SB 1816 by **AP**; Health Care

918752	PCS	S		RCS	AP		04/25 11:55 AM
803580	PCS:A	S	L	RCS	AP, Hays	btw L.1365 - 1366:	04/25 11:55 AM

CS/CS/SB 84 by **GO, CA, Diaz de la Portilla (CO-INTRODUCERS) Bean**; (Compare to CS/CS/2ND ENG/H 0085) Public-private Partnerships

502258	A	S		FAV	TR, Diaz de la Portilla	Before L.31:	04/03 04:22 PM
343044	A	S		FAV	TR, Diaz de la Portilla	Before L.31:	04/03 04:22 PM
725490	A	S		FAV	TR, Diaz de la Portilla	Delete L.223:	04/03 04:22 PM
456632	D	S		RCS	AP, Gardiner	Delete everything after	04/25 02:59 PM
257648	AA	S	L	WD	AP, Latvala	btw L.742 - 743:	04/25 02:59 PM
273636	A	S		WD	AP, Latvala	btw L.736 - 737:	04/25 02:59 PM

CS/SB 150 by **ED, Altman (CO-INTRODUCERS) Garcia, Bean, Bradley**; (Similar to CS/1ST ENG/H 0461) Deaf and Hard-of-hearing Students

842716	PCS	S		RCS	AP		04/25 11:36 AM

CS/SB 154 by **ED, Detert (CO-INTRODUCERS) Clemens**; (Similar to CS/CS/1ST ENG/H 0801) Certified School Counselors

CS/SB 156 by **CA, Detert**; (Compare to CS/H 0737) Swimming Pools and Spas

269142	D	S		FAV	RI, Stargel	Delete everything after	04/10 03:25 PM
290726	SD	S		RCS	AP, Gardiner	Delete everything after	04/25 05:28 PM
741084	AA	S	L	WD	AP, Grimsley	btw L.1308 - 1309:	04/25 05:28 PM
826452	AA	S	L	RCS	AP, Gardiner	Delete L.1309 - 1313.	04/25 05:28 PM
899032	AA	S	L	RCS	AP, Galvano	Delete L.774:	04/25 05:28 PM

CS/CS/SB 242 by **GO, BI, Hukill**; (Similar to CS/CS/H 0383) Interstate Insurance Product Regulation Compact

703120	A	S		RCS	AP, Hukill	Delete L.1046 - 1125:	04/25 03:56 PM

CS/CS/SB 274 by **RC, TR, Dean (CO-INTRODUCERS) Evers, Latvala**; (Similar to CS/CS/CS/H 0487) Freemasonry License Plates

164746	PCS	S		RCS	AP		04/25 11:36 AM

CS/SB 288 by **JU, Bradley**; (Identical to CS/H 0311) Costs of Prosecution, Investigation, and Representation

CS/SB 370 by **RI, Sachs**; (Identical to CS/H 0171) Disposition of Human Remains

SB 410 by **Bean**; (Similar to CS/CS/H 0217) Money Services Businesses

783148	PCS	S		RCS	AP		04/25 11:36 AM

CS/CS/CS/SB 500 by **HP, CA, RI, Clemens (CO-INTRODUCERS) Sobel**; (Similar to CS/CS/CS/H 7005) Massage Practice

CS/SB 582 by **CM, Galvano**; (Similar to CS/H 0357) Manufacturing Development

747758	A	S		RCS	AP, Galvano	Delete L.197 - 284:	04/25 11:57 AM

CS/SB 644 by **BI, Richter**; (Similar to CS/CS/H 0665) Licensure by the Office of Financial Regulation

SB 662 by **Hays**; (Identical to H 0605) Workers' Compensation

213550	D	S	RCS	AP, Hays	Delete everything after	04/25 02:46 PM

CS/SB 732 by **HP, Grimsley**; (Similar to CS/CS/1ST ENG/H 0365) Pharmacy

613416	D	S	RCS	AP, Galvano	Delete everything after	04/25 02:41 PM

SB 742 by **Evers**; (Similar to H 0685) Parole Interview Dates for Certain Inmates

CS/SB 844 by **HP, Grimsley**; (Compare to CS/CS/1ST ENG/H 0939) Medicaid Fraud

873636	PCS	S	RCS	AP		04/25 02:41 PM
931160	PCS:A	S	RCS	AP, Grimsley	Delete L.61 - 63:	04/25 02:41 PM
601082	PCS:A	S	RCS	AP, Grimsley	Delete L.280 - 286:	04/25 02:41 PM
105778	PCS:A	S	RCS	AP, Grimsley	Delete L.651:	04/25 02:41 PM
330380	PCS:A	S	RCS	AP, Grimsley	Delete L.663:	04/25 02:41 PM
717986	PCS:A	S	RCS	AP, Grimsley	Delete L.679:	04/25 02:41 PM

CS/SB 860 by **BI, Galvano**; (Identical to CS/CS/H 0553) Workers' Compensation System Administration

974512	A	S	WD	AP, Galvano	btw L.697 - 698:	04/24 09:11 PM

SB 862 by **Stargel**; (Similar to CS/CS/1ST ENG/H 0867) Parent Empowerment in Education

740566	PCS	S	RCS	AP		04/25 11:50 AM
437198	PCS:A	S	UNFAV	AP, Joyner	btw L.149 - 150:	04/25 11:50 AM
499026	PCS:A	S	WD	AP, Joyner	Delete L.160 - 162:	04/25 11:50 AM
495786	PCS:A	S	UNFAV	AP, Joyner	Delete L.199:	04/25 11:50 AM
805192	PCS:A	S	UNFAV	AP, Sobel	Delete L.202:	04/25 11:50 AM
447176	PCS:A	S	UNFAV	AP, Sobel	Delete L.222:	04/25 11:50 AM
637634	PCS:A	S	UNFAV	AP, Sobel	Delete L.230 - 244:	04/25 11:50 AM
193922	PCS:A	S	UNFAV	AP, Sobel	btw L.249 - 250:	04/25 11:50 AM
184132	PCS:A	S	WD	AP, Benacquisto	Delete L.255 - 263:	04/25 11:50 AM

CS/SB 896 by **HP, Garcia (CO-INTRODUCERS) Flores**; (Similar to CS/H 0793) Prepaid Dental Plans

856836	PCS	S	RCS	AP		04/25 11:36 AM
297676	PCS:A	S	WD	AP, Hays	btw L.104 - 105:	04/22 01:35 PM

SB 916 by **Flores (CO-INTRODUCERS) Benacquisto**; (Identical to H 0419) Tax on Sales, Use, and Other Transactions

116326	PCS	S	RCS	AP		04/25 11:36 AM

CS/CS/SB 958 by **CU, EP, Richter (CO-INTRODUCERS) Smith**; (Similar to CS/CS/CS/H 1083) Underground Natural Gas Storage

919526	D	S	RCS	AP, Richter	Delete everything after	04/25 02:46 PM

CS/SB 960 by **CM, Bean**; (Identical to CS/H 0423) Tax on Sales, Use, and Other Transactions

243574	PCS	S	RCS	AP		04/25 11:36 AM

CS/SB 980 by **ED, Flores**; (Similar to H 7141) Public School Personnel

577432	PCS	S	RCS	AP		04/25 02:41 PM
687024	PCS:A	S	RCS	AP, Bean	btw L.54 - 55:	04/25 02:41 PM

CS/SB 1024 by **CA, CM**; (Compare to H 0641) Department of Economic Opportunity

389672	PCS	S		RCS	AP		04/25 02:41 PM
317422	PCS:D	S		RCS	AP, Gardiner	Delete everything after	04/25 02:41 PM
699348	PCS:A	S	L	RCS	AP, Gardiner	Delete L.2159 - 2160:	04/25 02:41 PM

SB 1026 by **Thrasher**; (Compare to CS/H 0837) Tax Collectors

342350	PCS	S		RCS	AP		04/25 11:36 AM

SB 1064 by **Latvala**; (Compare to CS/CS/H 0277) Assessment of Residential and Nonhomestead Real Property

725598	PCS	S		RCS	AP		04/25 11:36 AM

CS/SB 1132 by **CA, Brandes**; (Compare to CS/CS/H 0579) Department of Transportation

730310	PCS	S		FAV	AP		04/25 05:28 PM
277322	PCS:A	S		RCS	AP, Richter	btw L.633 - 634:	04/25 05:28 PM
396632	PCS:A	S		RCS	AP, Gardiner	btw L.814 - 815:	04/25 05:28 PM
499346	PCS:A	S		RCS	AP, Richter	btw L.827 - 828:	04/25 05:28 PM
212468	PCS:A	S		RCS	AP, Richter	Delete L.1051 - 1058:	04/25 05:28 PM
632806	PCS:A	S		WD	AP, Richter	Delete L.1733 - 1734:	04/25 05:28 PM
753148	PCS:A	S		WD	AP, Richter	Delete L.3:	04/25 05:28 PM
894362	PCS:A	S		RCS	AP, Richter	Delete L.1973 - 1974:	04/25 05:28 PM
593382	PCS:A	S		RCS	AP, Richter	Delete L.2348:	04/25 05:28 PM
918984	PCS:A	S		RCS	AP, Gardiner	Delete L.2388 - 2610:	04/25 05:28 PM
169590	PCS:A	S		RCS	AP, Richter	btw L.4507 - 4508:	04/25 05:28 PM
676670	PCS:A	S		RCS	AP, Montford	btw L.4507 - 4508:	04/25 05:28 PM
146010	PCS:A	S	L	WD	AP, Bean	btw L.608 - 609:	04/25 05:28 PM
127608	PCS:A	S	L	WD	AP, Margolis	btw L.608 - 609:	04/25 05:28 PM
303472	PCS:A	S	L	RCS	AP, Gardiner	Delete L.2980 - 3114:	04/25 05:28 PM

SB 1190 by **Brandes (CO-INTRODUCERS) Sachs, Evers**; (Similar to CS/CS/1ST ENG/H 0203) Agricultural Lands

543664	A	S		RCS	AP, Hays	btw L.53 - 54:	04/25 11:55 AM

CS/CS/SB 1192 by **CA, HP, Grimsley**; (Compare to CS/CS/H 0831) Provision of Health Care with Controlled Substances

978416	A	S		RCS	AP, Grimsley	Delete L.58 - 223:	04/25 02:42 PM
426316	A	S		RCS	AP, Grimsley	Delete L.399 - 459:	04/25 02:42 PM
957718	A	S	L	RCS	AP, Sobel	Delete L.382 - 398:	04/25 02:42 PM

SB 1200 by **Simpson**; (Similar to CS/H 1193) Taxation of Property

971948	PCS	S		RCS	AP		04/25 11:55 AM
115124	PCS:A	S		RCS	AP, Ring	Delete L.64 - 70:	04/25 11:55 AM

SB 1246 by **Bean**; (Similar to CS/H 0853) Public Retirement Plans

877596	PCS	S		RCS	AP		04/25 11:36 AM

SB 1280 by **Sachs**; (Identical to H 0099) Tax Dealer Collection Allowances

458308	PCS	S		RCS	AP		04/25 11:36 AM

CS/SB 1350 by **CJ, Bradley**; (Similar to CS/H 7137) Criminal Penalties

176724	A	S	UNFAV	AP, Joyner	Delete L.55 - 57:	04/25 10:04 AM
813126	A	S	UNFAV	AP, Joyner	btw L.57 - 58:	04/25 10:04 AM

CS/SB 1352 by **CA, Ring**; (Compare to CS/CS/1ST ENG/H 0247) Paper Reduction

508548	PCS	S	RCS	AP		04/25 11:56 AM
965980	PCS:A	S L	RCS	AP, Smith	Delete L.54 - 64:	04/25 11:56 AM

CS/SB 1388 by **ED, Montford**; (Compare to CS/H 1031) Instructional Materials

413204	PCS	S	RCS	AP		04/25 02:42 PM
426402	PCS:D	S	RCS	AP, Montford	Delete everything after	04/25 02:42 PM
236298	PCS:A	S L	RCS	AP, Montford	Delete L.723:	04/25 02:42 PM

CS/SB 1390 by **ED, Montford**; (Compare to H 1341) School District Innovation

CS/SB 1408 by **BI, Richter**; (Similar to CS/H 1191) Captive Insurance

683692	A	S	RCS	AP, Richter	Delete L.51 - 57:	04/25 02:42 PM

CS/CS/SB 1482 by **JU, HP, Hays**; (Compare to CS/CS/2ND ENG/H 1159) Skilled Nursing Facilities

206088	A	S		AP, Hays	Delete everything after	04/22 06:21 PM
707638	AA	S		AP, Hays	Delete L.93 - 95:	04/23 01:17 PM
870048	A	S	WD	AP, Hays	Delete L.19 - 72:	04/22 05:32 PM
730272	AA	S	WD	AP, Hays	Delete L.30:	04/22 05:32 PM

SB 1630 by **Legg**; (Compare to CS/H 7029) Education

201208	D	S L	WD	AP, Bean	Delete everything after	04/23 07:59 AM
640620	D	S L	RCS	AP, Bean	Delete everything after	04/25 05:12 PM
821630	AA	S L	RCS	AP, Bean	btw L.456 - 457:	04/25 05:12 PM
941478	AA	S L	RCS	AP, Bean	btw L.51 - 52:	04/25 05:12 PM

CS/CS/SB 1636 by **JU, HP, Flores**; (Identical to CS/CS/CS/1ST ENG/H 1129) Infants Born Alive

CS/CS/SB 1644 by **JU, CF, Flores**; (Similar to CS/CS/H 1325) Victims of Human Trafficking

872226	A	S	RCS	AP, Bradley	Delete L.179 - 180:	04/25 02:44 PM
926568	A	S	RCS	AP, Bradley	Delete L.412:	04/25 02:44 PM

CS/SB 1684 by **EP, Altman**; (Compare to H 0199) Environmental Regulation

721714	PCS	S	RCS	AP		04/25 11:36 AM
455738	PCS:A	S L	RCS	AP, Latvala	Delete L.470 - 473:	04/25 11:36 AM
212288	PCS:A	S L	WD	AP, Latvala	Delete L.416 - 417:	04/25 11:36 AM

CS/SB 1722 by **ED, Legg**; (Compare to CS/H 5101) Early Learning

428226	PCS	S	FAV	AP		04/25 02:44 PM
959928	PCS:A	S	RCS	AP, Benacquisto	Delete L.1478 - 1502:	04/25 02:44 PM
671062	PCS:A	S	RCS	AP, Benacquisto	Delete L.1777 - 1783.	04/25 02:44 PM
117748	PCS:A	S	WD	AP, Benacquisto	Delete L.2270 - 2323.	04/22 10:33 AM
416810	PCS:A	S L	RCS	AP, Latvala	Delete L.2270 - 2323.	04/25 02:44 PM

SB 1844 by **HP**; (Compare to CS/H 7169) Health Choice Plus Program

812796	PCS	S		RCS	AP	04/25 11:36 AM

SB 1884 by **HP**; County Medicaid Contributions

215006	D	S	L	RCS	AP, Grimsley	Delete everything after	04/25 02:45 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Negron, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, April 23, 2013
TIME: 9:00 a.m.—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Negron, Chair; Senator Benacquisto, Vice Chair; Senators Bean, Bradley, Galvano, Gardiner, Grimsley, Hays, Hukill, Joyner, Latvala, Lee, Margolis, Montford, Richter, Ring, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (SB 1816) is expected to be considered:		
1	**SB 1816** Appropriations	Health Care; Revising the components of the Florida Kidcare program; revising the eligibility of the Medikids program component; revising the minimum health benefits coverage under the Florida Kidcare Act; repealing provisions relating to the approval of health benefits coverage, financial assistance, and delivery of services in rural counties; creating the Healthy Florida program; authorizing the Florida Healthy Kids Corporation to contract with certain insurers; requiring the corporation to oversee the Healthy Florida program and to establish a grievance process and integrity process, etc. AHS 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation - Health and Human Services		
2	**CS/CS/SB 84** Governmental Oversight and Accountability / Community Affairs / Diaz de la Portilla (Compare CS/CS/H 85, S 238)	Public-private Partnerships; Providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; creating the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to establish specified guidelines; providing for interim and comprehensive agreements between a public and a private entity; authorizing counties to enter into public-private partnership agreements for construction, operation, ownership, and financing of transportation facilities, etc. CA 01/23/2013 Fav/CS GO 03/14/2013 Fav/CS TR 04/02/2013 Fav/2 Amendments AP 04/23/2013 Fav/CS	Fav/CS Yeas 16 Nays 0
	A proposed committee substitute for the following bill (CS/SB 150) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 150** Education / Altman (Similar CS/H 461)	Deaf and Hard-of-hearing Students; Requiring that a student's language and communication needs, including certain opportunities, be considered in the development of an individual education plan for a deaf or hard-of-hearing student; requiring the Department of Education to develop a model communication plan to be used in the development of an individual education plan for deaf or hard-of-hearing students; requiring the department to disseminate the model communication plan to each school district and provide technical assistance, etc. ED 03/18/2013 Fav/CS AED 04/04/2013 Temporarily Postponed AED 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation - Education		
4	**CS/SB 154** Education / Detert (Similar CS/CS/H 801)	Certified School Counselors; Renaming guidance counselors as "certified school counselors," etc. ED 04/01/2013 Fav/CS AED 04/17/2013 Favorable AP 04/23/2013 Favorable	Favorable Yeas 18 Nays 0
	With subcommittee recommendation - Education		
5	**CS/SB 156** Community Affairs / Detert (Compare CS/H 737)	Swimming Pools and Spas; Providing an exemption from licensure requirements for an owner or operator maintaining a swimming pool or spa for the purpose of water treatment; revising the definition of the terms "contractor," "commercial pool/spa contractor," "residential pool/spa contractor," and "swimming pool/spa servicing contractor" to include the cleaning, maintenance, and water treatment of swimming pools and spas; revising eligibility requirements to take the swimming pool/spa servicing contractors' examination, etc. CA 03/07/2013 Fav/CS RI 04/09/2013 Fav/1 Amendment AGG 04/17/2013 Favorable AP 04/23/2013 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation - General Government		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/CS/SB 242** Governmental Oversight and Accountability / Banking and Insurance / Hukill (Similar CS/CS/H 383)	Interstate Insurance Product Regulation Compact; Providing for establishment of an Interstate Insurance Product Regulation Commission; specifying the commission as an instrumentality of the compacting states; designating the Commissioner of Insurance Regulation as the representative of the state on the commission; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; exempting the commission from all taxation, except as otherwise provided, etc. BI 03/20/2013 Not Considered BI 04/02/2013 Fav/CS GO 04/09/2013 Fav/CS AGG 04/17/2013 Favorable AP 04/23/2013 Fav/CS With subcommittee recommendation - General Government	Fav/CS Yeas 17 Nays 0

A proposed committee substitute for the following bill (CS/CS/SB 274) is expected to be considered:

7	**CS/CS/SB 274** Rules / Transportation / Dean (Similar CS/CS/CS/H 487)	Freemasonry License Plates; Creating a Freemasonry license plate; establishing an annual use fee for the plate; providing for the distribution of annual use fees received from the sale of such plates, etc. TR 03/21/2013 Fav/CS RC 04/09/2013 Fav/CS ATD 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS With subcommittee recommendation - Transportation, Tourism, and Economic Development	Fav/CS Yeas 18 Nays 0
8	**CS/SB 288** Judiciary / Bradley (Identical CS/H 311)	Costs of Prosecution, Investigation, and Representation; Providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing that a child adjudicated delinquent may perform community service in lieu of certain costs and fees, etc. CJ 02/05/2013 Favorable JU 04/01/2013 Not Considered JU 04/08/2013 Fav/CS ACJ 04/11/2013 Favorable AP 04/23/2013 Favorable	Favorable Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Criminal and Civil Justice		
9	**CS/SB 370** Regulated Industries / Sachs (Identical CS/H 171)	Disposition of Human Remains; Revising procedures for the registration of certificates of death or fetal death and the medical certification of causes of death; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; revising provisions prohibiting the selling or buying of human remains or the transmitting or conveying of such remains outside the state, etc. RI 03/07/2013 Fav/CS HP 03/14/2013 Favorable JU 04/01/2013 Favorable AP 04/23/2013 Favorable	Favorable Yeas 16 Nays 0
	A proposed committee substitute for the following bill (SB 410) is expected to be considered:		
10	**SB 410** Bean (Similar CS/CS/H 217, Compare CS/H 7135, Link CS/S 1868)	Money Services Businesses; Authorizing the Financial Services Commission to use a portion of the fees that licensees may charge for the direct costs of verification of payment instruments cashed for certain purposes; requiring licensees engaged in check cashing to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; requiring the office to maintain the transaction information in a centralized database; providing liability protection for licensees relying on database information, etc. BI 04/02/2013 Favorable AGG 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation - General Government		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/CS/CS/SB 500** Health Policy / Community Affairs / Regulated Industries / Clemens (Similar CS/CS/CS/H 7005)	Massage Practice; Requiring an application to be denied upon specified findings; prohibiting the operation of a massage establishment during specified times; prohibiting the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use under a local ordinance; authorizing a county or municipality to waive the restriction on operating hours of a massage establishment in certain instances; declaring that a massage establishment operating in violation of specified statutes is a nuisance that may be abated or enjoined, etc. RI 03/14/2013 Fav/CS CA 04/02/2013 Fav/CS HP 04/09/2013 Fav/CS AP 04/23/2013 Favorable	Favorable Yeas 16 Nays 0
12	**CS/SB 582** Commerce and Tourism / Galvano (Similar CS/H 357)	Manufacturing Development; Establishing the Manufacturing Competitiveness Act; authorizing local governments to establish a local manufacturing development program that provides for master development approval for certain sites; requiring the Department of Economic Opportunity to develop a model ordinance containing specified information and provisions; requiring participating agencies to establish a manufacturing development coordinated approval process for certain manufacturers, etc. CM 04/01/2013 Fav/CS CA 04/09/2013 Favorable ATD 04/17/2013 Favorable AP 04/23/2013 Fav/CS With subcommittee recommendation - Transportation, Tourism, and Economic Development	Fav/CS Yeas 16 Nays 0
13	**CS/SB 644** Banking and Insurance / Richter (Similar CS/CS/H 665)	Licensure by the Office of Financial Regulation; Authorizing, rather than requiring, the Office of Financial Regulation to deny a mortgage broker license application if the applicant had a mortgage broker license revoked previously; revising the procedures and requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; requiring the Office of Financial Regulation to pay an annual fee to the Department of Law Enforcement; revising license application fees to include fingerprint retention fees as prescribed by rule, etc. BI 03/20/2013 Fav/CS CJ 04/08/2013 Favorable ACJ 04/11/2013 Favorable AP 04/23/2013 Favorable	Favorable Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Criminal and Civil Justice		
14	**SB 662** Hays (Identical H 605, Compare H 483, S 1662)	Workers' Compensation; Revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication, etc. BI 03/20/2013 Favorable HP 04/09/2013 Favorable AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
15	**CS/SB 732** Health Policy / Grimsley (Similar CS/CS/H 365)	Pharmacy; Permitting a class II institutional pharmacy formulary to include biologics, biosimilars, and biosimilar interchangeables; providing requirements for a pharmacist to dispense a substitute biological product that is determined to be biosimilar to and interchangeable for the prescribed biological product; providing notification requirements for a pharmacist in a class II or modified class II institutional pharmacy; requiring the Board of Pharmacy to maintain a current list of interchangeable biosimilar products, etc. HP 03/20/2013 Not Considered HP 04/02/2013 Fav/CS AHS 04/11/2013 Favorable AP 04/23/2013 Fav/CS	Fav/CS Yeas 16 Nays 1
	With subcommittee recommendation - Health and Human Services		
16	**SB 742** Evers (Similar H 685)	Parole Interview Dates for Certain Inmates; Extending from 2 years to 7 years the period between parole interview dates for inmates convicted of committing certain specified crimes, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Favorable JU 04/01/2013 Favorable ACJ 04/11/2013 Favorable AP 04/23/2013 Favorable	Favorable Yeas 18 Nays 0
	With subcommittee recommendation - Criminal and Civil Justice		

A proposed committee substitute for the following bill (CS/SB 844) is expected to be considered:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**CS/SB 844** Health Policy / Grimsley (Compare CS/CS/H 939)	Medicaid Fraud; Adding an additional provision relating to a change in principal that must be included in a Medicaid provider agreement with the Agency for Health Care Administration; revising provisions specifying grounds for terminating a provider from the program, for seeking certain remedies for violations, and for imposing certain sanctions; deleting the requirement that the agency place payments withheld from a provider in a suspended account and revising when a provider must reimburse overpayments, etc. HP 03/07/2013 Fav/CS BI 04/09/2013 Favorable AHS 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation - Health & Human Services		
18	**CS/SB 860** Banking and Insurance / Galvano (Identical CS/CS/H 553)	Workers' Compensation System Administration; Revising requirements relating to submitting notice of election of exemption; revising immunity from liability standards for employers and employees using a help supply services company; revising and deleting penalties for noncompliance relating to duty of employer upon receipt of notice of injury or death; deleting a requirement that a provision that is mutually agreed upon in any collective bargaining agreement be filed with the Department of Financial Services, etc. BI 04/09/2013 Fav/CS GO 04/16/2013 Favorable AP 04/23/2013 Favorable	Favorable Yeas 18 Nays 0
	A proposed committee substitute for the following bill (SB 862) is available:		
19	**SB 862** Stargel (Similar CS/CS/H 867)	Parent Empowerment in Education; Providing that parents who have a student in a public school that is implementing a turnaround option may petition to have a particular turnaround option implemented; requiring the school district to notify parents of a public school student being taught by an out-of-field teacher or by a teacher with an unsatisfactory performance rating; creating the Parent Empowerment Act; requiring the school district to consider the turnaround option on the valid petition with the most signatures at a publicly noticed school board meeting, etc. ED 04/01/2013 Favorable AED 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 13 Nays 6
	With subcommittee recommendation - Education		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (CS/SB 896) is expected to be considered:		
20	**CS/SB 896** Health Policy / Garcia (Similar CS/H 793)	Prepaid Dental Plans; Postponing the scheduled repeal of a provision requiring the Agency for Health Care Administration to contract with dental plans for dental services on a prepaid or fixed-sum basis; authorizing the agency to provide a prepaid dental health program in Miami-Dade County on a permanent basis, etc. HP 03/14/2013 Fav/CS AHS 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS RC	Fav/CS Yeas 16 Nays 0
	With subcommittee recommendation - Health and Human Services		
	A proposed committee substitute for the following bill (SB 916) is expected to be considered:		
21	**SB 916** Flores (Identical H 419, Compare H 5601, H 7097)	Tax on Sales, Use, and Other Transactions; Specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer related accessories are exempt from the sales tax, etc. ED 03/18/2013 Favorable AFT 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation - Finance and Tax		
22	**CS/CS/SB 958** Communications, Energy, and Public Utilities / Environmental Preservation and Conservation / Richter (Similar CS/CS/CS/H 1083, Compare CS/CS/H 1085, Link CS/CS/S 984)	Underground Natural Gas Storage; Declaring underground natural gas storage to be in the public interest; providing for the notice and permitting of storage in and recovery from natural gas storage reservoirs; granting authority to the Department of Environmental Protection to issue permits to establish natural gas storage facilities; providing for legal action against a person who appears to be violating a rule that relates to the storage or recovery of natural gas, etc. EP 04/09/2013 Fav/CS CU 04/15/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0
	A proposed committee substitute for the following bill (CS/SB 960) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	**CS/SB 960** Commerce and Tourism / Bean (Identical CS/H 423)	Tax on Sales, Use, and Other Transactions; Providing an exception to sales tax for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; providing an exception from sales tax collected by a licensed sales tax dealer for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; providing a sales tax exemption for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes, etc. CM 03/18/2013 Fav/CS AFT 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (CS/SB 980) is available:

24	**CS/SB 980** Education / Flores (Similar H 7141, Compare CS/CS/S 1664)	Public School Personnel; Providing requirements for the performance evaluation of personnel for purposes of the performance salary schedule, etc. ED 03/18/2013 Fav/CS AED 04/04/2013 Fav/CS AP 04/23/2013 Fav/CS RC	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation - Education

A proposed committee substitute for the following bill (CS/SB 1024) is available:

25	**CS/SB 1024** Community Affairs / Commerce and Tourism (Compare H 641, H 1057, CS/CS/H 7007, S 222, CS/S 406, S 494)	Department of Economic Opportunity; Revising requirements for various annual reports submitted to the Governor and Legislature, including the annual report of the Department of Economic Opportunity, the annual report of Enterprise Florida, Inc., and the annual incentives report; revising application requirements for community development block grants and procedures for the ranking of applications and the determination of project funding; requiring the department to impose a penalty against a claimant who is overpaid reemployment assistance benefits due to fraud by the claimant and providing for deposit of moneys collected for such penalties in the Unemployment Compensation Trust Fund, etc. CA 03/07/2013 Fav/CS ATD 03/27/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 1

With subcommittee recommendation - Transportation, Tourism, and Economic Development

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION

A proposed committee substitute for the following bill (SB 1026) is expected to be considered:

26	**SB 1026** Thrasher (Compare CS/H 837)	Tax Collectors; Specifying that the tax collector may collect delinquent taxes by processing tax deed applications, etc. CA 04/02/2013 Favorable AFT 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (SB 1064) is expected to be considered:

27	**SB 1064** Latvala (Compare CS/CS/H 277)	Assessment of Residential and Nonhomestead Real Property; Excluding the value of certain installations, changes, or improvements made after a specified date from the assessed value of residential real property; requiring a nonrefundable filing fee for a petition to the value adjustment board; specifying additional exceptions to the assessment of homestead property at just value; repealing provisions relating to the property tax exemption for renewable energy source devices, etc. CA 03/14/2013 Favorable AFT 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (CS/SB 1132) is available:

28	**CS/SB 1132** Community Affairs / Brandes (Compare CS/CS/H 579, CS/CS/H 7127, CS/CS/S 560)	Department of Transportation; Requiring the Transportation Commission to also monitor ch. 345, F.S., relating to the Florida Regional Tollway Authority; deleting provisions relating to the Florida Statewide Passenger Rail Commission; providing that persons who install a transit shelter or bus bench on certain right-of-ways are responsible for ensuring that the bench or transit shelter complies with applicable laws and rules; creating specified provisions relating to the Florida Regional Tollway Authority, etc. TR 03/07/2013 Fav/7 Amendments CA 03/20/2013 Fav/CS ATD 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Transportation, Tourism, and Economic Development		
29	**SB 1190** Brandes (Similar CS/CS/H 203)	Agricultural Lands; Prohibiting a governmental entity from adopting or enforcing any prohibition, restriction, regulation, or other limitation or from charging a fee on a specific agricultural activity of a bona fide farm operation on land classified as agricultural land under certain circumstances, etc. AG 03/11/2013 Favorable EP 04/02/2013 Favorable AFT 04/11/2013 Favorable AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation - Finance and Tax		
30	**CS/CS/SB 1192** Community Affairs / Health Policy / Grimsley (Compare CS/CS/H 831, CS/CS/S 966)	Provision of Health Care with Controlled Substances; Limiting the application of requirements for prescribing controlled substances; requiring a physician to consult the prescription drug monitoring program database before prescribing certain controlled substances; requiring a pharmacy permittee to commence operations within 180 days after permit issuance or show good cause why operations were not commenced; deleting a provision that prohibits funds from prescription drug manufacturers to be used to implement the prescription drug monitoring program; providing that regulation of the licensure, activity, and operation of pain-management clinics is preempted to the state under certain circumstances, etc. HP 03/20/2013 Fav/CS CA 04/09/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 1200) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
31	**SB 1200** Simpson (Similar CS/H 1193)	Taxation of Property; Deleting authorization for a value adjustment board upon its own motion to review lands classified by a property appraiser as agricultural or nonagricultural; deleting a requirement that the property appraiser must reclassify as nonagricultural certain lands that have been zoned to a nonagricultural use; deleting authorization for a value adjustment board upon its own motion to review property granted or denied classification by a property appraiser as historic property that is being used for commercial or certain nonprofit purposes, etc. CA 03/20/2013 Favorable AG 04/01/2013 Favorable AFT 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (SB 1246) is expected to be considered:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	**SB 1246** Bean (Similar CS/H 853)	Public Retirement Plans; Providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law, etc. GO 04/02/2013 Favorable CA 04/09/2013 Favorable AFT 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (SB 1280) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	**SB 1280** Sachs (Identical H 99, H 1023)	Tax Dealer Collection Allowances; Revising the process for dealers to elect to forgo the sales tax collection allowance and direct that the collection allowance amount be transferred into the Educational Enhancement Trust Fund, etc. ED 04/01/2013 Favorable AFT 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation - Finance and Tax

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
34	**CS/SB 1350** Criminal Justice / Bradley (Similar CS/H 7137, Compare H 963)	Criminal Penalties; Providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring that a judge consider certain factors before determining if life imprisonment is an appropriate sentence, etc. CJ 04/01/2013 Not Considered CJ 04/08/2013 Fav/CS ACJ 04/11/2013 Favorable AP 04/23/2013 Favorable With subcommittee recommendation - Criminal and Civil Justice	Favorable Yeas 13 Nays 4

A proposed committee substitute for the following bill (CS/SB 1352) is expected to be considered:

35	**CS/SB 1352** Community Affairs / Ring (Compare CS/CS/H 247, CS/H 249, Link CS/S 1260)	Paper Reduction; Providing that the uniform statewide voter registration application be designed to elicit the e-mail address of an applicant and whether the applicant desires to receive sample ballots by e-mail; authorizing the property appraiser to notify taxpayers of proposed property taxes by postcard or e-mail in lieu of first-class mail, etc. EE 03/11/2013 Fav/1 Amendment CA 03/20/2013 Fav/CS ATD 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS With subcommittee recommendation - Transportation, Tourism, and Economic Development	Fav/CS Yeas 15 Nays 0

A proposed committee substitute for the following bill (CS/SB 1388) is available:

36	**CS/SB 1388** Education / Montford (Compare CS/H 1031)	Instructional Materials; Authorizing a district school board to review, adopt, and purchase instructional materials; authorizing the district school board to set and collect fees from a publisher that participates in the instructional materials review process; requiring the Commissioner of Education to appoint state instructional materials reviewers, rather than state or national experts, to review instructional materials; requiring the Department of Education to post certain instructional materials on its website, etc. ED 04/01/2013 Fav/CS AED 04/11/2013 Fav/CS AP 04/23/2013 Fav/CS With subcommittee recommendation - Education	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
37	**CS/SB 1390** Education / Montford (Compare H 1341, CS/H 7029, S 828, S 1232)	School District Innovation; Creating the Florida Innovation Schools Act; granting school districts the ad valorem tax exemption given to charter schools; creating innovation schools to allow school districts to earn flexibility for high academic achievement; limiting the number of such schools that may be operated and established in a school district; exempting such schools from ch. 1000-1013, F.S., subject to certain exceptions; providing for funding, etc. ED 03/18/2013 Workshop-Discussed ED 04/01/2013 Fav/CS AED 04/11/2013 Favorable AP 04/23/2013 Favorable With subcommittee recommendation - Education	Favorable Yeas 16 Nays 0
38	**CS/SB 1408** Banking and Insurance / Richter (Similar CS/H 1191, Compare CS/CS/H 635, CS/CS/S 1046)	Captive Insurance; Replacing the term “captive insurer” with “captive insurance company” in part V of ch. 628, F.S.; expanding the risks that an industrial insured capital insurance company may insure; providing that an industrial insured captive insurance company may provide certain insurance if the company has and maintains unencumbered capital and surplus of a certain amount; conforming terms and requiring captive insurance companies to deposit and maintain securities for the protection of policyholders, etc. BI 04/09/2013 Fav/CS CM 04/15/2013 Favorable AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
39	**CS/CS/SB 1482** Judiciary / Health Policy / Hays (Compare CS/CS/H 1159) **(If Received)**	Skilled Nursing Facilities; Providing an exemption from certificate-of-need requirements for construction of a licensed skilled nursing facility in a retirement community, etc. HP 04/02/2013 Fav/CS JU 04/15/2013 Fav/CS AP 04/23/2013 Not Received	Not Received

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**SB 1630** Legg (Compare CS/H 7029, CS/CS/H 7091, CS/CS/S 1076)	Education; Requiring that the technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments pursuant to s. 1008.22, F.S., be load tested and independently verified as appropriate, adequate, efficient, and sustainable; requiring that full implementation of online common core assessments for all kindergarten through grade 12 public school students occur only after the technology infrastructure, connectivity, and capacity of all public schools and school districts have been load tested and independently verified as ready for successful deployment and implementation, etc. ED 03/18/2013 Favorable AED 03/27/2013 Temporarily Postponed AED 04/11/2013 Favorable AP 04/23/2013 Fav/CS With subcommittee recommendation - Education	Fav/CS Yeas 15 Nays 0
41	**CS/CS/SB 1636** Judiciary / Health Policy / Flores (Identical CS/CS/CS/H 1129, Compare H 395, S 1056)	Infants Born Alive; Providing that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth; requiring health care practitioners to preserve the life and health of such an infant born alive, if possible; providing for the transport and admittance of an infant born alive to a hospital; requiring a health care practitioner or certain employees who have knowledge of any violations with respect to infants born alive after an attempted abortion to report those violations to the Department of Health, etc. HP 04/09/2013 Fav/CS JU 04/15/2013 Fav/CS AP 04/23/2013 Favorable	Favorable Yeas 18 Nays 0
42	**CS/CS/SB 1644** Judiciary / Children, Families, and Elder Affairs / Flores (Similar CS/CS/H 1325, Compare CS/H 1327, CS/H 7031, CS/S 1114, Link CS/CS/CS/S 1734)	Victims of Human Trafficking; Revising the mental, emotional, or developmental age of a child victim whose out-of-court statement describing specified criminal acts is admissible in evidence in certain instances; providing for the expungement of the criminal history record of a victim of human trafficking; providing for electronic appearances of petitioners and attorneys at hearings; authorizing a person whose records are expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record, etc. CF 03/18/2013 Fav/CS JU 04/08/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION

A proposed committee substitute for the following bill (CS/SB 1684) is expected to be considered:

43	**CS/SB 1684** Environmental Preservation and Conservation / Altman (Compare H 199, CS/CS/CS/H 999, CS/H 1063, CS/H 7105, CS/CS/H 7127, S 588, CS/S 948, S 1470, CS/S 1828)	Environmental Regulation; Authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; requiring the cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to establish an agricultural water supply planning program, etc. EP 04/02/2013 Fav/CS AG 04/08/2013 Favorable AGG 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 14 Nays 3

With subcommittee recommendation - General Government

A proposed committee substitute for the following bill (CS/SB 1722) is expected to be considered:

44	**CS/SB 1722** Education / Legg (Compare CS/H 5101, CS/H 7165)	Early Learning; Establishing the Office of Early Learning within the Office of the Commissioner of Education; establishing responsibilities of the Office of Early Learning, etc. ED 04/01/2013 Fav/CS AED 04/11/2013 Temporarily Postponed AED 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 16 Nays 0

With subcommittee recommendation - Education

A proposed committee substitute for the following bill (SB 1844) is expected to be considered:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
45	**SB 1844** Health Policy (Compare CS/H 7169)	Health Choice Plus Program; Authorizing the Florida Health Choices, Inc., to accept funds from various sources to deposit into health benefits accounts, subsidize the costs of coverage, and administer and support the program; requiring the corporation to manage the health benefits accounts and provide the marketplace of options that an enrollee in the program may use; providing for payment for achieving health living performance goals, etc. AHS 04/17/2013 Fav/CS AP 04/23/2013 Fav/CS	Fav/CS Yeas 12 Nays 6
	With subcommittee recommendation - Health and Human Services		
46	**SB 1884** Health Policy	County Medicaid Contributions; Specifying the initial contribution and revising the method for calculating county contributions; providing timetables for calculating contributions and for payment of contributions; deleting provisions specifying the care and services that counties must participate in, obsolete bond provisions, and a process for refund requests; specifying the method for calculating each county's contribution for the 2013-2014 fiscal year, etc. AP 04/23/2013 Fav/CS	Fav/CS Yeas 17 Nays 0
	Other Related Meeting Documents		

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 Committee on Appropriations

BILL:	PCS/SB 1816 (918752)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Appropriations Committee
SUBJECT:	Health Care
DATE:	April 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Hansen		**AP SPB 7038 as introduced**
2.	Brown	Pigott	AHS	**Fav/CS**
3.	Brown	Hansen	AP	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

PCS/SB 1816 amends several sections of the Florida Kidcare Program Act under Part II of chapter 409, Florida Statutes, to remove obsolete provisions and conform other provisions with changes in federal laws and regulations relating to the implementation of the federal Patient Protection and Affordable Care Act (Public Law 2011-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 2011-152), known collectively as "PPACA," and the Supreme Court ruling in *National Federation of Independent Business v. Sebelius.*[1]

The bill adds definitions for "modified adjusted gross income" and "household income" to align with changes in Medicaid and Children's Health Insurance Program (CHIP) program eligibility laws and regulations and removes definitions that are no longer applicable to the program. The bill removes authority and provisions for an employer-sponsored insurance premium assistance program component in Florida Kidcare. Notification requirements for certain Florida Kidcare disenrollees regarding other insurance options on the exchange, as defined under PPACA, are added, and the non-subsidized program under Florida Kidcare is phased-out. The bill includes provisions for electronic eligibility matching through the exchange hub and an option for written documentation when matching is not feasible.

The bill includes appropriations of $10.93 million general revenue (GR) and $1.29 billion from the Medical Care Trust Fund for the 2013-2014 fiscal year to implement the bill.

[1] *National Federation of Independent Business v. Sebelius, 567 U.S.___(2012).*

The bill revises the eligibility process to reflect the procedures that will be used under the modified adjusted gross income (MAGI) method beginning January 1, 2014. The bill further revises the responsibilities of the Department of Children and Family Services (DCF), the Agency for Health Care Administration (AHCA), the Department of Health (DOH), the Florida Healthy Kids Corporation (FHKC), and the Office of Insurance Regulation (OIR) under the Florida Kidcare Program. The bill clarifies that the AHCA is directed to contract with the FHKC for the administration of the Healthy Kids and Healthy Florida programs.

The bill amends s. 624.91, Florida Statutes – the Florida Healthy Kids Corporation Act – to revise legislative intent to include a new program, Healthy Florida. The bill modifies FHKC's corporate governance structure, medical loss ratio guidelines for health plan contracts, and corporate responsibilities. The bill creates s. 624.917, Florida Statutes, to provide definitions, eligibility criteria, enrollment, and benefits for the Healthy Florida program. The FHKC is also authorized to make changes to the program to negotiate for the approval of the Healthy Florida program with the federal Department of Health and Human Services (HHS), if necessary.

The bill repeals the authority for an operating fund for the FHKC under section 624.915, Florida Statutes.

The bill includes a conflict of laws statement indicating that if there is a conflict between a provision in the bill and the PPACA, the provision must be interpreted to comply with the requirements of federal law.

The bill is effective upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 409.811, 409.813, 409.8132, 409.8135, 409.814, 409.815, 409.8177, 409.818, 409.820, and 624.91.

The bill creates section 624.917, Florida Statutes.

The bill repeals the following sections the Florida Statutes: 409.817, 409.8175, and 624.915.

II. Present Situation:

Florida provides health insurance coverage options to low income Floridians through a variety of programs utilizing state and federal funds. As of February 28, 2013, more than 3.2 million individuals received coverage through some Medicaid eligibility category.[2] Enrollment in the Florida Kidcare program (non-Medicaid funded components) for the same time period was an additional 256,721 children.[3]

Florida's Medicaid program is expected to expend $21 billion for the 2012-13 state fiscal year to provide coverage to its enrollees, making it the fifth largest in the nation in terms of

[2] Agency for Health Care Administration, *Report of Medicaid Eligibles*, http://ahca.myflorida.com/Medicaid/about/pdf/age_assistance_category_130228.pdf (last visited Mar. 17, 2013).
[3] Agency for Health Care Administration, *Florida KidCare Enrollment Report – February 2013*, (copy on file with the Senate Health Policy Committee).

expenditures.[4] The Florida Medicaid program is jointly funded between the state and federal governments; 57.73 percent of the cost for health care services is paid by federal funds and 42.27 percent is state share in the current state fiscal year. Funding for the Florida Kidcare program's Title XXI components has an enhanced federal match of 70.66 percent for federal fiscal year 2012-13.[5]

According to the most recent data from the American Community Survey (ACS) of the federal Census Bureau, an estimated 4 million Floridians are uninsured.[6] Of that number according to the ACS data, 594,000 are children.[7] Dividing Florida's uninsured by income level, more than 1.9 million adults are under 139% of the federal poverty level (FPL), according to statistics for 2010-2011.[8] Lower income adults, or those below 100 percent of the FPL, number at 1.1 million of the 1.9 million for that same time period.[9]

Eligibility for the Medicaid program is based on a number of factors, including age, household or individual income, and assets.

The Department of Children and Families (DCF) determines eligibility for the Medicaid program but the AHCA is the single state Medicaid agency and has the lead responsibility for the overall program.[10]

Recipients in the Medicaid program receive their benefits through several different delivery systems, depending on their individual situation. Delivery systems currently include fee-for-service providers, prepaid dental plans, provider service networks, and Medicaid managed care plans. In July 2006, the AHCA implemented the Medicaid Managed Pilot Program as directed by the 2005 Legislature through s. 409.91211, F.S. The pilot program operates under an 1115 Research and Demonstration Waiver approved by the federal Centers for Medicare and Medicaid Services. The pilot program was initially authorized for Broward and Duval counties with expansion to Baker, Clay and Nassau the following year.

Under the current pilot program, most Medicaid recipients in the five pilot counties (Broward, Duval, Baker, Clay, and Nassau counties) are required to receive their benefits through either

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[4] Agency for Health Care Administration, Presentation to House Health and Human Services Committee, *Florida Medicaid: An Overview - December 5, 2012*, http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2714&Session=2013&DocumentType=Meeting Packets&FileName=HHSC_Mtg_ 12-5-12_ONLINE.pdf (last visited Mar. 17, 2013).

[5] Florida KidCare Coordinating Council, *2013 Annual Report and Recommendations*, p. 5, (January 2013), http://www.floridakidcare.org/council/reports/2013_KCC_Report.pdf (last visited Mar. 17, 2013).

[6] Office of Economic and Demographic Research, Florida Legislature, *Economic Analysis of PPACA and Medicaid Expansion,* Presentation to Senate Select Committee on Patient Protection and Affordable Care Act (Mar. 4, 2013), http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf (last visited Mar. 17, 2013).

[7] Ibid.

[8] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011),* http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).

[9] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011),* http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).

[10] Agency for Health Care Administration, *Welcome to Medicaid!*, http://ahca.myflorida.com/Medicaid/index.shtml (last visited Mar. 17, 2013).

health maintenance organizations (HMOs), provider service networks (PSNs), or a specialty plan. In addition to the minimum benefits package, plans may provide enhanced services such as over the counter benefits, preventive dental care for adults, and health and wellness benefits.

Medicaid Statewide Managed Medical Care Program

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Medical Assistance (SMMC) Program as part IV of ch. 409, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care. The SMMC has two components: the Long Term Care Managed Care program and the Managed Medical Assistance (MMA) program.

As the single state agency for Medicaid under s. 409.963, F.S., the AHCA has primary responsibility for the management and operations of the state's Medicaid program, including seeking waiver authority from the federal government. To implement these two programs and receive federal Medicaid funding, the AHCA was required to seek federal authorization through two different Medicaid waivers from the Centers for Medicare and Medicaid Services. The first component authorized was the LTC Managed Care Program's 1915(b) and (c) waiver. Approval was granted on February 1, 2013.

The LTC Managed Care Program will serve those individuals who are 65 years of age or old or who are eligible for Medicaid by reason of a disability, subject to wait list prioritization and availability of funds. The recipients must also be determined to require a nursing facility level of care. Medicaid recipients who qualify will receive all of their long-term care services from the long-term care managed care plan.

The AHCA is responsible for administering the LTC Managed Care Program but may delegate specific duties to the Department of Elderly Affairs and other state agencies. Implementation of the LTC Managed Care program started July 1, 2012, with completion expected by October 1, 2013. The AHCA released an Invitation to Negotiate (ITN) on June 29, 2012, and on January 15, 2013, notices of contract awards to managed care plans under that ITN were announced.

For the SMMC component, the AHCA sought to modify the existing Medicaid Reform 1115 Demonstration waiver with the Centers for Medicare and Medicaid Services to expand the program statewide. The AHCA initiated the SMMC project in January 2012 and released a separate ITN to competitively procure managed care plans on a statewide basis on December 28, 2012. Bids are due to the AHCA on March 29, 2013 and awards are expected to be announced on September 16, 2013.

Plans can supplement the minimum benefits in their bids and offer enhanced options. The number of plans to be selected by region is prescribed under s. 409.974, F.S. Specialty plans that serve specific, targeted populations based on age, medical condition, and diagnosis, are also included under the SMMC program. Under s. 409.967, F.S., accountability provisions for the managed care plans specify several conditions or requirements including emergency care and physician reimbursement standards, access and credentialing requirements, encounter data submission guidelines, grievance and resolutions, and medical loss ratio calculations.

Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however, on February 20, 2013 the AHCA and the Centers for Medicare and Medicaid Services reached an "Agreement in Principle" on the proposed plan.

Under SMMC, persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare; (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through the DCF Substance Abuse and Mental Health Program; (c) are eligible for refugee assistance; or (d) are residents of a developmental disability center, may voluntarily enroll in the SMMC program. Those recipients who elect not to enroll in SMMC voluntarily will be served through the Medicaid fee-for-service system.

Florida Kidcare Program

The Florida Kidcare Program (Program) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997. The CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who have family incomes under 200 percent of the FPL and meet other eligibility criteria. The state statutory authority for the Program is found under part II of chapter 409; ss. 409.810 through 409.821, F.S.

The Program includes four operating components: Medicaid for children, Medikids, the Children's Medical Services Network, and the FHKC. Section 409.813, F.S., includes five components for the Program. The fifth component – the employer sponsored group health insurance plan – has never been implemented. The AHCA submitted a state plan amendment in December 1998 for implementation of that component; however, the plan amendment was disapproved by the federal Centers for Medicare and Medicaid Services in November 1999 and was not re-submitted.[11] The Title XXI-funded components of Florida Kidcare serve distinct populations under the program:[12]

- Medicaid for Children: Children from birth until age 1 for family incomes between 185 percent and 200 percent of the FPL.
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 through age 6 for family incomes between 133 and 200 percent of the FPL. For age 6 through age 18, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.

[11] *See* State of Florida, Florida KidCare Program, Title XXI State Child Health Insurance Plan, Amendment #22, July 1, 2012, pg. 6, http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Childrens-Health-Insurance-Program-CHIP/Downloads/CHIP-SPAs/FL-CSPA-22-FINAL.pdf (last visited: March 15, 2013).
[12] *See* State of Florida, Florida KidCare Program, Title XXI State Child Health Insurance Plan, Amendment #22, July 1, 2012, pg.5., http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Childrens-Health-Insurance-Program-CHIP/Downloads/CHIP-SPAs/FL-CSPA-22-FINAL.pdf (last visited: March 15, 2013).

- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the clinical requirements.

Coverage for the non-Medicaid components of the Florida Kidcare Program is funded through Title XXI of the federal Social Security Act (CHIP coverage). Title XIX of the Social Security Act (Medicaid coverage), state funds for CHIP coverage, and family contributions also provide funding for the Florida Kidcare Program. Family contributions are based on family size, household income, and other eligibility factors. Families above the income limits for premium assistance or who are not otherwise eligible for premium assistance are offered the opportunity to participate in the Program at a non-subsidized rate (full-pay). Currently, the income limit for premium assistance is 200 percent of the FPL.

The Medikids program was created under s. 409.8132, F.S., as a Medicaid "look-alike" program for enrollees age 1 through 4. Medikids is administered by the AHCA and enrollees receive the same mandatory and optional benefits covered under ss. 409.905 and 409.906, F.S. Enrollees are offered a choice of health plans or, if two plans are not offered in a particular county, MediPass is provided as one of the options. Many provisions of the Medicaid program also apply to the Medikids program; such as program integrity, provider fraud and abuse preventions, and quality of care.

Under s. 409.814, F.S., the Program's eligibility guidelines are described in conformity with current Title XIX and Title XXI terminology and requirements for each funding component. Other eligibility factors related to premium assistance under this section include whether a child:

- Is covered under other employer-based coverage costing less than five percent of the family income;
- Is an alien, but does not meet the definition of a qualified alien;
- Is an inmate in a public institution or a patient in an institution for mental disease; or,
- Has dropped employer-sponsored coverage within 60 days of applying for premium assistance. Current law does provide good cause exceptions that may be taken into consideration for individuals that drop employer-sponsored coverage resulting in a waiver of the 60-day waiting period for premium assistances.

Families with income above 200 percent of the FPL or who do not meet the qualifications for premium assistance may still be able to purchase the coverage under Medikids or Healthy Kids at the non-subsidized rate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and a CHIP application. Families may apply using either an online or a paper application. Both formats are available in English, Spanish, or Creole. Eligibility is determined through electronic data matching using available databases, or, when income cannot be verified electronically, through submission of current paystubs, tax returns, or W-2 forms. Families may also apply for Medicaid through the

DCF web portal (ACCESS) online, at an ACCESS community partner site, or with a paper form via the mail, fax, or in person at a Customer Service Center.[13]

Under s. 409.815, F.S., benefits under the Florida Kidcare program vary by program component. For Medicaid, Medikids, and the Children's Medical Services Network, enrollees receive the mandatory and optional medical benefits covered under ss. 409.905 and 409.906, F.S. For Healthy Kids and the employer-sponsored component, a benchmark benefit package is provided. The comprehensive benefit package includes preventive services, specialty care, hospitalization, prescription drug coverage, behavioral health and substance abuse services, dental care, vision and hearing services, and emergency care and transportation.

Limits on premiums and cost sharing in the Program are covered under s. 409.816, F.S., and conform to existing federal law and regulation for Title XIX and XXI. All Title XXI funded enrollees pay monthly premiums of $15 or $20 per family per month based on their family size and income. For those families at or below 150 percent of the FPL, the cost is $15 per family per month. For those between 150 percent of the FPL and 200 percent of the FPL, the cost is $20 per family per month. Enrollees in the Healthy Kids component also have copayments for non-preventive services that range from $5 per prescription to $10 for an inappropriate use of the emergency room visit. There are no copayments for visits related to well-child, preventive health, or dental care.[14]

Under s. 409.8175, F.S., a health maintenance organization may reimburse providers in a rural county according to the Medicaid fee schedule provided the provider agrees to such a schedule.

The AHCA contracts for an annual evaluation of the Program to address the statutory components of s. 409.8177, F.S. The annual reports are posted to the AHCA's website for public review and submitted to the Centers for Medicare and Medicaid Services.[15]

Several state agencies and the FHKC share responsibilities for the Program. Section 409.818, F.S., delineates the responsibilities for each of the entities under the Program, and subsection (5) preserves the FHKC's eligibility determination functions for the Healthy Kids program. Annually, the Legislature provides administrative funds through the AHCA's appropriation to contract with the FHKC to conduct the eligibility and administrative functions related to the Program.[16] The DCF determines eligibility for Medicaid and the FHKC determines eligibility for CHIP, which includes a Medicaid screening and referral process to the DCF, as appropriate.

During the 2012 Legislature, the DCF was directed to collaborate with the AHCA to develop an internet-based system for eligibility determination for Medicaid and CHIP.[17] The Legislature

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[13] Florida Department of Children and Families, *ACCESS Florida Website*, *http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash* (last visited March 15, 2013).
[14] *See* State of Florida, Florida KidCare Program, Title XXI State Child Health Insurance Plan, Amendment #22, July 1, 2012, pp.98-101., http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Childrens-Health-Insurance-Program-CHIP/Downloads/CHIP-SPAs/FL-CSPA-22-FINAL.pdf (last visited: Mar. 17, 2013).
[15] Agency for Health Care Administration, *Medikids Publications*, *http://www.fdhc.state.fl.us/medicaid/medikids/publications.shtml*, (last visited: Mar. 15, 2013).
[16] See Conference Report on HB 5001, 2012-2013 General Appropriations Act, Proviso for Line Item 162. (http://www.flsenate.gov/Session/Bill/2012/5001/Amendment/657521/PDF) (last visited Mar. 15, 2013).
[17] s. 409.902(3), F.S.

provided DCF with specific business and functional requirements for the project and timeframes for project completion.[18]

The following chart reflects current roles and responsibilities of the agencies and the FHKC:

Agency for Health Care Administration	Department of Children and Families	Department of Health	Florida Healthy Kids Corporation
Medicaid program and policy	Medicaid eligibility determination	Oversight of the Children's Medical Services Network program	Oversight of the Florida Healthy Kids Program
Lead state agency for Title XIX and XXI Compliance and federal funding	Manage B-NET program – specialized behavioral health care program	KidCare Coordinating Council	Conduct Title XXI (CHIP) eligibility and administration
Oversight of the Medikids program		Develop Quality Assurance Standards	Conduct Kidcare Outreach and Marketing
Monitor quality assurance standards			
Maintain Kidcare Grievance Process			

The Florida Kidcare Coordinating Council falls under the responsibility of the DOH; the secretary of the DOH chairs the Council. The Coordinating Council is specifically created under s. 409.818(2)(b), F.S., and is charged with making recommendations concerning the implementation and operation of the program. The Council includes representatives from the partner agencies and stakeholder representatives from the insurance industry, consumers, and providers. For 2013, the Council developed a single priority state recommendation: "To fully fund the Florida Kidcare program, including its annualization and medical trend needs, projected growth, outreach and increased medical and dental costs in order to maximize the use of Florida's CHIP federal funds and include all eligible uninsured children."[19]

The Florida Healthy Kids Program is authorized under s. 624.91, F.S., which is also known as the "William G. 'Doc' Myers Healthy Kids Corporation Act." The FHKC was created as a private, not-for-profit corporation by the 1990 Florida Legislature in an effort to increase access to health insurance for school-aged children.[20]

Eligibility for the state-funded assistance is prescribed under s. 624.91(3), F.S., and provides cross references to the Florida Kidcare Act. The Healthy Kids program is also identified as a non-entitlement program under subsection (4).

[18] ss. 409.902(4) and (5), F.S.
[19] Florida KidCare Website, KidCare Coordinating Council, *2013 Recommendations,* *http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf* (last visited Mar. 17, 2013).
[20] Florida Healthy Kids Corporation, *History*, https://www.healthykids.org/healthykids/history/ (last visited Mar. 15, 2013).

Under s. 624.91(5), F.S., the FHKC is managed by an executive director selected by the board with the number of staff determined by the board. The FHKC is authorized to:

- Collect contributions from families, local sources or employer based premiums;
- Accept voluntary local match for Title XXI and Title XXI;
- Accept supplemental local match for Title XXI;
- Establish administrative and accounting procedures;
- Establish preventive health standards for children that do not limit participation to pediatricians in rural areas with consultation from appropriate experts;
- Determine eligibility for children seeking enrollment in Title XXI funded and non-Title XXI components;
- Establish grievance processes;
- Establish participation criteria for administrative services for the FHKC;
- Establish enrollment criteria that include penalties or waiting periods for non-payment of premiums of 30 days;
- Contract with authorized insurers and other health care providers meeting standards established by the FHKC for the delivery of services and select health plans through a competitive bid process;
- Purchase goods and services in a cost effective manner with a minimum medical loss ratio of 85 percent for health plan contracts;
- Establish disenrollment criteria for insufficient funding levels;
- Develop a plan to publicize the program;
- Secure staff and the necessary funds to administer the program;
- Provide an annual Kidcare report, in consultation with partner agencies, to the governor, chief financial officer, commissioner of education, president of the Senate, speaker of the House of Representatives, and minority leaders of the Senate and House of Representatives;
- Provide quarterly enrollment information on the full pay population; and,
- Establish benefit packages that conform to the Florida Kidcare benchmark benefit.

The FHKC is governed by a 13-member board of directors, chaired by Florida's chief financial officer or his or her designee.[21] The 12 other board members are:

- Secretary of the AHCA;
- One member appointed by the commissioner of education from the Office of School Health Programs from the Department of Education;
- One member, appointed by the chief financial officer from among three members nominated by the Florida Pediatric Society;
- One member, appointed by the governor, who represents the Children's Medical Services Program;
- One member appointed by the chief financial officer from among three members nominated by the Florida Hospital Association;
- One member, appointed by the governor, who is an expert on child health policy;
- One member, appointed by the chief financial officer, from among three members nominated by the Florida Academy of Family Physicians;

[21] *See* s. 624.91(6), F.S.

- One member, appointed by the governor, who represents the state Medicaid program;
- One member, appointed by the chief financial officer, from among three members nominated by the Florida Association of Counties;
- The state health officer or his or her designee;
- The secretary of the DCF, or his or her designee; and,
- One member, appointed by the governor, from among three members nominated by the Florida Dental Association.

Board members do not receive compensation for their service but may receive reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.[22]

The FHKC is not an insurer and is not subject to the licensing requirements of the Department of Financial Services. In addition, the FHKC board is also granted complete fiscal control over the FHKC and responsibility for all fiscal operations. Any liquidation of the FHKC would be supervised by the Department of Financial Services.[23]

The Patient Protection and Affordable Care Act of 2010

In March 2010, the Congress passed and the President signed the PPACA.[24] Under PPACA, one of the key components required the states to expand Medicaid to a minimum national eligibility threshold of 133 percent of the FPL, or, as it is sometimes expressed, 138 percent of the FPL with application of an automatic five percent income disregard, effective January 1, 2014.[25] While the funding for the newly eligible under this expansion would be initially funded at 100 percent federal funds for the first 3 calendar years, the states would gradually be required to pay a share of the costs, starting at 5 percent in calendar year 2017 before leveling off at 10 percent in 2020.[26] As enacted, PPACA provided that states refusing to expand to the new national eligibility threshold faced the loss of *all* of their federal Medicaid funding.[27]

Florida, along with 25 other states challenged the constitutionality of the law. In *NFIB v. Sebelius*, the Supreme Court found the enforcement provisions of the Medicaid expansion unconstitutional.[28] As a result, states can voluntarily expand their Medicaid eligibility thresholds to PPACA standards and receive the enhanced federal match for the expansion population, but states cannot be penalized for not doing so.[29]

Since the decision in *NFIB v. Sebelius*, federal guidance has emphasized state flexibility in how states expand coverage to those defined as the newly eligible population. In a letter to the National Governors Association January 14, 2013, Health and Human Services Secretary

[22] *See* s. 624.91(5), F.S.
[23] *See* s. 624.91(7), F.S.
[24] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[25] 42 U.S.C. s. 1396a(1).
[26] 42 U.S.C. s. 1396d(y)(1).
[27] 42 U.S.C. s. a1396c
[28] *See supra* note 1.
[29] Department of Health and Human Services, *Secretary Sebelius Letter to Governors, July 10, 2012*, http://capsules.kaiserhealthnews.org/wp-content/uploads/2012/07/Secretary-Sebelius-Letter-to-the-Governors-071012.pdf (last visited Mar. 16, 2013).

Kathleen Sebelius reminded states of their ability to design flexible benefit packages without the need for waivers and the alternative benefit plans that are available.[30] This letter was preceded by the Frequently Asked Questions document on Exchange, Market Reforms and Medicaid, issued on December 10, 2012, that discussed promotion of personal responsibility wellness benefits and state flexibility to design benefits.[31]

A state Medicaid director letter on November 20, 2012 (ACA #21) further addressed state options for the adult Medicaid expansion group and the alternative benefit plans available under Section 1937 of the Social Security Act.[32] Under Section 1937, state Medicaid programs have the option of providing certain groups with benchmark or benchmark equivalent coverage based on four products: (1) the standard Blue Cross/Blue Shield Preferred Provider option offered to federal employees; (2) state employee coverage that is generally offered to all state employees; (3) the commercial HMO with the largest insured, non-Medicaid enrollment in the state or (4) Secretary-approved coverage.[33] For children under the age of 21, the coverage must include the Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT). Other aspects of the essential health benefit requirements of PPACA, as discussed further below, may also be applicable, depending on the benefit package utilized.

In addition to the Medicaid expansion component, the PPACA imposes a mandate on individuals to acquire health insurance or pay a penalty, which was interpreted by the U.S. Supreme Court as a tax. Currently, many uninsured individuals are eligible for Medicaid or Kidcare coverage but are not enrolled. The existence of the federal mandate to purchase insurance may result in an unknown number of currently eligible individuals coming forward and enrolling Medicaid who had not previously chosen to enroll. Their participation – to the extent it occurs – will result in increased costs that the state would not likely have incurred without the catalyst of the federal legislation.

To facilitate coverage, PPACA authorized the state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges. These exchanges are to be administered by governmental agencies or non-profit organizations and be ready to accept applications for coverage beginning October 1, 2013, for January 1, 2014, coverage dates. The exchanges, at a minimum, must:[34]

- Certify, re-certify and de-certify plans participating on the exchange;
- Operate a toll-free hotline;
- Maintain a website;
- Provide plan information and plan benefit options;

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[30] *Letter to National Governor's Association from Secretary Sebelius*, January 14, 2013 (copy on file with Senate Health Policy Committee).
[31] Centers for Medicare and Medicaid Services, *Frequently Asked Questions on Exchanges, Market Reforms and Medicaid*, (December 10, 2012), http://cciio.cms.gov/resources/factsheets/index.html, pp. 15-16, (last visited Mar. 17, 2013).
[32] Centers for Medicare and Medicaid Services, *State Medicaid Director Letter: Essential Health Benefits in the Medicaid Program* (November 20, 2012), http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD-12-003.pdf (last visited Mar. 17, 2013).
[33] *See supra* note 30 at 2.
[34]Centers for Medicare and Medicaid Services, Initial Guidance to States on Exchanges, November 18, 2010, http://cciio.cms.gov/resources/files/guidance_to_states_on_exchanges.html (last visited Mar. 16, 2013).

- Interact with the state's Medicaid and CHIP programs and provide information on eligibility and determination of eligibility for these programs;
- Certify individuals that gain exemptions from the individual responsibility requirement; and,
- Establish a navigator program.

The initial guidance from HHS in November 2010 set forward a number of principles and priorities for the exchanges. Further guidance was issued on May 16, 2012, detailing the proposed operations of a federally-facilitated exchange for those states that elect not to implement a state-based exchange. On November 16, 2012, Florida Governor Rick Scott notified HHS Secretary Sebelius that Florida had too many unanswered questions to commit to a state-based exchange under PPACA for the first enrollment period on January 1, 2014.[35]

PPACA also includes a tax penalty for those individuals that do not have qualifying health insurance coverage beginning January 1, 2014. The penalty is the greater of $695 per year up to a maximum of three times that amount per family or 2.5% of household income. The penalty, however, is phased-in and exemptions apply.

The following persons are exempt from the PPACA's requirement to maintain coverage:[36]

- Individuals with a religious objection;
- individuals not lawfully present; and
- Incarcerated individuals.

The following persons are exempt from the PPACA's penalty for failure to maintain coverage:[37]

- Individuals who cannot afford coverage, i.e. those whose required premium contributions exceed eight percent of household income;
- Individuals with income below the income tax filing threshold;
- American Indians;
- Individuals without coverage for less than three months; and
- Individuals determined by the HHS secretary to have suffered a hardship with respect to the capability to obtain coverage under a qualified plan.

Qualifying coverage may be obtained through an employer, the federal or state exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard.

Employers with more than 50 full time employees also share a financial responsibility under PPACA. Employers with more than 50 full-time employees that do not offer coverage meeting

[35] *Letter from Governor Rick Scott to Health and Human Services Secretary Kathleen Sebelius,* November 16, 2012 http://www.flgov.com/2012/11/16/letter-from-governor-rick-scott-to-u-s-secretary-of-health-and-human-services-kathleen-sebelius/ (last visited Mar. 16, 2013).
[36] *See* Sec. 5000A(d), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.
[37] *See* Sec. 5000A(e), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.

the essential benefits coverage standard and who have at least one employee receive a premium tax credit will be assessed a fee of $2,000 per full time employee, after the 30th employee.[38] If an employer does offer coverage and an employee receives a premium tax credit, the employer is assessed the lesser of $3,000 per employee receiving the credit or $2,000 per each employee after the 30th employee.[39]

Premium credits and other cost sharing subsidies are available to United States citizens and legal immigrants within certain income limits for coverage purchased through the exchanges. Legal immigrants with incomes at or below 100 percent of the FPL who are not eligible for Medicaid during their first five years are eligible for premium credits.[40] Premium credits are set on a sliding scale based on the percent of FPL for the household and reduce the out-of-pocket costs incurred by individuals and families.

The amount for premium tax credits, as a percentage of income, are set in section 36B of the Internal Revenue Code follows:[41]

Premium Tax Credits	
Income Range	**Premium Percentage Range** (% of income)
Up to 133% FPL	2%
133% to 150%	3% - 4%
150% to 200%	4% - 6.3%
200% to 250%	6.3% - 8.05%
250% to 300%	8.05% - 9.5%
300% to 400%	9.5%

Subsidies for cost sharing are also applicable for those between 100 percent of the FPL and 400 percent of the FPL. The cost sharing credits reduce the out-of-pocket amounts incurred by individuals on essential health benefits and will also impact the actuarial value of a health plan.[42] Actuarial value reflects the average share of covered benefits paid by the insurer or health plan.[43] For example, if the actuarial value of a plan is 90 percent, the health plan is paying 90 percent of the costs and the enrollee 10 percent. Under the PPACA, the maximum amount of cost sharing under this component range from 94 percent for those between 100 percent to 150 percent of the FPL, to 70 percent for those between 250 percent and 400 percent of the FPL.[44]

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[38] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[39] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[40] 26 U.S.C. s. 36B(c).
[41] 26 U.S.C. s. 36B(c).
[42] Kaiser Family Foundation, *Summary of New Health Reform Law, Last Modified April 15, 2011*, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[43] Lisa Bowen Garrett, et al., The Urban Institute, *Premium and Cost Sharing Subsidies under Health Reform: Implications for Coverage, Costs and Affordability* (December 2009), http://www.urban.org/UploadedPDF/411992_health_reform.pdf (last visited Mar. 16, 2013).
[44] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).

III. Effect of Proposed Changes:

Section 1 amends s. 409.811, F.S. adding, deleting, and modifying definitions relating to the Florida Kidcare Act. Definitions applicable to the overall Act, which is identified as ss. 409.810 through 409.821, F.S., are updated or added to align with requirements under PPACA:

- CHIP (Children's Health Insurance Program)
- Combined Eligibility Notice
- Household Income
- Modified Adjusted Gross Income (MAGI)
- Patient Protection and Affordable Care Act (Act)

Other definitions under this section are deleted as obsolete if related to the employer-sponsored component of the Florida Kidcare program. This program component was never implemented and is deleted under this bill. Definitions that have been modified or rendered obsolete by PPACA have also been deleted.

Section 2 amends s. 409.813, F.S., relating to the program components of the Florida Kidcare program. The bill also adds the FHKC to the list of entities for which a cause of action cannot be brought if coverage is not provided under the non-entitlement portion of the program. The FHKC is the only Kidcare component excluded.

Section 3 amends s. 409.8132, F.S., relating to the Medikids program component of the Florida Kidcare program. The bill deletes language permitting a Medikids enrollee who is a younger sibling of a Healthy Kids enrollee, to enroll in a Healthy Kids plan. An obsolete reference to receiving approval from the predecessor agency to the Centers for Medicare and Medicaid Services for MediPass coverage authorization is removed. The MediPass option in Medikids has been approved since the program was implemented in 1998.

Section 4 makes technical changes to s. 409.8134, F.S., relating to program expenditures and enrollment in the Florida Kidcare program.

Section 5 amends section s. 409.814, F.S., relating to eligibility for the Florida Kidcare program. The bill modifies references to align with changes under PPACA. Obsolete references related to the employer-sponsored component have been deleted. An option has been provided to Medicaid enrollees to elect coverage under the CHIP component and permit a transfer back to Medicaid at any time without a break in coverage.

Under s. 409.814(6)(c), F.S., the FHKC is directed to notify full pay enrollees of the availability of coverage under the exchanges, as created under PPACA. No new applications for full-pay or non-subsidized coverage are permitted after September 30, 2013.

Modifications to the eligibility determination process are made under s. 409.814(8), F.S., to reflect changes in the eligibility process under PPACA and the role of the federal data hub.

Section 6 amends s. 409.815, F.S., relating to the benefits under the Florida Kidcare program. Obsolete dates and references are deleted under certain benefits.

Section 7 amends s. 409.816, F.S, relating to lifetime benefits on premiums and limitations on cost sharing. References to "family," "family income," and "modified adjusted income" are updated to align with federal definitions under PPACA.

Section 8 repeals s. 409.817, F.S., relating to approval of health benefits, coverage, and financial assistance. The other requirements of this section have been preempted under PPACA.

Section 9 repeals s. 409.8175, F.S., relating to the delivery of services in rural counties. Health maintenance organizations and health insurers may contract with providers in accordance with any fee schedule that may be agreed upon by the parties. The language under this section is permissive and not mandatory under current law.

Section 10 amends s. 409.8177, F.S., relating to evaluation of the Florida Kidcare program. A reference to family income is updated to household income to align with PPACA.

Section 11 amends s. 409.818, F.S., relating to the administration of the Florida Kidcare program. The duties and responsibilities of the DCF are modified to recognize the modernization efforts and process changes under PPACA. The department is required to develop a combined eligibility notice, in consultation with the AHCA and the FHKC. A reference to a centralized coordinating office is deleted.

Specific administrative responsibilities for the Florida Kidcare program for the DOH are deleted. Obsolete provisions for designing the eligibility intake process are removed, as is the requirement for the DOH to establish a toll-free hotline. The FHKC provides customer service for the Florida Kidcare program, including operation of the toll-free hotline, under its Florida Kidcare eligibility determination responsibilities.

The responsibilities for the AHCA under this section are modified to reflect the removal of the employer-sponsored component and accompanying deletion of the OIR involvement. Technical references to a more general definition of managed care organizations rather than the more limited term of HMOs are made in this section. References to specific topics for rulemaking are deleted. A direction to contract with the FHKC for the Healthy Kids program and the Healthy Florida program is added. Direction to the AHCA for Healthy Kids has been included annually in proviso or implementing bill language in the past.

Responsibilities under the Florida Kidcare program for the OIR have been deleted. Their removal reflects the deletion of the employer sponsored component from the program.

Section 12 amends s. 409.820, F.S., relating to the quality assurance and access standards for the Florida Kidcare program. The quality assurance and access standards are clarified to show that such standards are for the pediatric and adolescent populations.

Section 13 amends s. 624.91, F.S., relating to the FHKC. The legislative intent for the Florida Healthy Kids Corporation Act is expanded to include a new program called "Healthy Florida." The legislative intent states that Healthy Florida will cover uninsured adults utilizing a unique

network of providers and contracts through which enrollees will receive a comprehensive set of benefits and services.

The Florida Healthy Kids Corporation Act is modified in several subsections to reflect the addition of the Healthy Florida program. Cross references are added to the Florida Kidcare program and the Florida Medicaid program, as appropriate.

Section 624.91(5)(b), F.S., is amended to incorporate the Healthy Florida program and to align with changes made to the Florida Kidcare Act.

Provisions under s. 624.91(5)(b)10., F.S., are separated into individual sub-subparagraphs by topic. No substantive change is made in sub-subparagraphs a. and b. The medical loss ratio requirement for the Healthy Kids program is modified under sub-subparagraph c. to include all health care contracts and language relating to the exemption of dental contracts is deleted. Clarification on how the calculations for the medical loss ratios will be computed is added and a cross reference to federal guidelines for classification of funds is included.

Under s. 624.91(5)(b)12., F.S., the FHKC's responsibility for the development of a plan for publicity of the Florida Kidcare program, public awareness, eligibility procedures, and requirements and to maintain public awareness is expanded to include both the Florida Kidcare program and the Healthy Florida program.

Requirements for separate reporting on the full-pay program by the FHKC are repealed effective December 31, 2013. The repeal aligns with the closure of new enrollment in the full-pay program effective September 30, 2013, and the availability of the exchange on January 1, 2014. A new subparagraph 16 requires the FHKC to notify existing full-pay enrollees of the availability of the exchange and how to access services. No new applications for full-pay coverage may be accepted after September 30, 2013.

Amendments to s. 624.91(5)(d), F.S., provides that the FHKC and any committees formed by the FHKC are subject to the conflict of interest provisions of ch. 112, F.S., the public records provisions of ch. 119, F.S., and the public meeting requirements of ch. 286, F.S.

The membership of the FHKC board of directors is changed to require that the chair of the board be appointed by the governor, rather than the chief financial officer or his or her designee. The specific membership and nominating guidelines for the 12 other members of the FHKC board are repealed and replaced with a board of 15 members designated or appointed as follow:

- The secretary of the AHCA, or his or her designee, as an ex-officio member;
- The state surgeon general, or his or her designee, as an ex-officio member;
- The secretary of the DCF, or his or her designee, as an ex-officio member;
- Four members appointed by the governor;
- Two members appointed by the president of the Senate;
- Two members appointed by the Senate minority leader;
- Two members appointed by the speaker of the House of Representatives; and
- Two members appointed by the House minority leader.

The chair and other members of the board will be subject to Senate confirmation. Members of the board will serve three-year terms and appointed members will serve at the pleasure of the official who appointed them. A provision is also included that any current board member serving at the time of enactment may remain until July 1, 2013, to provide the governor time to appoint a new board after the enactment of the law.

An executive steering committee of agency secretaries is created to provide management direction and support to the board and its programs. The steering committee comprises the secretary of the AHCA, the secretary of the DCF, and the state surgeon general.

Section 14 repeals s. 624.915, F.S., relating to the Florida Healthy Kids Corporation Operating Fund. This language is obsolete and the option is not being utilized by the FHKC.

Section 15 creates a new section of statute, s. 624.917, F.S., relating to the Healthy Florida program. Healthy Florida will be administered by the FHKC as a program for lower income, uninsured adults who meet eligibility guidelines established by the FHKC. Definitions are provided that are specific to the Healthy Florida program under s. 624.917(2), F.S.

Eligibility for the Healthy Florida program is prescribed under s. 624.917(3), F.S. To be eligible and remain eligible, an individual must be a Florida resident and meet the definition of being "newly eligible" under PPACA, maintain their eligibility with the FHKC, and meet any renewal requirements to renew their coverage at least annually.

Under s. 624.917(4), F.S., enrollment may begin on October 1, 2013, with coverage effective no earlier than January 1, 2014. Enrollment in the program may occur through a third party administrator, referrals from other agencies, or through the exchange, as defined under PPACA. When an enrollee leaves the program, the FHKC is required to provide information about other insurance affordability options that may be available.

Delivery of services under Healthy Florida is provided for under s. 624.917(5), F.S. The FHKC is directed to contract with authorized insurers licensed under ch. 627, F.S., managed care organizations authorized under ch. 641, F.S., and provider service networks authorized under ss. 409.912(4)(d) and 409.962(13) that are prepaid plans meeting standards established by the FHKC to deliver services to enrollees. The FHKC must also establish access and network standards to ensure an adequate number of providers are available to deliver the benefits and services. Standards are to be developed in consultation with and under consideration of National Committee on Quality Assurance recommendations, stakeholders, and other existing performance standards for public and commercial populations.

Under this subsection, enrollees must also be provided a choice of plans. A lock-in period is specifically included and the FHKC is directed to offer exceptions to that lock-in period that take into consideration good cause reasons and qualifying events.

The bill permits the FHKC to consider contracts that include family plans that would provide coverage for members that are enrolled across multiple state or federally funded programs. The

medical loss ratio provisions of s. 624.91, F.S., are applicable to the Healthy Florida program. These provisions mirror those used for the Healthy Kids contracts.

Under s. 624.917(6), F.S., the bill provides the benefits for the Healthy Florida program. The FHKC is directed to establish a benefit plan for the program that is actuarially equivalent to the Florida Kidcare benchmark plan, excluding dental. The benefits package must also meet the alternative benefits package requirements under section 1937 of the Social Security Act. Benefits must be offered as an integrated, single package, without carve-outs.

The bill also requires that a health reimbursement account or comparable health savings account be established for Healthy Florida enrollees. The account may be established and managed either by the FHKC directly or by a contractor. Under s. 624.917(6)(a), F.S., the bill provides examples of the types of behaviors for which enrollees may be rewarded and how funds may be utilized by enrollees. Paragraph (b) of this same subsection also permits the offering of other enhanced benefits and services, provided these services generate savings to the overall plan. Paragraph (c) requires the FHKC to establish a process for the delivery of medically necessary wrap-around services that are not covered by the benchmark plan but that may be required under PPACA. The FHKC's capitation process with its contracted plans for the wrap-around services will be subject to a separate reconciliation process, and the medical loss ratio provisions will also apply to the wrap-around capitation. Prior authorization processes and other utilization controls for any benefit are authorized under this subsection, if approved by the FHKC.

Under s. 624.917(7), F.S., the bill establishes requirements for cost sharing under the Healthy Florida program. The FHKC is authorized to collect premiums and copayments from enrollees in accordance with federal law and in amounts that will be established annually in the General Appropriations Act. The bill provides that payment of a monthly premium may be required prior to an enrollee receiving a coverage start date under the program. Enrollees with a family income above the federal poverty level may also be required to make nominal copayments, in accordance with federal rules, as a condition of receiving a health care service. Providers will be responsible for collecting any copayment for a service and failure to collect any amount due from the enrollee will reduce the provider's reimbursement by the uncollected enrollee's copayment amount.

Management of the Healthy Florida program is described under s. 624.917(8), F.S. The FHKC is designated as the entity responsible for the oversight of the program. The AHCA is directed to seek the necessary state plan amendment to implement the program and to consult with the FHKC on the development of the amendment. The bill provides an amendment submission deadline by the AHCA of June 14, 2013. The AHCA is also directed under this subsection to contract with the FHKC for the administration of this program and for the purposes of the timely release of state and federal funds. The AHCA is recognized as the state's single entity for the administration of the Medicaid program.

Under s. 624.917(8)(a), F.S., the FHKC is directed to establish a grievance and resolutions process under which Healthy Florida recipients can be notified of their rights under the Medicaid Fair Hearing process as well as of any other processes that may be adopted by the FHKC for the program.

Under paragraph (b), the FHKC is required to establish a program integrity process to ensure compliance with the program's guidelines and to combat applicant and enrollee fraud. Timelines for the notification of when benefits may be withheld, reasons for loss of benefits, and the identification of individuals who can be prosecuted for fraud under s. 414.39, F.S., are specified.

Cross references to the applicability of certain Medicaid statutes to the Healthy Florida program are included under s. 624.917(9), F.S. The referenced statutes are s. 409.902, F.S., relating to the AHCA as the designated single state agency for Medicaid; s. 409.9128, F.S., relating to providing emergency services and care; and, s. 409.920, F.S, relating to Medicaid provider fraud. These provisions would apply to the Healthy Florida program in the same manner in which they apply in Medicaid.

The requirement for an evaluation of the Healthy Florida program is added under s. 624.917(10), F.S. The FHKC is required to collect eligibility and enrollment data on its applicants and enrollees and utilization and encounter data from its contracted entities for health care services. Monthly enrollment reports to the Legislature are also required. The bill provides for an interim evaluation by July 1, 2015, with annual evaluations thereafter. Components of the evaluation report are detailed and include information on application and enrollment trends, utilization and cost data, and customer satisfaction.

Section 624.917(11), F.S., sets an expiration date for the program for the end of the state fiscal year in which any of several conditions happen, whichever occurs first. The trigger events are identified as the federal match falling below 90 percent; the federal match contribution falling below the "Increased FMAP for Medical Assistance for Newly Eligible Mandatory Individuals" as specified under PPACA; or a blended federal match formula for Healthy Florida and the Medicaid program is enacted under federal law or regulation which causes the overall federal contribution to be reduced compared to separate, non-blended federal contributions under the status quo.

Section 16 creates an undesignated section of law that authorizes the FHKC to make program changes to comply with objections raised by HHS that are necessary to gain approval of the Healthy Florida program in compliance with PPACA, upon giving notice to the Legislature of the proposed changes. The Healthy Florida program requires approval of an amendment to the state's Medicaid state plan prior to implementation and to receive federal funds. The section also includes a conflict of laws interpretation clause that provides that if there is conflict between any provision in this section and PPACA, the provision should be interpreted as an intention to comply with federal requirements.

Section 17 provides appropriations of:

- $1,258,054,808 from the Medical Care Trust Fund beginning in the 2013-2014 fiscal year to provide coverage for individuals who enroll in Healthy Florida;
- $254,151 from the General Revenue Fund and $18,235,833 from the Medical Care Trust Fund beginning in the 2013-2014 fiscal year to comply with federal regulations to compensate insurers and managed care organizations that contract with the Healthy Florida program for the imposition of the annual fee on health insurance providers under the PPACA; and

- $10,676,377 from the General Revenue Fund and $10,676,377 from the Medical Care Trust Fund beginning in the 2013-2014 fiscal year to fund administrative costs necessary for the FHKC to implement and operate the Healthy Florida program.

Section 18 provides that the act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill explicitly requires the FHKC to conduct its activities and those of any committees formed by the FHKC, in accordance with chapters 119 and 286, F.S. The FHKC currently provides notice of meetings of its board and committees on its website at www.healthykids.org and posts materials for board meetings on the same site within timeframes set through board policy.

The FHKC also responds to requests for public records, within the additional exemptions and limitations of s. 409.821, F.S. and federal law which protect certain individual and identifying information of applicants and enrollees to the Florida Kidcare program.

The provisions of this bill would expressly require compliance with state public records and open meetings requirements.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Florida's Social Services Estimating Conference (SSEC) estimates that 438,113 individuals would become newly eligible and would enroll in Florida Medicaid during the 2013-2014 state fiscal year if the program's eligibility threshold were expanded to 138 percent of FPL beginning January 1, 2014. An estimated 377,813 of those newly eligible enrollees are currently uninsured while the remaining 60,300 are likely to terminate their existing individual coverage in favor of Medicaid after becoming eligible. The Healthy Florida program would expect roughly the same estimated enrollment if implemented.

The bill contemplates the FHKC contracting with insurers and managed care organizations to deliver comprehensive health insurance coverage to uninsured individuals who may or may not be seeking health care services now. Physicians, hospitals, and other health care providers may be impacted by a potentially higher demand for their services after Healthy Florida is implemented.

C. Government Sector Impact:

The bill directs the AHCA to seek the PPACA's enhanced federal match for the Healthy Florida program, which would result in 100 percent federal funding for newly eligible enrollees until January 1, 2017. To cover the estimated 438,113 new enrollees in Fiscal Year 2013-2014, $1.26 billion would be expended, according to the SSEC.

Additionally, under eligibility expansion, the SSEC estimates that 70,647 Kidcare enrollees would become newly eligible for Medicaid and could transfer out of Kidcare. In such a transfer, the federal match would be the same as the Kidcare matching rate, which is 71.03 percent for the 2013-2014 state fiscal year. The state and federal expenditures to cover those children would be the same between the two programs.

The PPACA also imposes a federal health insurance tax (HIT) on health insurance providers beginning January 1, 2014, to be divided among insurers according to a formula based on each insurer's net premiums, including those contracted under Medicaid or Healthy Florida. Federal guidance indicates that states must account for the HIT to be incurred by managed care plans when calculating rates paid by a state Medicaid program to the plans. For the newly eligible population, the federal match for the HIT mirrors the match provided in the PPACA, which means a 100 percent federal match for the HIT during the 2013-2014 state fiscal year. For Kidcare transfers, however, the federal match will mirror the Kidcare matching rate. If all 70,647 children described above were to transfer from Kidcare to Healthy Florida, an estimated $254,151 GR would be required to compensate insurers and managed care plans for the HIT in the 2013-2014 state fiscal year.

The FHKC will need additional resources to adapt its existing eligibility and enrollment systems to accommodate a new program. Also, the FHKC will need to adjust and expand its administrative structure and professional staff to manage new contracts for the Healthy Florida program. Additionally, these needs will vary somewhat depending on the number of persons who enroll in the Healthy Florida program. Based on existing enrollment projections, the fiscal impact of the FHKC's additional resource needs is estimated to be a total of $21.2 million for the 2013-2014 state fiscal year, half of which would be state funds, or $10.6 million GR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In December 2012, Florida Senate President Don Gaetz formed the Select Committee on the PPACA to launch a comprehensive assessment on the impact of the law on Florida, evaluate the state's options under the law, and to make recommendations to the full Senate membership on any actions necessary to mitigate cost increases, preserve a competitive insurance market, and protect Florida's consumers.[45] The Select Committee received public testimony, expert presentations, and staff reports over nine meetings before it developed three specific recommendations relating to the development of a health care exchange, coverage for certain state employees, and the expansion of Medicaid. On the question of Medicaid expansion, the Select Committee voted 7-4 to recommend to the full Senate to not expand the existing Medicaid program under the current state plan or pending waivers.[46]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on April 17, 2013:
The CS revises the membership of the board of directors of the FHKC; provides that the Healthy Florida program may contract with prepaid provider service networks in addition to insurers licensed under ch. 627, F.S., and managed care organizations authorized under ch. 641, F.S.; provides that the Healthy Florida program may require nominal copayments specifically from enrollees with family incomes above the FPL; and appropriates general revenue and trust fund dollars for the Healthy Florida program beginning in the 2013-2014 fiscal year.

B. Amendments:

None.

[45] *See* Florida Senate, *Patient Protection and Affordable Care Act*, http://www.flsenate.gov/topics/ppaca (last visited: April 1, 2013).
[46] Florida Senate Select Committee on Patient Protection and Affordable Care Act, *Letter to Senate President Don Gaetz on Medicaid Recommendation* http://www.flsenate.gov/usercontent/topics/ppaca/03-12-13MedicaidRecommendation.pdf (last visited: April 1, 2013).

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 1365 and 1366
insert:

Section 17. Section 627.6474, Florida Statutes, is amended to read:

627.6474 Provider contracts.—

(1) A health insurer may ~~shall~~ not require a contracted health care practitioner as defined in s. 456.001(4) to accept the terms of other health care practitioner contracts with the insurer or any other insurer, or health maintenance organization, under common management and control with the

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insurer, including Medicare and Medicaid practitioner contracts and those authorized by s. 627.6471, s. 627.6472, s. 636.035, or s. 641.315, except for a practitioner in a group practice as defined in s. 456.053 who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Any contract provision that violates this section is void. A violation of this subsection ~~section~~ is not subject to the criminal penalty specified in s. 624.15.

(2)(a) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not contain any provision that requires the dentist to provide services to the insured under such contract at a fee set by the health insurer unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the insured is entitled to receive under the contract. An insurer may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A health insurer may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of chapter 636.

Section 18. Subsection (13) is added to section 636.035, Florida Statutes, to read:

636.035 Provider arrangements.—

(13)(a) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the

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provision of services to a subscriber of the prepaid limited health service organization may not contain any provision that requires the dentist to provide services to the subscriber of the prepaid limited health service organization at a fee set by the prepaid limited health service organization unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the subscriber is entitled to receive under the contract. A prepaid limited health service organization may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A prepaid limited health service organization may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of this chapter.

Section 19. Subsection (11) is added to section 641.315, Florida Statutes, to read:

641.315 Provider contracts.—

(11)(a) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not contain any provision that requires the dentist to provide services to the subscriber of the health maintenance organization at a fee set by the health maintenance organization unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the subscriber is entitled to receive under the

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contract. A health maintenance organization may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A health maintenance organization may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of chapter 636.

Section 20. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (h) is added to subsection (4) of that section, to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for ~~any~~ services provided under the contract and must not bill or accept compensation from the recipient, or a ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of

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the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(h) As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is deemed in compliance with this section.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

Section 21. The amendments to ss. 627.6474, 636.035, and 641.315, Florida Statutes, apply to contracts entered into or renewed on or after July 1, 2013.

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

And the title is amended as follows:

Delete line 67


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and insert:

interpretation clause; amending s. 627.6474, F.S.; prohibiting a contract between a health insurer and a dentist from requiring the dentist to provide services at a fee set by the insurer under certain circumstances; providing that covered services are those services listed as a benefit that the insured is entitled to receive under a contract; prohibiting an insurer from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting a health insurer from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 636.035, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a prepaid limited health service organization is entitled to receive under a contract; prohibiting a prepaid limited health service organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the prepaid limited health service organization from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 641.315, F.S.; prohibiting a

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contract between a health maintenance organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a health maintenance organization is entitled to receive under a contract; prohibiting a health maintenance organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the health maintenance organization from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing for applicability; providing appropriations;

576-04564-13

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to health care; amending s. 409.811, F.S.; revising and providing definitions; amending s. 409.813, F.S.; revising the components of the Florida Kidcare program; prohibiting a cause of action from arising against the Florida Healthy Kids Corporation for failure to make health services available; amending s. 409.8132, F.S.; revising the eligibility of the Medikids program component; revising the enrollment requirements of the Medikids program component; amending s. 409.8134, F.S.; conforming provisions to changes made by the act; amending s. 409.814, F.S.; revising eligibility requirements for the Florida Kidcare program; amending s. 409.815, F.S.; revising the minimum health benefits coverage under the Florida Kidcare Act; deleting obsolete provisions; amending ss. 409.816 and 409.8177, F.S.; conforming provisions to changes made by the act; repealing s. 409.817, F.S., relating to the approval of health benefits coverage and financial assistance; repealing s. 409.8175, F.S., relating to delivery of services in rural counties; amending s. 409.818, F.S.; revising the duties of the Department of Children and Families and the Agency for Health Care Administration with regard to the Florida Kidcare Act; deleting the duties of the Department of Health and the Office of Insurance Regulation with regard to the Florida

576-04564-13

Kidcare Act; amending s. 409.820, F.S.; requiring the Department of Health, in consultation with the agency and the Florida Healthy Kids Corporation, to develop a minimum set of pediatric and adolescent quality assurance and access standards for all program components; amending s. 624.91, F.S.; revising the legislative intent of the Florida Healthy Kids Corporation Act to include the Healthy Florida program; revising participation guidelines for nonsubsidized enrollees in the Healthy Kids program; revising the medical loss ratio requirements for the contracts for the Florida Healthy Kids Corporation; modifying the membership of the Florida Healthy Kids Corporation's board of directors; creating an executive steering committee; requiring additional corporate compliance requirements for the Florida Healthy Kids Corporation; repealing s. 624.915, F.S., relating to the operating fund of the Florida Healthy Kids Corporation; creating s. 624.917, F.S.; creating the Healthy Florida program; providing definitions; providing eligibility and enrollment requirements; authorizing the Florida Healthy Kids Corporation to contract with certain insurers, managed care organizations, and provider service networks; encouraging the corporation to contract with insurers and managed care organizations that participate in more than one insurance affordability program under certain circumstances; requiring the corporation to establish a benefits package and a process for payment

of services; authorizing the corporation to collect premiums and copayments; requiring the corporation to oversee the Healthy Florida program and to establish a grievance process and integrity process; providing applicability of certain state laws for administration of the Healthy Florida program; requiring the corporation to collect certain data and to submit enrollment reports and interim independent evaluations to the Legislature; providing for expiration of the program; providing an implementation and interpretation clause; providing appropriations; providing an effective date.

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

Section 1. Section 409.811, Florida Statutes, is amended to read:

409.811 Definitions relating to Florida Kidcare Act.—As used in ss. 409.810-409.821, the term:

(1) "Actuarially equivalent" means that:

(a) The aggregate value of the benefits included in health benefits coverage is equal to the value of the benefits in the benchmark benefit plan; and

(b) The benefits included in health benefits coverage are substantially similar to the benefits included in the benchmark benefit plan, except that preventive health services must be the same as in the benchmark benefit plan.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Applicant" means a parent or guardian of a child or a child whose disability of nonage has been removed under chapter 743, who applies for determination of eligibility for health benefits coverage under ss. 409.810-409.821.

(4) "Child benchmark benefit plan" means the form and level of health benefits coverage established in s. 409.815.

(5) "Child" means any person younger than ~~under~~ 19 years of age.

(6) "Child with special health care needs" means a child whose serious or chronic physical or developmental condition requires extensive preventive and maintenance care beyond that required by typically healthy children. Health care utilization by such a child exceeds the statistically expected usage of the normal child adjusted for chronological age, and such a child often needs complex care requiring multiple providers, rehabilitation services, and specialized equipment in a number of different settings.

(7) "Children's Medical Services Network" or "network" means a statewide managed care service system as defined in s. 391.021(1).

(8) "CHIP" means the Children's Health Insurance Program as authorized under Title XXI of the Social Security Act, and its regulations, ss. 409.810-409.820, and as administered in this state by the agency, the department, and the Florida Healthy Kids Corporation, as appropriate to their respective responsibilities.

(9) "Combined eligibility notice" means an eligibility notice that informs an applicant, an enrollee, or multiple family members of a household, when feasible, of eligibility for

each of the insurance affordability programs and enrollment into a program or exchange plan. A combined eligibility form must be issued by the last agency or department to make an eligibility, renewal or denial determination. The form must meet all of the federal and state law and regulatory requirements no later than January 1, 2014.

~~(8) "Community rate" means a method used to develop premiums for a health insurance plan that spreads financial risk across a large population and allows adjustments only for age, gender, family composition, and geographic area.~~

(10)~~(9)~~ "Department" means the Department of Health.

(11)~~(10)~~ "Enrollee" means a child who has been determined eligible for and is receiving coverage under ss. 409.810-409.821.

~~(11) "Family" means the group or the individuals whose income is considered in determining eligibility for the Florida Kidcare program. The family includes a child with a parent or caretaker relative who resides in the same house or living unit or, in the case of a child whose disability of nonage has been removed under chapter 743, the child. The family may also include other individuals whose income and resources are considered in whole or in part in determining eligibility of the child.~~

~~(12) "Family income" means cash received at periodic intervals from any source, such as wages, benefits, contributions, or rental property. Income also may include any money that would have been counted as income under the Aid to Families with Dependent Children (AFDC) state plan in effect prior to August 22, 1996.~~

(12)~~(13)~~ "Florida Kidcare program," "Kidcare program," or "program" means the health benefits program administered through ss. 409.810-409.821.

(13)~~(14)~~ "Guarantee issue" means that health benefits coverage must be offered to an individual regardless of the individual's health status, preexisting condition, or claims history.

(14)~~(15)~~ "Health benefits coverage" means protection that provides payment of benefits for covered health care services or that otherwise provides, either directly or through arrangements with other persons, covered health care services on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis.

(15)~~(16)~~ "Health insurance plan" means health benefits coverage under the following:

(a) A health plan offered by any certified health maintenance organization or authorized health insurer, except a plan that is limited to the following: a limited benefit, specified disease, or specified accident; hospital indemnity; accident only; limited benefit convalescent care; Medicare supplement; credit disability; dental; vision; long-term care; disability income; coverage issued as a supplement to another health plan; workers' compensation liability or other insurance; or motor vehicle medical payment only; or

(b) An employee welfare benefit plan that includes health benefits established under the Employee Retirement Income Security Act of 1974, as amended.

(16) "Household income" means the group or the individual whose income is considered in determining eligibility for the Florida Kidcare program. The term "household" has the same

meaning as provided in s. 36B(d)(2) of the Internal Revenue Code of 1986.

(17) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, and regulations thereunder, and ss. 409.901-409.920, as administered in this state by the agency.

(18) "Medically necessary" means the use of any medical treatment, service, equipment, or supply necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity and which is:

(a) Consistent with the symptom, diagnosis, and treatment of the enrollee's condition;

(b) Provided in accordance with generally accepted standards of medical practice;

(c) Not primarily intended for the convenience of the enrollee, the enrollee's family, or the health care provider;

(d) The most appropriate level of supply or service for the diagnosis and treatment of the enrollee's condition; and

(e) Approved by the appropriate medical body or health care specialty involved as effective, appropriate, and essential for the care and treatment of the enrollee's condition.

(19) "Medikids" means a component of the Florida Kidcare program of medical assistance authorized by Title XXI of the Social Security Act, and regulations thereunder, and s. 409.8132, as administered in the state by the agency.

(20) "Modified adjusted gross income" means the individual's or household's annual adjusted gross income as

defined in s. 36B(d)(2) of the Internal Revenue Code of 1986 which is used to determine eligibility under the Florida Kidcare program.

(21) "Patient Protection and Affordable Care Act" or "Act" means the federal law enacted as Pub. L. No. 111-148, as further amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments, regulations, or guidance issued under those acts.

(22) ~~(20)~~ "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

(23) ~~(21)~~ "Premium" means the entire cost of a health insurance plan, including the administration fee or the risk assumption charge.

(24) ~~(22)~~ "Premium assistance payment" means the monthly consideration paid by the agency per enrollee in the Florida Kidcare program towards health insurance premiums.

(25) ~~(23)~~ "Qualified alien" means an alien as defined in 8 U.S.C. s. 1641 (b) and (c) ~~s. 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193~~.

(26) ~~(24)~~ "Resident" means a United States citizen, or qualified alien, who is domiciled in this state.

(27) ~~(25)~~ "Rural county" means a county having a population density of less than 100 persons per square mile, or a county defined by the most recent United States Census as rural, in

which there is no prepaid health plan participating in the Medicaid program as of July 1, 1998.

~~(26) "Substantially similar" means that, with respect to additional services as defined in s. 2103(c)(2) of Title XXI of the Social Security Act, these services must have an actuarial value equal to at least 75 percent of the actuarial value of the coverage for that service in the benchmark benefit plan and, with respect to the basic services as defined in s. 2103(c)(1) of Title XXI of the Social Security Act, these services must be the same as the services in the benchmark benefit plan.~~

Section 2. Section 409.813, Florida Statutes, is amended to read:

409.813 Health benefits coverage; program components; entitlement and nonentitlement.—

(1) The Florida Kidcare program includes health benefits coverage provided to children through the following program components, which shall be marketed as the Florida Kidcare program:

(a) Medicaid;

(b) Medikids as created in s. 409.8132;

(c) The Florida Healthy Kids Corporation as created in s. 624.91; and

~~(d) Employer-sponsored group health insurance plans approved under ss. 409.810-409.821; and~~

(d)~~(c)~~ The Children's Medical Services network established in chapter 391.

(2) Except for Title XIX-funded Florida Kidcare program coverage under the Medicaid program, coverage under the Florida Kidcare program is not an entitlement. No cause of action shall

arise against the state, the department, the Department of Children and Families ~~Family Services~~, ~~or~~ the agency, or the Florida Healthy Kids Corporation for failure to make health services available to any person under ss. 409.810-409.821.

Section 3. Subsections (6) and (7) of section 409.8132, Florida Statutes, are amended to read:

409.8132 Medikids program component.—

(6) ELIGIBILITY.—

(a) A child who has attained the age of 1 year but who is under the age of 5 years is eligible to enroll in the Medikids program component of the Florida Kidcare program, if the child is a member of a family that has a family income which exceeds the Medicaid applicable income level as specified in s. 409.903, but which is equal to or below 200 percent of the current federal poverty level. In determining the eligibility of such a child, an assets test is not required. ~~A child who is eligible for Medikids may elect to enroll in Florida Healthy Kids coverage or employer-sponsored group coverage. However, a child who is eligible for Medikids may participate in the Florida Healthy Kids program only if the child has a sibling participating in the Florida Healthy Kids program and the child's county of residence permits such enrollment.~~

(b) The provisions of s. 409.814 apply to the Medikids program.

(7) ENROLLMENT.—Enrollment in the Medikids program component may occur at any time throughout the year. A child may not receive services under the Medikids program until the child is enrolled in a managed care plan or MediPass. Once determined eligible, an applicant may receive choice counseling and select

a managed care plan or MediPass. The agency may initiate mandatory assignment for a Medikids applicant who has not chosen a managed care plan or MediPass provider after the applicant's voluntary choice period ends. An applicant may select MediPass under the Medikids program component only in counties that have fewer than two managed care plans available to serve Medicaid recipients ~~and only if the federal Health Care Financing Administration determines that MediPass constitutes "health insurance coverage" as defined in Title XXI of the Social Security Act~~.

Section 4. Subsection (2) of section 409.8134, Florida Statutes, is amended to read:

409.8134 Program expenditure ceiling; enrollment.—

(2) The Florida Kidcare program may conduct enrollment continuously throughout the year.

(a) Children eligible for coverage under the Title XXI-funded Florida Kidcare program shall be enrolled on a first-come, first-served basis using the date the enrollment application is received. Enrollment shall immediately cease when the expenditure ceiling is reached. Year-round enrollment shall only be held if the Social Services Estimating Conference determines that sufficient federal and state funds will be available to finance the increased enrollment.

(b) The application for the Florida Kidcare program is valid for a period of 120 days after the date it was received. At the end of the 120-day period, if the applicant has not been enrolled in the program, the application is invalid and the applicant shall be notified of the action. The applicant may reactivate the application after notification of the action

taken by the program.

(c) Except for the Medicaid program, whenever the Social Services Estimating Conference determines that there are presently, or will be by the end of the current fiscal year, insufficient funds to finance the current or projected enrollment in the Florida Kidcare program, all additional enrollment must cease and additional enrollment may not resume until sufficient funds are available to finance such enrollment.

Section 5. Section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.—A child who has not reached 19 years of age whose household ~~family~~ income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. If an enrolled individual is determined to be ineligible for coverage, he or she must be immediately disenrolled from the respective Florida Kidcare program component and referred to another insurance affordability program, if appropriate, through a combined eligibility notice.

(1) A child who is eligible for Medicaid coverage under s. 409.903 or s. 409.904 must be offered the opportunity to enroll ~~enrolled~~ in Medicaid ~~and is not eligible to receive health benefits under any other health benefits coverage authorized under the Florida Kidcare program~~. A child who is eligible for Medicaid and opts to enroll in CHIP may disenroll from CHIP at any time and transition to Medicaid. This transition must occur without any break in coverage.

(2) A child who is not eligible for Medicaid, but who is eligible for the Florida Kidcare program, may obtain health

benefits coverage under any of the other components listed in s. 409.813 if such coverage is approved and available in the county in which the child resides.

(3) A Title XXI-funded child who is eligible for the Florida Kidcare program who is a child with special health care needs, as determined through a medical or behavioral screening instrument, is eligible for health benefits coverage from and shall be assigned to and may opt out of the Children's Medical Services Network.

(4) The following children are not eligible to receive Title XXI-funded premium assistance for health benefits coverage under the Florida Kidcare program, except under Medicaid if the child would have been eligible for Medicaid under s. 409.903 or s. 409.904 as of June 1, 1997:

(a) A child who is covered under a family member's group health benefit plan or under other private or employer health insurance coverage, if the cost of the child's participation is not greater than 5 percent of the household's ~~family's~~ income. If a child is otherwise eligible for a subsidy under the Florida Kidcare program and the cost of the child's participation in the family member's health insurance benefit plan is greater than 5 percent of the household's ~~family's~~ income, the child may enroll in the appropriate subsidized Kidcare program.

~~(b) A child who is seeking premium assistance for the Florida Kidcare program through employer-sponsored group coverage, if the child has been covered by the same employer's group coverage during the 60 days before the family submitted an application for determination of eligibility under the program.~~

(b) ~~(c)~~ A child who is an alien, but who does not meet the

definition of qualified alien, in the United States.

(c) ~~(d)~~ A child who is an inmate of a public institution or a patient in an institution for mental diseases.

(d) ~~(c)~~ A child who is otherwise eligible for premium assistance for the Florida Kidcare program and has had his or her coverage in an employer-sponsored or private health benefit plan voluntarily canceled in the last 60 days, except those children whose coverage was voluntarily canceled for good cause, including, but not limited to, the following circumstances:

1. The cost of participation in an employer-sponsored health benefit plan is greater than 5 percent of the household's modified adjusted gross ~~family's~~ income;

2. The parent lost a job that provided an employer-sponsored health benefit plan for children;

3. The parent who had health benefits coverage for the child is deceased;

4. The child has a medical condition that, without medical care, would cause serious disability, loss of function, or death;

5. The employer of the parent canceled health benefits coverage for children;

6. The child's health benefits coverage ended because the child reached the maximum lifetime coverage amount;

7. The child has exhausted coverage under a COBRA continuation provision;

8. The health benefits coverage does not cover the child's health care needs; or

9. Domestic violence led to loss of coverage.

~~(5) A child who is otherwise eligible for the Florida~~

~~Kidcare program and who has a preexisting condition that prevents coverage under another insurance plan as described in paragraph (4)(a) which would have disqualified the child for the Florida Kidcare program if the child were able to enroll in the plan is eligible for Florida Kidcare coverage when enrollment is possible.~~

(5)~~(6)~~ A child whose household's modified adjusted gross ~~family~~ income is above 200 percent of the federal poverty level or a child who is excluded under the provisions of subsection (4) may participate in the Florida Kidcare program as provided in s. 409.8132 or, if the child is ineligible for Medikids by reason of age, in the Florida Healthy Kids program, subject to the following:

(a) The family is not eligible for premium assistance payments and must pay the full cost of the premium, including any administrative costs.

(b) The board of directors of the Florida Healthy Kids Corporation may offer a reduced benefit package to these children in order to limit program costs for such families.

(c) By August 15, 2013, the Florida Healthy Kids Corporation shall notify all current full-pay enrollees of the availability of the exchange and how to access other insurance affordability options. New applications for full-pay coverage may not be accepted after September 30, 2013.

(6)~~(7)~~ Once a child is enrolled in the Florida Kidcare program, the child is eligible for coverage for 12 months without a redetermination or reverification of eligibility, if the family continues to pay the applicable premium. Eligibility for program components funded through Title XXI of the Social

Security Act terminates when a child attains the age of 19. A child who has not attained the age of 5 and who has been determined eligible for the Medicaid program is eligible for coverage for 12 months without a redetermination or reverification of eligibility.

(7)~~(8)~~ When determining or reviewing a child's eligibility under the Florida Kidcare program, the applicant shall be provided with reasonable notice of changes in eligibility which may affect enrollment in one or more of the program components. If a transition from one program component to another is authorized, there shall be cooperation between the program components and the affected family which promotes continuity of health care coverage. Any authorized transfers must be managed within the program's overall appropriated or authorized levels of funding. Each component of the program shall establish a reserve to ensure that transfers between components will be accomplished within current year appropriations. These reserves shall be reviewed by each convening of the Social Services Estimating Conference to determine the adequacy of such reserves to meet actual experience.

(8)~~(9)~~ In determining the eligibility of a child, an assets test is not required. Each applicant shall provide documentation during the application process and the redetermination process, including, but not limited to, the following:

(a) Proof of household ~~family~~ income, which must be verified electronically to determine financial eligibility for the Florida Kidcare program. Written documentation, which may include wages and earnings statements or pay stubs, W-2 forms, or a copy of the applicant's most recent federal income tax

return, is required only if the electronic verification is not available or does not substantiate the applicant's income. This paragraph expires December 31, 2013.

(b) A statement from all applicable, employed household ~~family~~ members that:

1. Their employers do not sponsor health benefit plans for employees;

2. The potential enrollee is not covered by an employer-sponsored health benefit plan; or

3. The potential enrollee is covered by an employer-sponsored health benefit plan and the cost of the employer-sponsored health benefit plan is more than 5 percent of the household's modified adjusted gross ~~family's~~ income.

(c) To enroll in the Children's Medical Services Network, a completed application, including a clinical screening.

(d) Effective January 1, 2014, eligibility shall be determined through electronic matching using the federally managed data services hub and other resources. Written documentation from the applicant may be accepted if the electronic verification does not substantiate the applicant's income or if there has been a change in circumstances.

(9) ~~(10)~~ Subject to paragraph (4)(a), the Florida Kidcare program shall withhold benefits from an enrollee if the program obtains evidence that the enrollee is no longer eligible, submitted incorrect or fraudulent information in order to establish eligibility, or failed to provide verification of eligibility. The applicant or enrollee shall be notified that because of such evidence program benefits will be withheld unless the applicant or enrollee contacts a designated

representative of the program by a specified date, which must be within 10 working days after the date of notice, to discuss and resolve the matter. The program shall make every effort to resolve the matter within a timeframe that will not cause benefits to be withheld from an eligible enrollee.

(10) ~~(11)~~ The following individuals may be subject to prosecution in accordance with s. 414.39:

(a) An applicant obtaining or attempting to obtain benefits for a potential enrollee under the Florida Kidcare program when the applicant knows or should have known the potential enrollee does not qualify for the Florida Kidcare program.

(b) An individual who assists an applicant in obtaining or attempting to obtain benefits for a potential enrollee under the Florida Kidcare program when the individual knows or should have known the potential enrollee does not qualify for the Florida Kidcare program.

Section 6. Paragraphs (g), (k), (q), and (w) of subsection (2) of section 409.815, Florida Statutes, are amended to read:

409.815 Health benefits coverage; limitations.—

(2) BENCHMARK BENEFITS.—In order for health benefits coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.821, the health benefits coverage, except for coverage under Medicaid and Medikids, must include the following minimum benefits, as medically necessary.

(g) *Behavioral health services.*—

1. Mental health benefits include:

a. Inpatient services~~, limited to 30 inpatient days per contract year~~ for psychiatric admissions, or residential services in facilities licensed under s. 394.875(6) or s.

395.003 in lieu of inpatient psychiatric admissions~~; however, a minimum of 10 of the 30 days shall be available only for inpatient psychiatric services~~ if authorized by a physician; and

b. Outpatient services, including outpatient visits for psychological or psychiatric evaluation, diagnosis, and treatment by a licensed mental health professional~~, limited to 40 outpatient visits each contract year~~.

2. Substance abuse services include:

a. Inpatient services~~, limited to 7 inpatient days per contract year~~ for medical detoxification only and ~~30 days of~~ residential services; and

b. Outpatient services, including evaluation, diagnosis, and treatment by a licensed practitioner~~, limited to 40 outpatient visits per contract year~~.

~~Effective October 1, 2009,~~ Covered services include inpatient and outpatient services for mental and nervous disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Such benefits include psychological or psychiatric evaluation, diagnosis, and treatment by a licensed mental health professional and inpatient, outpatient, and residential treatment of substance abuse disorders. Any benefit limitations, including duration of services, number of visits, or number of days for hospitalization or residential services, shall not be any less favorable than those for physical illnesses generally. The program may also implement appropriate financial incentives, peer review, utilization requirements, and other methods used for the management of benefits provided for

other medical conditions in order to reduce service costs and utilization without compromising quality of care.

(k) *Hospice services.*—Covered services include reasonable and necessary services for palliation or management of an enrollee's terminal illness~~, with the following exceptions:~~

~~1. Once a family elects to receive hospice care for an enrollee, other services that treat the terminal condition will not be covered; and~~

~~2. Services required for conditions totally unrelated to the terminal condition are covered to the extent that the services are included in this section~~.

(q) *Dental services.*—~~Effective October 1, 2009,~~ Dental services shall be covered as required under federal law and may also include those dental benefits provided to children by the Florida Medicaid program under s. 409.906(6).

(w) *Reimbursement of federally qualified health centers and rural health clinics.*—~~Effective October 1, 2009,~~ Payments for services provided to enrollees by federally qualified health centers and rural health clinics under this section shall be reimbursed using the Medicaid Prospective Payment System as provided for under s. 2107(e)(1)(D) of the Social Security Act. If such services are paid for by health insurers or health care providers under contract with the Florida Healthy Kids Corporation, such entities are responsible for this payment. The agency may seek any available federal grants to assist with this transition.

Section 7. Section 409.816, Florida Statutes, is amended to read:

409.816 Limitations on premiums and cost-sharing.—The

following limitations on premiums and cost-sharing are established for the program.

(1) Enrollees who receive coverage under the Medicaid program may not be required to pay:

(a) Enrollment fees, premiums, or similar charges; or

(b) Copayments, deductibles, coinsurance, or similar charges.

(2) Enrollees in households that have ~~families with~~ a modified adjusted gross ~~family~~ income equal to or below 150 percent of the federal poverty level, who are not receiving coverage under the Medicaid program, may not be required to pay:

(a) Enrollment fees, premiums, or similar charges that exceed the maximum monthly charge permitted under s. 1916(b)(1) of the Social Security Act; or

(b) Copayments, deductibles, coinsurance, or similar charges that exceed a nominal amount, as determined consistent with regulations referred to in s. 1916(a)(3) of the Social Security Act. However, such charges may not be imposed for preventive services, including well-baby and well-child care, age-appropriate immunizations, and routine hearing and vision screenings.

(3) Enrollees in households that have ~~families with~~ a modified adjusted gross ~~family~~ income above 150 percent of the federal poverty level who are not receiving coverage under the Medicaid program or who are not eligible under s. 409.814(5) ~~s. 409.814(6)~~ may be required to pay enrollment fees, premiums, copayments, deductibles, coinsurance, or similar charges on a sliding scale related to income, except that the total annual aggregate cost-sharing with respect to all children in a

household ~~family~~ may not exceed 5 percent of the household's modified adjusted ~~family's~~ income. However, copayments, deductibles, coinsurance, or similar charges may not be imposed for preventive services, including well-baby and well-child care, age-appropriate immunizations, and routine hearing and vision screenings.

Section 8. Section 409.817, Florida Statutes, is repealed.

Section 9. Section 409.8175, Florida Statutes, is repealed.

Section 10. Paragraph (c) of subsection (1) of section 409.8177, Florida Statutes, is amended to read:

409.8177 Program evaluation.—

(1) The agency, in consultation with the Department of Health, the Department of Children and Families ~~Family Services~~, and the Florida Healthy Kids Corporation, shall contract for an evaluation of the Florida Kidcare program and shall by January 1 of each year submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report of the program. In addition to the items specified under s. 2108 of Title XXI of the Social Security Act, the report shall include an assessment of crowd-out and access to health care, as well as the following:

(c) The characteristics of the children and families assisted under the program, including ages of the children, household ~~family~~ income, and access to or coverage by other health insurance prior to the program and after disenrollment from the program.

Section 11. Section 409.818, Florida Statutes, is amended to read:

409.818 Administration.—In order to implement ss. 409.810-

409.821, the following agencies shall have the following duties:

(1) The Department of Children and Families ~~Family Services~~ shall:

(a) Maintain ~~Develop~~ a simplified eligibility determination and renewal process ~~application mail-in form to be used for determining the eligibility of children for coverage~~ under the Florida Kidcare program, in consultation with the agency, the Department of Health, and the Florida Healthy Kids Corporation. The simplified eligibility process ~~application form~~ must include ~~an item that provides~~ an opportunity for the applicant to indicate whether coverage is being sought for a child with special health care needs. Families applying for children's Medicaid coverage must also be able to use the simplified application process ~~form~~ without having to pay a premium.

(b) Establish and maintain the eligibility determination process under the program except as specified in subsection (3), which includes the following: ~~(5).~~

1. The department shall directly, or through the services of a contracted third-party administrator, establish and maintain a process for determining eligibility of children for coverage under the program. The eligibility determination process must be used solely for determining eligibility of applicants for health benefits coverage under the program. The eligibility determination process must include an initial determination of eligibility for any coverage offered under the program, as well as a redetermination or reverification of eligibility each subsequent 6 months. ~~Effective January 1, 1999,~~ A child who has not attained the age of 5 and who has been determined eligible for the Medicaid program is eligible for

coverage for 12 months without a redetermination or reverification of eligibility. In conducting an eligibility determination, the department shall determine if the child has special health care needs.

2. The department, in consultation with the Agency for Health Care Administration and the Florida Healthy Kids Corporation, shall develop procedures for redetermining eligibility which enable applicants and enrollees ~~a family~~ to easily update any change in circumstances which could affect eligibility.

3. The department may accept changes in ~~a family's~~ status as reported to the department by the Florida Healthy Kids Corporation or the exchange without requiring a new application ~~from the family~~. Redetermination of a child's eligibility for Medicaid may not be linked to a child's eligibility determination for other programs.

4. The department, in consultation with the agency and the Florida Healthy Kids Corporation, shall develop a combined eligibility notice to inform applicants and enrollees of their application or renewal status, as appropriate. The content must be coordinated to meet all federal and state requirements under the federal Patient Protection and Affordable Care Act.

(c) Inform program applicants about eligibility determinations and provide information about eligibility of applicants to the Florida Kidcare program and to insurers and their agents~~, through a centralized coordinating office~~.

(d) Adopt rules necessary for conducting program eligibility functions.

~~(2) The Department of Health shall:~~

~~(a) Design an eligibility intake process for the program, in coordination with the Department of Children and Family Services, the agency, and the Florida Healthy Kids Corporation. The eligibility intake process may include local intake points that are determined by the Department of Health in coordination with the Department of Children and Family Services.~~

~~(b) Chair a state-level Florida Kidcare coordinating council to review and make recommendations concerning the implementation and operation of the program. The coordinating council shall include representatives from the department, the Department of Children and Family Services, the agency, the Florida Healthy Kids Corporation, the Office of Insurance Regulation of the Financial Services Commission, local government, health insurers, health maintenance organizations, health care providers, families participating in the program, and organizations representing low-income families.~~

~~(c) In consultation with the Florida Healthy Kids Corporation and the Department of Children and Family Services, establish a toll-free telephone line to assist families with questions about the program.~~

~~(d) Adopt rules necessary to implement outreach activities.~~

(2)~~(3)~~ The Agency for Health Care Administration, under the authority granted in s. 409.914(1), shall:

(a) Calculate the premium assistance payment necessary to comply with the premium and cost-sharing limitations specified in s. 409.816 and the federal Patient Protection and Affordable Care Act. The premium assistance payment for each enrollee in a health insurance plan participating in the Florida Healthy Kids Corporation shall equal the premium approved by the Florida

Healthy Kids Corporation ~~and the Office of Insurance Regulation of the Financial Services Commission pursuant to ss. 627.410 and 641.31,~~ less any enrollee's share of the premium established within the limitations specified in s. 409.816. ~~The premium assistance payment for each enrollee in an employer-sponsored health insurance plan approved under ss. 409.810-409.821 shall equal the premium for the plan adjusted for any benchmark benefit plan actuarial equivalent benefit rider approved by the Office of Insurance Regulation pursuant to ss. 627.410 and 641.31, less any enrollee's share of the premium established within the limitations specified in s. 409.816. In calculating the premium assistance payment levels for children with family coverage, the agency shall set the premium assistance payment levels for each child proportionately to the total cost of family coverage.~~

(b) Make premium assistance payments to health insurance plans on a periodic basis. The agency may use its Medicaid fiscal agent or a contracted third-party administrator in making these payments. The agency may require health insurance plans that participate in the Medikids program ~~or employer-sponsored group health insurance~~ to collect premium payments from an enrollee's family. Participating health insurance plans shall report premium payments collected on behalf of enrollees in the program to the agency in accordance with a schedule established by the agency.

(c) Monitor compliance with quality assurance and access standards developed under s. 409.820 and in accordance with s. 2103(f) of the Social Security Act, 42 U.S.C. s. 1397cc(f).

(d) Establish a mechanism for investigating and resolving

complaints and grievances from program applicants, enrollees, and health benefits coverage providers, and maintain a record of complaints and confirmed problems. In the case of a child who is enrolled in a managed care ~~health maintenance~~ organization, the agency must use the provisions of s. 641.511 to address grievance reporting and resolution requirements.

~~(c) Approve health benefits coverage for participation in the program, following certification by the Office of Insurance Regulation under subsection (4).~~

(e)~~(f)~~ Adopt rules necessary for ~~calculating premium assistance payment levels, making premium assistance payments,~~ monitoring access and quality assurance standards and~~,~~ investigating and resolving complaints and grievances~~, administering the Medikids program, and approving health benefits coverage~~.

(f) Contract with the Florida Healthy Kids Corporation for the administration of the Florida Kidcare program and the Healthy Florida program and to facilitate the release of any federal and state funds.

The agency is designated the lead state agency for Title XXI of the Social Security Act for purposes of receipt of federal funds, for reporting purposes, and for ensuring compliance with federal and state regulations and rules.

~~(4) The Office of Insurance Regulation shall certify that health benefits coverage plans that seek to provide services under the Florida Kidcare program, except those offered through the Florida Healthy Kids Corporation or the Children's Medical Services Network, meet, exceed, or are actuarially equivalent to~~

~~the benchmark benefit plan and that health insurance plans will be offered at an approved rate. In determining actuarial equivalence of benefits coverage, the Office of Insurance Regulation and health insurance plans must comply with the requirements of s. 2103 of Title XXI of the Social Security Act. The department shall adopt rules necessary for certifying health benefits coverage plans.~~

(3)~~(5)~~ The Florida Healthy Kids Corporation shall retain its functions as authorized in s. 624.91, including eligibility determination for participation in the Healthy Kids program.

(4)~~(6)~~ The agency, the Department of Health, the Department of Children and Families ~~Family Services~~, and the Florida Healthy Kids Corporation, ~~and the Office of Insurance Regulation,~~ after consultation with and approval of the Speaker of the House of Representatives and the President of the Senate, may ~~are authorized to~~ make program modifications that are necessary to overcome any objections of the United States Department of Health and Human Services to obtain approval of the state's child health insurance plan under Title XXI of the Social Security Act.

Section 12. Section 409.820, Florida Statutes, is amended to read:

409.820 Quality assurance and access standards.—Except for Medicaid, the Department of Health, in consultation with the agency and the Florida Healthy Kids Corporation, shall develop a minimum set of pediatric and adolescent quality assurance and access standards for all program components. The standards must include a process for granting exceptions to specific requirements for quality assurance and access. Compliance with

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the standards shall be a condition of program participation by health benefits coverage providers. These standards shall comply with the provisions of this chapter and chapter 641 and Title XXI of the Social Security Act.

Section 13. Section 624.91, Florida Statutes, is amended to read:

624.91 The Florida Healthy Kids Corporation Act.—

(1) SHORT TITLE.—This section may be cited as the "William G. 'Doc' Myers Healthy Kids Corporation Act."

(2) LEGISLATIVE INTENT.—

(a) The Legislature finds that increased access to health care services could improve children's health and reduce the incidence and costs of childhood illness and disabilities among children in this state. Many children do not have comprehensive, affordable health care services available. It is the intent of the Legislature that the Florida Healthy Kids Corporation provide comprehensive health insurance coverage to such children. The corporation is encouraged to cooperate with any existing health service programs funded by the public or the private sector.

(b) It is the intent of the Legislature that the Florida Healthy Kids Corporation serve as one of several providers of services to children eligible for medical assistance under Title XXI of the Social Security Act. Although the corporation may serve other children, the Legislature intends the primary recipients of services provided through the corporation be school-age children with a family income below 200 percent of the federal poverty level, who do not qualify for Medicaid. It is also the intent of the Legislature that state and local

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government Florida Healthy Kids funds be used to continue coverage, subject to specific appropriations in the General Appropriations Act, to children not eligible for federal matching funds under Title XXI.

(c) It is further the intent of the Legislature that the Florida Healthy Kids Corporation administer and manage services for Healthy Florida, a health care program for uninsured adults using a unique network of providers and contracts. Enrollees in Healthy Florida will receive comprehensive health care services from private, licensed health insurers who meet standards established by the corporation. It is further the intent of the Legislature that these enrollees participate in their own health care decisionmaking and contribute financially toward their medical costs. The Legislature intends to provide an alternative benefit package that includes a full range of services which meet the needs of residents of this state. As a new program, the Legislature shall also ensure that a comprehensive evaluation is conducted to measure the overall impact of the program and identify whether to renew the program after an initial 3-year term.

(3) ELIGIBILITY FOR STATE-FUNDED ASSISTANCE.—Only the following individuals are eligible for state-funded assistance in paying premiums for Healthy Florida or Florida Healthy Kids ~~premiums~~:

(a) Residents of this state who are eligible for the Florida Kidcare program pursuant to s. 409.814 or the Healthy Florida pursuant to s. 624.917.

(b) Notwithstanding s. 409.814, legal aliens who are enrolled in the Florida Healthy Kids program as of January 31,

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2004, who do not qualify for Title XXI federal funds because they are not qualified aliens as defined in s. 409.811.

(4) NONENTITLEMENT.—Nothing in this section shall be construed as providing an individual with an entitlement to health care services. No cause of action shall arise against the state, the Florida Healthy Kids Corporation, or a unit of local government for failure to make health services available under this section.

(5) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is created the Florida Healthy Kids Corporation, a not-for-profit corporation.

(b) The Florida Healthy Kids Corporation shall:

1. Arrange for the collection of any family, individual, or local contributions~~, or employer payment or premium~~, in an amount to be determined by the board of directors, to provide for payment of premiums for comprehensive insurance coverage and for the actual or estimated administrative expenses.

2. Arrange for the collection of any voluntary contributions to provide for payment of premiums for enrollees in the Florida Kidcare program or Healthy Florida ~~premiums for children who are not eligible for medical assistance under Title XIX or Title XXI of the Social Security Act~~.

3. Subject to the provisions of s. 409.8134, accept voluntary supplemental local match contributions that comply with the requirements of Title XXI of the Social Security Act for the purpose of providing additional Florida Kidcare coverage in contributing counties under Title XXI.

4. Establish the administrative and accounting procedures for the operation of the corporation.

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5. Establish, with consultation from appropriate professional organizations, standards for preventive health services and providers and comprehensive insurance benefits appropriate to children, provided that such standards for rural areas shall not limit primary care providers to board-certified pediatricians.

6. Determine eligibility for children seeking to participate in the Title XXI-funded components of the Florida Kidcare program consistent with the requirements specified in s. 409.814, as well as the non-Title-XXI-eligible children as provided in subsection (3).

7. Establish procedures under which providers of local match to, applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board of directors of the corporation.

8. Establish participation criteria and, if appropriate, contract with an authorized insurer, health maintenance organization, or third-party administrator to provide administrative services to the corporation.

9. Establish enrollment criteria that include penalties or waiting periods of 30 days for reinstatement of coverage upon voluntary cancellation for nonpayment of family and individual premiums under the programs.

10. Contract with authorized insurers or any provider of health care services, meeting standards established by the corporation, for the provision of comprehensive insurance coverage to participants. Such standards shall include criteria under which the corporation may contract with more than one provider of health care services in program sites.

a. Health plans shall be selected through a competitive bid process.

b. The Florida Healthy Kids Corporation shall purchase goods and services in the most cost-effective manner consistent with the delivery of quality medical care. The maximum administrative cost for a Florida Healthy Kids Corporation contract shall be 15 percent. For all health care contracts, the minimum medical loss ratio is ~~for a Florida Healthy Kids Corporation contract shall be~~ 85 percent. The calculations must use uniform financial data collected from all plans in a format established by the corporation and shall be computed for each insurer on a statewide basis. Funds shall be classified in a manner consistent with 45 C.F.R. part 158 ~~For dental contracts, the remaining compensation to be paid to the authorized insurer or provider under a Florida Healthy Kids Corporation contract shall be no less than an amount which is 85 percent of premium; to the extent any contract provision does not provide for this minimum compensation, this section shall prevail~~.

c. The health plan selection criteria and scoring system, and the scoring results, shall be available upon request for inspection after the bids have been awarded.

11. Establish disenrollment criteria in the event local matching funds are insufficient to cover enrollments.

12. Develop and implement a plan to publicize the Florida Kidcare program and Healthy Florida, the eligibility requirements of the programs ~~program~~, and the procedures for enrollment in the program and to maintain public awareness of the corporation and the programs ~~program~~.

13. Secure staff necessary to properly administer the

corporation. Staff costs shall be funded from state and local matching funds and such other private or public funds as become available. The board of directors shall determine the number of staff members necessary to administer the corporation.

14. In consultation with the partner agencies, annually provide a report on the Florida Kidcare program ~~annually~~ to the Governor, the Chief Financial Officer, the Commissioner of Education, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives.

15. Provide information on a quarterly basis to the Legislature and the Governor which compares the costs and utilization of the full-pay enrolled population and the Title XXI-subsidized enrolled population in the Florida Kidcare program. The information, at a minimum, must include:

a. The monthly enrollment and expenditure for full-pay enrollees in the Medikids and Florida Healthy Kids programs compared to the Title XXI-subsidized enrolled population; and

b. The costs and utilization by service of the full-pay enrollees in the Medikids and Florida Healthy Kids programs and the Title XXI-subsidized enrolled population. This subparagraph is repealed effective December 31, 2013.

~~By February 1, 2010, the Florida Healthy Kids Corporation shall provide a study to the Legislature and the Governor on premium impacts to the subsidized portion of the program from the inclusion of the full-pay program, which shall include recommendations on how to eliminate or mitigate possible impacts to the subsidized premiums.~~

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16. By August 15, 2013, the corporation shall notify all current full-pay enrollees of the availability of the exchange, as defined in the federal Patient Protection and Affordable Care Act, and how to access other insurance affordability options. New applications for full-pay coverage may not be accepted after September 30, 2013.

17.~~16.~~ Establish benefit packages that conform to the provisions of the Florida Kidcare program, as created in ss. 409.810-409.821.

(c) Coverage under the corporation's program is secondary to any other available private coverage held by, or applicable to, the participant ~~child~~ or family member. Insurers under contract with the corporation are the payors of last resort and must coordinate benefits with any other third-party payor that may be liable for the participant's medical care.

(d) The Florida Healthy Kids Corporation shall be a private corporation not for profit, registered, incorporated, and organized pursuant to chapter 617, and shall have all powers necessary to carry out the purposes of this act, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this act. The corporation and any committees it forms shall act in compliance with part III of chapter 112, and chapters 119 and 286.

(6) BOARD OF DIRECTORS AND MANAGEMENT SUPERVISION.—

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors

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chaired by an appointee designated by the Governor ~~Chief Financial Officer or her or his designee,~~ and composed of 15 ~~12~~ other members. The Senate shall confirm the designated chair and other board appointees ~~selected~~ for 3-year terms of office as follows:

1. The Secretary of Health Care Administration, or his or her designee, as an ex-officio member.

2. The State Surgeon General, or his or her designee, as an ex-officio member ~~One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education~~.

3. The Secretary of Children and Families, or his or her designee, as an ex-officio member ~~One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society~~.

4. Four members ~~One member,~~ appointed by the Governor~~, who represents the Children's Medical Services Program~~.

5. Two members ~~One member~~ appointed by the President of the Senate ~~Chief Financial Officer from among three members nominated by the Florida Hospital Association~~.

6. Two members ~~One member,~~ appointed by the Senate Minority Leader ~~Governor, who is an expert on child health policy~~.

7. Two members ~~One member,~~ appointed by the Speaker of the House of Representatives ~~Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians~~.

8. Two members ~~One member,~~ appointed by the House Minority Leader ~~Governor, who represents the state Medicaid program~~.

~~9. One member, appointed by the Chief Financial Officer,~~

~~from among three members nominated by the Florida Association of Counties.~~

~~10. The State Health Officer or her or his designee.~~

~~11. The Secretary of Children and Family Services, or his or her designee.~~

~~12. One member, appointed by the Governor, from among three members nominated by the Florida Dental Association.~~

(b) A member of the board of directors may be removed by the official who appointed that member. The board shall appoint an executive director, who is responsible for other staff authorized by the board.

(c) Board members are entitled to receive, from funds of the corporation, reimbursement for per diem and travel expenses as provided by s. 112.061.

(d) There shall be no liability on the part of, and no cause of action shall arise against, any member of the board of directors, or its employees or agents, for any action they take in the performance of their powers and duties under this act.

(e) Board members who are serving on or before the date of enactment of this act or similar legislation may remain until July 1, 2013.

(f) An executive steering committee is created to provide management direction and support and to make recommendations to the board on the programs. The steering committee is composed of the Secretary of Health Care Administration, the Secretary of Children and Families, and the State Surgeon General. Committee members may not delegate their membership or attendance.

(7) LICENSING NOT REQUIRED; FISCAL OPERATION.—

(a) The corporation shall not be deemed an insurer. The

officers, directors, and employees of the corporation shall not be deemed to be agents of an insurer. Neither the corporation nor any officer, director, or employee of the corporation is subject to the licensing requirements of the insurance code or the rules of the Department of Financial Services or Office of Insurance Regulation. However, any marketing representative utilized and compensated by the corporation must be appointed as a representative of the insurers or health services providers with which the corporation contracts.

(b) The board has complete fiscal control over the corporation and is responsible for all corporate operations.

(c) The Department of Financial Services shall supervise any liquidation or dissolution of the corporation and shall have, with respect to such liquidation or dissolution, all power granted to it pursuant to the insurance code.

Section 14. Section 624.915, Florida Statutes, is repealed.

Section 15. Section 624.917, Florida Statutes, is created to read:

624.917 Healthy Florida program.—

(1) PROGRAM CREATION.—There is created Healthy Florida, a health care program for lower income, uninsured adults who meet the eligibility guidelines established under s. 624.91. The Florida Healthy Kids Corporation shall administer the program under its existing corporate governance and structure.

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

(a) "Actuarially equivalent" means:

1. The aggregate value of the benefits included in health benefits coverage is equal to the value of the benefits in the child benchmark benefit plan as defined in s. 409.811; and

2. The benefits included in health benefits coverage are substantially similar to the benefits included in the child benchmark benefit plan, except that preventive health services do not include dental services.

(b) "Agency" means the Agency for Health Care Administration.

(c) "Applicant" means the individual who applies for determination of eligibility for health benefits coverage under this section.

(d) "Child benchmark benefit plan" means the form and level of health benefits coverage established in s. 409.815.

(e) "Child" means any person younger than 19 years of age.

(f) "Corporation" means the Florida Healthy Kids Corporation.

(g) "Enrollee" means an individual who has been determined eligible for and is receiving coverage under this section.

(h) "Florida Kidcare program" or "Kidcare program," means the health benefits program administered through ss. 409.810-409.821.

(i) "Health benefits coverage" means protection that provides payment of benefits for covered health care services or that otherwise provides, either directly or through arrangements with other persons, covered health care services on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis.

(j) "Healthy Florida" means the program created by this section which is administered by the Florida Healthy Kids Corporation.

(k) "Healthy Kids" means the Florida Kidcare program component created under s. 624.91 for children who are 5 through

18 years of age.

(l) "Household income" means the group or the individual whose income is considered in determining eligibility for the Healthy Florida program. The term "household" has the same meaning as provided in s. 36B(d)(2) of the Internal Revenue Code of 1986.

(m) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, and regulations thereunder, and ss. 409.901-409.920, as administered in this state by the agency.

(n) "Medically necessary" means the use of any medical treatment, service, equipment, or supply necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity and which is:

1. Consistent with the symptom, diagnosis, and treatment of the enrollee's condition;

2. Provided in accordance with generally accepted standards of medical practice;

3. Not primarily intended for the convenience of the enrollee, the enrollee's family, or the health care provider;

4. The most appropriate level of supply or service for the diagnosis and treatment of the enrollee's condition; and

5. Approved by the appropriate medical body or health care specialty involved as effective, appropriate, and essential for the care and treatment of the enrollee's condition.

(o) "Modified adjusted gross income" means the individual or household's annual adjusted gross income as defined in s.

36B(d)(2) of the Internal Revenue Code of 1986 which is used to determine eligibility under the Florida Kidcare program.

(p) "Patient Protection and Affordable Care Act" or "Act" means the federal law enacted as Pub. L. No. 111-148, as further amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments, regulations or guidance thereunder, issued under those acts.

(q) "Premium" means the entire cost of a health insurance plan, including the administration fee or the risk assumption charge.

(r) "Premium assistance payment" means the monthly consideration paid by the agency per enrollee in the Florida Kidcare program towards health insurance premiums.

(s) "Qualified alien" means an alien as defined in 8 U.S.C. s. 1641(b) and (c).

(t) "Resident" means a United States citizen or qualified alien who is domiciled in this state.

(3) ELIGIBILITY.—To be eligible and remain eligible for the Healthy Florida program, an individual must be a resident of this state and meet the following additional criteria:

(a) Be identified as newly eligible, as defined in s. 1902(a)(10)(A)(i)(VIII) of the Social Security Act or s. 2001 of the federal Patient Protection and Affordable Care Act, and as may be further defined by federal regulation.

(b) Maintain eligibility with the corporation and meet all renewal requirements as established by the corporation.

(c) Renew eligibility on at least an annual basis.

(4) ENROLLMENT.—The corporation may begin the enrollment of applicants in the Healthy Florida program on October 1, 2013.

Enrollment may occur directly, through the services of a third-party administrator, referrals from the Department of Children and Families, and the exchange as defined by the federal Patient Protection and Affordable Care Act. As an enrollee disenrolls, the corporation must also provide the enrollee with information about other insurance affordability programs and electronically refer the enrollee to the exchange or other programs, as appropriate. The earliest coverage effective date under the program shall be January 1, 2014.

(5) DELIVERY OF SERVICES.—The corporation shall contract with authorized insurers licensed under chapter 627; managed care organizations authorized under chapter 641; and provider service networks authorized under ss. 409.912(4)(d) and 409.962(13) which are prepaid plans. These insurers, managed care organizations, and provider service networks must meet standards established by the corporation to provide comprehensive health care services to enrollees who qualify for services under this section. The corporation may contract for such services on a statewide or regional basis. To encourage continuity of care among enrollees who may transition across multiple insurance affordability programs, the corporation is encouraged to contract with those insurers and managed care organizations that participate in more than one such program.

(a) The corporation shall establish access and network standards for such contracts and ensure that contracted providers have sufficient providers to meet enrollee needs. Quality standards must be developed by the corporation, specific to the adult population, which take into consideration recommendations from the National Committee on Quality

Assurance, stakeholders, and other existing performance indicators from both public and commercial populations. The corporation and its contracted health plans shall develop policies that minimize the disruption of enrollee medical homes when enrollees transition between insurance affordability plans.

(b) The corporation shall provide an enrollee a choice of plans. The corporation may select a plan if no selection has been received before the coverage start date. Once enrolled, an enrollee has an initial 90-day, free-look period before a lock-in period of not more than 12 months is applied. Exceptions to the lock-in period must be offered to an enrollee for reasons based upon good cause or qualifying events.

(c) The corporation may consider contracts that provide family plans that would allow members from multiple state and federally funded programs to remain together under the same plan.

(d) All contracts must meet the medical loss ratio requirements under s. 624.91.

(6) BENEFITS.—The corporation shall establish a benefits package that is actuarially equivalent to the benchmark benefit plan offered under s. 409.815(2), excluding dental, and meets the alternative benefits package requirements under s. 1937 of the Social Security Act. Benefits must be offered as an integrated, single package.

(a) In addition to benchmark benefits, health reimbursement accounts or a comparable health savings account for each enrollee must be established through the corporation or the contracts managed by the corporation. Enrollees must be rewarded for healthy behaviors, wellness program adherence, and other

activities established by the corporation which demonstrate compliance with preventive care or disease management guidelines. Funds deposited into these accounts may be used to pay cost-sharing obligations or to purchase over-the-counter health-related items to the extent allowed under federal law or regulation.

(b) Enhanced services may be offered if the cost of such additional services provides savings to the overall plan.

(c) The corporation shall establish a process for the payment of wrap-around services not covered by the benchmark benefit plan through a separate subcapitation process to its contracted providers if it is determined that such services are required by federal law. Such services would be covered when deemed medically necessary on an individual basis. The subcapitation pool is subject to a separate reconciliation process under the medical loss ratio provisions in s. 624.91.

(d) A prior authorization process and other utilization controls may be established by the plan for any benefit if approved by the corporation.

(7) COST SHARING.—The corporation may collect premiums and copayments from enrollees in accordance with federal law. Amounts to be collected for the Healthy Florida program must be established annually in the General Appropriations Act.

(a) Payment of a monthly premium may be required before the establishment of an enrollee’s coverage start date and to retain monthly coverage.

(b) An enrollee who has a family income above the federal poverty level may be required to make nominal copayments, in accordance with federal rule, as a condition of receiving a

health care service.

(c) A provider is responsible for the collection of point-of-service cost-sharing obligations. The enrollee's cost-sharing contribution is considered part of the provider's total reimbursement. Failure to collect an enrollee's cost sharing reduces the provider's share of the reimbursement.

(8) PROGRAM MANAGEMENT.—The corporation is responsible for the oversight of the Healthy Florida program. The agency shall seek a state plan amendment or other appropriate federal approval to implement the Healthy Florida program. The agency shall consult with the corporation in the amendment's development and submit by June 14, 2013, the state plan amendment to the federal Department of Health and Human Services. The agency shall contract with the corporation for the administration of the Healthy Florida program and for the timely release of federal and state funds. The agency retains its authorities as provided in ss. 409.902 and 409.963.

(a) The corporation shall establish a process by which grievances can be resolved and Healthy Florida recipients can be informed of their rights under the Medicaid Fair Hearing Process, as appropriate, or any alternative resolution process adopted by the corporation.

(b) The corporation shall establish a program integrity process to ensure compliance with program guidelines. At a minimum, the corporation shall withhold benefits from an applicant or enrollee if the corporation obtains evidence that the applicant or enrollee is no longer eligible, submitted incorrect or fraudulent information in order to establish eligibility, or failed to provide verification of eligibility.

The corporation shall notify the applicant or enrollee that, because of such evidence, program benefits must be withheld unless the applicant or enrollee contacts a designated representative of the corporation by a specified date, which must be within 10 working days after the date of notice, to discuss and resolve the matter. The corporation shall make every effort to resolve the matter within a timeframe that will not cause benefits to be withheld from an eligible enrollee. The following individuals may be subject to specific prosecution in accordance with s. 414.39:

1. An applicant who obtains or attempts to obtain benefits for a potential enrollee under the Healthy Florida program when the applicant knows or should have known that the potential enrollee does not qualify for the Healthy Florida program.

2. An individual who assists an applicant in obtaining or attempting to obtain benefits for a potential enrollee under the Healthy Florida program when the individual knows or should have known that the potential enrollee does not qualify for the Healthy Florida program.

(9) APPLICABILITY OF LAWS RELATING TO MEDICAID.—The provisions of ss. 409.902, 409.9128, and 409.920 apply to the administration of the Healthy Florida program.

(10) PROGRAM EVALUATION.—The corporation shall collect both eligibility and enrollment data from program applicants and enrollees as well as encounter and utilization data from all contracted entities during the program term. The corporation shall submit monthly enrollment reports to the President of the Senate, the Speaker of the House of Representative, and the Minority Leaders of the Senate and the House of Representatives.

The corporation shall submit an interim independent evaluation of the Healthy Florida program to the presiding officers no later than July 1, 2015, with annual evaluations due July 1 each year thereafter. The evaluations must address, at a minimum, application and enrollment trends and issues, utilization and cost data, and customer satisfaction.

(11) PROGRAM EXPIRATION.—The Healthy Florida program shall expire at the end of the state fiscal year in which any of these conditions occur, whichever occurs first:

(a) The federal match contribution falls below 90 percent.

(b) The federal match contribution falls below the increased FMAP for medical assistance for newly eligible mandatory individuals as specified in the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

(c) The federal match for the Healthy Florida program and the Medicaid program are blended under federal law or regulation in such a way that causes the overall federal contribution to diminish when compared to separate, nonblended federal contributions.

Section 16. The Florida Healthy Kids Corporation may make changes to comply with the objections of the federal Department of Health and Human Services to gain approval of the Healthy Florida program in compliance with the federal Patient Protection and Affordable Care Act, upon giving notice to the Senate and the House of Representatives of the proposed changes. If there is a conflict between a provision in this section and the federal Patient Protection and Affordable Care Act, Pub. L.

No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, the provision must be interpreted and applied so as to comply with the requirement of the federal law.

Section 17. (1) The sum of $1,258,054,808 from the Medical Care Trust Fund is appropriated to the Agency for Health Care Administration beginning in the 2013-2014 fiscal year to provide coverage for individuals who enroll in the Healthy Florida Program.

(2) The sum of $254,151 from the General Revenue Fund and $18,235,833 from the Medical Care Trust Fund is appropriated to the Agency for Health Care Administration beginning in the 2013-2014 fiscal year to comply with federal regulations to compensate insurers and managed care organizations that contract with the Healthy Florida Program for the imposition of the annual fee on health insurance providers under section 9010 of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

(3) The sum of $10,676,377 from the General Revenue Fund and $10,676,377 from the Medical Care Trust Fund is appropriated beginning in the 2013-2014 fiscal year to the Agency for Health Care Administration to contract with the Florida Healthy Kids Corporation under s. 409.818(2)(f), Florida Statutes, to fund administrative costs necessary for implementing and operating the Healthy Florida Program.

(4) The Agency for Health Care Administration may submit budget amendments to the Legislative Budget Commission pursuant to chapter 216, Florida Statutes, to fund the Healthy Florida

Program for the coverage of children who transfer from the Florida Kidcare Program to the Healthy Florida Program, or to provide additional spending authority from the Medical Care Trust Fund under subsection (1) for the coverage of individuals who enroll in the Healthy Florida Program, during the 2013-2014 fiscal year.

Section 18. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1816
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Appropriations Committee
SUBJECT:	Health Care
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Hansen		**AP SPB 7038 as introduced**
2.	Brown	Pigott	AHS	**Fav/CS**
3.	Brown	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

I. Summary:

CS/SB 1816 amends several sections of the Florida Kidcare Program Act under Part II of chapter 409, Florida Statutes, to remove obsolete provisions and conform other provisions with changes in federal laws and regulations relating to the implementation of the federal Patient Protection and Affordable Care Act (Public Law 2011-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 2011-152), known collectively as "PPACA," and the Supreme Court ruling in *National Federation of Independent Business v. Sebelius.*[1]

The bill adds definitions for "modified adjusted gross income" and "household income" to align with changes in Medicaid and Children's Health Insurance Program (CHIP) program eligibility laws and regulations and removes definitions that are no longer applicable to the program. The bill removes authority and provisions for an employer-sponsored insurance premium assistance program component in Florida Kidcare. Notification requirements for certain Florida Kidcare disenrollees regarding other insurance options on the exchange, as defined under PPACA, are added, and the non-subsidized program under Florida Kidcare is phased-out. The bill includes provisions for electronic eligibility matching through the exchange hub and an option for written documentation when matching is not feasible.

The bill includes appropriations of $10.93 million general revenue (GR) and $1.29 billion from the Medical Care Trust Fund for the 2013-2014 fiscal year to implement the bill.

[1] *National Federation of Independent Business v. Sebelius, 567 U.S.___(2012).*

The bill revises the eligibility process to reflect the procedures that will be used under the modified adjusted gross income (MAGI) method beginning January 1, 2014. The bill further revises the responsibilities of the Department of Children and Family Services (DCF), the Agency for Health Care Administration (AHCA), the Department of Health (DOH), the Florida Healthy Kids Corporation (FHKC), and the Office of Insurance Regulation (OIR) under the Florida Kidcare Program. The bill clarifies that the AHCA is directed to contract with the FHKC for the administration of the Healthy Kids and Healthy Florida programs.

The bill amends s. 624.91, Florida Statutes – the Florida Healthy Kids Corporation Act – to revise legislative intent to include a new program, Healthy Florida. The bill modifies FHKC's corporate governance structure, medical loss ratio guidelines for health plan contracts, and corporate responsibilities. The bill creates s. 624.917, Florida Statutes, to provide definitions, eligibility criteria, enrollment, and benefits for the Healthy Florida program. The FHKC is also authorized to make changes to the program to negotiate for the approval of the Healthy Florida program with the federal Department of Health and Human Services (HHS), if necessary.

The bill repeals the authority for an operating fund for the FHKC under section 624.915, Florida Statutes.

The bill includes a conflict of laws statement indicating that if there is a conflict between a provision in the bill and the PPACA, the provision must be interpreted to comply with the requirements of federal law.

The bill prohibits an insurer, health maintenance organization (HMO), or prepaid limited health service organization from contracting with a licensed dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. The bill prohibits an insurer, HMO, or prepaid limited health services organization from requiring that a contracted dentist participate in a discount medical plan. The bill also prohibits an insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a prepaid limited health service organization that is under common management and control with the contracting insurer.

The bill authorizes a dentist who is a government-contracted health care provider under the Access to Health Care Act, to allow a patient, or a parent or guardian of a patient, to voluntarily contribute a fee to cover costs of dental laboratory work. The contribution may not exceed the actual cost of the laboratory fee. When the voluntary contribution is accepted from the patient for dental laboratory fees, it is not considered compensation for services so that sovereign immunity protection is not lost.

The bill is effective upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 409.811, 409.813, 409.8132, 409.8135, 409.814, 409.815, 409.8177, 409.818, 409.820, 624.91, 627.6474, 636.035, 641.315, and 766.1115.

The bill creates section 624.917, Florida Statutes.

The bill repeals the following sections the Florida Statutes: 409.817, 409.8175, and 624.915.

II. Present Situation:

Florida provides health insurance coverage options to low income Floridians through a variety of programs utilizing state and federal funds. As of February 28, 2013, more than 3.2 million individuals received coverage through some Medicaid eligibility category.[2] Enrollment in the Florida Kidcare program (non-Medicaid funded components) for the same time period was an additional 256,721 children.[3]

Florida's Medicaid program is expected to expend $21 billion for the 2012-13 state fiscal year to provide coverage to its enrollees, making it the fifth largest in the nation in terms of expenditures.[4] The Florida Medicaid program is jointly funded between the state and federal governments; 57.73 percent of the cost for health care services is paid by federal funds and 42.27 percent is state share in the current state fiscal year. Funding for the Florida Kidcare program's Title XXI components has an enhanced federal match of 70.66 percent for federal fiscal year 2012-13.[5]

According to the most recent data from the American Community Survey (ACS) of the federal Census Bureau, an estimated 4 million Floridians are uninsured.[6] Of that number according to the ACS data, 594,000 are children.[7] Dividing Florida's uninsured by income level, more than 1.9 million adults are under 139% of the federal poverty level (FPL), according to statistics for 2010-2011.[8] Lower income adults, or those below 100 percent of the FPL, number at 1.1 million of the 1.9 million for that same time period.[9]

Eligibility for the Medicaid program is based on a number of factors, including age, household or individual income, and assets.

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[2] Agency for Health Care Administration, *Report of Medicaid Eligibles*, http://ahca.myflorida.com/Medicaid/about/pdf/age_assistance_category_130228.pdf (last visited Mar. 17, 2013).
[3] Agency for Health Care Administration, *Florida KidCare Enrollment Report – February 2013*, (copy on file with the Senate Health Policy Committee).
[4] Agency for Health Care Administration, Presentation to House Health and Human Services Committee, *Florida Medicaid: An Overview - December 5, 2012*, http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2714&Session=2013&DocumentType=Meeting Packets&FileName=HHSC_Mtg_ 12-5-12_ONLINE.pdf (last visited Mar. 17, 2013).
[5] Florida KidCare Coordinating Council, *2013 Annual Report and Recommendations*, p. 5, (January 2013), http://www.floridakidcare.org/council/reports/2013_KCC_Report.pdf (last visited Mar. 17, 2013).
[6] Office of Economic and Demographic Research, Florida Legislature, *Economic Analysis of PPACA and Medicaid Expansion*, Presentation to Senate Select Committee on Patient Protection and Affordable Care Act (Mar. 4, 2013), http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf (last visited Mar. 17, 2013).
[7] Ibid.
[8] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011)*, http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).
[9] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011)*, http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).

The Department of Children and Families (DCF) determines eligibility for the Medicaid program but the AHCA is the single state Medicaid agency and has the lead responsibility for the overall program.[10]

Recipients in the Medicaid program receive their benefits through several different delivery systems, depending on their individual situation. Delivery systems currently include fee-for-service providers, prepaid dental plans, provider service networks, and Medicaid managed care plans. In July 2006, the AHCA implemented the Medicaid Managed Pilot Program as directed by the 2005 Legislature through s. 409.91211, F.S. The pilot program operates under an 1115 Research and Demonstration Waiver approved by the federal Centers for Medicare and Medicaid Services. The pilot program was initially authorized for Broward and Duval counties with expansion to Baker, Clay and Nassau the following year.

Under the current pilot program, most Medicaid recipients in the five pilot counties (Broward, Duval, Baker, Clay, and Nassau counties) are required to receive their benefits through either health maintenance organizations (HMOs), provider service networks (PSNs), or a specialty plan. In addition to the minimum benefits package, plans may provide enhanced services such as over the counter benefits, preventive dental care for adults, and health and wellness benefits.

Medicaid Statewide Managed Medical Care Program

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Medical Assistance (SMMC) Program as part IV of ch. 409, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care. The SMMC has two components: the Long Term Care Managed Care program and the Managed Medical Assistance (MMA) program.

As the single state agency for Medicaid under s. 409.963, F.S., the AHCA has primary responsibility for the management and operations of the state's Medicaid program, including seeking waiver authority from the federal government. To implement these two programs and receive federal Medicaid funding, the AHCA was required to seek federal authorization through two different Medicaid waivers from the Centers for Medicare and Medicaid Services. The first component authorized was the LTC Managed Care Program's 1915(b) and (c) waiver. Approval was granted on February 1, 2013.

The LTC Managed Care Program will serve those individuals who are 65 years of age or old or who are eligible for Medicaid by reason of a disability, subject to wait list prioritization and availability of funds. The recipients must also be determined to require a nursing facility level of care. Medicaid recipients who qualify will receive all of their long-term care services from the long-term care managed care plan.

The AHCA is responsible for administering the LTC Managed Care Program but may delegate specific duties to the Department of Elderly Affairs and other state agencies. Implementation of

[10] Agency for Health Care Administration, *Welcome to Medicaid!*, http://ahca.myflorida.com/Medicaid/index.shtml (last visited Mar. 17, 2013).

the LTC Managed Care program started July 1, 2012, with completion expected by October 1, 2013. The AHCA released an Invitation to Negotiate (ITN) on June 29, 2012, and on January 15, 2013, notices of contract awards to managed care plans under that ITN were announced.

For the SMMC component, the AHCA sought to modify the existing Medicaid Reform 1115 Demonstration waiver with the Centers for Medicare and Medicaid Services to expand the program statewide. The AHCA initiated the SMMC project in January 2012 and released a separate ITN to competitively procure managed care plans on a statewide basis on December 28, 2012. Bids are due to the AHCA on March 29, 2013 and awards are expected to be announced on September 16, 2013.

Plans can supplement the minimum benefits in their bids and offer enhanced options. The number of plans to be selected by region is prescribed under s. 409.974, F.S. Specialty plans that serve specific, targeted populations based on age, medical condition, and diagnosis, are also included under the SMMC program. Under s. 409.967, F.S., accountability provisions for the managed care plans specify several conditions or requirements including emergency care and physician reimbursement standards, access and credentialing requirements, encounter data submission guidelines, grievance and resolutions, and medical loss ratio calculations.

Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however, on February 20, 2013 the AHCA and the Centers for Medicare and Medicaid Services reached an "Agreement in Principle" on the proposed plan.

Under SMMC, persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare; (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through the DCF Substance Abuse and Mental Health Program; (c) are eligible for refugee assistance; or (d) are residents of a developmental disability center, may voluntarily enroll in the SMMC program. Those recipients who elect not to enroll in SMMC voluntarily will be served through the Medicaid fee-for-service system.

Florida Kidcare Program

The Florida Kidcare Program (Program) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997. The CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who have family incomes under 200 percent of the FPL and meet other eligibility criteria. The state statutory authority for the Program is found under part II of chapter 409; ss. 409.810 through 409.821, F.S.

The Program includes four operating components: Medicaid for children, Medikids, the Children's Medical Services Network, and the FHKC. Section 409.813, F.S., includes five components for the Program. The fifth component – the employer sponsored group health insurance plan – has never been implemented. The AHCA submitted a state plan amendment in December 1998 for implementation of that component; however, the plan amendment was

disapproved by the federal Centers for Medicare and Medicaid Services in November 1999 and was not re-submitted.[11] The Title XXI-funded components of Florida Kidcare serve distinct populations under the program:[12]

- Medicaid for Children: Children from birth until age 1 for family incomes between 185 percent and 200 percent of the FPL.
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 through age 6 for family incomes between 133 and 200 percent of the FPL. For age 6 through age 18, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the clinical requirements.

Coverage for the non-Medicaid components of the Florida Kidcare Program is funded through Title XXI of the federal Social Security Act (CHIP coverage). Title XIX of the Social Security Act (Medicaid coverage), state funds for CHIP coverage, and family contributions also provide funding for the Florida Kidcare Program. Family contributions are based on family size, household income, and other eligibility factors. Families above the income limits for premium assistance or who are not otherwise eligible for premium assistance are offered the opportunity to participate in the Program at a non-subsidized rate (full-pay). Currently, the income limit for premium assistance is 200 percent of the FPL.

The Medikids program was created under s. 409.8132, F.S., as a Medicaid "look-alike" program for enrollees age 1 through 4. Medikids is administered by the AHCA and enrollees receive the same mandatory and optional benefits covered under ss. 409.905 and 409.906, F.S. Enrollees are offered a choice of health plans or, if two plans are not offered in a particular county, MediPass is provided as one of the options. Many provisions of the Medicaid program also apply to the Medikids program; such as program integrity, provider fraud and abuse preventions, and quality of care.

Under s. 409.814, F.S., the Program's eligibility guidelines are described in conformity with current Title XIX and Title XXI terminology and requirements for each funding component. Other eligibility factors related to premium assistance under this section include whether a child:

- Is covered under other employer-based coverage costing less than five percent of the family income;
- Is an alien, but does not meet the definition of a qualified alien;

[11] *See* State of Florida, Florida KidCare Program, Title XXI State Child Health Insurance Plan, Amendment #22, July 1, 2012, pg. 6, http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Childrens-Health-Insurance-Program-CHIP/Downloads/CHIP-SPAs/FL-CSPA-22-FINAL.pdf (last visited: March 15, 2013).
[12] *See* State of Florida, Florida KidCare Program, Title XXI State Child Health Insurance Plan, Amendment #22, July 1, 2012, pg.5., http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Childrens-Health-Insurance-Program-CHIP/Downloads/CHIP-SPAs/FL-CSPA-22-FINAL.pdf (last visited: March 15, 2013).

- Is an inmate in a public institution or a patient in an institution for mental disease; or,
- Has dropped employer-sponsored coverage within 60 days of applying for premium assistance. Current law does provide good cause exceptions that may be taken into consideration for individuals that drop employer-sponsored coverage resulting in a waiver of the 60-day waiting period for premium assistances.

Families with income above 200 percent of the FPL or who do not meet the qualifications for premium assistance may still be able to purchase the coverage under Medikids or Healthy Kids at the non-subsidized rate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and a CHIP application. Families may apply using either an online or a paper application. Both formats are available in English, Spanish, or Creole. Eligibility is determined through electronic data matching using available databases, or, when income cannot be verified electronically, through submission of current paystubs, tax returns, or W-2 forms. Families may also apply for Medicaid through the DCF web portal (ACCESS) online, at an ACCESS community partner site, or with a paper form via the mail, fax, or in person at a Customer Service Center.[13]

Under s. 409.815, F.S., benefits under the Florida Kidcare program vary by program component. For Medicaid, Medikids, and the Children's Medical Services Network, enrollees receive the mandatory and optional medical benefits covered under ss. 409.905 and 409.906, F.S. For Healthy Kids and the employer-sponsored component, a benchmark benefit package is provided. The comprehensive benefit package includes preventive services, specialty care, hospitalization, prescription drug coverage, behavioral health and substance abuse services, dental care, vision and hearing services, and emergency care and transportation.

Limits on premiums and cost sharing in the Program are covered under s. 409.816, F.S., and conform to existing federal law and regulation for Title XIX and XXI. All Title XXI funded enrollees pay monthly premiums of $15 or $20 per family per month based on their family size and income. For those families at or below 150 percent of the FPL, the cost is $15 per family per month. For those between 150 percent of the FPL and 200 percent of the FPL, the cost is $20 per family per month. Enrollees in the Healthy Kids component also have copayments for non-preventive services that range from $5 per prescription to $10 for an inappropriate use of the emergency room visit. There are no copayments for visits related to well-child, preventive health, or dental care.[14]

Under s. 409.8175, F.S., a health maintenance organization may reimburse providers in a rural county according to the Medicaid fee schedule provided the provider agrees to such a schedule.

[13] Florida Department of Children and Families, *ACCESS Florida Website*, *http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash* (last visited March 15, 2013).
[14] *See* State of Florida, Florida KidCare Program, Title XXI State Child Health Insurance Plan, Amendment #22, July 1, 2012, pp.98-101., http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Childrens-Health-Insurance-Program-CHIP/Downloads/CHIP-SPAs/FL-CSPA-22-FINAL.pdf (last visited: Mar. 17, 2013).

The AHCA contracts for an annual evaluation of the Program to address the statutory components of s. 409.8177, F.S. The annual reports are posted to the AHCA's website for public review and submitted to the Centers for Medicare and Medicaid Services.[15]

Several state agencies and the FHKC share responsibilities for the Program. Section 409.818, F.S., delineates the responsibilities for each of the entities under the Program, and subsection (5) preserves the FHKC's eligibility determination functions for the Healthy Kids program. Annually, the Legislature provides administrative funds through the AHCA's appropriation to contract with the FHKC to conduct the eligibility and administrative functions related to the Program.[16] The DCF determines eligibility for Medicaid and the FHKC determines eligibility for CHIP, which includes a Medicaid screening and referral process to the DCF, as appropriate.

During the 2012 Legislature, the DCF was directed to collaborate with the AHCA to develop an internet-based system for eligibility determination for Medicaid and CHIP.[17] The Legislature provided DCF with specific business and functional requirements for the project and timeframes for project completion.[18]

The following chart reflects current roles and responsibilities of the agencies and the FHKC:

Agency for Health Care Administration	**Department of Children and Families**	**Department of Health**	**Florida Healthy Kids Corporation**
Medicaid program and policy	Medicaid eligibility determination	Oversight of the Children's Medical Services Network program	Oversight of the Florida Healthy Kids Program
Lead state agency for Title XIX and XXI Compliance and federal funding	Manage B-NET program – specialized behavioral health care program	KidCare Coordinating Council	Conduct Title XXI (CHIP) eligibility and administration
Oversight of the Medikids program		Develop Quality Assurance Standards	Conduct Kidcare Outreach and Marketing
Monitor quality assurance standards			
Maintain Kidcare Grievance Process			

The Florida Kidcare Coordinating Council falls under the responsibility of the DOH; the secretary of the DOH chairs the Council. The Coordinating Council is specifically created under s. 409.818(2)(b), F.S., and is charged with making recommendations concerning the implementation and operation of the program. The Council includes representatives from the partner agencies and stakeholder representatives from the insurance industry, consumers, and

[15] Agency for Health Care Administration, *Medikids Publications*, *http://www.fdhc.state.fl.us/medicaid/medikids/publications.shtml*, (last visited: Mar. 15, 2013).
[16] See Conference Report on HB 5001, 2012-2013 General Appropriations Act, Proviso for Line Item 162. (http://www.flsenate.gov/Session/Bill/2012/5001/Amendment/657521/PDF) (last visited Mar. 15, 2013).
[17] s. 409.902(3), F.S.
[18] ss. 409.902(4) and (5), F.S.

providers. For 2013, the Council developed a single priority state recommendation: "To fully fund the Florida Kidcare program, including its annualization and medical trend needs, projected growth, outreach and increased medical and dental costs in order to maximize the use of Florida's CHIP federal funds and include all eligible uninsured children."[19]

The Florida Healthy Kids Program is authorized under s. 624.91, F.S., which is also known as the "William G. 'Doc' Myers Healthy Kids Corporation Act." The FHKC was created as a private, not-for-profit corporation by the 1990 Florida Legislature in an effort to increase access to health insurance for school-aged children.[20]

Eligibility for the state-funded assistance is prescribed under s. 624.91(3), F.S., and provides cross references to the Florida Kidcare Act. The Healthy Kids program is also identified as a non-entitlement program under subsection (4).

Under s. 624.91(5), F.S., the FHKC is managed by an executive director selected by the board with the number of staff determined by the board. The FHKC is authorized to:

- Collect contributions from families, local sources or employer based premiums;
- Accept voluntary local match for Title XXI and Title XXI;
- Accept supplemental local match for Title XXI;
- Establish administrative and accounting procedures;
- Establish preventive health standards for children that do not limit participation to pediatricians in rural areas with consultation from appropriate experts;
- Determine eligibility for children seeking enrollment in Title XXI funded and non-Title XXI components;
- Establish grievance processes;
- Establish participation criteria for administrative services for the FHKC;
- Establish enrollment criteria that include penalties or waiting periods for non-payment of premiums of 30 days;
- Contract with authorized insurers and other health care providers meeting standards established by the FHKC for the delivery of services and select health plans through a competitive bid process;
- Purchase goods and services in a cost effective manner with a minimum medical loss ratio of 85 percent for health plan contracts;
- Establish disenrollment criteria for insufficient funding levels;
- Develop a plan to publicize the program;
- Secure staff and the necessary funds to administer the program;
- Provide an annual Kidcare report, in consultation with partner agencies, to the governor, chief financial officer, commissioner of education, president of the Senate, speaker of the House of Representatives, and minority leaders of the Senate and House of Representatives;
- Provide quarterly enrollment information on the full pay population; and,
- Establish benefit packages that conform to the Florida Kidcare benchmark benefit.

[19] Florida KidCare Website, KidCare Coordinating Council, *2013 Recommendations*, *http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf* (last visited Mar. 17, 2013).
[20] Florida Healthy Kids Corporation, *History*, https://www.healthykids.org/healthykids/history/ (last visited Mar. 15, 2013).

The FHKC is governed by a 13-member board of directors, chaired by Florida's chief financial officer or his or her designee.[21] The 12 other board members are:

- Secretary of the AHCA;
- One member appointed by the commissioner of education from the Office of School Health Programs from the Department of Education;
- One member, appointed by the chief financial officer from among three members nominated by the Florida Pediatric Society;
- One member, appointed by the governor, who represents the Children's Medical Services Program;
- One member appointed by the chief financial officer from among three members nominated by the Florida Hospital Association;
- One member, appointed by the governor, who is an expert on child health policy;
- One member, appointed by the chief financial officer, from among three members nominated by the Florida Academy of Family Physicians;
- One member, appointed by the governor, who represents the state Medicaid program;
- One member, appointed by the chief financial officer, from among three members nominated by the Florida Association of Counties;
- The state health officer or his or her designee;
- The secretary of the DCF, or his or her designee; and,
- One member, appointed by the governor, from among three members nominated by the Florida Dental Association.

Board members do not receive compensation for their service but may receive reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.[22]

The FHKC is not an insurer and is not subject to the licensing requirements of the Department of Financial Services. In addition, the FHKC board is also granted complete fiscal control over the FHKC and responsibility for all fiscal operations. Any liquidation of the FHKC would be supervised by the Department of Financial Services.[23]

The Patient Protection and Affordable Care Act of 2010

In March 2010, the Congress passed and the President signed the PPACA.[24] Under PPACA, one of the key components required the states to expand Medicaid to a minimum national eligibility threshold of 133 percent of the FPL, or, as it is sometimes expressed, 138 percent of the FPL with application of an automatic five percent income disregard, effective January 1, 2014.[25] While the funding for the newly eligible under this expansion would be initially funded at 100 percent federal funds for the first 3 calendar years, the states would gradually be required to pay a share of the costs, starting at 5 percent in calendar year 2017 before leveling off at 10 percent

[21] *See* s. 624.91(6), F.S.
[22] *See* s. 624.91(5), F.S.
[23] *See* s. 624.91(7), F.S.
[24] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[25] 42 U.S.C. s. 1396a(1).

in 2020.[26] As enacted, PPACA provided that states refusing to expand to the new national eligibility threshold faced the loss of *all* of their federal Medicaid funding.[27]

Florida, along with 25 other states challenged the constitutionality of the law. In *NFIB v. Sebelius*, the Supreme Court found the enforcement provisions of the Medicaid expansion unconstitutional.[28] As a result, states can voluntarily expand their Medicaid eligibility thresholds to PPACA standards and receive the enhanced federal match for the expansion population, but states cannot be penalized for not doing so.[29]

Since the decision in *NFIB v. Sebelius*, federal guidance has emphasized state flexibility in how states expand coverage to those defined as the newly eligible population. In a letter to the National Governors Association January 14, 2013, Health and Human Services Secretary Kathleen Sebelius reminded states of their ability to design flexible benefit packages without the need for waivers and the alternative benefit plans that are available.[30] This letter was preceded by the Frequently Asked Questions document on Exchange, Market Reforms and Medicaid, issued on December 10, 2012, that discussed promotion of personal responsibility wellness benefits and state flexibility to design benefits.[31]

A state Medicaid director letter on November 20, 2012 (ACA #21) further addressed state options for the adult Medicaid expansion group and the alternative benefit plans available under Section 1937 of the Social Security Act.[32] Under Section 1937, state Medicaid programs have the option of providing certain groups with benchmark or benchmark equivalent coverage based on four products: (1) the standard Blue Cross/Blue Shield Preferred Provider option offered to federal employees; (2) state employee coverage that is generally offered to all state employees; (3) the commercial HMO with the largest insured, non-Medicaid enrollment in the state or (4) Secretary-approved coverage.[33] For children under the age of 21, the coverage must include the Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT). Other aspects of the essential health benefit requirements of PPACA, as discussed further below, may also be applicable, depending on the benefit package utilized.

In addition to the Medicaid expansion component, the PPACA imposes a mandate on individuals to acquire health insurance or pay a penalty, which was interpreted by the U.S. Supreme Court as a tax. Currently, many uninsured individuals are eligible for Medicaid or Kidcare coverage but are not enrolled. The existence of the federal mandate to purchase insurance may result in an

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[26] 42 U.S.C. s. 1396d(y)(1).
[27] 42 U.S.C. s. a1396c
[28] *See supra* note 1.
[29] Department of Health and Human Services, *Secretary Sebelius Letter to Governors, July 10, 2012*, http://capsules.kaiserhealthnews.org/wp-content/uploads/2012/07/Secretary-Sebelius-Letter-to-the-Governors-071012.pdf (last visited Mar. 16, 2013).
[30] *Letter to National Governor's Association from Secretary Sebelius*, January 14, 2013 (copy on file with Senate Health Policy Committee).
[31] Centers for Medicare and Medicaid Services, *Frequently Asked Questions on Exchanges, Market Reforms and Medicaid*, (December 10, 2012), http://cciio.cms.gov/resources/factsheets/index.html, pp. 15-16, (last visited Mar. 17, 2013).
[32] Centers for Medicare and Medicaid Services, *State Medicaid Director Letter: Essential Health Benefits in the Medicaid Program* (November 20, 2012), http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD-12-003.pdf (last visited Mar. 17, 2013).
[33] *See supra* note 30 at 2.

unknown number of currently eligible individuals coming forward and enrolling Medicaid who had not previously chosen to enroll. Their participation – to the extent it occurs – will result in increased costs that the state would not likely have incurred without the catalyst of the federal legislation.

To facilitate coverage, PPACA authorized the state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges. These exchanges are to be administered by governmental agencies or non-profit organizations and be ready to accept applications for coverage beginning October 1, 2013, for January 1, 2014, coverage dates. The exchanges, at a minimum, must:[34]

- Certify, re-certify and de-certify plans participating on the exchange;
- Operate a toll-free hotline;
- Maintain a website;
- Provide plan information and plan benefit options;
- Interact with the state's Medicaid and CHIP programs and provide information on eligibility and determination of eligibility for these programs;
- Certify individuals that gain exemptions from the individual responsibility requirement; and,
- Establish a navigator program.

The initial guidance from HHS in November 2010 set forward a number of principles and priorities for the exchanges. Further guidance was issued on May 16, 2012, detailing the proposed operations of a federally-facilitated exchange for those states that elect not to implement a state-based exchange. On November 16, 2012, Florida Governor Rick Scott notified HHS Secretary Sebelius that Florida had too many unanswered questions to commit to a state-based exchange under PPACA for the first enrollment period on January 1, 2014.[35]

PPACA also includes a tax penalty for those individuals that do not have qualifying health insurance coverage beginning January 1, 2014. The penalty is the greater of $695 per year up to a maximum of three times that amount per family or 2.5% of household income. The penalty, however, is phased-in and exemptions apply.

The following persons are exempt from the PPACA's requirement to maintain coverage:[36]

- Individuals with a religious objection;
- individuals not lawfully present; and
- Incarcerated individuals.

The following persons are exempt from the PPACA's penalty for failure to maintain coverage:[37]

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[34] Centers for Medicare and Medicaid Services, Initial Guidance to States on Exchanges, November 18, 2010, http://cciio.cms.gov/resources/files/guidance_to_states_on_exchanges.html (last visited Mar. 16, 2013).

[35] *Letter from Governor Rick Scott to Health and Human Services Secretary Kathleen Sebelius*, November 16, 2012 http://www.flgov.com/2012/11/16/letter-from-governor-rick-scott-to-u-s-secretary-of-health-and-human-services-kathleen-sebelius/ (last visited Mar. 16, 2013).

[36] *See* Sec. 5000A(d), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.

- Individuals who cannot afford coverage, i.e. those whose required premium contributions exceed eight percent of household income;
- Individuals with income below the income tax filing threshold;
- American Indians;
- Individuals without coverage for less than three months; and
- Individuals determined by the HHS secretary to have suffered a hardship with respect to the capability to obtain coverage under a qualified plan.

Qualifying coverage may be obtained through an employer, the federal or state exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard.

Employers with more than 50 full time employees also share a financial responsibility under PPACA. Employers with more than 50 full-time employees that do not offer coverage meeting the essential benefits coverage standard and who have at least one employee receive a premium tax credit will be assessed a fee of $2,000 per full time employee, after the 30th employee.[38] If an employer does offer coverage and an employee receives a premium tax credit, the employer is assessed the lesser of $3,000 per employee receiving the credit or $2,000 per each employee after the 30th employee.[39]

Premium credits and other cost sharing subsidies are available to United States citizens and legal immigrants within certain income limits for coverage purchased through the exchanges. Legal immigrants with incomes at or below 100 percent of the FPL who are not eligible for Medicaid during their first five years are eligible for premium credits.[40] Premium credits are set on a sliding scale based on the percent of FPL for the household and reduce the out-of-pocket costs incurred by individuals and families.

[37] *See* Sec. 5000A(e), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.
[38] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[39] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[40] 26 U.S.C. s. 36B(c).

The amount for premium tax credits, as a percentage of income, are set in section 36B of the Internal Revenue Code follows:[41]

Premium Tax Credits	
Income Range	**Premium Percentage Range** (% of income)
Up to 133% FPL	2%
133% to 150%	3% - 4%
150% to 200%	4% - 6.3%
200% to 250%	6.3% - 8.05%
250% to 300%	8.05% - 9.5%
300% to 400%	9.5%

Subsidies for cost sharing are also applicable for those between 100 percent of the FPL and 400 percent of the FPL. The cost sharing credits reduce the out-of-pocket amounts incurred by individuals on essential health benefits and will also impact the actuarial value of a health plan.[42] Actuarial value reflects the average share of covered benefits paid by the insurer or health plan.[43] For example, if the actuarial value of a plan is 90 percent, the health plan is paying 90 percent of the costs and the enrollee 10 percent. Under the PPACA, the maximum amount of cost sharing under this component range from 94 percent for those between 100 percent to 150 percent of the FPL, to 70 percent for those between 250 percent and 400 percent of the FPL.[44]

Prohibition Against "All Products" Clauses in Health Care Provider Contracts

Section 627.6474, F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with another insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group. These contractual provisions are referred to as "all products" clauses. Before being prohibited by the 2001 Legislature, these clauses typically required the health care provider, as a condition of participating in any of the health plan products, to participate in *all* of the health plan's current or future health plan products. The 2001 Legislature outlawed "all products" clauses after concerns were raised by physicians that the clauses:

- May force providers to render services at below market rates;
- Harm consumers through suppressed market competition;

[41] 26 U.S.C. s. 36B(c).
[42] Kaiser Family Foundation, *Summary of New Health Reform Law, Last Modified April 15, 2011*, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[43] Lisa Bowen Garrett, et al., The Urban Institute, *Premium and Cost Sharing Subsidies under Health Reform: Implications for Coverage, Costs and Affordability* (December 2009), http://www.urban.org/UploadedPDF/411992_health_reform.pdf (last visited Mar. 16, 2013).
[44] Kaiser Family Foundation, *Summary of New Health Reform Law*, Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).

- May require physicians to accept future contracts with unknown and unpredictable business risk; and
- May unfairly keep competing health plans out of the marketplace.

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in ch. 636, F.S. Limited health services are ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.[45] Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Health Maintenance Organization Provider Contracts

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment and preventive health care pursuant to contractual arrangements with preferred providers in, a designated service area.[46] Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying the payment of benefits for the out-of-network services rendered to the member. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers of health care services.

Discount Medical Plan Organizations

Discount medical plan organizations (DMPOs)[47] offer a variety of health care services to consumers at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members. Instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a DMPO has a contract with a provider network under which the individual providers render the medical services at a discount.

The DMPOs are regulated by the Office of Insurance Regulation (OIR) under part II of ch. 636, F.S. That statute establishes licensure requirements, annual reporting, minimum capital requirements, authority for examinations and investigations, marketing restrictions, prohibited activities, and criminal penalties, among other regulations.

Before transacting business in Florida, a DMPO must be incorporated and possess a license as a DMPO.[48] As a condition of licensure, each DMPO must maintain a net worth requirement of

[45] Section 636.003(5), F.S.
[46] Section 641.19(12), F.S.
[47] Section 636.202(2), F.S.
[48] Section 636.204, F.S.

$150,000.[49] All charges to members of such plans must be filed with OIR and any charge to members greater than $30 per month or $360 per year must be approved by OIR before the charges can be used by the plan.[50] All forms used by the organization must be filed with and approved by OIR.

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[51] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[52]

- A birth center licensed under ch. 383, F.S.;[53]
- An ambulatory surgical center licensed under ch. 395, F.S.;[54]
- A hospital licensed under ch. 395, F.S.;[55]
- A physician or physician assistant licensed under ch. 458, F.S.;[56]
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.;[57]
- A chiropractic physician licensed under ch. 460, F.S.;[58]
- A podiatric physician licensed under ch. 461, F.S.;[59]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility which employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under this section.;[60]
- A dentist or dental hygienist licensed under ch. 466, F.S.;[61]
- A midwife licensed under ch. 467, F.S.;[62]
- A health maintenance organization certificated under part I of ch. 641, F.S.;[63]

[49] Section 636.220, F.S.
[50] Section 636.216(1), F.S.
[51] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department.
[52] Section 766.1115(3)(d), F.S.
[53] Section 766.1115(3)(d)1., F.S.
[54] Section 766.1115(3)(d)2., F.S.
[55] Section 766.1115(3)(d)3., F.S.
[56] Section 766.1115(3)(d)4., F.S.
[57] Section 766.1115(3)(d)5., F.S.
[58] Section 766.1115(3)(d)6., F.S.
[59] Section 766.1115(3)(d)7., F.S.
[60] Section 766.1115(3)(d)8., F.S.
[61] Section 766.1115(3)(d)9., F.S.
[62] Section 766.1115(3)(d)10., F.S.
[63] Section 766.1115(3)(d)11., F.S.

- A health care professional association and its employees or a corporate medical group and its employees.;[64]
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.;[65]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.;[66]
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 766.1115(3)(d)4-9, F.S.;[67] and
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the Act as the Department of Health (DOH or department), a county health department, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.[68]

The definition of contract under the Act provides that the contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.[69]

The Act further specifies contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract;
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract;
- The health care provider must report adverse incidents and information on treatment outcomes;
- The governmental contractor must make patient selection and initial referrals;
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred;

[64] Section 766.1115(3)(d)12., F.S.
[65] Section 766.1115(3)(d)13., F.S.
[66] Section 766.1115(3)(d)14., F.S.
[67] Section 766.1115(3)(d)15., F.S.
[68] Section 766.1115(3)(c), F.S.
[69] Section 766.1115(3)(a), F.S.

- Patient care, including any follow-up or hospital care is subject to approval by the governmental contractor; and
- The health care provider is subject to supervision and regular inspection by the governmental contractor.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.

The individual accepting services through this contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.[70] The services not covered under this program include experimental procedures and clinically unproven procedures. The governmental contractor shall determine whether or not a procedure is covered.

The health care provider may not subcontract for the provision of services under this chapter.[71]

Currently, s. 766.1115, F.S., is interpreted differently across the state. In certain parts of the state one medical director interprets this law to mean that as long as there is transparency and clear proof that the volunteer provider is providing services, without receiving personal compensation, then the patient can pay a nominal amount per visit to assist in covering laboratory fees. In other parts of the state, a medical director suggests that if any monetary amount is accepted then sovereign immunity is lost. Patients sometimes offer to pay a nominal contribution to cover some of the cost of laboratory fees that the provider incurs to pay outside providers for items such as dentures for the patient. In many areas, the dentist is paying the cost of these fees from his or her own resources.[72]

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.

[70] Rule 64I-2.002, F.A.C.
[71] *Id.*
[72] Staff of Committee on Health Policy's discussion with representatives from the Florida Dental Association on March 8, 2013.

Instead, the state steps in as the party litigant and defends against the claim. Subsection (5) limits the recovery of any one person to $200,000 for one incidence and limits all recovery related to one incidence to a total of $300,000. 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 action by the Legislature.[73]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[74] 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 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.[75]

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.[76] The court explained:

> Whether the [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. *National Sur. Corp. v. Windham*, 74 So. 2d 549, 550 (Fla. 1954) ("The [principal's] right to control depends upon the terms of the contract of employment…") The CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[77] 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 acknowledgement 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.[78]

[73] Section 768.28(5), F.S.
[74] *Stoll v. Noel*, 694 So. 2d 701, 703(Fla. 1997).
[75] *Id.* (quoting The Restatement of Agency).
[76] *Stoll v. Noel*, 694 So. 2d 701 at 703.
[77] Florida Department of Health and Rehabilitative Services.
[78] *Stoll v. Noel*, 694 So. 2d 701, 703(Fla. 1997).

III. Effect of Proposed Changes:

Section 1 amends s. 409.811, F.S. adding, deleting, and modifying definitions relating to the Florida Kidcare Act. Definitions applicable to the overall Act, which is identified as ss. 409.810 through 409.821, F.S., are updated or added to align with requirements under PPACA:

- CHIP (Children's Health Insurance Program)
- Combined Eligibility Notice
- Household Income
- Modified Adjusted Gross Income (MAGI)
- Patient Protection and Affordable Care Act (Act)

Other definitions under this section are deleted as obsolete if related to the employer-sponsored component of the Florida Kidcare program. This program component was never implemented and is deleted under this bill. Definitions that have been modified or rendered obsolete by PPACA have also been deleted.

Section 2 amends s. 409.813, F.S., relating to the program components of the Florida Kidcare program. The bill also adds the FHKC to the list of entities for which a cause of action cannot be brought if coverage is not provided under the non-entitlement portion of the program. The FHKC is the only Kidcare component excluded.

Section 3 amends s. 409.8132, F.S., relating to the Medikids program component of the Florida Kidcare program. The bill deletes language permitting a Medikids enrollee who is a younger sibling of a Healthy Kids enrollee, to enroll in a Healthy Kids plan. An obsolete reference to receiving approval from the predecessor agency to the Centers for Medicare and Medicaid Services for MediPass coverage authorization is removed. The MediPass option in Medikids has been approved since the program was implemented in 1998.

Section 4 makes technical changes to s. 409.8134, F.S., relating to program expenditures and enrollment in the Florida Kidcare program.

Section 5 amends section s. 409.814, F.S., relating to eligibility for the Florida Kidcare program. The bill modifies references to align with changes under PPACA. Obsolete references related to the employer-sponsored component have been deleted. An option has been provided to Medicaid enrollees to elect coverage under the CHIP component and permit a transfer back to Medicaid at any time without a break in coverage.

Under s. 409.814(6)(c), F.S., the FHKC is directed to notify full pay enrollees of the availability of coverage under the exchanges, as created under PPACA. No new applications for full-pay or non-subsidized coverage are permitted after September 30, 2013.

Modifications to the eligibility determination process are made under s. 409.814(8), F.S., to reflect changes in the eligibility process under PPACA and the role of the federal data hub.

Section 6 amends s. 409.815, F.S., relating to the benefits under the Florida Kidcare program. Obsolete dates and references are deleted under certain benefits.

Section 7 amends s. 409.816, F.S, relating to lifetime benefits on premiums and limitations on cost sharing. References to "family," "family income," and "modified adjusted income" are updated to align with federal definitions under PPACA.

Section 8 repeals s. 409.817, F.S., relating to approval of health benefits, coverage, and financial assistance. The other requirements of this section have been preempted under PPACA.

Section 9 repeals s. 409.8175, F.S., relating to the delivery of services in rural counties. Health maintenance organizations and health insurers may contract with providers in accordance with any fee schedule that may be agreed upon by the parties. The language under this section is permissive and not mandatory under current law.

Section 10 amends s. 409.8177, F.S., relating to evaluation of the Florida Kidcare program. A reference to family income is updated to household income to align with PPACA.

Section 11 amends s. 409.818, F.S., relating to the administration of the Florida Kidcare program. The duties and responsibilities of the DCF are modified to recognize the modernization efforts and process changes under PPACA. The department is required to develop a combined eligibility notice, in consultation with the AHCA and the FHKC. A reference to a centralized coordinating office is deleted.

Specific administrative responsibilities for the Florida Kidcare program for the DOH are deleted. Obsolete provisions for designing the eligibility intake process are removed, as is the requirement for the DOH to establish a toll-free hotline. The FHKC provides customer service for the Florida Kidcare program, including operation of the toll-free hotline, under its Florida Kidcare eligibility determination responsibilities.

The responsibilities for the AHCA under this section are modified to reflect the removal of the employer-sponsored component and accompanying deletion of the OIR involvement. Technical references to a more general definition of managed care organizations rather than the more limited term of HMOs are made in this section. References to specific topics for rulemaking are deleted. A direction to contract with the FHKC for the Healthy Kids program and the Healthy Florida program is added. Direction to the AHCA for Healthy Kids has been included annually in proviso or implementing bill language in the past.

Responsibilities under the Florida Kidcare program for the OIR have been deleted. Their removal reflects the deletion of the employer sponsored component from the program.

Section 12 amends s. 409.820, F.S., relating to the quality assurance and access standards for the Florida Kidcare program. The quality assurance and access standards are clarified to show that such standards are for the pediatric and adolescent populations.

Section 13 amends s. 624.91, F.S., relating to the FHKC. The legislative intent for the Florida Healthy Kids Corporation Act is expanded to include a new program called "Healthy Florida." The legislative intent states that Healthy Florida will cover uninsured adults utilizing a unique network of providers and contracts through which enrollees will receive a comprehensive set of benefits and services.

The Florida Healthy Kids Corporation Act is modified in several subsections to reflect the addition of the Healthy Florida program. Cross references are added to the Florida Kidcare program and the Florida Medicaid program, as appropriate.

Section 624.91(5)(b), F.S., is amended to incorporate the Healthy Florida program and to align with changes made to the Florida Kidcare Act.

Provisions under s. 624.91(5)(b)10., F.S., are separated into individual sub-subparagraphs by topic. No substantive change is made in sub-subparagraphs a. and b. The medical loss ratio requirement for the Healthy Kids program is modified under sub-subparagraph c. to include all health care contracts and language relating to the exemption of dental contracts is deleted. Clarification on how the calculations for the medical loss ratios will be computed is added and a cross reference to federal guidelines for classification of funds is included.

Under s. 624.91(5)(b)12., F.S., the FHKC's responsibility for the development of a plan for publicity of the Florida Kidcare program, public awareness, eligibility procedures, and requirements and to maintain public awareness is expanded to include both the Florida Kidcare program and the Healthy Florida program.

Requirements for separate reporting on the full-pay program by the FHKC are repealed effective December 31, 2013. The repeal aligns with the closure of new enrollment in the full-pay program effective September 30, 2013, and the availability of the exchange on January 1, 2014. A new subparagraph 16 requires the FHKC to notify existing full-pay enrollees of the availability of the exchange and how to access services. No new applications for full-pay coverage may be accepted after September 30, 2013.

Amendments to s. 624.91(5)(d), F.S., provides that the FHKC and any committees formed by the FHKC are subject to the conflict of interest provisions of ch. 112, F.S., the public records provisions of ch. 119, F.S., and the public meeting requirements of ch. 286, F.S.

The membership of the FHKC board of directors is changed to require that the chair of the board be appointed by the governor, rather than the chief financial officer or his or her designee. The specific membership and nominating guidelines for the 12 other members of the FHKC board are repealed and replaced with a board of 15 members designated or appointed as follow:

- The secretary of the AHCA, or his or her designee, as an ex-officio member;
- The state surgeon general, or his or her designee, as an ex-officio member;
- The secretary of the DCF, or his or her designee, as an ex-officio member;
- Four members appointed by the governor;
- Two members appointed by the president of the Senate;
- Two members appointed by the Senate minority leader;
- Two members appointed by the speaker of the House of Representatives; and
- Two members appointed by the House minority leader.

The chair and other members of the board will be subject to Senate confirmation. Members of the board will serve three-year terms and appointed members will serve at the pleasure of the official who appointed them. A provision is also included that any current board member serving

at the time of enactment may remain until July 1, 2013, to provide the governor time to appoint a new board after the enactment of the law.

An executive steering committee of agency secretaries is created to provide management direction and support to the board and its programs. The steering committee comprises the secretary of the AHCA, the secretary of the DCF, and the state surgeon general.

Section 14 repeals s. 624.915, F.S., relating to the Florida Healthy Kids Corporation Operating Fund. This language is obsolete and the option is not being utilized by the FHKC.

Section 15 creates a new section of statute, s. 624.917, F.S., relating to the Healthy Florida program. Healthy Florida will be administered by the FHKC as a program for lower income, uninsured adults who meet eligibility guidelines established by the FHKC. Definitions are provided that are specific to the Healthy Florida program under s. 624.917(2), F.S.

Eligibility for the Healthy Florida program is prescribed under s. 624.917(3), F.S. To be eligible and remain eligible, an individual must be a Florida resident and meet the definition of being "newly eligible" under PPACA, maintain their eligibility with the FHKC, and meet any renewal requirements to renew their coverage at least annually.

Under s. 624.917(4), F.S., enrollment may begin on October 1, 2013, with coverage effective no earlier than January 1, 2014. Enrollment in the program may occur through a third party administrator, referrals from other agencies, or through the exchange, as defined under PPACA. When an enrollee leaves the program, the FHKC is required to provide information about other insurance affordability options that may be available.

Delivery of services under Healthy Florida is provided for under s. 624.917(5), F.S. The FHKC is directed to contract with authorized insurers licensed under ch. 627, F.S., managed care organizations authorized under ch. 641, F.S., and provider service networks authorized under ss. 409.912(4)(d) and 409.962(13) that are prepaid plans meeting standards established by the FHKC to deliver services to enrollees. The FHKC must also establish access and network standards to ensure an adequate number of providers are available to deliver the benefits and services. Standards are to be developed in consultation with and under consideration of National Committee on Quality Assurance recommendations, stakeholders, and other existing performance standards for public and commercial populations.

Under this subsection, enrollees must also be provided a choice of plans. A lock-in period is specifically included and the FHKC is directed to offer exceptions to that lock-in period that take into consideration good cause reasons and qualifying events.

The bill permits the FHKC to consider contracts that include family plans that would provide coverage for members that are enrolled across multiple state or federally funded programs. The medical loss ratio provisions of s. 624.91, F.S., are applicable to the Healthy Florida program. These provisions mirror those used for the Healthy Kids contracts.

Under s. 624.917(6), F.S., the bill provides the benefits for the Healthy Florida program. The FHKC is directed to establish a benefit plan for the program that is actuarially equivalent to the

Florida Kidcare benchmark plan, excluding dental. The benefits package must also meet the alternative benefits package requirements under section 1937 of the Social Security Act. Benefits must be offered as an integrated, single package, without carve-outs.

The bill also requires that a health reimbursement account or comparable health savings account be established for Healthy Florida enrollees. The account may be established and managed either by the FHKC directly or by a contractor. Under s. 624.917(6)(a), F.S., the bill provides examples of the types of behaviors for which enrollees may be rewarded and how funds may be utilized by enrollees. Paragraph (b) of this same subsection also permits the offering of other enhanced benefits and services, provided these services generate savings to the overall plan. Paragraph (c) requires the FHKC to establish a process for the delivery of medically necessary wrap-around services that are not covered by the benchmark plan but that may be required under PPACA. The FHKC's capitation process with its contracted plans for the wrap-around services will be subject to a separate reconciliation process, and the medical loss ratio provisions will also apply to the wrap-around capitation. Prior authorization processes and other utilization controls for any benefit are authorized under this subsection, if approved by the FHKC.

Under s. 624.917(7), F.S., the bill establishes requirements for cost sharing under the Healthy Florida program. The FHKC is authorized to collect premiums and copayments from enrollees in accordance with federal law and in amounts that will be established annually in the General Appropriations Act. The bill provides that payment of a monthly premium may be required prior to an enrollee receiving a coverage start date under the program. Enrollees with a family income above the federal poverty level may also be required to make nominal copayments, in accordance with federal rules, as a condition of receiving a health care service. Providers will be responsible for collecting any copayment for a service and failure to collect any amount due from the enrollee will reduce the provider's reimbursement by the uncollected enrollee's copayment amount.

Management of the Healthy Florida program is described under s. 624.917(8), F.S. The FHKC is designated as the entity responsible for the oversight of the program. The AHCA is directed to seek the necessary state plan amendment to implement the program and to consult with the FHKC on the development of the amendment. The bill provides an amendment submission deadline by the AHCA of June 14, 2013. The AHCA is also directed under this subsection to contract with the FHKC for the administration of this program and for the purposes of the timely release of state and federal funds. The AHCA is recognized as the state's single entity for the administration of the Medicaid program.

Under s. 624.917(8)(a), F.S., the FHKC is directed to establish a grievance and resolutions process under which Healthy Florida recipients can be notified of their rights under the Medicaid Fair Hearing process as well as of any other processes that may be adopted by the FHKC for the program.

Under paragraph (b), the FHKC is required to establish a program integrity process to ensure compliance with the program's guidelines and to combat applicant and enrollee fraud. Timelines for the notification of when benefits may be withheld, reasons for loss of benefits, and the identification of individuals who can be prosecuted for fraud under s. 414.39, F.S., are specified.

Cross references to the applicability of certain Medicaid statutes to the Healthy Florida program are included under s. 624.917(9), F.S. The referenced statutes are s. 409.902, F.S., relating to the AHCA as the designated single state agency for Medicaid; s. 409.9128, F.S., relating to providing emergency services and care; and, s. 409.920, F.S, relating to Medicaid provider fraud. These provisions would apply to the Healthy Florida program in the same manner in which they apply in Medicaid.

The requirement for an evaluation of the Healthy Florida program is added under s. 624.917(10), F.S. The FHKC is required to collect eligibility and enrollment data on its applicants and enrollees and utilization and encounter data from its contracted entities for health care services. Monthly enrollment reports to the Legislature are also required. The bill provides for an interim evaluation by July 1, 2015, with annual evaluations thereafter. Components of the evaluation report are detailed and include information on application and enrollment trends, utilization and cost data, and customer satisfaction.

Section 624.917(11), F.S., sets an expiration date for the program for the end of the state fiscal year in which any of several conditions happen, whichever occurs first. The trigger events are identified as the federal match falling below 90 percent; the federal match contribution falling below the "Increased FMAP for Medical Assistance for Newly Eligible Mandatory Individuals" as specified under PPACA; or a blended federal match formula for Healthy Florida and the Medicaid program is enacted under federal law or regulation which causes the overall federal contribution to be reduced compared to separate, non-blended federal contributions under the status quo.

Section 16 creates a non-statutory provision of law that authorizes the FHKC to make program changes to comply with objections raised by HHS that are necessary to gain approval of the Healthy Florida program in compliance with PPACA, upon giving notice to the Legislature of the proposed changes. The Healthy Florida program requires approval of an amendment to the state's Medicaid state plan prior to implementation and to receive federal funds. The section also includes a conflict of laws interpretation clause that provides that if there is conflict between any provision in this section and PPACA, the provision should be interpreted as an intention to comply with federal requirements.

Section 17 amends s. 627.6474, F.S., relating to provider contracts for health insurance policies.

Under current law, a health insurer cannot require that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The bill adds to that list by prohibiting the insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a PLHSO that is under common management and control with the contracting insurer.

The bill prohibits insurers from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. "Covered services" are defined as those services that are listed as a benefit that the subscriber is entitled to receive under the contract.

This will prevent contracts between dentists and insurers from containing provisions that subject non-covered services to negotiated payment rates. The bill also prohibits insurers from providing merely de minimis reimbursement or coverage to avoid the requirements of the bill. The bill requires that fees for covered services must be set in good faith and cannot be nominal. The bill prohibits insurers from requiring that a contracted dentist participate in a DMPO.

The bill also addresses the criminal penalty specified in s. 624.15, F.S.,[79,80] by limiting the exemption from the criminal penalty currently contained in s. 627.6474, F.S., to subsection (1) of s. 627.6474, F.S. The provisions of subsection (2) of s. 627.6474, F.S., as created by the bill, are not specifically exempted from the criminal penalty. This leaves the current law exemption in place for the statutory provisions to which it currently applies, without applying the exemption to the bill's new provisions in subsection (2).

Section 18 amends s. 636.035, F.S., relating to prepaid limited health service organizations, by prohibiting PLHSOs from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. "Covered services" are defined as those services that are listed as a benefit that the subscriber is entitled to receive under the contract. This will prevent contracts between dentists and PLHSOs from containing provisions that subject non-covered services to negotiated payment rates. The bill also prohibits PLHSOs from providing merely de minimis reimbursement or coverage to avoid the requirements of the bill. The bill requires that fees for covered services must be set in good faith and cannot be nominal. The bill prohibits PLHSOs from requiring that a contracted dentist participate in a DMPO.

Section 19 amends s. 641.315, F.S., relating to HMO provider contracts, by prohibiting HMOs from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. "Covered services" are defined as those services that are listed as a benefit that the subscriber is entitled to receive under the contract. This will prevent contracts between dentists and HMOs from containing provisions that subject non-covered services to negotiated payment rates. The bill also prohibits HMOs from providing merely de minimis reimbursement or coverage to avoid the requirements of the bill. The bill requires that fees for covered services must be set in good faith and cannot be nominal. The bill prohibits HMOs from requiring that a contracted dentist participate in a DMPO.

Section 20 amends s. 766.1115, F.S., relating to the Access to Health Care Act, to authorize a dentist, who is a government contracted health care provider under the Act, to allow a patient, or a parent or guardian of a patient to voluntarily contribute a fee to cover costs of dental laboratory work. The contribution may not exceed the actual cost of the laboratory fee. When the voluntary contribution is accepted from the patient for dental laboratory fees it is not considered compensation for services so that sovereign immunity protection is not lost.

[79] Section 624.15, F.S., provides that, unless a greater specific penalty is provided by another provision of the Insurance Code or other applicable law or rule of the state, each willful violation of the Insurance Code is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and that each instance of such violation shall be considered a separate offense.

[80] Section 775.082, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to pay a fine not exceeding $500 plus court costs.

Section 21 creates a non-statutory provision of law to provide that the bill's amendments to ss. 627.6474, 636.035, and 641.315, F.S., apply to contracts entered into or renewed on or after July 1, 2013.

Section 22 provides appropriations of:

- $1,258,054,808 from the Medical Care Trust Fund beginning in the 2013-2014 fiscal year to provide coverage for individuals who enroll in Healthy Florida;
- $254,151 from the General Revenue Fund and $18,235,833 from the Medical Care Trust Fund beginning in the 2013-2014 fiscal year to comply with federal regulations to compensate insurers and managed care organizations that contract with the Healthy Florida program for the imposition of the annual fee on health insurance providers under the PPACA; and
- $10,676,377 from the General Revenue Fund and $10,676,377 from the Medical Care Trust Fund beginning in the 2013-2014 fiscal year to fund administrative costs necessary for the FHKC to implement and operate the Healthy Florida program.

Section 23 provides that the act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill explicitly requires the FHKC to conduct its activities and those of any committees formed by the FHKC, in accordance with chapters 119 and 286, F.S. The FHKC currently provides notice of meetings of its board and committees on its website at www.healthykids.org and posts materials for board meetings on the same site within timeframes set through board policy.

The FHKC also responds to requests for public records, within the additional exemptions and limitations of s. 409.821, F.S. and federal law which protect certain individual and identifying information of applicants and enrollees to the Florida Kidcare program.

The provisions of this bill would expressly require compliance with state public records and open meetings requirements.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Florida's Social Services Estimating Conference (SSEC) estimates that 438,113 individuals would become newly eligible and would enroll in Florida Medicaid during the 2013-2014 state fiscal year if the program's eligibility threshold were expanded to 138 percent of FPL beginning January 1, 2014. An estimated 377,813 of those newly eligible enrollees are currently uninsured while the remaining 60,300 are likely to terminate their existing individual coverage in favor of Medicaid after becoming eligible. The Healthy Florida program would expect roughly the same estimated enrollment if implemented.

The bill contemplates the FHKC contracting with insurers and managed care organizations to deliver comprehensive health insurance coverage to uninsured individuals who may or may not be seeking health care services now. Physicians, hospitals, and other health care providers may be impacted by a potentially higher demand for their services after Healthy Florida is implemented.

The bill may have a negative fiscal impact on health insurer, HMO, and PLHSO policyholders and subscribers who may pay higher costs for dental care if the Legislature prohibits these entities from contracting with dentists to provide services that are not covered at a negotiated fee.

The fiscal impact of the bill's provisions relating to a patient's voluntary contribution of a fee to cover costs of dental laboratory work is expected to be minimal since many areas in the state already allow voluntary contributions.[81]

C. Government Sector Impact:

The bill directs the AHCA to seek the PPACA's enhanced federal match for the Healthy Florida program, which would result in 100 percent federal funding for newly eligible enrollees until January 1, 2017. To cover the estimated 438,113 new enrollees in Fiscal Year 2013-2014, $1.26 billion would be expended, according to the SSEC.

Additionally, under eligibility expansion, the SSEC estimates that 70,647 Kidcare enrollees would become newly eligible for Medicaid and could transfer out of Kidcare. In such a transfer, the federal match would be the same as the Kidcare matching rate, which is 71.03 percent for the 2013-2014 state fiscal year. The state and federal expenditures to cover those children would be the same between the two programs.

[81] *See* Department of Health Bill Analysis for SB 1016 (dated March 11, 2013) on file with the Senate Health Policy Committee and notes from telephone call with staff on March 12, 2013.

The PPACA also imposes a federal health insurance tax (HIT) on health insurance providers beginning January 1, 2014, to be divided among insurers according to a formula based on each insurer's net premiums, including those contracted under Medicaid or Healthy Florida. Federal guidance indicates that states must account for the HIT to be incurred by managed care plans when calculating rates paid by a state Medicaid program to the plans. For the newly eligible population, the federal match for the HIT mirrors the match provided in the PPACA, which means a 100 percent federal match for the HIT during the 2013-2014 state fiscal year. For Kidcare transfers, however, the federal match will mirror the Kidcare matching rate. If all 70,647 children described above were to transfer from Kidcare to Healthy Florida, an estimated $254,151 GR would be required to compensate insurers and managed care plans for the HIT in the 2013-2014 state fiscal year.

The FHKC will need additional resources to adapt its existing eligibility and enrollment systems to accommodate a new program. Also, the FHKC will need to adjust and expand its administrative structure and professional staff to manage new contracts for the Healthy Florida program. Additionally, these needs will vary somewhat depending on the number of persons who enroll in the Healthy Florida program. Based on existing enrollment projections, the fiscal impact of the FHKC's additional resource needs is estimated to be a total of $21.2 million for the 2013-2014 state fiscal year, half of which would be state funds, or $10.6 million GR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In December 2012, Florida Senate President Don Gaetz formed the Select Committee on the PPACA to launch a comprehensive assessment on the impact of the law on Florida, evaluate the state's options under the law, and to make recommendations to the full Senate membership on any actions necessary to mitigate cost increases, preserve a competitive insurance market, and protect Florida's consumers.[82] The Select Committee received public testimony, expert presentations, and staff reports over nine meetings before it developed three specific recommendations relating to the development of a health care exchange, coverage for certain state employees, and the expansion of Medicaid. On the question of Medicaid expansion, the Select Committee voted 7-4 to recommend to the full Senate to not expand the existing Medicaid program under the current state plan or pending waivers.[83]

[82] *See* Florida Senate, *Patient Protection and Affordable Care Act*, http://www.flsenate.gov/topics/ppaca (last visited: April 1, 2013).
[83] Florida Senate Select Committee on Patient Protection and Affordable Care Act, *Letter to Senate President Don Gaetz on Medicaid Recommendation* http://www.flsenate.gov/usercontent/topics/ppaca/03-12-13MedicaidRecommendation.pdf (last visited: April 1, 2013).

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 Appropriations on April 23, 2013:
The committee substitute revises the membership of the board of directors of the FHKC; provides that the Healthy Florida program may contract with prepaid provider service networks in addition to insurers licensed under ch. 627, F.S., and managed care organizations authorized under ch. 641, F.S.; provides that the Healthy Florida program may require nominal copayments specifically from enrollees with family incomes above the FPL; and appropriates general revenue and trust fund dollars for the Healthy Florida program beginning in the 2013-2014 fiscal year.

Sections 17-21 were added to the bill, providing requirements for contracts between dentists and insurers, HMOs, or PLHSOs, and authorizing a dentist who is a government-contracted health care provider under the Access to Health Care Act, to allow a patient, or a parent or guardian of a patient, to voluntarily contribute a fee to cover costs of dental laboratory work.

B. Amendments:

None.

By the Committee on Appropriations

576-02875-13 20131816__

A bill to be entitled

An act relating to health care; amending s. 409.811, F.S.; revising and providing definitions; amending s. 409.813, F.S.; revising the components of the Florida Kidcare program; prohibiting a cause of action from arising against the Florida Healthy Kids Corporation for failure to make health services available; amending s. 409.8132, F.S.; revising the eligibility of the Medikids program component; revising the enrollment requirements of the Medikids program component; amending s. 409.8134, F.S.; conforming provisions to changes made by the act; amending s. 409.814, F.S.; revising eligibility requirements for the Florida Kidcare program; amending s. 409.815, F.S.; revising the minimum health benefits coverage under the Florida Kidcare Act; deleting obsolete provisions; amending ss. 409.816 and 409.8177, F.S.; conforming provisions to changes made by the act; repealing s. 409.817, F.S., relating to the approval of health benefits coverage and financial assistance; repealing s. 409.8175, F.S., relating to delivery of services in rural counties; amending s. 409.818, F.S.; revising the duties of the Department of Children and Families and the Agency for Health Care Administration with regard to the Florida Kidcare Act; deleting the duties of the Department of Health and the Office of Insurance Regulation with regard to the Florida Kidcare Act; amending s. 409.820, F.S.; requiring the Department of Health, in consultation with the agency

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and the Florida Healthy Kids Corporation, to develop a minimum set of pediatric and adolescent quality assurance and access standards for all program components; amending s. 624.91, F.S.; revising the legislative intent of the Florida Healthy Kids Corporation Act to include the Healthy Florida program; revising participation guidelines for nonsubsidized enrollees in the Healthy Kids program; revising the medical loss ratio requirements for the contracts for the Florida Healthy Kids Corporation; modifying the membership of the Florida Healthy Kids Corporation's board of directors; creating an executive steering committee; requiring additional corporate compliance requirements for the Florida Healthy Kids Corporation; repealing s. 624.915, F.S., relating to the operating fund of the Florida Healthy Kids Corporation; creating s. 624.917, F.S.; creating the Healthy Florida program; providing definitions; providing eligibility and enrollment requirements; authorizing the Florida Healthy Kids Corporation to contract with certain insurers; requiring the corporation to establish a benefits package and a process for payment of services; authorizing the corporation to collect premiums and copayments; requiring the corporation to oversee the Healthy Florida program and to establish a grievance process and integrity process; providing applicability of certain state laws for administration of the Healthy Florida program; requiring the corporation to collect

certain data and to submit enrollment reports and interim independent evaluations to the Legislature; providing for expiration of the program; providing an implementation and interpretation clause; providing an effective date.

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

Section 1. Section 409.811, Florida Statutes, is amended to read:

409.811 Definitions relating to Florida Kidcare Act.—As used in ss. 409.810-409.821, the term:

(1) "Actuarially equivalent" means that:

(a) The aggregate value of the benefits included in health benefits coverage is equal to the value of the benefits in the benchmark benefit plan; and

(b) The benefits included in health benefits coverage are substantially similar to the benefits included in the benchmark benefit plan, except that preventive health services must be the same as in the benchmark benefit plan.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Applicant" means a parent or guardian of a child or a child whose disability of nonage has been removed under chapter 743, who applies for determination of eligibility for health benefits coverage under ss. 409.810-409.821.

(4) "Child benchmark benefit plan" means the form and level of health benefits coverage established in s. 409.815.

(5) "Child" means any person younger than ~~under~~ 19 years of

age.

(6) "Child with special health care needs" means a child whose serious or chronic physical or developmental condition requires extensive preventive and maintenance care beyond that required by typically healthy children. Health care utilization by such a child exceeds the statistically expected usage of the normal child adjusted for chronological age, and such a child often needs complex care requiring multiple providers, rehabilitation services, and specialized equipment in a number of different settings.

(7) "Children's Medical Services Network" or "network" means a statewide managed care service system as defined in s. 391.021(1).

(8) "CHIP" means the Children's Health Insurance Program as authorized under Title XXI of the Social Security Act, and its regulations, ss. 409.810-409.820, and as administered in this state by the agency, the department, and the Florida Healthy Kids Corporation, as appropriate to their respective responsibilities.

(9) "Combined eligibility notice" means an eligibility notice that informs an applicant, an enrollee, or multiple family members of a household, when feasible, of eligibility for each of the insurance affordability programs and enrollment into a program or exchange plan. A combined eligibility form must be issued by the last agency or department to make an eligibility, renewal or denial determination. The form must meet all of the federal and state law and regulatory requirements no later than January 1, 2014.

~~(8) "Community rate" means a method used to develop~~

~~premiums for a health insurance plan that spreads financial risk across a large population and allows adjustments only for age, gender, family composition, and geographic area.~~

(10)~~(9)~~ "Department" means the Department of Health.

(11)~~(10)~~ "Enrollee" means a child who has been determined eligible for and is receiving coverage under ss. 409.810-409.821.

~~(11) "Family" means the group or the individuals whose income is considered in determining eligibility for the Florida Kidcare program. The family includes a child with a parent or caretaker relative who resides in the same house or living unit or, in the case of a child whose disability of nonage has been removed under chapter 743, the child. The family may also include other individuals whose income and resources are considered in whole or in part in determining eligibility of the child.~~

~~(12) "Family income" means cash received at periodic intervals from any source, such as wages, benefits, contributions, or rental property. Income also may include any money that would have been counted as income under the Aid to Families with Dependent Children (AFDC) state plan in effect prior to August 22, 1996.~~

(12)~~(13)~~ "Florida Kidcare program," "Kidcare program," or "program" means the health benefits program administered through ss. 409.810-409.821.

(13)~~(14)~~ "Guarantee issue" means that health benefits coverage must be offered to an individual regardless of the individual's health status, preexisting condition, or claims history.

(14)~~(15)~~ "Health benefits coverage" means protection that provides payment of benefits for covered health care services or that otherwise provides, either directly or through arrangements with other persons, covered health care services on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis.

(15)~~(16)~~ "Health insurance plan" means health benefits coverage under the following:

(a) A health plan offered by any certified health maintenance organization or authorized health insurer, except a plan that is limited to the following: a limited benefit, specified disease, or specified accident; hospital indemnity; accident only; limited benefit convalescent care; Medicare supplement; credit disability; dental; vision; long-term care; disability income; coverage issued as a supplement to another health plan; workers' compensation liability or other insurance; or motor vehicle medical payment only; or

(b) An employee welfare benefit plan that includes health benefits established under the Employee Retirement Income Security Act of 1974, as amended.

(16) "Household income" means the group or the individual whose income is considered in determining eligibility for the Florida Kidcare program. The term "household" has the same meaning as provided in s. 36B(d)(2) of the Internal Revenue Code of 1986.

(17) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, and regulations thereunder, and ss. 409.901-409.920, as administered in this state by the agency.

(18) "Medically necessary" means the use of any medical

treatment, service, equipment, or supply necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity and which is:

(a) Consistent with the symptom, diagnosis, and treatment of the enrollee's condition;

(b) Provided in accordance with generally accepted standards of medical practice;

(c) Not primarily intended for the convenience of the enrollee, the enrollee's family, or the health care provider;

(d) The most appropriate level of supply or service for the diagnosis and treatment of the enrollee's condition; and

(e) Approved by the appropriate medical body or health care specialty involved as effective, appropriate, and essential for the care and treatment of the enrollee's condition.

(19) "Medikids" means a component of the Florida Kidcare program of medical assistance authorized by Title XXI of the Social Security Act, and regulations thereunder, and s. 409.8132, as administered in the state by the agency.

(20) "Modified adjusted gross income" means the individual's or household's annual adjusted gross income as defined in s. 36B(d)(2) of the Internal Revenue Code of 1986 which is used to determine eligibility under the Florida Kidcare program.

(21) "Patient Protection and Affordable Care Act" or "Act" means the federal law enacted as Pub. L. No. 111-148, as further amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments,

regulations, or guidance issued under those acts.

(22)~~(20)~~ "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

(23)~~(21)~~ "Premium" means the entire cost of a health insurance plan, including the administration fee or the risk assumption charge.

(24)~~(22)~~ "Premium assistance payment" means the monthly consideration paid by the agency per enrollee in the Florida Kidcare program towards health insurance premiums.

(25)~~(23)~~ "Qualified alien" means an alien as defined in 8 U.S.C. s. 1641 (b) and (c) ~~s. 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193~~.

(26)~~(24)~~ "Resident" means a United States citizen, or qualified alien, who is domiciled in this state.

(27)~~(25)~~ "Rural county" means a county having a population density of less than 100 persons per square mile, or a county defined by the most recent United States Census as rural, in which there is no prepaid health plan participating in the Medicaid program as of July 1, 1998.

~~(26) "Substantially similar" means that, with respect to additional services as defined in s. 2103(c)(2) of Title XXI of the Social Security Act, these services must have an actuarial value equal to at least 75 percent of the actuarial value of the coverage for that service in the benchmark benefit plan and,~~

~~with respect to the basic services as defined in s. 2103(c)(1) of Title XXI of the Social Security Act, these services must be the same as the services in the benchmark benefit plan.~~

Section 2. Section 409.813, Florida Statutes, is amended to read:

409.813 Health benefits coverage; program components; entitlement and nonentitlement.—

(1) The Florida Kidcare program includes health benefits coverage provided to children through the following program components, which shall be marketed as the Florida Kidcare program:

(a) Medicaid;

(b) Medikids as created in s. 409.8132;

(c) The Florida Healthy Kids Corporation as created in s. 624.91; and

~~(d) Employer sponsored group health insurance plans approved under ss. 409.810-409.821; and~~

(d)~~(c)~~ The Children's Medical Services network established in chapter 391.

(2) Except for Title XIX-funded Florida Kidcare program coverage under the Medicaid program, coverage under the Florida Kidcare program is not an entitlement. No cause of action shall arise against the state, the department, the Department of Children and Families ~~Family Services~~, ~~or~~ the agency, or the Florida Healthy Kids Corporation for failure to make health services available to any person under ss. 409.810-409.821.

Section 3. Subsections (6) and (7) of section 409.8132, Florida Statutes, are amended to read:

409.8132 Medikids program component.—

(6) ELIGIBILITY.—

(a) A child who has attained the age of 1 year but who is under the age of 5 years is eligible to enroll in the Medikids program component of the Florida Kidcare program, if the child is a member of a family that has a family income which exceeds the Medicaid applicable income level as specified in s. 409.903, but which is equal to or below 200 percent of the current federal poverty level. In determining the eligibility of such a child, an assets test is not required. ~~A child who is eligible for Medikids may elect to enroll in Florida Healthy Kids coverage or employer sponsored group coverage. However, a child who is eligible for Medikids may participate in the Florida Healthy Kids program only if the child has a sibling participating in the Florida Healthy Kids program and the child's county of residence permits such enrollment.~~

(b) The provisions of s. 409.814 apply to the Medikids program.

(7) ENROLLMENT.—Enrollment in the Medikids program component may occur at any time throughout the year. A child may not receive services under the Medikids program until the child is enrolled in a managed care plan or MediPass. Once determined eligible, an applicant may receive choice counseling and select a managed care plan or MediPass. The agency may initiate mandatory assignment for a Medikids applicant who has not chosen a managed care plan or MediPass provider after the applicant's voluntary choice period ends. An applicant may select MediPass under the Medikids program component only in counties that have fewer than two managed care plans available to serve Medicaid recipients ~~and only if the federal Health Care Financing~~

~~Administration determines that MediPass constitutes "health insurance coverage" as defined in Title XXI of the Social Security Act~~.

Section 4. Subsection (2) of section 409.8134, Florida Statutes, is amended to read:

409.8134 Program expenditure ceiling; enrollment.—

(2) The Florida Kidcare program may conduct enrollment continuously throughout the year.

(a) Children eligible for coverage under the Title XXI-funded Florida Kidcare program shall be enrolled on a first-come, first-served basis using the date the enrollment application is received. Enrollment shall immediately cease when the expenditure ceiling is reached. Year-round enrollment shall only be held if the Social Services Estimating Conference determines that sufficient federal and state funds will be available to finance the increased enrollment.

(b) The application for the Florida Kidcare program is valid for a period of 120 days after the date it was received. At the end of the 120-day period, if the applicant has not been enrolled in the program, the application is invalid and the applicant shall be notified of the action. The applicant may reactivate the application after notification of the action taken by the program.

(c) Except for the Medicaid program, whenever the Social Services Estimating Conference determines that there are presently, or will be by the end of the current fiscal year, insufficient funds to finance the current or projected enrollment in the Florida Kidcare program, all additional enrollment must cease and additional enrollment may not resume

until sufficient funds are available to finance such enrollment.

Section 5. Section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.—A child who has not reached 19 years of age whose household ~~family~~ income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. If an enrolled individual is determined to be ineligible for coverage, he or she must be immediately disenrolled from the respective Florida Kidcare program component and referred to another insurance affordability program, if appropriate, through a combined eligibility notice.

(1) A child who is eligible for Medicaid coverage under s. 409.903 or s. 409.904 must be offered the opportunity to enroll ~~enrolled~~ in Medicaid ~~and is not eligible to receive health benefits under any other health benefits coverage authorized under the Florida Kidcare program~~. A child who is eligible for Medicaid and opts to enroll in CHIP may disenroll from CHIP at any time and transition to Medicaid. This transition must occur without any break in coverage.

(2) A child who is not eligible for Medicaid, but who is eligible for the Florida Kidcare program, may obtain health benefits coverage under any of the other components listed in s. 409.813 if such coverage is approved and available in the county in which the child resides.

(3) A Title XXI-funded child who is eligible for the Florida Kidcare program who is a child with special health care needs, as determined through a medical or behavioral screening instrument, is eligible for health benefits coverage from and

shall be assigned to and may opt out of the Children's Medical Services Network.

(4) The following children are not eligible to receive Title XXI-funded premium assistance for health benefits coverage under the Florida Kidcare program, except under Medicaid if the child would have been eligible for Medicaid under s. 409.903 or s. 409.904 as of June 1, 1997:

(a) A child who is covered under a family member's group health benefit plan or under other private or employer health insurance coverage, if the cost of the child's participation is not greater than 5 percent of the household's ~~family's~~ income. If a child is otherwise eligible for a subsidy under the Florida Kidcare program and the cost of the child's participation in the family member's health insurance benefit plan is greater than 5 percent of the household's ~~family's~~ income, the child may enroll in the appropriate subsidized Kidcare program.

~~(b) A child who is seeking premium assistance for the Florida Kidcare program through employer-sponsored group coverage, if the child has been covered by the same employer's group coverage during the 60 days before the family submitted an application for determination of eligibility under the program.~~

(b)~~(c)~~ A child who is an alien, but who does not meet the definition of qualified alien, in the United States.

(c)~~(d)~~ A child who is an inmate of a public institution or a patient in an institution for mental diseases.

(d)~~(e)~~ A child who is otherwise eligible for premium assistance for the Florida Kidcare program and has had his or her coverage in an employer-sponsored or private health benefit plan voluntarily canceled in the last 60 days, except those

children whose coverage was voluntarily canceled for good cause, including, but not limited to, the following circumstances:

1. The cost of participation in an employer-sponsored health benefit plan is greater than 5 percent of the household's modified adjusted gross ~~family's~~ income;

2. The parent lost a job that provided an employer-sponsored health benefit plan for children;

3. The parent who had health benefits coverage for the child is deceased;

4. The child has a medical condition that, without medical care, would cause serious disability, loss of function, or death;

5. The employer of the parent canceled health benefits coverage for children;

6. The child's health benefits coverage ended because the child reached the maximum lifetime coverage amount;

7. The child has exhausted coverage under a COBRA continuation provision;

8. The health benefits coverage does not cover the child's health care needs; or

9. Domestic violence led to loss of coverage.

~~(5) A child who is otherwise eligible for the Florida Kidcare program and who has a preexisting condition that prevents coverage under another insurance plan as described in paragraph (4)(a) which would have disqualified the child for the Florida Kidcare program if the child were able to enroll in the plan is eligible for Florida Kidcare coverage when enrollment is possible.~~

(5)~~(6)~~ A child whose household's modified adjusted gross

~~family~~ income is above 200 percent of the federal poverty level or a child who is excluded under the provisions of subsection (4) may participate in the Florida Kidcare program as provided in s. 409.8132 or, if the child is ineligible for Medikids by reason of age, in the Florida Healthy Kids program, subject to the following:

(a) The family is not eligible for premium assistance payments and must pay the full cost of the premium, including any administrative costs.

(b) The board of directors of the Florida Healthy Kids Corporation may offer a reduced benefit package to these children in order to limit program costs for such families.

(c) By August 15, 2013, the Florida Healthy Kids Corporation shall notify all current full-pay enrollees of the availability of the exchange and how to access other insurance affordability options. New applications for full-pay coverage may not be accepted after September 30, 2013.

(6)~~(7)~~ Once a child is enrolled in the Florida Kidcare program, the child is eligible for coverage for 12 months without a redetermination or reverification of eligibility, if the family continues to pay the applicable premium. Eligibility for program components funded through Title XXI of the Social Security Act terminates when a child attains the age of 19. A child who has not attained the age of 5 and who has been determined eligible for the Medicaid program is eligible for coverage for 12 months without a redetermination or reverification of eligibility.

(7)~~(8)~~ When determining or reviewing a child's eligibility under the Florida Kidcare program, the applicant shall be

provided with reasonable notice of changes in eligibility which may affect enrollment in one or more of the program components. If a transition from one program component to another is authorized, there shall be cooperation between the program components and the affected family which promotes continuity of health care coverage. Any authorized transfers must be managed within the program's overall appropriated or authorized levels of funding. Each component of the program shall establish a reserve to ensure that transfers between components will be accomplished within current year appropriations. These reserves shall be reviewed by each convening of the Social Services Estimating Conference to determine the adequacy of such reserves to meet actual experience.

(8)~~(9)~~ In determining the eligibility of a child, an assets test is not required. Each applicant shall provide documentation during the application process and the redetermination process, including, but not limited to, the following:

(a) Proof of household ~~family~~ income, which must be verified electronically to determine financial eligibility for the Florida Kidcare program. Written documentation, which may include wages and earnings statements or pay stubs, W-2 forms, or a copy of the applicant's most recent federal income tax return, is required only if the electronic verification is not available or does not substantiate the applicant's income. This paragraph expires December 31, 2013.

(b) A statement from all applicable, employed household ~~family~~ members that:

1. Their employers do not sponsor health benefit plans for employees;

2. The potential enrollee is not covered by an employer-sponsored health benefit plan; or

3. The potential enrollee is covered by an employer-sponsored health benefit plan and the cost of the employer-sponsored health benefit plan is more than 5 percent of the household's modified adjusted gross ~~family's~~ income.

(c) To enroll in the Children's Medical Services Network, a completed application, including a clinical screening.

(d) Effective January 1, 2014, eligibility shall be determined through electronic matching using the federally managed data services hub and other resources. Written documentation from the applicant may be accepted if the electronic verification does not substantiate the applicant's income or if there has been a change in circumstances.

(9) ~~(10)~~ Subject to paragraph (4)(a), the Florida Kidcare program shall withhold benefits from an enrollee if the program obtains evidence that the enrollee is no longer eligible, submitted incorrect or fraudulent information in order to establish eligibility, or failed to provide verification of eligibility. The applicant or enrollee shall be notified that because of such evidence program benefits will be withheld unless the applicant or enrollee contacts a designated representative of the program by a specified date, which must be within 10 working days after the date of notice, to discuss and resolve the matter. The program shall make every effort to resolve the matter within a timeframe that will not cause benefits to be withheld from an eligible enrollee.

(10) ~~(11)~~ The following individuals may be subject to prosecution in accordance with s. 414.39:

(a) An applicant obtaining or attempting to obtain benefits for a potential enrollee under the Florida Kidcare program when the applicant knows or should have known the potential enrollee does not qualify for the Florida Kidcare program.

(b) An individual who assists an applicant in obtaining or attempting to obtain benefits for a potential enrollee under the Florida Kidcare program when the individual knows or should have known the potential enrollee does not qualify for the Florida Kidcare program.

Section 6. Paragraphs (g), (k), (q), and (w) of subsection (2) of section 409.815, Florida Statutes, are amended to read:

409.815 Health benefits coverage; limitations.—

(2) BENCHMARK BENEFITS.—In order for health benefits coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.821, the health benefits coverage, except for coverage under Medicaid and Medikids, must include the following minimum benefits, as medically necessary.

(g) *Behavioral health services.*—

1. Mental health benefits include:

a. Inpatient services~~, limited to 30 inpatient days per contract year~~ for psychiatric admissions, or residential services in facilities licensed under s. 394.875(6) or s. 395.003 in lieu of inpatient psychiatric admissions~~; however, a minimum of 10 of the 30 days shall be available only for inpatient psychiatric services~~ if authorized by a physician; and

b. Outpatient services, including outpatient visits for psychological or psychiatric evaluation, diagnosis, and treatment by a licensed mental health professional~~, limited to 40 outpatient visits each contract year~~.

2. Substance abuse services include:

a. Inpatient services~~, limited to 7 inpatient days per contract year~~ for medical detoxification only and ~~30 days of~~ residential services; and

b. Outpatient services, including evaluation, diagnosis, and treatment by a licensed practitioner~~, limited to 40 outpatient visits per contract year~~.

~~Effective October 1, 2009,~~ Covered services include inpatient and outpatient services for mental and nervous disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Such benefits include psychological or psychiatric evaluation, diagnosis, and treatment by a licensed mental health professional and inpatient, outpatient, and residential treatment of substance abuse disorders. Any benefit limitations, including duration of services, number of visits, or number of days for hospitalization or residential services, shall not be any less favorable than those for physical illnesses generally. The program may also implement appropriate financial incentives, peer review, utilization requirements, and other methods used for the management of benefits provided for other medical conditions in order to reduce service costs and utilization without compromising quality of care.

(k) *Hospice services.*—Covered services include reasonable and necessary services for palliation or management of an enrollee's terminal illness~~, with the following exceptions:~~

~~1. Once a family elects to receive hospice care for an enrollee, other services that treat the terminal condition will not be covered; and~~

~~2. Services required for conditions totally unrelated to the terminal condition are covered to the extent that the services are included in this section~~.

(q) *Dental services.* ~~Effective October 1, 2009,~~ Dental services shall be covered as required under federal law and may also include those dental benefits provided to children by the Florida Medicaid program under s. 409.906(6).

(w) *Reimbursement of federally qualified health centers and rural health clinics.* ~~Effective October 1, 2009,~~ Payments for services provided to enrollees by federally qualified health centers and rural health clinics under this section shall be reimbursed using the Medicaid Prospective Payment System as provided for under s. 2107(e)(1)(D) of the Social Security Act. If such services are paid for by health insurers or health care providers under contract with the Florida Healthy Kids Corporation, such entities are responsible for this payment. The agency may seek any available federal grants to assist with this transition.

Section 7. Section 409.816, Florida Statutes, is amended to read:

409.816 Limitations on premiums and cost-sharing.—The following limitations on premiums and cost-sharing are established for the program.

(1) Enrollees who receive coverage under the Medicaid program may not be required to pay:

(a) Enrollment fees, premiums, or similar charges; or

(b) Copayments, deductibles, coinsurance, or similar charges.

(2) Enrollees in households that have ~~families with~~ a modified adjusted gross ~~family~~ income equal to or below 150 percent of the federal poverty level, who are not receiving coverage under the Medicaid program, may not be required to pay:

(a) Enrollment fees, premiums, or similar charges that exceed the maximum monthly charge permitted under s. 1916(b)(1) of the Social Security Act; or

(b) Copayments, deductibles, coinsurance, or similar charges that exceed a nominal amount, as determined consistent with regulations referred to in s. 1916(a)(3) of the Social Security Act. However, such charges may not be imposed for preventive services, including well-baby and well-child care, age-appropriate immunizations, and routine hearing and vision screenings.

(3) Enrollees in households that have ~~families with~~ a modified adjusted gross ~~family~~ income above 150 percent of the federal poverty level who are not receiving coverage under the Medicaid program or who are not eligible under s. 409.814(5) ~~s. 409.814(6)~~ may be required to pay enrollment fees, premiums, copayments, deductibles, coinsurance, or similar charges on a sliding scale related to income, except that the total annual aggregate cost-sharing with respect to all children in a household ~~family~~ may not exceed 5 percent of the household's modified adjusted ~~family's~~ income. However, copayments, deductibles, coinsurance, or similar charges may not be imposed for preventive services, including well-baby and well-child care, age-appropriate immunizations, and routine hearing and vision screenings.

Section 8. Section 409.817, Florida Statutes, is repealed.

Section 9. Section 409.8175, Florida Statutes, is repealed.

Section 10. Paragraph (c) of subsection (1) of section 409.8177, Florida Statutes, is amended to read:

409.8177 Program evaluation.—

(1) The agency, in consultation with the Department of Health, the Department of Children and Families ~~Family Services~~, and the Florida Healthy Kids Corporation, shall contract for an evaluation of the Florida Kidcare program and shall by January 1 of each year submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report of the program. In addition to the items specified under s. 2108 of Title XXI of the Social Security Act, the report shall include an assessment of crowd-out and access to health care, as well as the following:

(c) The characteristics of the children and families assisted under the program, including ages of the children, household ~~family~~ income, and access to or coverage by other health insurance prior to the program and after disenrollment from the program.

Section 11. Section 409.818, Florida Statutes, is amended to read:

409.818 Administration.—In order to implement ss. 409.810-409.821, the following agencies shall have the following duties:

(1) The Department of Children and Families ~~Family Services~~ shall:

(a) Maintain ~~Develop~~ a simplified eligibility determination and renewal process ~~application mail-in form to be used for determining the eligibility of children for coverage~~ under the Florida Kidcare program, in consultation with the agency, the

Department of Health, and the Florida Healthy Kids Corporation. The simplified eligibility process ~~application form~~ must include ~~an item that provides~~ an opportunity for the applicant to indicate whether coverage is being sought for a child with special health care needs. Families applying for children's Medicaid coverage must also be able to use the simplified application process ~~form~~ without having to pay a premium.

(b) Establish and maintain the eligibility determination process under the program except as specified in subsection (3), which includes the following: ~~(5).~~

1. The department shall directly, or through the services of a contracted third-party administrator, establish and maintain a process for determining eligibility of children for coverage under the program. The eligibility determination process must be used solely for determining eligibility of applicants for health benefits coverage under the program. The eligibility determination process must include an initial determination of eligibility for any coverage offered under the program, as well as a redetermination or reverification of eligibility each subsequent 6 months. ~~Effective January 1, 1999,~~ A child who has not attained the age of 5 and who has been determined eligible for the Medicaid program is eligible for coverage for 12 months without a redetermination or reverification of eligibility. In conducting an eligibility determination, the department shall determine if the child has special health care needs.

2. The department, in consultation with the Agency for Health Care Administration and the Florida Healthy Kids Corporation, shall develop procedures for redetermining

eligibility which enable applicants and enrollees ~~a family~~ to easily update any change in circumstances which could affect eligibility.

3. The department may accept changes in ~~a family's~~ status as reported to the department by the Florida Healthy Kids Corporation or the exchange without requiring a new application ~~from the family~~. Redetermination of a child's eligibility for Medicaid may not be linked to a child's eligibility determination for other programs.

4. The department, in consultation with the agency and the Florida Healthy Kids Corporation, shall develop a combined eligibility notice to inform applicants and enrollees of their application or renewal status, as appropriate. The content must be coordinated to meet all federal and state requirements under the federal Patient Protection and Affordable Care Act.

(c) Inform program applicants about eligibility determinations and provide information about eligibility of applicants to the Florida Kidcare program and to insurers and their agents~~, through a centralized coordinating office~~.

(d) Adopt rules necessary for conducting program eligibility functions.

~~(2) The Department of Health shall:~~

~~(a) Design an eligibility intake process for the program, in coordination with the Department of Children and Family Services, the agency, and the Florida Healthy Kids Corporation. The eligibility intake process may include local intake points that are determined by the Department of Health in coordination with the Department of Children and Family Services.~~

~~(b) Chair a state-level Florida Kidcare coordinating~~

~~council to review and make recommendations concerning the implementation and operation of the program. The coordinating council shall include representatives from the department, the Department of Children and Family Services, the agency, the Florida Healthy Kids Corporation, the Office of Insurance Regulation of the Financial Services Commission, local government, health insurers, health maintenance organizations, health care providers, families participating in the program, and organizations representing low income families.~~

~~(c) In consultation with the Florida Healthy Kids Corporation and the Department of Children and Family Services, establish a toll-free telephone line to assist families with questions about the program.~~

~~(d) Adopt rules necessary to implement outreach activities.~~

(2)~~(3)~~ The Agency for Health Care Administration, under the authority granted in s. 409.914(1), shall:

(a) Calculate the premium assistance payment necessary to comply with the premium and cost-sharing limitations specified in s. 409.816 and the federal Patient Protection and Affordable Care Act. The premium assistance payment for each enrollee in a health insurance plan participating in the Florida Healthy Kids Corporation shall equal the premium approved by the Florida Healthy Kids Corporation ~~and the Office of Insurance Regulation of the Financial Services Commission pursuant to ss. 627.410 and 641.31,~~ less any enrollee's share of the premium established within the limitations specified in s. 409.816. ~~The premium assistance payment for each enrollee in an employer sponsored health insurance plan approved under ss. 409.810-409.821 shall equal the premium for the plan adjusted for any benchmark~~

~~benefit plan actuarial equivalent benefit rider approved by the Office of Insurance Regulation pursuant to ss. 627.410 and 641.31, less any enrollee's share of the premium established within the limitations specified in s. 409.816. In calculating the premium assistance payment levels for children with family coverage, the agency shall set the premium assistance payment levels for each child proportionately to the total cost of family coverage.~~

(b) Make premium assistance payments to health insurance plans on a periodic basis. The agency may use its Medicaid fiscal agent or a contracted third-party administrator in making these payments. The agency may require health insurance plans that participate in the Medikids program ~~or employer sponsored group health insurance~~ to collect premium payments from an enrollee's family. Participating health insurance plans shall report premium payments collected on behalf of enrollees in the program to the agency in accordance with a schedule established by the agency.

(c) Monitor compliance with quality assurance and access standards developed under s. 409.820 and in accordance with s. 2103(f) of the Social Security Act, 42 U.S.C. s. 1397cc(f).

(d) Establish a mechanism for investigating and resolving complaints and grievances from program applicants, enrollees, and health benefits coverage providers, and maintain a record of complaints and confirmed problems. In the case of a child who is enrolled in a managed care ~~health maintenance~~ organization, the agency must use the provisions of s. 641.511 to address grievance reporting and resolution requirements.

~~(e) Approve health benefits coverage for participation in~~

~~the program, following certification by the Office of Insurance Regulation under subsection (4).~~

(e)~~(f)~~ Adopt rules necessary for ~~calculating premium assistance payment levels, making premium assistance payments,~~ monitoring access and quality assurance standards and~~,~~ investigating and resolving complaints and grievances~~,~~ ~~administering the Medikids program, and approving health benefits coverage~~.

(f) Contract with the Florida Healthy Kids Corporation for the administration of the Florida Kidcare program and the Healthy Florida program and to facilitate the release of any federal and state funds.

The agency is designated the lead state agency for Title XXI of the Social Security Act for purposes of receipt of federal funds, for reporting purposes, and for ensuring compliance with federal and state regulations and rules.

~~(4) The Office of Insurance Regulation shall certify that health benefits coverage plans that seek to provide services under the Florida Kidcare program, except those offered through the Florida Healthy Kids Corporation or the Children's Medical Services Network, meet, exceed, or are actuarially equivalent to the benchmark benefit plan and that health insurance plans will be offered at an approved rate. In determining actuarial equivalence of benefits coverage, the Office of Insurance Regulation and health insurance plans must comply with the requirements of s. 2103 of Title XXI of the Social Security Act. The department shall adopt rules necessary for certifying health benefits coverage plans.~~

(3)~~(5)~~ The Florida Healthy Kids Corporation shall retain its functions as authorized in s. 624.91, including eligibility determination for participation in the Healthy Kids program.

(4)~~(6)~~ The agency, the Department of Health, the Department of Children and Families ~~Family Services~~, and the Florida Healthy Kids Corporation, ~~and the Office of Insurance Regulation,~~ after consultation with and approval of the Speaker of the House of Representatives and the President of the Senate, may ~~are authorized to~~ make program modifications that are necessary to overcome any objections of the United States Department of Health and Human Services to obtain approval of the state's child health insurance plan under Title XXI of the Social Security Act.

Section 12. Section 409.820, Florida Statutes, is amended to read:

409.820 Quality assurance and access standards.—Except for Medicaid, the Department of Health, in consultation with the agency and the Florida Healthy Kids Corporation, shall develop a minimum set of pediatric and adolescent quality assurance and access standards for all program components. The standards must include a process for granting exceptions to specific requirements for quality assurance and access. Compliance with the standards shall be a condition of program participation by health benefits coverage providers. These standards shall comply with the provisions of this chapter and chapter 641 and Title XXI of the Social Security Act.

Section 13. Section 624.91, Florida Statutes, is amended to read:

624.91 The Florida Healthy Kids Corporation Act.—

(1) SHORT TITLE.—This section may be cited as the "William G. 'Doc' Myers Healthy Kids Corporation Act."

(2) LEGISLATIVE INTENT.—

(a) The Legislature finds that increased access to health care services could improve children's health and reduce the incidence and costs of childhood illness and disabilities among children in this state. Many children do not have comprehensive, affordable health care services available. It is the intent of the Legislature that the Florida Healthy Kids Corporation provide comprehensive health insurance coverage to such children. The corporation is encouraged to cooperate with any existing health service programs funded by the public or the private sector.

(b) It is the intent of the Legislature that the Florida Healthy Kids Corporation serve as one of several providers of services to children eligible for medical assistance under Title XXI of the Social Security Act. Although the corporation may serve other children, the Legislature intends the primary recipients of services provided through the corporation be school-age children with a family income below 200 percent of the federal poverty level, who do not qualify for Medicaid. It is also the intent of the Legislature that state and local government Florida Healthy Kids funds be used to continue coverage, subject to specific appropriations in the General Appropriations Act, to children not eligible for federal matching funds under Title XXI.

(c) It is further the intent of the Legislature that the Florida Healthy Kids Corporation administer and manage services for Healthy Florida, a health care program for uninsured adults

using a unique network of providers and contracts. Enrollees in Healthy Florida will receive comprehensive health care services from private, licensed health insurers who meet standards established by the corporation. It is further the intent of the Legislature that these enrollees participate in their own health care decisionmaking and contribute financially toward their medical costs. The Legislature intends to provide an alternative benefit package that includes a full range of services which meet the needs of residents of this state. As a new program, the Legislature shall also ensure that a comprehensive evaluation is conducted to measure the overall impact of the program and identify whether to renew the program after an initial 3-year term.

(3) ELIGIBILITY FOR STATE-FUNDED ASSISTANCE.—Only the following individuals are eligible for state-funded assistance in paying premiums for Healthy Florida or Florida Healthy Kids ~~premiums~~:

(a) Residents of this state who are eligible for the Florida Kidcare program pursuant to s. 409.814 or the Healthy Florida pursuant to s. 624.917.

(b) Notwithstanding s. 409.814, legal aliens who are enrolled in the Florida Healthy Kids program as of January 31, 2004, who do not qualify for Title XXI federal funds because they are not qualified aliens as defined in s. 409.811.

(4) NONENTITLEMENT.—Nothing in this section shall be construed as providing an individual with an entitlement to health care services. No cause of action shall arise against the state, the Florida Healthy Kids Corporation, or a unit of local government for failure to make health services available under

this section.

(5) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is created the Florida Healthy Kids Corporation, a not-for-profit corporation.

(b) The Florida Healthy Kids Corporation shall:

1. Arrange for the collection of any family, individual, or local contributions~~, or employer payment or premium~~, in an amount to be determined by the board of directors, to provide for payment of premiums for comprehensive insurance coverage and for the actual or estimated administrative expenses.

2. Arrange for the collection of any voluntary contributions to provide for payment of premiums for enrollees in the Florida Kidcare program or Healthy Florida ~~premiums for children who are not eligible for medical assistance under Title XIX or Title XXI of the Social Security Act~~.

3. Subject to the provisions of s. 409.8134, accept voluntary supplemental local match contributions that comply with the requirements of Title XXI of the Social Security Act for the purpose of providing additional Florida Kidcare coverage in contributing counties under Title XXI.

4. Establish the administrative and accounting procedures for the operation of the corporation.

5. Establish, with consultation from appropriate professional organizations, standards for preventive health services and providers and comprehensive insurance benefits appropriate to children, provided that such standards for rural areas shall not limit primary care providers to board-certified pediatricians.

6. Determine eligibility for children seeking to

participate in the Title XXI-funded components of the Florida Kidcare program consistent with the requirements specified in s. 409.814, as well as the non-Title-XXI-eligible children as provided in subsection (3).

7. Establish procedures under which providers of local match to, applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board of directors of the corporation.

8. Establish participation criteria and, if appropriate, contract with an authorized insurer, health maintenance organization, or third-party administrator to provide administrative services to the corporation.

9. Establish enrollment criteria that include penalties or waiting periods of 30 days for reinstatement of coverage upon voluntary cancellation for nonpayment of family and individual premiums under the programs.

10. Contract with authorized insurers or any provider of health care services, meeting standards established by the corporation, for the provision of comprehensive insurance coverage to participants. Such standards shall include criteria under which the corporation may contract with more than one provider of health care services in program sites.

a. Health plans shall be selected through a competitive bid process.

b. The Florida Healthy Kids Corporation shall purchase goods and services in the most cost-effective manner consistent with the delivery of quality medical care. The maximum administrative cost for a Florida Healthy Kids Corporation contract shall be 15 percent. For all health care contracts, the

minimum medical loss ratio is ~~for a Florida Healthy Kids Corporation contract shall be~~ 85 percent. The calculations must use uniform financial data collected from all plans in a format established by the corporation and shall be computed for each insurer on a statewide basis. Funds shall be classified in a manner consistent with 45 C.F.R. part 158 ~~For dental contracts, the remaining compensation to be paid to the authorized insurer or provider under a Florida Healthy Kids Corporation contract shall be no less than an amount which is 85 percent of premium; to the extent any contract provision does not provide for this minimum compensation, this section shall prevail~~.

c. The health plan selection criteria and scoring system, and the scoring results, shall be available upon request for inspection after the bids have been awarded.

11. Establish disenrollment criteria in the event local matching funds are insufficient to cover enrollments.

12. Develop and implement a plan to publicize the Florida Kidcare program and Healthy Florida, the eligibility requirements of the programs ~~program~~, and the procedures for enrollment in the program and to maintain public awareness of the corporation and the programs ~~program~~.

13. Secure staff necessary to properly administer the corporation. Staff costs shall be funded from state and local matching funds and such other private or public funds as become available. The board of directors shall determine the number of staff members necessary to administer the corporation.

14. In consultation with the partner agencies, annually provide a report on the Florida Kidcare program ~~annually~~ to the Governor, the Chief Financial Officer, the Commissioner of

Education, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives.

15. Provide information on a quarterly basis to the Legislature and the Governor which compares the costs and utilization of the full-pay enrolled population and the Title XXI-subsidized enrolled population in the Florida Kidcare program. The information, at a minimum, must include:

a. The monthly enrollment and expenditure for full-pay enrollees in the Medikids and Florida Healthy Kids programs compared to the Title XXI-subsidized enrolled population; and

b. The costs and utilization by service of the full-pay enrollees in the Medikids and Florida Healthy Kids programs and the Title XXI-subsidized enrolled population. This subparagraph is repealed effective December 31, 2013.

~~By February 1, 2010, the Florida Healthy Kids Corporation shall provide a study to the Legislature and the Governor on premium impacts to the subsidized portion of the program from the inclusion of the full pay program, which shall include recommendations on how to eliminate or mitigate possible impacts to the subsidized premiums.~~

16. By August 15, 2013, the corporation shall notify all current full-pay enrollees of the availability of the exchange, as defined in the federal Patient Protection and Affordable Care Act, and how to access other insurance affordability options. New applications for full-pay coverage may not be accepted after September 30, 2013.

17.~~16.~~ Establish benefit packages that conform to the

provisions of the Florida Kidcare program, as created in ss. 409.810-409.821.

(c) Coverage under the corporation's program is secondary to any other available private coverage held by, or applicable to, the participant ~~child~~ or family member. Insurers under contract with the corporation are the payors of last resort and must coordinate benefits with any other third-party payor that may be liable for the participant's medical care.

(d) The Florida Healthy Kids Corporation shall be a private corporation not for profit, registered, incorporated, and organized pursuant to chapter 617, and shall have all powers necessary to carry out the purposes of this act, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this act. The corporation and any committees it forms shall act in compliance with part III of chapter 112, and chapters 119 and 286.

(6) BOARD OF DIRECTORS AND MANAGEMENT SUPERVISION.—

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors chaired by an appointee designated by the Governor ~~Chief Financial Officer or her or his designee,~~ and composed of 12 other members. The Senate shall confirm the designated chair and other board appointees ~~selected~~ for 3-year terms~~ of office as follows:~~

~~1. The Secretary of Health Care Administration, or his or her designee~~.

~~2. One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education.~~

~~3. One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society.~~

~~4. One member, appointed by the Governor, who represents the Children's Medical Services Program.~~

~~5. One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association.~~

~~6. One member, appointed by the Governor, who is an expert on child health policy.~~

~~7. One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians.~~

~~8. One member, appointed by the Governor, who represents the state Medicaid program.~~

~~9. One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties.~~

~~10. The State Health Officer or her or his designee.~~

~~11. The Secretary of Children and Family Services, or his or her designee.~~

~~12. One member, appointed by the Governor, from among three members nominated by the Florida Dental Association.~~

(b) A member of the board of directors serves at the pleasure of the Governor ~~may be removed by the official who appointed that member~~. The board shall appoint an executive director, who is responsible for other staff authorized by the

board.

(c) Board members are entitled to receive, from funds of the corporation, reimbursement for per diem and travel expenses as provided by s. 112.061.

(d) There shall be no liability on the part of, and no cause of action shall arise against, any member of the board of directors, or its employees or agents, for any action they take in the performance of their powers and duties under this act.

(e) Board members who are serving on or before the date of enactment of this act or similar legislation may remain until July 1, 2013.

(f) An executive steering committee is created to provide management direction and support and to make recommendations to the board on the programs. The steering committee is composed of the Secretary of Health Care Administration, the Secretary of Children and Families, and the State Surgeon General. Committee members may not delegate their membership or attendance.

(7) LICENSING NOT REQUIRED; FISCAL OPERATION.—

(a) The corporation shall not be deemed an insurer. The officers, directors, and employees of the corporation shall not be deemed to be agents of an insurer. Neither the corporation nor any officer, director, or employee of the corporation is subject to the licensing requirements of the insurance code or the rules of the Department of Financial Services or Office of Insurance Regulation. However, any marketing representative utilized and compensated by the corporation must be appointed as a representative of the insurers or health services providers with which the corporation contracts.

(b) The board has complete fiscal control over the

corporation and is responsible for all corporate operations.

(c) The Department of Financial Services shall supervise any liquidation or dissolution of the corporation and shall have, with respect to such liquidation or dissolution, all power granted to it pursuant to the insurance code.

Section 14. Section 624.915, Florida Statutes, is repealed.

Section 15. Section 624.917, Florida Statutes, is created to read:

624.917 Healthy Florida program.—

(1) PROGRAM CREATION.—There is created Healthy Florida, a health care program for lower income, uninsured adults who meet the eligibility guidelines established under s. 624.91. The Florida Healthy Kids Corporation shall administer the program under its existing corporate governance and structure.

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

(a) "Actuarially equivalent" means:

1. The aggregate value of the benefits included in health benefits coverage is equal to the value of the benefits in the child benchmark benefit plan as defined in s. 409.811; and

2. The benefits included in health benefits coverage are substantially similar to the benefits included in the child benchmark benefit plan, except that preventive health services do not include dental services.

(b) "Agency" means the Agency for Health Care Administration.

(c) "Applicant" means the individual who applies for determination of eligibility for health benefits coverage under this section.

(d) "Child benchmark benefit plan" means the form and level

of health benefits coverage established in s. 409.815.

(e) "Child" means any person younger than 19 years of age.

(f) "Corporation" means the Florida Healthy Kids Corporation.

(g) "Enrollee" means an individual who has been determined eligible for and is receiving coverage under this section.

(h) "Florida Kidcare program" or "Kidcare program," means the health benefits program administered through ss. 409.810-409.821.

(i) "Health benefits coverage" means protection that provides payment of benefits for covered health care services or that otherwise provides, either directly or through arrangements with other persons, covered health care services on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis.

(j) "Healthy Florida" means the program created by this section which is administered by the Florida Healthy Kids Corporation.

(k) "Healthy Kids" means the Florida Kidcare program component created under s. 624.91 for children who are 5 through 18 years of age.

(l) "Household income" means the group or the individual whose income is considered in determining eligibility for the Healthy Florida program. The term "household" has the same meaning as provided in s. 36B(d)(2) of the Internal Revenue Code of 1986.

(m) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, and regulations thereunder, and ss. 409.901-409.920, as administered in this state by the agency.

(n) "Medically necessary" means the use of any medical treatment, service, equipment, or supply necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity and which is:

1. Consistent with the symptom, diagnosis, and treatment of the enrollee's condition;

2. Provided in accordance with generally accepted standards of medical practice;

3. Not primarily intended for the convenience of the enrollee, the enrollee's family, or the health care provider;

4. The most appropriate level of supply or service for the diagnosis and treatment of the enrollee's condition; and

5. Approved by the appropriate medical body or health care specialty involved as effective, appropriate, and essential for the care and treatment of the enrollee's condition.

(o) "Modified adjusted gross income" means the individual or household's annual adjusted gross income as defined in s. 36B(d)(2) of the Internal Revenue Code of 1986 which is used to determine eligibility under the Florida Kidcare program.

(p) "Patient Protection and Affordable Care Act" or "Act" means the federal law enacted as Pub. L. No. 111-148, as further amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments, regulations or guidance thereunder, issued under those acts.

(q) "Premium" means the entire cost of a health insurance plan, including the administration fee or the risk assumption charge.

(r) "Premium assistance payment" means the monthly consideration paid by the agency per enrollee in the Florida Kidcare program towards health insurance premiums.

(s) "Qualified alien" means an alien as defined in 8 U.S.C. s. 1641(b) and (c).

(t) "Resident" means a United States citizen or qualified alien who is domiciled in this state.

(3) ELIGIBILITY.—To be eligible and remain eligible for the Healthy Florida program, an individual must be a resident of this state and meet the following additional criteria:

(a) Be identified as newly eligible, as defined in s. 1902(a)(10)(A)(i)(VIII) of the Social Security Act or s. 2001 of the federal Patient Protection and Affordable Care Act, and as may be further defined by federal regulation.

(b) Maintain eligibility with the corporation and meet all renewal requirements as established by the corporation.

(c) Renew eligibility on at least an annual basis.

(4) ENROLLMENT.—The corporation may begin the enrollment of applicants in the Healthy Florida program on October 1, 2013. Enrollment may occur directly, through the services of a third-party administrator, referrals from the Department of Children and Families, and the exchange as defined by the federal Patient Protection and Affordable Care Act. As an enrollee disenrolls, the corporation must also provide the enrollee with information about other insurance affordability programs and electronically refer the enrollee to the exchange or other programs, as appropriate. The earliest coverage effective date under the program shall be January 1, 2014.

(5) DELIVERY OF SERVICES.—The corporation shall contract

with authorized insurers licensed under chapter 627 and managed care organizations under chapter 641 which meet standards established by the corporation to provide comprehensive health care services to enrollees who qualify for services under this section. The corporation may contract for such services on a statewide or regional basis.

(a) The corporation shall establish access and network standards for such contracts and ensure that contracted providers have sufficient providers to meet enrollee needs. Quality standards must be developed by the corporation, specific to the adult population, which take into consideration recommendations from the National Committee on Quality Assurance, stakeholders, and other existing performance indicators from both public and commercial populations.

(b) The corporation shall provide an enrollee a choice of plans. The corporation may select a plan if no selection has been received before the coverage start date. Once enrolled, an enrollee has an initial 90-day, free-look period before a lock-in period of not more than 12 months is applied. Exceptions to the lock-in period must be offered to an enrollee for reasons based upon good cause or qualifying events.

(c) The corporation may consider contracts that provide family plans that would allow members from multiple state and federally funded programs to remain together under the same plan.

(d) All contracts must meet the medical loss ratio requirements under s. 624.91.

(6) BENEFITS.—The corporation shall establish a benefits package that is actuarially equivalent to the benchmark benefit

plan offered under s. 409.815(2), excluding dental, and meets the alternative benefits package requirements under s. 1937 of the Social Security Act. Benefits must be offered as an integrated, single package.

(a) In addition to benchmark benefits, health reimbursement accounts or a comparable health savings account for each enrollee must be established through the corporation or the contracts managed by the corporation. Enrollees must be rewarded for healthy behaviors, wellness program adherence, and other activities established by the corporation which demonstrate compliance with preventive care or disease management guidelines. Funds deposited into these accounts may be used to pay cost-sharing obligations or to purchase over-the-counter health-related items to the extent allowed under federal law or regulation.

(b) Enhanced services may be offered if the cost of such additional services provides savings to the overall plan.

(c) The corporation shall establish a process for the payment of wrap-around services not covered by the benchmark benefit plan through a separate subcapitation process to its contracted providers if it is determined that such services are required by federal law. Such services would be covered when deemed medically necessary on an individual basis. The subcapitation pool is subject to a separate reconciliation process under the medical loss ratio provisions in s. 624.91.

(d) A prior authorization process and other utilization controls may be established by the plan for any benefit if approved by the corporation.

(7) COST SHARING.—The corporation may collect premiums and

copayments from enrollees in accordance with federal law. Amounts to be collected for the Healthy Florida program must be established annually in the General Appropriations Act.

(a) Payment of a monthly premium may be required before the establishment of an enrollee's coverage start date and to retain monthly coverage.

(b) An enrollee may be required to make copayments as a condition of receiving a health care service.

(c) A provider is responsible for the collection of point-of-service cost-sharing obligations. The enrollee's cost-sharing contribution is considered part of the provider's total reimbursement. Failure to collect an enrollee's cost sharing reduces the provider's share of the reimbursement.

(8) PROGRAM MANAGEMENT.—The corporation is responsible for the oversight of the Healthy Florida program. The agency shall seek a state plan amendment or other appropriate federal approval to implement the Healthy Florida program. The agency shall consult with the corporation in the amendment's development and submit by June 14, 2013, the state plan amendment to the federal Department of Health and Human Services. The agency shall contract with the corporation for the administration of the Healthy Florida program and for the timely release of federal and state funds. The agency retains its authorities as provided in ss. 409.902 and 409.963.

(a) The corporation shall establish a process by which grievances can be resolved and Healthy Florida recipients can be informed of their rights under the Medicaid Fair Hearing Process, as appropriate, or any alternative resolution process adopted by the corporation.

(b) The corporation shall establish a program integrity process to ensure compliance with program guidelines. At a minimum, the corporation shall withhold benefits from an applicant or enrollee if the corporation obtains evidence that the applicant or enrollee is no longer eligible, submitted incorrect or fraudulent information in order to establish eligibility, or failed to provide verification of eligibility. The corporation shall notify the applicant or enrollee that, because of such evidence, program benefits must be withheld unless the applicant or enrollee contacts a designated representative of the corporation by a specified date, which must be within 10 working days after the date of notice, to discuss and resolve the matter. The corporation shall make every effort to resolve the matter within a timeframe that will not cause benefits to be withheld from an eligible enrollee. The following individuals may be subject to specific prosecution in accordance with s. 414.39:

1. An applicant who obtains or attempts to obtain benefits for a potential enrollee under the Healthy Florida program when the applicant knows or should have known that the potential enrollee does not qualify for the Healthy Florida program.

2. An individual who assists an applicant in obtaining or attempting to obtain benefits for a potential enrollee under the Healthy Florida program when the individual knows or should have known that the potential enrollee does not qualify for the Healthy Florida program.

(9) APPLICABILITY OF LAWS RELATING TO MEDICAID.—The provisions of ss. 409.902, 409.9128, and 409.920 apply to the administration of the Healthy Florida program.

(10) PROGRAM EVALUATION.—The corporation shall collect both eligibility and enrollment data from program applicants and enrollees as well as encounter and utilization data from all contracted entities during the program term. The corporation shall submit monthly enrollment reports to the President of the Senate, the Speaker of the House of Representative, and the Minority Leaders of the Senate and the House of Representatives. The corporation shall submit an interim independent evaluation of the Healthy Florida program to the presiding officers no later than July 1, 2015, with annual evaluations due July 1 each year thereafter. The evaluations must address, at a minimum, application and enrollment trends and issues, utilization and cost data, and customer satisfaction.

(11) PROGRAM EXPIRATION.—The Healthy Florida program shall expire at the end of the state fiscal year in which any of these conditions occur, whichever occurs first:

(a) The federal match contribution falls below 90 percent.

(b) The federal match contribution falls below the increased FMAP for medical assistance for newly eligible mandatory individuals as specified in the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

(c) The federal match for the Healthy Florida program and the Medicaid program are blended under federal law or regulation in such a way that causes the overall federal contribution to diminish when compared to separate, nonblended federal contributions.

Section 16. The Florida Healthy Kids Corporation may make

changes to comply with the objections of the federal Department of Health and Human Services to gain approval of the Healthy Florida program in compliance with the federal Patient Protection and Affordable Care Act, upon giving notice to the Senate and the House of Representatives of the proposed changes. If there is a conflict between a provision in this section and the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, the provision must be interpreted and applied so as to comply with the requirement of the federal law.

Section 17. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Health Care

Bill Number 1810 *(if applicable)*

Name Joe Anne Hart

Amendment Barcode 803580 *(if applicable)*

Job Title Director of Govt. Relations

Address 118 E. Jefferson St. *Street*

Phone 850-224-1089

Tallahassee *City* FL *State* 32301 *Zip*

E-mail jhart@floridadental.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/2013
Meeting Date

Topic Health Care

Bill Number SB 1816 *(if applicable)*

Name Michael Cannon

Amendment Barcode 803580 *(if applicable)*

Job Title Pres & CEO

Address 200 W. College Ave, Suite 104 *Street*

Phone 850-386-2904

Tallahassee FL 32301 *City State Zip*

E-mail michael@fahp.net

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Healthcare

Bill Number 1716 *(if applicable)*

Name David Francis

Amendment Barcode *(if applicable)*

Job Title Gov Relations Director

Address 2751 Remington Green Cir Ste C
Street

Phone 850-567-0598

Tall FL 32308
City *State* *Zip*

E-mail david-francis@heart.org

Speaking: ☑ For ☐ Against ☐ Information

Representing American Heart Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Medicaid Expansion - MegaCare

Bill Number 1816 *(if applicable)*

Name Barbara DeVane

Amendment Barcode _____ *(if applicable)*

Job Title Independent Contractor

Address 625 E. Brevard St
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 50-222-3969

E-mail barbydevane1@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL NOW & FL Alliance for Retired Americans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic _____ Bill Number 1816 *(if applicable)*

Name Chris Nuland Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115 Phone 904-355-1555
Street

Jacksonville, FL 32204 E-mail nulandlaw@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Public Health Association / Fl. Chapter, American College of Physicians

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.23.13
Meeting Date

Topic SB 1816 Bill Number 1816 *(if applicable)*

Name Andy Bearman Amendment Barcode *(if applicable)*

Job Title CEO FL. Assoc of Community Health Centers

Address 2340 Hansen LAN Phone 850 942 1822
Street

Tallahassee FL E-mail abehrman@fachc.org
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FL. Federally Qualified Health Centers

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Health Care

Bill Number 1816 *(if applicable)*

Name Karen Woodall

Amendment Barcode *(if applicable)*

Job Title

Address 579 E. Call St.
Street

Phone 850-321-9386

Tallahassee FL 32301
City *State* *Zip*

E-mail ~~k~~fcfep@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

Topic HEALTH CARE ~~EXPANSION~~ Bill Number SB-1816 *(if applicable)*

Name JAMES A. EDWARDS Amendment Barcode *(if applicable)*

Job Title

Address 1900 VALENCIA AVE Phone 772-480-3565
Street

FT. PIERCE FL 34946 E-mail
City *State* *Zip*

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

Representing

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Healthcare Expansion

Bill Number 1816 *(if applicable)*

Name Elbra Drain

Amendment Barcode *(if applicable)*

Job Title Skilled ~~Painter~~

Address 836 19 Street Orlando

Phone 407-952-0884

Street

Orlando Fl. 32805

E-mail elbradrain1288@gmail.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing To ~~Vote For bill~~ Peco

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

Topic Expanding Health Care

Bill Number SB1816 *(if applicable)*

Name MRS. Renee Walker

Amendment Barcode *(if applicable)*

Job Title

Address 4815 Cherokee Rose, Drive
Street

Phone (321) 594-3411

Orlando, FL 32808
City *State* *Zip*

E-mail Tryphaena529@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

Representing PICO unite Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic Health Care

Bill Number SB 1816 *(if applicable)*

Name Rev. John LEE SR.

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2849 Herson Way
Street
Ft. Pierce FL 34946
City *State* *Zip*

Phone 772-577.0805

E-mail JohnLeeSR32@Aol.Com

Speaking: ☑ For ☐ Against ☐ Information

Representing Peco united Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Healthcare Expansion

Bill Number SB #1816 *(if applicable)*

Name Booker T. Perry

Amendment Barcode *(if applicable)*

Job Title Volunteer Community Organizer

Address FL FF Exempt Cell
Street

Phone 321 263-6984

E-mail bookerperry@gmail.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing PICO United FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Health Plan

Bill Number SB1814 *(if applicable)*

Name Tammy Perdue

Amendment Barcode _____ *(if applicable)*

Job Title General Counsel

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Industries

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13
Meeting Date

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

Topic Health Care

Bill Number 1816 *(if applicable)*

Name Laura Cantwell

Amendment Barcode _____ *(if applicable)*

Job Title Associate State Director

Address 200 W College Avenue, Suite 304 *Street*

Phone 577-5163

Tallahassee FL 32317 *City* *State* *Zip*

E-mail lcantwell@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2013
Meeting Date

Topic Health Care

Bill Number SB 1816 *(if applicable)*

Name Dorene Barker

Amendment Barcode *(if applicable)*

Job Title Legislative Director

Address 2425 Torreya Dr.
Street
Tall FL 32303
City *State* *Zip*

Phone 850-509-3631

E-mail dorene@floridalegal.org

Speaking: * ☑ For ☐ Against ☐ Information * Waive in Support

Representing Florida Legal Services, Inc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/2013
Meeting Date

Topic Health Care

Bill Number SB 1816 *(if applicable)*

Name Michael Garner

Amendment Barcode *(if applicable)*

Job Title Pres & CEO

Address 200 W. College Ave, Suite 104 *Street*

Phone 850-386-2904

Tallahassee FL 32301 *City State Zip*

E-mail michael@fahp.net

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Extending Healthcare Coverage

Bill Number 1816 *(if applicable)*

Name Dawn Christie

Amendment Barcode *(if applicable)*

Job Title Certified Nursing Assistant

Address 1065 SW Biscaya Ave
Street

Port St Lucie FL 34953
City *State* *Zip*

Phone 561-255-4189

E-mail

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

Representing 1199 SEIU

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Extending Healthcare Coverage

Bill Number 1816 *(if applicable)*

Name Debra Brown

Amendment Barcode *(if applicable)*

Job Title Lab Assistant

Address 717 8th Ave South
Street
Lake Worth FL 33460
City *State* *Zip*

Phone 561-693-7341

E-mail

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

Representing 1199SEIU

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.23.13
Meeting Date

Topic Extending Healthcare Coverage

Bill Number 1816 *(if applicable)*

Name Anthena Haynes

Amendment Barcode *(if applicable)*

Job Title CNA

Address 4206 N. 16th St Apt. 13
Street
Ft. Pierce Fl. 34950
City *State* *Zip*

Phone 772-882-2362

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing 1199SEIU

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Health Care

Bill Number 1816 *(if applicable)*

Name Amy Datz

Amendment Barcode *(if applicable)*

Job Title Retired State Employee

Address 1130 Crestview Ave
Street
Tallahassee, FL 32303
City *State* *Zip*

Phone 850 322-7599

E-mail Amaliedatz@mac.com

Speaking: ☐ For ☐ Against ☐ Information

Representing Supporting Any Plan that Brings Fed. PPACA Dollars into the State.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13
Meeting Date

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

Topic HEALTH CARE

Bill Number SB 1816 *(if applicable)*

Name PAUL BELCHER

Amendment Barcode _____ *(if applicable)*

Job Title SR. VICE PRESIDENT

Address 306 E. COLLEGE AVE
Street
TALLAHASSEE, FLA. 32309
City *State* *Zip*

Phone 850-222-9800

E-mail PAUL@FHA.ORG

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA HOSPITAL ASSOC.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

(WILL WAIVE IN SUPPORT)

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 84
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Diaz de la Portilla
SUBJECT:	Public-Private Partnerships
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	McKay	McVaney	GO	**Fav/CS**
3.	Price	Eichin	TR	**Fav/2 amendments**
4.	Betta	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 84 makes several changes to law relating to public-private partnerships. The bill authorizes certain public entities to contract for public service works with not-for-profit organizations, and revises eligibility and contract requirements for not-for-profit organizations contracting with certain public entities. The bill also revises the powers of a public health trust.

The bill has an indeterminate fiscal impact upon universities, school boards, counties, municipalities, and other public bodies and political subdivisions of the state that may enter public-private partnerships. In addition, there is an indeterminate fiscal impact relating to the administrative support of the task force.

The bill creates a new section of law to facilitate public-private partnerships, when cost-effective, to construct public-purpose projects. Specifically, the bill:

- Provides legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose.

- Creates a task force to provide guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects.
- Provides for notice to affected local jurisdictions as well as for comprehensive agreements between a public and a private entity.
- Specifies the requirements for such partnership.
- Specifies the financing sources for certain projects by a private entity.
- Provides for the applicability of sovereign immunity for public entities with respect to qualified projects.

The bill amends chapter 336, F.S., to authorize procedures for the creation and operation of public-private partnerships for transportation facilities within a county.

The bill creates sections 287.05712 and 336.71, Florida Statutes. The bill amends sections 154.11 and 255.60, Florida Statutes.

II. Present Situation:

Public-Private Partnerships

Overview

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

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

[1] *See* The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited on January 15, 2013).
[2] *See generally* The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: http://ncppp.org/howpart/index.shtml#define (last visited on January 15, 2013).
[3] *Id.*
[4] *See* The Oregon Department of Transportation, The Power of Public-Private Partnerships, available at: http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf (last visited on January 15, 2013).
[5] *Id.*

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

Florida Department of Transportation Public-Private Partnership

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

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

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

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.[13] If FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Register and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.[14] In addition, FDOT requires an initial payment of $50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.[15]

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.[16] FDOT may request proposals from private entities for public-private transportation projects.[17] The partnerships must be qualified by FDOT as part

[6] *See Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 3.
[7] *Id.*
[8] *See* s. 334.30, F.S.
[9] Section 334.30, F.S.
[10] Section 334.30(3), F.S.
[11] Section 334.30(1), F.S.
[12] *Id.*
[13] *Id.*
[14] Section 334.30(6)(a), F.S.
[15] *See* Fla. Admin. Code R. 14-107.0011.
[16] *See* s. 287.055, F.S.
[17] Section 334.30(6)(a), F.S.

of the procurement process outlined in the procurement documents.[18] These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.[19] FDOT must rank the proposals in the order of preference.[20] FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm. If unsuccessful again, FDOT must move to the third-ranked firm.[21] FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.[22]

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

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency[25] procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[26] The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[27]

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

[18] Section 334.30(6)(b), F.S.
[19] Section 334.30(6)(c).
[20] *See* s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.
[21] Section 334.30(6)(d), F.S.
[22] Section 334.30(6)(e), F.S.
[23] Section 334.30(7), F.S.
[24] Section 334.30(12), F.S.
[25] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[26] *See* ss. 287.032 and 287.042, F.S.
[27] Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.
[28] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold provided in s. 287.017, F.S., to be competitively bid.
[29] As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

The Consultants' Competitive Negotiation Act

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

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

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

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

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

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

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

[30] Chapter 73-19, L.O.F.
[31] Chapter 88-108, L.O.F.
[32] Section 287.055, F.S.
[33] Section 287.055(4) and (5), F.S.
[34] *See* s. 287.055(4)(b), F.S.
[35] Section 287.055(2)(d), F.S.

produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Procurement of Construction Services

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

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

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[38] In addition, such projects must be advertised in the Florida Administrative Register at least 21 days prior to the bid opening.[39,40] Counties, municipalities, special districts,[41] or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[42]

Public Health Trusts

There may be created in and for each county of the state a public body corporate and politic, to be known as the "public health trust" of such county, for the purpose of exercising the powers described in Florida Statutes with respect to "designated facilities" as that term is defined in s. 154.08, F.S. No trust created may transact any business or exercise any powers until the governing body of the county of such trust declares that there is a need for such trust to function

[36] As defined in s. 255.072(2), F.S., "construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.
[37] Section 255.29, F.S.
[38] *See* 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.
[39] Section 255.0525(1), F.S.
[40] State construction projects that are projected to exceed $500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Register, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525(1), F.S.
[41] As defined in s. 189.403(1), F.S., "special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.
[42] *See* s. 255.20(1), F.S.

and shall appoint the members thereof. The board of trustees of each public health trust is authorized to become the operator of, and governing body for, any designated facility. The term "designated facility" means any county-owned or county-operated facility used in connection with the delivery of health care, the operation, governance, or maintenance of which has been designated by the governing body of such county for transfer to the public health trust of that county.

Special Contracts with Charitable Youth Organizations

The state, or the governing body of any political subdivision of the state, is authorized, but not required, to contract for public service work such as highway and park maintenance, notwithstanding competitive sealed bid procedures required under this chapter or chapter 287, upon compliance with s. 255.60, F.S. This provision of law permits specified not-for-profit charitable youth organizations to receive no-bid public service contracts if the following conditions are satisfied:

- The contract may not exceed the annual sum of $250,000.
- The organization must be a not-for-profit corporation pursuant to ch. 617, F.S., and s. 501(c)(3) of the Internal Revenue Code.
- The corporate charter of the organization must state that it is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.
- Administrative salaries and benefits of the corporation may not exceed 15 percent of gross revenues, excluding field supervisors' salaries and benefits.
- The contract must be approved by state agency personnel or the governing body of a political subdivision.
- No subcontracting may be implemented and all labor must be performed exclusively by at-risk youth and their direct supervisors.
- Payment must be production-based.
- The contractor must institute a drug-free workplace program substantially in compliance with s. 287.087, F.S.
- The contractor must agree to be subject to Auditor General review.
- The contractor may not be in violation of ss. 287.132 through 287.134, F.S., which proscribe the state from contracting with persons convicted of public entity crimes or found to have violated specified discrimination laws.

Further, the law provides that a court may terminate a contract that does not meet the section's requirements, but shall not require disgorgement of monies earned for goods or services actually delivered or supplied.

III. Effect of Proposed Changes:

Section 1 amends s. 154.11, F.S., to revise the powers of a public health trust to allow leasing of office space controlled by the Public Health Trust.

Section 2 amends s. 255.60, F.S., to revise the existing authority that enables governmental entities to enter into no-bid contracts for public service work with charitable youth organizations, expanding it to also include public-private partnerships with other not-for-profit organizations. A

suggested type of public service work envisioned by the existing statute (highway and park maintenance) is removed.

The bill also provides additional requirements for contracts relating to certain types of work performed by the not-for-profit organization. Specifically, for contracts relating to the preservation, maintenance, and improvement of park land, such property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure; and, for nondescript work "for public education buildings", that the building must be at least 90,000 square feet. Thus, contracts with youth organizations involving properties not meeting these requirements would no longer be authorized. The bill clarifies that contracts written under this section are limited to no more than $250,000 annually.

Section 3 creates s. 287.05712, F.S., relating to public-private partnerships.

Definitions

Subsection (1) provides the following relevant definitions, amongst others. "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.[43] "Qualifying project" means a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, power-generating facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or a water, wastewater, or surface water management facility or other related infrastructure.

Legislative Findings and Intent

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

[43] This definition does not include state agencies.

Public-Private Partnership Guidelines Task Force

Subsection (3) creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to establish guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects. The task force members are follows:

- One member of the Senate, appointed by the President of the Senate.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- The Secretary of Management Services or his or her designee.
- Six members appointed by the Governor, as follows:
  - One county government official.
  - One municipal government official.
  - One district school board member.
  - Three representatives of the business community.

The task force must provide guidelines to public entities no later than July 1, 2014, to include:

- Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.
- Reasonable criteria for choosing among competing proposals.
- Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.
- Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority.
- Procedures for financial review and analysis.
- Consideration of the nonfinancial benefits of a proposed qualifying project.
- A mechanism for the appropriating body to review a proposed comprehensive agreement before execution.
- Analysis of the adequacy of the information released when seeking competing proposals, and providing for the enhancement of that information, if deemed necessary, to encourage competition, as well as establishing standards to maintain the confidentiality of financial and proprietary terms of an unsolicited proposal, which shall be disclosed only in accordance with the bidding procedures of competing proposals.
- Authority for the responsible public entity to engage the services of qualified professionals.

Procurement Procedures

Subsection (4) provides that a responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrade, operation, ownership, or financing of facilities. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal.

The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal for a public private project and the public entity intends to enter into a comprehensive agreement for the project described in such

unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe in which other proposals may be accepted may be determined by the public entity, but must be no less than 21 days, and no more than 120 days.

A public entity that is a school board may enter into a comprehensive agreement under this section of law only with the approval of the local governing body.

Before approval, the responsible public entity must determine that the proposed project:

- Is in the public's best interest.
- Is for a facility that is owned by the responsible public entity or will be conveyed to the responsible public entity.
- Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.
- Has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

Projects Approval Requirements

Subsection (5) provides that an unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information that the responsible public entity reasonably requests.

Project Qualification and Process

Subsection (6) specifies that the private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for

traditional procurement projects. The responsible public entity must ensure that provisions are made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05, F.S. Also the responsible public entity must ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors as well as ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

Notice to Affected Local Jurisdictions

Subsection (7) provides that the responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

Interim Agreement

Subsection (8) specifies that before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

Comprehensive Agreements

Subsection (9) specifies that before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

- The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity.
- The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the responsible public entity, the approval by the responsible public entity.
- The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.
- The maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self insurance.
- The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.
- The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.
- The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity.
- The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project.
- The duties of the private entity, including the terms and conditions that the responsible public entity determine serve the public purpose of this Act.

The comprehensive agreement may include other specified provisions.

Fees

Subsection (10) provides that an agreement entered into pursuant to this bill may authorize the private entity to impose fees for the use of the facility. The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships. The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement. The responsible public entity may lease existing fee for-use facilities through a public-private partnership agreement. Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

Financing

Subsection (11) provides that a private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement. The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this Act. The responsible public entity may use innovative finance techniques associated with a public-private partnership under this Act, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, and the required payment obligation must be appropriated before other noncontractual obligations of the responsible public entity.

Powers and Duties of the Private Entity

Subsection (12) specifies that the private entity shall develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement. The private entity shall maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement. Also, the private entity shall cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity. The private entity shall also comply with the comprehensive agreement and any lease or service contract.

Expiration or Termination of Agreements

Subsection (13) provides that upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.

Sovereign Immunity

Subsection (14) provides that this bill does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located

possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

Construction

Subsection (15) provides that the bill is to be liberally construed to effectuate its purposes. The Act does not waive any requirement of s. 287.055, F.S.

Section 4 creates s. 336.71, F.S., on the creation of public-private transportation facilities in a county. The provisions in this section appear to mirror provisions in s. 334.30, F.S.

A county may receive or solicit proposals and enter into agreements with private entities or consortia thereof to build, operate, own, or finance highways, bridges, multimodal transportation systems, transit-oriented development nodes, transit stations, and related transportation facilities located solely within the county, including municipalities therein. Before approval, the county must determine that a proposed project:

- Is in the best interest of the public.
- Would not require county funds to be used unless the project is on the county road system or would provide increased mobility on the county road system.
- Would have adequate safeguards.
- Would be owned by the county upon completion or termination of the agreement.

The county shall ensure that all reasonable costs to the county related to transportation facilities that are not part of the county road system are borne by the private entity that develops or operates the facilities.

The county may request proposals and receive unsolicited proposals for public-private transportation facilities. Agreements entered into pursuant to this section may authorize the county or the private project owner, lessee, or operator to impose, collect, and enforce tolls or fares for the use of the transportation facility. Each public-private transportation facility constructed pursuant to this section must comply with all requirements of federal, state, and local laws. The governing body of the county may exercise any of its powers, including eminent domain, to facilitate the development and construction of transportation projects pursuant to this section. Except as otherwise provided in this section, this section is not intended to amend existing law by granting additional powers to or imposing further restrictions on local governmental entities with regard to regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities. This section does not authorize a county or counties to enter into agreements with private entities or consortia thereof to build, operate, own, or finance a transportation facility that would extend beyond the geographical boundaries of a single county.

Public-private partnership agreements under this section shall be limited to a term not exceeding 75 years.

Section 5 provides an effective date of July 1, 2013.

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:

An agreement entered into pursuant to this bill may authorize the private entity to impose fees for the use of the facility. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

B. Private Sector Impact:

The bill may provide for more opportunities for the private sector to enter into contracts for certain qualified projects with political subdivisions of the state.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on political subdivisions of the state that enter into public-private partnerships. Expenditures would be based on currently unidentified agreements with public-private partnerships. This bill may provide for more projects at a lower risk to political subdivisions of the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides, "administrative and technical support shall be provided by the department." The bill does not specify which department to which it is referring.

The provisions of the bill address partnerships between local governments and private contractors, so the Legislature may wish to consider whether someone from the Department of Economic Opportunity should be on the task force, instead of the Secretary of the Department of Management Services.

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/CS by Appropriations Committee on April 23, 2013:
The CS/CS/CS makes the following changes:

- Revising the powers of a public health trust to allow leasing of office space controlled by the Public Health Trust;
- Authorizes certain public entities to contract for public service works with a not-for-profit organization despite competitive sealed bid requirements;
- Revises eligibility and contract requirements for not-for-profit organizations contracting with certain public entities; and
- Provides that when a responsible public entity receives an unsolicited proposal for a public-private project, the public entity must publish notice of the proposal *only* if it intends to enter into a comprehensive agreement for the project described in the unsolicited proposal.

CS/CS by Governmental Oversight and Accountability on March 14, 2013:
The CS/CS makes the following changes to the CS:

- Creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force;
- Extends the timeframe in which proposals may be accepted;
- Authorizes the use of interim agreements, which allow for specified terms to be agreed to prior to entering into a comprehensive agreement;
- Authorizes the creation of public-private partnerships for transportation facilities within a county; and
- Makes technical and clarifying changes.

CS by Community Affairs on January 23, 2013:
The CS makes technical and clarifying changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (f) of subsection (1) of section 154.11, Florida Statutes, is amended to read:

154.11 Powers of board of trustees.—

(1) The board of trustees of each public health trust shall be deemed to exercise a public and essential governmental function of both the state and the county and in furtherance thereof it shall, subject to limitation by the governing body of the county in which such board is located, have all of the


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powers necessary or convenient to carry out the operation and governance of designated health care facilities, including, but without limiting the generality of, the foregoing:

(f) To lease, either as lessee or lessor, or rent for any number of years and upon any terms and conditions real property, except that the board shall not lease or rent, as lessor, any real property other than office space controlled by the Public Health Trust, except in accordance with the requirements of s. 125.35 [F. S. 1973].

Section 2. Section 255.60, Florida Statutes, is amended to read:

255.60 Special contracts with charitable not-for-profit ~~youth~~ organizations.—The state, ~~or~~ the governing body of any political subdivision of the state, or a public-private partnership is authorized, but not required, to contract for public service work with a not-for-profit organization ~~such as highway and park maintenance,~~ notwithstanding competitive sealed bid procedures required under this chapter, ~~or~~ chapter 287, or any municipal or county charter, upon compliance with this section.

(1) The contractor or supplier must meet the following conditions:

(a) The contractor or supplier must be a not-for-profit corporation incorporated under chapter 617 and in good standing.

(b) The contractor or supplier must hold exempt status under s. 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code.

(c) For youth organizations, the corporate charter of the contractor or supplier must state that the corporation is


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organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.

(d) Administrative salaries and benefits for any such corporation shall not exceed 15 percent of gross revenues. Field supervisors shall not be considered administrative overhead.

(2) The contract, if approved by authorized agency personnel of the state, ~~or~~ the governing body of a political subdivision, or the public-private partnership, as appropriate, must provide at a minimum that:

(a) For youth organizations, labor shall be performed exclusively by at-risk youth and their direct supervisors; and shall not be subject to subcontracting.

(b) For the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with contiguous permanent public facilities that are capable of seating at least 5,000 persons.

(c) For public education buildings, the building must be at least 90,000 square feet.

(d) ~~(b)~~ Payment must be production-based.

(e) ~~(c)~~ The contract will terminate should the contractor or supplier no longer qualify under subsection (1).

(f) ~~(d)~~ The supplier or contractor has instituted a drug-free workplace program substantially in compliance with the provisions of s. 287.087.

(g) ~~(e)~~ The contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure that the contractor or supplier has complied with this section.

(3) A ~~No~~ contract under this section may not exceed the

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annual sum of $250,000.

(4) Should a court find that a contract purporting to have been entered into pursuant to this section does not so qualify, the court may order that the contract be terminated on reasonable notice to the parties. The court shall not require disgorgement of any moneys earned for goods or services actually delivered or supplied.

(5) Nothing in this section shall excuse any person from compliance with ss. 287.132-287.134.

Section 3. Section 287.05712, Florida Statutes, is created to read:

287.05712 Public-private partnerships.—

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

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

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

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

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

(e) "Material default" means nonperformance of duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

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


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

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and the project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity, the public at large, or that supports a service delivery system in the public sector;

3. A water, wastewater, or surface water management facility or other related infrastructure; or

4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, only those projects that the governing board

designates as qualifying projects pursuant to this section.

(j) "Responsible public entity" means a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

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

(l) "Service contract" means a contract between a public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which

serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

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

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

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

(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.—

(a) There is created the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force for the purpose of recommending guidelines for the Legislature to consider for

purposes of creating a uniform process for establishing public-private partnerships, including the types of factors responsible public entities should review and consider when processing requests for public-private partnership projects pursuant to this section.

(b) The task force shall be composed of seven members as follows:

1. The secretary of the Department of Management Services or his or her designee, who shall serve as chair of the task force.

2. Six members appointed by the Governor, as follows:

a. One county government official.

b. One municipal government official.

c. One district school board member.

d. Three representatives of the business community.

(c) Task force members must be appointed by July 31, 2013. By August 31, 2013, the task force shall meet to establish procedures for the conduct of its business and to elect a vice chair. The task force shall meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings shall be held in Tallahassee unless otherwise decided by the task force. No more than two meetings may be held in a location other than Tallahassee for the purpose of taking public testimony. Administrative and technical support shall be provided by the department. Task force members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(d) In reviewing public-private partnerships and developing recommendations, the task force must consider:

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

2. Reasonable criteria for choosing among competing proposals.

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

4. Whether an accelerated selection, review, and documentation timeline should be considered for proposals involving a qualifying project that the responsible public entity deems a priority.

5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project.

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

7. Current exemptions from public records and public meetings requirements, and if any changes to those exemptions are necessary or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal.

8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered


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professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity.

(e) The task force must submit a final report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2014.

(f) The task force is terminated December 31, 2014. The establishment of guidelines pursuant to this section by the task force or the adoption of such guidelines by a public entity is not required for the public entity to request or receive proposals for a qualifying project or to enter into a comprehensive agreement for a qualifying project. A public entity may adopt guidelines before or after the establishment of guidelines by the task force, which may remain in effect if such guidelines are not inconsistent with the guidelines established by the task force. A guideline that is inconsistent with the guidelines of the task force must be amended as necessary to maintain consistency with the task force guidelines.

(4) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a) The responsible public entity may establish a

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reasonable application fee for the submission of an unsolicited proposal under this section. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation of the proposal.

(b) The responsible public entity may request a proposal from private entities for a public-private project; or, if the public entity receives an unsolicited proposal for a public-private project and the public entity intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the public entity may accept other proposals shall be determined by the public entity on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after publication of the notice. A copy of the notice must be mailed to each local government in the affected area.

(c) A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.

(d) Before approval, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.


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2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or to add capacity to other facilities serving similar predominantly public purposes.

5. Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (11), the project cost, revenues by source, available financing, major assumptions, internal rate of return on private investments if governmental funds are assumed in order to deliver a cost-feasible project, and the total cash-flow analysis beginning with the implementation of the project and extending for the term of the agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the

operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances that would allow changes to such user fees, lease payments, and service payments in the future.

(f) Reasonable additional material or information requested by the responsible public entity.

(6) PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity must meet the minimum standards

contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must ensure:

1. That provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. The most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. That provision is made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked proposer. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the highest-ranked proposer and negotiate with


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the second- or subsequent-ranked proposers in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

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

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

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

3. The private entity’s plans will result in the timely acquisition, design, construction, improvement, renovation,

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expansion, equipping, maintenance, or operation of the qualifying project.

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

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

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

(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.

(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit written comments to the responsible public entity to indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, any development of regional impact processes or timelines, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive

agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, such nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

(8) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

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

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

(c) Relate to an aspect of the development or operation of

a qualifying project that the responsible public entity and the private entity deem appropriate.

(9) COMPREHENSIVE AGREEMENT.—

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

1. The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in a form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. The review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.

4. The maintenance by the private entity of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in a form and amount

satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in


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the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. The duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

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

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(10) FEES.—An agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships.

(b) The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive

agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a public-private partnership agreement.

(d) Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

(11) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 of the Code of Federal Regulations, commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the


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responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided for in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provision is void.

(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other noncontractual obligations payable from the same enterprise or other government fund.

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

(a) The private entity shall:

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

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

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions


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of the comprehensive agreement.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying

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project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(14) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(15) CONSTRUCTION.—This section shall be liberally

construed to effectuate the purposes of this section. This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing board of a county, district, or municipal hospital or health care system including those contained in acts of the Legislature establishing such public hospital boards or s. 155.40. This section does not affect any agreement or existing relationship with a supporting organization involving such governing board or system in effect as of January 1, 2013.

(a) This section does not limit a political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory authority.

(b) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(c) This section does not waive any requirement of s. 287.055.

Section 4. Section 336.71, Florida Statutes, is created to read:

336.71 Public-private cooperation in construction of county roads.-

(1) If a county receives a proposal, solicited or unsolicited, from a private entity seeking to construct, extend, or improve a county road or portion thereof, the county may enter into an agreement with the private entity for completion of the road construction project, which agreement may provide

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for payment to the private entity, from public funds, if the county conducts a noticed public hearing and finds that the proposed county road construction project:

(a) Is in the best interest of the public.

(b) Uses county funds only for portions of the project that will be part of the county road system.

(c) Has adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the public.

(d) Will, upon completion, be a part of the county road system owned by the county.

(e) Results in a financial benefit to the public by completing the project at a cost to the public significantly lower than if the project were completed by the county using the normal procurement process.

(2) The notice for the public hearing provided for in subsection (1) must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to accept the proposal and enter into an agreement pursuant thereto. The determination of cost savings pursuant to paragraph (1)(e) must be supported by a professional engineer's cost estimate made available to the public at least 14 days before the public meeting and placed in the record for that meeting.

(3) Upon compliance with subsection (1), the project and agreement are exempt from s. 255.20 pursuant to s.

456632

255.20(1)(c)11.

(4) Except as otherwise expressly provided in this section, this section does not affect existing law by granting additional powers to or imposing further restrictions on local government entities.

Section 5. This act shall take effect July 1, 2013.

========== 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 public-private partnerships; amending s. 154.11, F.S.; revising the powers of a public health trust; amending s. 255.60, F.S.; authorizing certain public entities to contract for public service works with not-for-profit organizations; revising eligibility and contract requirements for not-for-profit organizations contracting with certain public entities; creating s. 287.05712, F.S.; providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; creating a task force to establish specified guidelines; providing procurement procedures; providing requirements for project approval; providing project qualifications and process; providing for notice to affected local jurisdictions; providing for

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interim and comprehensive agreements between a public and a private entity; providing for use fees; providing for financing sources for certain projects by a private entity; providing powers and duties of private entities; providing for expiration or termination of agreements; providing for the applicability of sovereign immunity for public entities with respect to qualified projects; providing for construction of the act; creating s. 336.71, F.S.; authorizing counties to enter into public-private partnership agreements for construction of roads under certain circumstances; providing bid exemption for such projects under certain circumstances; providing for a public notice and meeting; providing applicability; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment to Amendment (456632) (with title amendment)

Between lines 742 and 743
insert:

Section 5. Paragraph (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (7) of section 1010.62, Florida Statutes, are amended to read:

1010.62 Revenue bonds and debt.—

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

(c) "Debt" means bonds, except revenue bonds as defined in

paragraph (e), loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, public-private partnership agreements, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing for or on behalf of a state university or a direct-support organization or for the acquisition, construction, improvement, or purchase of capital outlay projects.

(2)(a) The Board of Governors may request the issuance of revenue bonds pursuant to the State Bond Act and s. 11(d), Art. VII of the State Constitution to finance or refinance capital outlay projects permitted by law. Revenue bonds may be secured by or payable only from those revenues authorized for such purpose, including the Capital Improvement Trust Fund fee, ~~the building fee,~~ the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services, other revenues attributable to the projects to be financed or refinanced, any other revenue approved by the Legislature for facilities construction or for securing revenue bonds issued pursuant to s. 11(d), Art. VII of the State Constitution, or any other revenues permitted by law. Revenues from the activity and service fee and the athletic fee may be used to pay and secure revenue bonds except that the annual debt service may ~~shall~~ not exceed an amount equal to 5 percent of the fees collected during the most


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recent 12 consecutive months for which collection information is available before ~~prior to~~ the sale of the bonds. The assets of a university foundation and the earnings thereon may also be used to pay and secure revenue bonds of the university or its direct-support organizations. Revenues from royalties and licensing fees may also be used to pay and secure revenue bonds so long as either the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees, or such revenues are used to secure revenue bonds issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. Revenue bonds may not be secured by or be payable from, directly or indirectly, tuition, the financial aid fee, ~~sales and services of educational departments,~~ revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs, or any other operating revenues of a state university. Revenues from one auxiliary enterprise may ~~not~~ be used to secure revenue bonds of another only if ~~unless~~ the Board of Governors, after review and analysis, determines that either the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such revenue bonds or such revenues are used to secure revenue bonds issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project.

(3)(a) A state university or direct-support organization may not issue debt without the approval of the Board of Governors. The Board of Governors may approve the issuance of


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debt by a state university or a direct-support organization only when such debt is used to finance or refinance capital outlay projects. The debt may be secured by or payable only from those revenues authorized for such purpose, including the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services. Revenues derived from the activity and service fee and the athletic fee may be used to pay and secure debt except that the annual debt service may ~~shall~~ not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available before ~~prior to~~ incurring the debt. The assets of university foundations and the earnings thereon may be used to pay and secure debt of the university or its direct-support organizations. Gifts and donations or pledges of gifts may also be used to secure debt so long as the maturity of the debt, including extensions, renewals, and refundings, does not exceed 5 years. Revenues from royalties and licensing fees may also be used to secure debt so long as either the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees or such revenues are used to secure debt issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. The debt may not be secured by or be payable from, directly or indirectly,


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tuition, the financial aid fee, ~~sales and services of educational departments,~~ revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs of grants, or any other operating revenues of a state university. The debt of direct-support organizations may not be secured by or be payable under an agreement or contract with a state university unless the source of payments under such agreement or contract is limited to revenues that universities are authorized to use for payment of debt service. Revenues from one auxiliary enterprise may ~~not~~ be used to secure debt of another only if ~~unless~~ the Board of Governors, after review and analysis, determines that either the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such debt or such revenues are used to secure debt issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. Debt may not be approved to finance or refinance operating expenses of a state university or a direct-support organization. The maturity of debt used to finance or refinance the acquisition of equipment or software, including any extensions, renewals, or refundings thereof, shall be limited to 5 years or the estimated useful life of the equipment or software, whichever is shorter. The Board of Governors may establish conditions and limitations on such debt as it determines to be advisable.

(7)(a) As required pursuant to s. 11(d), Art. VII of the State Constitution and subsection (6), the Legislature approves capital outlay projects meeting the following requirements:

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1. The project is located on a campus of a state university or on land leased to the university or is used for activities relating to the state university;

2. The project is included in the master plan of the state university or is for facilities that are not required to be in a university's master plan;

3. The project is approved by the Board of Governors as being consistent with the strategic plan of the state university and the programs offered by the state university; and

4. The project is for purposes relating to the housing, transportation, health care, research or research-related activities, food service, retail sales, ~~or~~ student activities, or academic or educational activities of the state university.

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

And the title is amended as follows:

Delete line 781

and insert:

applicability; amending s. 1010.62, F.S.; adding public-private partnership agreements to the definition of the term university "debt"; revising sources that may be used to secure or pay revenue bonds; authorizing revenues from royalties and licensing and auxiliary enterprise revenues to be used to secure debt for academic, educational, and research facilities that are part of a multipurpose project; authorizing academic and educational activities to be bonded without legislative approval of the specific project; providing an effective date.

273636

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 736 and 737
insert:

Section 3. Paragraph (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (7) of section 1010.62, Florida Statutes, are amended to read:

1010.62 Revenue bonds and debt.—

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

(c) "Debt" means bonds, except revenue bonds as defined in paragraph (e), loans, promissory notes, lease-purchase

agreements, certificates of participation, installment sales, leases, public-private partnership agreements, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing for or on behalf of a state university or a direct-support organization or for the acquisition, construction, improvement, or purchase of capital outlay projects.

(2)(a) The Board of Governors may request the issuance of revenue bonds pursuant to the State Bond Act and s. 11(d), Art. VII of the State Constitution to finance or refinance capital outlay projects permitted by law. Revenue bonds may be secured by or payable only from those revenues authorized for such purpose, including the Capital Improvement Trust Fund fee, ~~the building fee,~~ the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services, other revenues attributable to the projects to be financed or refinanced, any other revenue approved by the Legislature for facilities construction or for securing revenue bonds issued pursuant to s. 11(d), Art. VII of the State Constitution, or any other revenues permitted by law. Revenues from the activity and service fee and the athletic fee may be used to pay and secure revenue bonds except that the annual debt service may ~~shall~~ not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is

available before ~~prior to~~ the sale of the bonds. The assets of a university foundation and the earnings thereon may also be used to pay and secure revenue bonds of the university or its direct-support organizations. Revenues from royalties and licensing fees may also be used to pay and secure revenue bonds so long as either the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees, or such revenues are used to secure revenue bonds issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. Revenue bonds may not be secured by or be payable from, directly or indirectly, tuition, the financial aid fee, ~~sales and services of educational departments,~~ revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs, or any other operating revenues of a state university. Revenues from one auxiliary enterprise may ~~not~~ be used to secure revenue bonds of another only if ~~unless~~ the Board of Governors, after review and analysis, determines that either the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such revenue bonds or such revenues are used to secure revenue bonds issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project.

(3)(a) A state university or direct-support organization may not issue debt without the approval of the Board of Governors. The Board of Governors may approve the issuance of debt by a state university or a direct-support organization only

when such debt is used to finance or refinance capital outlay projects. The debt may be secured by or payable only from those revenues authorized for such purpose, including the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services. Revenues derived from the activity and service fee ~~and the athletic fee~~ may be used to pay and secure debt except that the annual debt service may ~~shall~~ not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available before ~~prior to~~ incurring the debt. The assets of university foundations and the earnings thereon may be used to pay and secure debt of the university or its direct-support organizations. Gifts and donations or pledges of gifts may also be used to secure debt so long as the maturity of the debt, including extensions, renewals, and refundings, does not exceed 5 years. Revenues from royalties and licensing fees may also be used to secure debt so long as either the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees or such revenues are used to secure debt issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. The debt may not be secured by or be payable from, directly or indirectly, tuition, the financial aid fee, ~~sales and services of~~

~~educational departments,~~ revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs of grants, or any other operating revenues of a state university. The debt of direct-support organizations may not be secured by or be payable under an agreement or contract with a state university unless the source of payments under such agreement or contract is limited to revenues that universities are authorized to use for payment of debt service. Revenues from one auxiliary enterprise may ~~not~~ be used to secure debt of another only if ~~unless~~ the Board of Governors, after review and analysis, determines that either the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such debt or such revenues are used to secure debt issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. Debt may not be approved to finance or refinance operating expenses of a state university or a direct-support organization. The maturity of debt used to finance or refinance the acquisition of equipment or software, including any extensions, renewals, or refundings thereof, shall be limited to 5 years or the estimated useful life of the equipment or software, whichever is shorter. The Board of Governors may establish conditions and limitations on such debt as it determines to be advisable.

(7)(a) As required pursuant to s. 11(d), Art. VII of the State Constitution and subsection (6), the Legislature approves capital outlay projects meeting the following requirements:

1. The project is located on a campus of a state university


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or on land leased to the university or is used for activities relating to the state university;

2. The project is included in the master plan of the state university or is for facilities that are not required to be in a university's master plan;

3. The project is approved by the Board of Governors as being consistent with the strategic plan of the state university and the programs offered by the state university; and

4. The project is for purposes relating to the housing, transportation, health care, research or research-related activities, food service, retail sales, ~~or~~ student activities, or academic or educational activities of the state university.

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

And the title is amended as follows:

Delete line 26

and insert:

requiring a fee for certain proposals; amending s. 1010.62, F.S.; adding public-private partnership agreements to the definition of the term university "debt"; revising sources that may be used to secure or pay revenue bonds; authorizing revenues from royalties and licensing and auxiliary enterprise revenues to be used to secure debt for academic, educational, and research facilities that are part of a multipurpose project; authorizing academic and educational activities to be bonded without legislative approval of the specific project; providing an

By the Committees on Governmental Oversight and Accountability; and Community Affairs; and Senator Diaz de la Portilla

585-02420-13 201384c2

A bill to be entitled

An act relating to public-private partnerships; creating s. 287.05712, F.S.; providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; creating a task force to establish specified guidelines; providing procurement procedures; providing requirements for project approval; providing project qualifications and process; providing for notice to affected local jurisdictions; providing for interim and comprehensive agreements between a public and a private entity; providing for use fees; providing for financing sources for certain projects by a private entity; providing powers and duties of private entities; providing for expiration or termination of agreements; providing for the applicability of sovereign immunity for public entities with respect to qualified projects; providing for construction of the act; creating s. 336.71, F.S.; authorizing counties to enter into public-private partnership agreements for construction, operation, ownership, and financing of transportation facilities; providing requirements and limitations for such agreements; providing procurement procedures; requiring a fee for certain proposals; providing an effective date.

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

585-02420-13 201384c2

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

287.05712 Public-private partnerships.—

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

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

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

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

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

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

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

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

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or

3. A water, wastewater, or surface water management facility or other related infrastructure.

(j) "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

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

(l) "Service contract" means a contract between a public

entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There may be state and federal tax incentives that promote partnerships between public and private entities to

develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

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

(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.-

(a) The Partnership for Public Facilities and Infrastructure Act Guidelines Task Force is created to establish guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects pursuant to this section, including consistent requirements for private entities seeking to participate in the construction or development of a qualifying project throughout the state.

(b) The task force shall consist of nine members, as follows:

1. One member of the Senate, appointed by the President of the Senate.

2. One member of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. The Secretary of Management Services or his or her designee.

4. Six members appointed by the Governor, as follows:

a. One county government official.

b. One municipal government official.

c. One district school board member.

d. Three representatives of the business community.

(c) Task force members shall serve for a term of 2 years each and shall elect a chair and a vice chair. The task force shall meet as necessary. Administrative and technical support shall be provided by the department. Task force members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061. The task force shall terminate on July 1, 2015.

(d) The task force shall provide guidelines to public entities no later than July 1, 2014. The guidelines shall include:

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

2. Reasonable criteria for choosing among competing proposals.

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

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

5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project.

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

7. A mechanism for the appropriating body to review a proposed comprehensive agreement before execution.

8. Analysis of the adequacy of the information released when seeking competing proposals, and providing for the enhancement of that information, if deemed necessary, to encourage competition, as well as establishing standards to maintain the confidentiality of financial and proprietary terms of an unsolicited proposal, which shall be disclosed only in accordance with the bidding procedures of competing proposals.

9. Authority for the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity. Professional services as defined in s. 287.055 must be engaged pursuant to s. 287.055.

(e) The establishment of guidelines pursuant to this section by the task force or the adoption of such guidelines by a public entity is not required for the public entity to request or receive proposals for a qualifying project or to enter into a comprehensive agreement for a qualifying project. A public entity may adopt guidelines before the establishment of guidelines by the task force, which may remain in effect as long

as such guidelines are not inconsistent with the guidelines established by the task force. A guideline that is inconsistent with the guidelines of the task force must be amended as necessary to maintain consistency with the task force guidelines.

(4) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a) The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the public entity may accept other proposals shall be determined by the public entity on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received;

however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. A copy of the notice must be mailed to each local government in the affected area. The scope of the proposal may be publicized for the purpose of soliciting competing proposals; however, the financial terms of the proposal may not be disclosed until the terms of all competing bids are simultaneously disclosed in accordance with the applicable law governing procurement procedures for the qualifying project.

(c) A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.

(d) Before approval, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.

2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

5. Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (11), the project cost, revenues by source, available financing, major assumptions, internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project, and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the

private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

(f) Additional material or information that the responsible public entity reasonably requests.

(6) PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that provision is made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management

facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

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

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

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

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

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

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

(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each

affected local jurisdiction when considering a proposal for a qualifying project.

(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

(8) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited

to provisions that:

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

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

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(9) COMPREHENSIVE AGREEMENT.—

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

1. The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the

responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.

4. The maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the

qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. The duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

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

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local

jurisdiction, to the affected local jurisdiction for public use.

(10) FEES.—An agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships.

(b) The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a public-private partnership agreement.

(d) Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

(11) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private

entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provision is void.

(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other noncontractual obligations payable from the same enterprise or other government fund.

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

(a) The private entity shall:

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

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

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet

its commitments to the responsible public entity pursuant to the comprehensive agreement.

(13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(14) SOVEREIGN IMMUNITY.—This section does not waive the

sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(15) CONSTRUCTION.—This section shall be liberally construed to effectuate the purposes of this section.

(a) This section does not limit a state agency or political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory authority.

(b) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(c) This section does not waive any requirement of s. 287.055.

Section 2. Section 336.71, Florida Statutes, is created to read:

336.71 Public-private transportation facilities.—

(1) A county may receive or solicit proposals and enter into agreements with private entities or consortia thereof to build, operate, own, or finance highways, bridges, multimodal

transportation systems, transit-oriented development nodes, transit stations, and related transportation facilities located solely within the county, including municipalities therein. Before approval, the county must determine that a proposed project:

(a) Is in the best interest of the public.

(b) Would not require county funds to be used unless the project is on the county road system or would provide increased mobility on the county road system.

(c) Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and citizens of the state in the event of default or cancellation of the agreement by the county.

(d) Would be owned by the county upon completion or termination of the agreement.

(2) The county shall ensure that all reasonable costs to the county related to transportation facilities that are not part of the county road system are borne by the private entity that develops or operates the facilities. The county shall also ensure that all reasonable costs to the county and substantially affected local governments and utilities related to the private transportation facility are borne by the private entity for transportation facilities that are owned by private entities. For projects on the county road system or that provide increased mobility on the county road system, the county may use county resources to participate in funding and financing the project pursuant to the county's financial policies and ordinances.

(3) The county may request proposals and receive

unsolicited proposals for public-private transportation facilities. Upon a determination by the governing body of the county to issue a request for proposals, the governing body of the county must publish a notice of the request for proposals in a newspaper of general circulation in the county at least once a week for 2 weeks. Upon receipt of an unsolicited proposal, the governing body of the county must publish a notice in a newspaper of general circulation in the county at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to the governing body of each local government in the affected area. After the public notification period has expired, the governing body of the county shall rank the proposals in order of preference. In ranking the proposals, the governing body of the county shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for county funds to complete the project. If the governing body of the county is not satisfied with the results of the negotiations, it may terminate negotiations with the proposer. If negotiations are unsuccessful, the governing body of the county may negotiate with the private entity that has the next highest ranked proposal, using the same procedure. If only one proposal is received, the governing body of the county may negotiate in good faith and may, if not satisfied with the results, terminate negotiations with the proposer. The governing body of the county may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer. Any

private entity submitting an unsolicited proposal shall submit with the proposal a fee of $25,000 to be used by the governing body of the county for the costs associated with the review and analysis of the proposal, and such entity shall remain liable for any additional costs and expenses incurred by the governing body of the county for such review and analysis.

(4) Agreements entered into pursuant to this section may authorize the county or the private project owner, lessee, or operator to impose, collect, and enforce tolls or fares for the use of the transportation facility. However, the amount and use of toll or fare revenue shall be regulated by the county to avoid unreasonable costs to users of the facility.

(5) Each public-private transportation facility constructed pursuant to this section shall comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the county's rules, policies, procedures, and standards for transportation facilities; and any other conditions that the county determines to be in the best interest of the public.

(6) The governing body of the county may exercise any of its powers, including eminent domain, to facilitate the development and construction of transportation projects pursuant to this section. The governing body of the county may pay all or part of the cost of operating and maintaining the facility and may provide services to the private entity, for which services it shall receive full or partial reimbursement.

(7) Except as otherwise provided in this section, this section is not intended to amend existing law by granting additional powers to or imposing further restrictions on local

governmental entities with regard to regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities.

(8) Public-private partnership agreements under this section shall be limited to a term not exceeding 75 years.

(9) This section does not authorize a county or counties to enter into agreements with private entities or consortia thereof to build, operate, own, or finance a transportation facility that would extend beyond the geographical boundaries of a single county.

Section 3. This act shall take effect July 1, 2013.

502258

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/03/2013	.	
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	.	
	.	

The Committee on Transportation (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Before line 31

insert:

Section 1. Section 255.60, Florida Statutes, is amended to read:

255.60 Special contracts with charitable not-for-profit ~~youth~~ organizations.—The state, ~~or~~ the governing body of any political subdivision of the state, or a public-private partnership is authorized, but not required, to contract for public service work with a not-for-profit organization ~~such as highway and park maintenance,~~ notwithstanding competitive sealed


502258

bid procedures required under this chapter, ~~or~~ chapter 287, or any municipal or county charter, upon compliance with this section.

(1) The contractor or supplier must meet the following conditions:

(a) The contractor or supplier must be a not-for-profit corporation incorporated under chapter 617 and in good standing.

(b) The contractor or supplier must hold exempt status under s. 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code.

~~(c) The corporate charter of the contractor or supplier must state that the corporation is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.~~

(c) ~~(d)~~ Administrative salaries and benefits for any such corporation shall not exceed 15 percent of gross revenues. Field supervisors shall not be considered administrative overhead.

(2) The contract, if approved by authorized agency personnel of the state, ~~or~~ the governing body of a political subdivision, or the public-private partnership, as appropriate, must provide at a minimum that:

(a) For youth organizations, labor shall be performed exclusively by at-risk youth and their direct supervisors; and shall not be subject to subcontracting.

(b) For the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure.

(c) For public education buildings, the building must be at

502258

least 90,000 square feet.

(d) ~~(b)~~ Payment must be production-based.

(e) ~~(c)~~ The contract will terminate should the contractor or supplier no longer qualify under subsection (1).

~~(d) The supplier or contractor has instituted a drug-free workplace program substantially in compliance with the provisions of s. 287.087.~~

(f) ~~(c)~~ The contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure that the contractor or supplier has complied with this section.

(3) A ~~No~~ contract under this section may not exceed the annual sum of $250,000.

(4) Should a court find that a contract purporting to have been entered into pursuant to this section does not so qualify, the court may order that the contract be terminated on reasonable notice to the parties. The court shall not require disgorgement of any moneys earned for goods or services actually delivered or supplied.

(5) Nothing in this section shall excuse any person from compliance with ss. 287.132-287.134.

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

And the title is amended as follows:

Between lines 2 and 3

insert:

amending s. 255.60, F.S.; authorizing certain public entities to contract for public service works with a not-for-profit organization despite competitive sealed

bid requirements; revising eligibility requirements for not-for-profit organizations contracting with certain public entities; revising required contract provisions;

725490

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/03/2013	.	
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	.	

The Committee on Transportation (Diaz de la Portilla) recommended the following:

Senate Amendment

Delete line 223
and insert:
public entity receives an unsolicited proposal for a public-private project and the public entity intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the public

343044

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/03/2013	.	
	.	
	.	
	.	

The Committee on Transportation (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Before line 31

insert:

Section 1. Section 255.60, Florida Statutes, is amended to read:

255.60 Special contracts with charitable not-for-profit ~~youth~~ organizations.—The state, ~~or~~ the governing body of any political subdivision of the state, or a public-private partnership is authorized, but not required, to contract for public service work with a not-for-profit organization ~~such as highway and park maintenance,~~ notwithstanding competitive sealed

bid procedures required under this chapter, ~~or~~ chapter 287, or any municipal or county charter, upon compliance with this section.

(1) The contractor or supplier must meet the following conditions:

(a) The contractor or supplier must be a not-for-profit corporation incorporated under chapter 617 and in good standing.

(b) The contractor or supplier must hold exempt status under s. 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code.

(c) For youth organizations, the corporate charter of the contractor or supplier must state that the corporation is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.

(d) Administrative salaries and benefits for any such corporation shall not exceed 15 percent of gross revenues. Field supervisors shall not be considered administrative overhead.

(2) The contract, if approved by authorized agency personnel of the state, ~~or~~ the governing body of a political subdivision, or the public-private partnership, as appropriate, must provide at a minimum that:

(a) For youth organizations, labor shall be performed exclusively by at-risk youth and their direct supervisors; and shall not be subject to subcontracting.

(b) For the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure.

(c) For public education buildings, the building must be at

343044

least 90,000 square feet.

(d) ~~(b)~~ Payment must be production-based.

(e) ~~(c)~~ The contract will terminate should the contractor or supplier no longer qualify under subsection (1).

(f) ~~(d)~~ The supplier or contractor has instituted a drug-free workplace program substantially in compliance with the provisions of s. 287.087.

(g) ~~(e)~~ The contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure that the contractor or supplier has complied with this section.

(3) A ~~No~~ contract under this section may not exceed the annual sum of $250,000.

(4) Should a court find that a contract purporting to have been entered into pursuant to this section does not so qualify, the court may order that the contract be terminated on reasonable notice to the parties. The court shall not require disgorgement of any moneys earned for goods or services actually delivered or supplied.

(5) Nothing in this section shall excuse any person from compliance with ss. 287.132-287.134.

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

And the title is amended as follows:

Between lines 2 and 3

insert:

amending s. 255.60, F.S.; authorizing certain public entities to contract for public service works with a

343044

not-for-profit organization despite competitive sealed bid requirements; revising eligibility requirements for not-for-profit organizations contracting with certain public entities; revising required contract provisions;

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/13
Meeting Date

Topic Public Private Partnerships Bill Number 84

Name Marion Hoffmann Amendment Barcode ~~451~~ *(if applicable)*

Job Title Assoc. V.P. Govt. Relations 257648 *(if applicable)*

Address 2115 S. Monroe St. Ste 110 Phone 850-488-2447
Street

Tallahassee FL 32301 E-mail marionh@ufl.edu
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Univ. of Florida

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Public Private Partnerships

Bill Number 84

Name Janice Gilley

Amendment Barcode 257648 *(if applicable)*

Job Title UWF Govt Relations

Address 11000 Univ. Pkwy *Street*

Phone 850.474.2200

Pensacola FL 32514 *City* *State* *Zip*

E-mail jgilley@uwf.edu

Speaking: ☑ For ☐ Against ☐ Information

Representing Univ. West Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Public / Priv. Partnership

Bill Number SB 84 *(if applicable)*

Name Kathleen Daly

Amendment Barcode 257648 *(if applicable)*

Job Title Assist. V. P. Gov Relations

Address Westcott *Street*

Tallahassee FL *City State Zip*

Phone

E-mail kdaly@fsu.edu

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida State University

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Am. 257648

4.23.13
Meeting Date

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

Topic Public-Private Partnerships

Bill Number SB 84 *(if applicable)*

Name Janet Owen

Amendment Barcode ~~457632~~ *(if applicable)*

Job Title Vice President, Governmental Affairs - UNF

Address 1 UNF Drive
Street

Phone (904) 620-2500

Jacksonville, FL 32224
City *State* *Zip*

E-mail jowen@unf.edu

Speaking: ☑ For ☐ Against ☐ Information

Representing University of North Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Am. 257648

Meeting Date

Topic Rubio Private Partnerships Bill Number SB 84 *(if applicable)*

Name Deborah Galley Amendment Barcode ~~435633~~ *(if applicable)*

Job Title Assoc VP Govt Relations

Address _____ Phone (850) 443-6404

Street

Miami E-mail galleyd@fiu.edu

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FIU

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Am. 257648

4/23/13
Meeting Date

Topic Public Private Partnership

Bill Number 82 *(if applicable)*

Name Tola Thompson

Amendment Barcode ~~[illegible]~~ *(if applicable)*

Job Title Govt Rels Director

Address Florida A & M U, 400 Lee Hall
Street

Phone 599.3225

Tallahassee, FL 32307
City *State* *Zip*

E-mail

Speaking: [✓] For [ ] Against [ ] Information

Representing Florida A & M

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Am. 257648

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

4/23/12
Meeting Date

Topic ~~SB 48~~ 84

Bill Number ~~48~~ 84
(if applicable)

Name Chris Kinsley

Amendment Barcode ~~456633~~
(if applicable)

Job Title Dir., Fin. & Fac.

Address _____
Street

Phone 245-9607

_____
City *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing Board of Gov

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Am. 257648

4-23-13
Meeting Date

Topic Public Private Partnerships

Bill Number 84 *(if applicable)*

Name Helen Levine

Amendment Barcode ~~45 to 32~~ *(if applicable)*

Job Title Vice Chancellor, USF SP

Address 140 7th Ave
Street

Phone 727-873-4744

St Pete FL 33701
City *State* *Zip*

E-mail hlevine@usfsp.edu

Speaking: ☑ For ☐ Against ☐ Information

Representing USF St. Petersburg

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Public - Private Partnerships

Bill Number 84 *(if applicable)*

Name David Cruz

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Advocate

Address P.O. Box 1757
Street

Phone 701-3076

Tallahassee FL 32302
City *State* *Zip*

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Public Private Partnership

Bill Number SB 84 *(if applicable)*

Name Monica Rodriguez

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address Ballard Partners *Street*

Phone 850 766 6287

E-mail monica@ballardfl.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Miami Museum of Science

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Public-Private Partnerships Bill Number SB 84 *(if applicable)*

Name Warren Husband Amendment Barcode *(if applicable)*

Job Title —

Address PO Box 10909 Phone 8502059000
Street

Tallahassee FL 32302 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla. Associated General Contractors Council

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Public Private Partnerships Bill Number 84 *(if applicable)*

Name Mark Anderson Amendment Barcode *(if applicable)*

Job Title

Address 121 N. Monroe Phone 320-6659
Street

Tallahassee, FL 32301 E-mail
City *State* *Zip*

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

Representing Nassau County

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

9/23/13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic P3 Bill Number 84 *(if applicable)*

Name Leticia Adams Amendment Barcode *(if applicable)*

Job Title Director of Governance Policy

Address 136 S. Bronough St. Phone 850 5446866

Street

Tall FL 32301 E-mail ladams@flchamber.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic PPP

Bill Number SB 84 *(if applicable)*

Name Richard Watson

Amendment Barcode *(if applicable)*

Job Title Legislative Counsel

Address P.O. Box 10038 *Street*

Phone 850 222-0000

Tallahassee FL 32302 *City* *State* *Zip*

E-mail rick@rlwatsonandassociates.com

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

Representing Associated Builders & Contractors

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic PPP

Bill Number SB 84 *(if applicable)*

Name Stephen Shiver

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 215 S Monroe
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850 222 8900

E-mail _____

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

Representing Associated Industries of Florida

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

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

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

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

S-001 (10/20/11)

The Florida Senate

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 Committee on Appropriations

BILL:	PCS/CS/SB 150 (842716)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Altman and others
SUBJECT:	Deaf and Hard-of-hearing Children
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**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:

PCS/CS/SB 150 clarifies the considerations that the individual educational plan (IEP) team must address to develop an IEP for a student who is deaf or hard-of-hearing. The bill also requires the Department of Education, in coordination with the Florida School for the Deaf and Blind and with input from stakeholders, to develop a model communication plan for use during the IEP development. The Department of Education must provide technical assistance regarding using the model communication plan.

The bill has a minimal fiscal impact.

The bill has an effective date of July 1, 2013.

This bill amends section 1003.55 of the Florida Statutes.

II. Present Situation:

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, 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]

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.[3] In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.[4]

Current law requires that for a child who is deaf or hard-of-hearing, the IEP team consider: the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.[5] Currently, Florida's IEP process only requires the IEP team to check two boxes and provide brief sentences to indicate that the communications needs have been considered.[6]

In the fall of 2011, 4,098 students were identified as deaf or hard-of-hearing.[7] The DOE has developed, in collaboration with the Florida School for the Deaf and Blind and a statewide leadership team, a draft model communication plan that was disseminated to all 67 school districts in November 2012. Initial feedback is anticipated in late March 2013.[8]

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

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[1] 20 U.S.C. s.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. s. 300.17.
[2] 34 C.F.R. s. 300.149.
[3] Rule 6A-6.03028(3), F.A.C.
[4] 20 U.S.C. s. 1414(d)(3)(A) and (B).
[5] 20 U.S.C. s. 1414(d)(3)(B)(iv) and Rule 6A-6.03028(3)(g)9., F.A.C.
[6] E-mail, Florida Department of Education, Governmental Relations (March 14, 2013), on file with the Committee on Education staff.
[7] Florida Department of Education, *Membership in Programs for Exceptional Students, Fall 2011* (Jan. 2012), *available at* http://www.fldoe.org/eias/eiaspubs/word/esemem1112.doc, at 2.
[8] E-mail, Florida Department of Education, Governmental Relations (March 14, 2013), on file with the Committee on Education staff.
[9] United States Department of Education Institute of Education Sciences, *Facts from NLTS2: The Secondary School Experiences and Academic Performance of Students with Hearing Impairments* (Feb. 2011), http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=NCSER20113003 (last visited March 13, 2013), at 1.

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. Still, despite advances and efforts to improve the outcomes of students with hearing impairments, evidence suggests that these students continue to lag behind their general education peers in academic achievement.[10]

III. Effect of Proposed Changes:

The bill clarifies that to develop an IEP for a student who is deaf or hard-of-hearing, the IEP team must consider:

- The student's language and communication needs;
- Opportunities afforded to the student for direct communication with peers and professional personnel in the student's language and communication mode, and
- The student's academic level and full range of needs, including opportunities for direct instruction in the student's language and communication mode.

The bill requires the DOE, in coordination with the Florida School for the Deaf and Blind and with input from stakeholders, to develop a model communication plan for use during the IEP development. The model communication plan must be adopted in State Board of Education Rule and made available online to all school districts no later than December 31, 2013. The DOE must provide technical assistance regarding using the model communication plan.

The model will provide for a more thorough evaluation of a student's needs. Additionally, parents will be able to utilize the information provided by the model to develop IEPs for students which will likely result in better targeted services for such students.

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.

[10] *Id*.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a minimal fiscal impact.

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.)

Recommended CS/CS by Appropriations Subcommittee on Education on April 11, 2013:
The committee substitute clarifies that education stakeholders include representatives of the auditory-oral community.

CS by Committee on Education on March 18, 2013:
The committee substitute differs from SB 150 in that the committee substitute:

- Clarifies the considerations that the IEP team must address to develop an IEP for a student who is deaf or hard-of-hearing;
- Requires the DOE, in coordination with the Florida School for the Deaf and Blind and with input from stakeholders, to develop a model communication plan for use during the IEP development;
- Requires the plan to be adopted in rule by the State Board of Education Rule and made available online to all school districts no later than December 31, 2013; and

Requires the DOE to provide technical assistance regarding using the model communication plan.

B. Amendments:

None.

842716

576-04161-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to deaf and hard-of-hearing students; amending s. 1003.55, F.S.; requiring that a student's language and communication needs, including certain opportunities, be considered in the development of an individual education plan for a deaf or hard-of-hearing student; requiring the Department of Education to develop a model communication plan to be used in the development of an individual education plan for deaf or hard-of-hearing students; requiring the department to disseminate the model communication plan to each school district and provide technical assistance; providing an effective date.

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

Section 1. Subsection (6) is added to section 1003.55, Florida Statutes, to read:

1003.55 Instructional programs for blind or visually impaired students and deaf or hard-of-hearing students.—

(6)(a) In developing an individual education plan for a deaf or hard-of-hearing student, the individual education plan team must consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, and the student's academic level and full range of needs, including opportunities for direct instruction

842716

576-04161-13

in the student's language and communication mode.

(b) The Department of Education, in coordination with the Florida School for the Deaf and the Blind and with input from education stakeholders, including representatives of the auditory-oral community, shall develop a model communication plan that shall be used during the development of a student's individual education plan. The model communication plan shall be adopted in rule by the State Board of Education and made available online to all school districts no later than December 31, 2013. The department shall provide technical assistance for using the model communication plan.

Section 2. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 150
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Altman and others
SUBJECT:	Deaf and Hard-of-hearing Children
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 150 clarifies the considerations that the individual educational plan (IEP) team must address to develop an IEP for a student who is deaf or hard-of-hearing. The bill also requires the Department of Education, in coordination with the Florida School for the Deaf and Blind and with input from stakeholders, to develop a model communication plan for use during the IEP development. The Department of Education must provide technical assistance regarding using the model communication plan.

The bill has a minimal fiscal impact.

The bill has an effective date of July 1, 2013.

This bill amends section 1003.55 of the Florida Statutes.

II. Present Situation:

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, 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]

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.[3] In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.[4]

Current law requires that for a child who is deaf or hard-of-hearing, the IEP team consider: the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.[5] Currently, Florida's IEP process only requires the IEP team to check two boxes and provide brief sentences to indicate that the communications needs have been considered.[6]

In the fall of 2011, 4,098 students were identified as deaf or hard-of-hearing.[7] The DOE has developed, in collaboration with the Florida School for the Deaf and Blind and a statewide leadership team, a draft model communication plan that was disseminated to all 67 school districts in November 2012. Initial feedback is anticipated in late March 2013.[8]

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

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[1] 20 U.S.C. s.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. s. 300.17.
[2] 34 C.F.R. s. 300.149.
[3] Rule 6A-6.03028(3), F.A.C.
[4] 20 U.S.C. s. 1414(d)(3)(A) and (B).
[5] 20 U.S.C. s. 1414(d)(3)(B)(iv) and Rule 6A-6.03028(3)(g)9., F.A.C.
[6] E-mail, Florida Department of Education, Governmental Relations (March 14, 2013), on file with the Committee on Education staff.
[7] Florida Department of Education, *Membership in Programs for Exceptional Students, Fall 2011* (Jan. 2012), *available at* http://www.fldoe.org/eias/eiaspubs/word/esemem1112.doc, at 2.
[8] E-mail, Florida Department of Education, Governmental Relations (March 14, 2013), on file with the Committee on Education staff.
[9] United States Department of Education Institute of Education Sciences, *Facts from NLTS2: The Secondary School Experiences and Academic Performance of Students with Hearing Impairments* (Feb. 2011), http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=NCSER20113003 (last visited March 13, 2013), at 1.

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. Still, despite advances and efforts to improve the outcomes of students with hearing impairments, evidence suggests that these students continue to lag behind their general education peers in academic achievement.[10]

III. Effect of Proposed Changes:

The bill clarifies that to develop an IEP for a student who is deaf or hard-of-hearing, the IEP team must consider:

- The student's language and communication needs;
- Opportunities afforded to the student for direct communication with peers and professional personnel in the student's language and communication mode, and
- The student's academic level and full range of needs, including opportunities for direct instruction in the student's language and communication mode.

The bill requires the DOE, in coordination with the Florida School for the Deaf and Blind and with input from stakeholders, to develop a model communication plan for use during the IEP development. The model communication plan must be adopted in State Board of Education Rule and made available online to all school districts no later than December 31, 2013. The DOE must provide technical assistance regarding using the model communication plan.

The model will provide for a more thorough evaluation of a student's needs. Additionally, parents will be able to utilize the information provided by the model to develop IEPs for students which will likely result in better targeted services for such students.

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.

[10] *Id*.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a minimal fiscal impact.

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 Appropriations on April 23, 2013:
The committee substitute clarifies that education stakeholders include representatives of the auditory-oral community.

CS by Committee on Education on March 18, 2013:
The committee substitute differs from SB 150 in that the committee substitute:

- Clarifies the considerations that the IEP team must address to develop an IEP for a student who is deaf or hard-of-hearing;
- Requires the DOE, in coordination with the Florida School for the Deaf and Blind and with input from stakeholders, to develop a model communication plan for use during the IEP development;
- Requires the plan to be adopted in rule by the State Board of Education Rule and made available online to all school districts no later than December 31, 2013; and

Requires the DOE to provide technical assistance regarding using the model communication plan.

B. Amendments:

None.

By the Committee on Education; and Senators Altman, Garcia, and Bean

581-02637-13 2013150c1

A bill to be entitled

An act relating to deaf and hard-of-hearing students; amending s. 1003.55, F.S.; requiring that a student's language and communication needs, including certain opportunities, be considered in the development of an individual education plan for a deaf or hard-of-hearing student; requiring the Department of Education to develop a model communication plan to be used in the development of an individual education plan for deaf or hard-of-hearing students; requiring the department to disseminate the model communication plan to each school district and provide technical assistance; providing an effective date.

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

Section 1. Subsection (6) is added to section 1003.55, Florida Statutes, to read:

1003.55 Instructional programs for blind or visually impaired students and deaf or hard-of-hearing students.—

(6)(a) In developing an individual education plan for a deaf or hard-of-hearing student, the individual education plan team must consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, and the student's academic level and full range of needs, including opportunities for direct instruction in the student's language and communication mode.

(b) The Department of Education, in coordination with the

581-02637-13 2013150c1

Florida School for the Deaf and the Blind and with input from education stakeholders, shall develop a model communication plan that shall be used during the development of a student's individual education plan. The model communication plan shall be adopted in rule by the State Board of Education and made available online to all school districts no later than December 31, 2013. The department shall provide technical assistance for using the model communication plan.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic SB 150 Bill Number SB 150 *(if applicable)*

Name Theresa Bulger Amendment Barcode *(if applicable)*

Job Title Grandmom

Address 3215 Coral Seas Drive Phone 904 880 9063
Street

Tallahassee, FL
City *State* *Zip*

E-mail bulger12@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Representing FACES, Parents Group FLAA, FLASHB, FLAGS, Clerke, Daddis

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR THAD ALTMAN
16th District

April 11, 2013

The Honorable Joe Negron
Senate Committee on Appropriations, Chair
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that SB 150, related to *Deaf and Hard-of-hearing Students,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/rk

CC: Mike Hansen, Staff Director, 201 The Capitol

SENATE APPROPRIATIONS
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STAFF DIR. STAFF

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☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 154
INTRODUCER:	Education Committee and Senator Detert
SUBJECT:	Certified School Counselors
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Favorable**
3.	Elwell	Hansen	AP	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 154 substitutes "certified school counselor" for the term "guidance counselor." This reflects the current requirement that persons employed as school counselors be certified as set forth by law and State Board of Education rule.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 322.091, 381.0057, 1002.3105, 1003.21, 1003.43, 1003.491, 1004.04, 1006.025, 1007.35, 1008.42, 1009.53, 1012.01, 1012.71, and 1012.98.

II. Present Situation:

Current law defines school counseling personnel as guidance counselors.[1] School counselors play a significant role in school guidance and counseling programs, which are designed to promote student success through a focus on academic achievement, prevention, intervention, and advocacy.[2] Now, guidance counselors evaluate students and participate in decisions relating to the promotion, remediation, and retention of students. Effective school guidance counselors work with school administrators, faculty, students, parents, and members of the community to plan, implement, and evaluate comprehensive guidance and counseling programs. In advising students, counselors identify needs, define priorities, and determine appropriate objectives. They also determine the personnel, physical resources, programs, and activities required to best serve the student.[3]

School counselors are considered instructional personnel within Florida's public school system.[4] To be employed as a school counselor, a person must be certified as required by law and State Board of Education (SBE) rule.[5] To be certified in guidance and counseling, a person must hold a master's or higher degree with a graduate major in guidance and counseling or counselor education or a master's or higher degree with 30 semester hours of graduate credit in specified guidance and counseling courses.[6]

III. Effect of Proposed Changes:

The bill replaces, within the Florida Statutes, the term "guidance counselor" with "certified school counselor." This change reflects the current requirement that persons employed as school counselors hold a certificate in guidance and counseling as provided by law and SBE rule.[7]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[1] s. 1012.01(2)(b), F.S.
[2] Florida Department of Education, Division of Workforce Development, *Florida's School Counseling and Guidance Framework: A Comprehensive Student Development Model* (2002), available at http://www.fldoe.org/workforce/pdf/guidance.pdf (last visited March 26, 2013).
[3] *Id.*
[4] s. 1012.01(2)(b), F.S.
[5] s. 1012.55(1), F.S.
[6] Rule 6A-4.0181, F.A.C.
[7] *See* Section 1012.55(1), F.S., and Rule 6A-4.0181, F.A.C.

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 Education on April 1, 2013:
The committee substitute:

- Replaces the term "guidance counselor" with "certified school counselor"; and
- Removes from the bill specified duties of counselors, counselor to student ratios, minimum of full-time counselors per school, ratio of counselors to students in an annual audit, and required district rule adoption for counselors.

B. Amendments:

None.

By the Committee on Education; and Senators Detert and Clemens

581-03364-13 2013154c1

A bill to be entitled

An act relating to certified school counselors; amending ss. 322.091, 381.0057, 1002.3105, 1003.21, 1003.43, 1003.491, 1004.04, 1006.025, 1007.35, 1008.42, 1009.53, 1012.01, 1012.71, and 1012.98, F.S.; renaming guidance counselors as "certified school counselors"; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 322.091, Florida Statutes, is amended to read:

322.091 Attendance requirements.—

(3) HARDSHIP WAIVER AND APPEAL.—

(b) The public school principal, the principal's designee, or the designee of the governing body of a private school shall waive the requirements of subsection (1) for any minor under the school's jurisdiction for whom a personal or family hardship requires that the minor have a driver ~~driver's~~ license for his or her own, or his or her family's, employment or medical care. The minor or the minor's parent or guardian may present other evidence that indicates compliance with the requirements of subsection (1) at the waiver hearing. The public school principal, the principal's designee, or the designee of the governing body of a private school shall consider ~~take into consideration~~ the recommendations of teachers, other school officials, certified school ~~guidance~~ counselors, or academic advisers before waiving the requirements of subsection (1).

Section 2. Paragraph (b) of subsection (3) of section

581-03364-13 2013154c1

381.0057, Florida Statutes, is amended to read:

381.0057 Funding for school health services.—

(3) Any school district, school, or laboratory school which desires to receive state funding under the provisions of this section shall submit a proposal to the joint committee established in subsection (2). The proposal shall state the goals of the program, provide specific plans for reducing teenage pregnancy, and describe all of the health services to be available to students with funds provided pursuant to this section, including a combination of initiatives such as health education, counseling, extracurricular, and self-esteem components. School health services shall not promote elective termination of pregnancy as a part of counseling services. Only those program proposals which have been developed jointly by county health departments and local school districts or schools, and which have community and parental support, shall be eligible for funding. Funding shall be available specifically for implementation of one of the following programs:

(b) *Student support services team program.*—The program shall include a multidisciplinary team composed of a psychologist, social worker, and nurse whose responsibilities are to provide basic support services and to assist, in the school setting, children who exhibit mild to severely complex health, behavioral, or learning problems affecting their school performance. Support services ~~shall~~ include, but are not ~~be~~ limited to: evaluation and treatment of ~~for~~ minor illnesses and injuries, referral and followup for serious illnesses and emergencies, onsite care and consultation, referral to a physician, and followup care for pregnancy or chronic diseases

and disorders as well as emotional or mental problems. Services also ~~shall~~ include referral care for drug and alcohol abuse and sexually transmitted diseases, sports and employment physicals, immunizations, and ~~in addition,~~ effective preventive services aimed at delaying early sexual involvement and aimed at pregnancy, acquired immune deficiency syndrome, sexually transmitted diseases, and destructive lifestyle conditions, such as alcohol and drug abuse. Moneys for this program shall be used to fund three teams, each consisting of one half-time psychologist, one full-time nurse, and one full-time social worker. Each team shall provide student support services to an elementary school, middle school, and high school that are a part of one feeder school system and shall coordinate all activities with the school administrator and certified school ~~guidance~~ counselor at each school. A program that ~~which~~ places all three teams in middle schools or high schools may also be proposed.

Funding may also be available for any other program that is comparable to a program described in this subsection but is designed to meet the particular needs of the community.

Section 3. Paragraph (e) of subsection (3) of section 1002.3105, Florida Statutes, is amended to read:

1002.3105 Academically Challenging Curriculum to Enhance Learning (ACCEL) options.—

(3) STUDENT ELIGIBILITY CONSIDERATIONS.—When establishing student eligibility requirements, principals and school districts must consider, at a minimum:

(e) A recommendation from a certified school ~~guidance~~

counselor, if one is assigned to the school in which the student is enrolled.

Section 4. Paragraph (c) of subsection (1) of section 1003.21, Florida Statutes, is amended to read:

1003.21 School attendance.—

(1)

(c) A student who attains the age of 16 years during the school year is not subject to compulsory school attendance beyond the date upon which he or she attains that age if the student files a formal declaration of intent to terminate school enrollment with the district school board. Public school students who have attained the age of 16 years and who have not graduated are subject to compulsory school attendance until the formal declaration of intent is filed with the district school board. The declaration must acknowledge that terminating school enrollment is likely to reduce the student's earning potential and must be signed by the student and the student's parent. The school district shall ~~must~~ notify the student's parent of receipt of the student's declaration of intent to terminate school enrollment. The student's certified school ~~guidance~~ counselor or other school personnel shall ~~must~~ conduct an exit interview with the student to determine the reasons for the student's decision to terminate school enrollment and actions that could be taken to keep the student in school. The student's certified school counselor or other school personnel shall inform the student ~~must be informed~~ of opportunities to continue his or her education in a different environment, including, but not limited to, adult education and GED test preparation. Additionally, the student shall ~~must~~ complete a survey in a

format prescribed by the Department of Education to provide data on student reasons for terminating enrollment and actions taken by schools to keep students enrolled.

Section 5. Paragraph (d) of subsection (7) of section 1003.43, Florida Statutes, is amended to read:

1003.43 General requirements for high school graduation.—

(7) No student may be granted credit toward high school graduation for enrollment in the following courses or programs:

(d) Any Level I course unless the student's assessment indicates that a more rigorous course of study would be inappropriate, in which case a written assessment of the need must be included in the student's individual educational plan or in a student performance plan, signed by the principal, the certified school ~~guidance~~ counselor, and the parent of the student, or the student if the student is 18 years of age or older.

Section 6. Subsection (3) and paragraph (a) of subsection (4) of section 1003.491, Florida Statutes, are amended to read:

1003.491 Florida Career and Professional Education Act.—The Florida Career and Professional Education Act is created to provide a statewide planning partnership between the business and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

(3) The strategic 3-year plan developed jointly by the local school district, regional workforce boards, economic development agencies, and state-approved postsecondary institutions shall be constructed and based on:

(a) Research conducted to objectively determine local and

regional workforce needs for the ensuing 3 years, using labor projections of the United States Department of Labor and the Department of Economic Opportunity;

(b) Strategies to develop and implement career academies or career-themed courses based on those careers determined to be high-wage, high-skill, and high-demand;

(c) Strategies to provide shared, maximum use of private sector facilities and personnel;

(d) Strategies that ensure instruction by industry-certified faculty and standards and strategies to maintain current industry credentials and for recruiting and retaining faculty to meet those standards;

(e) Strategies to provide personalized student advisement, including a parent-participation component, and coordination with middle schools to promote and support career-themed courses and education planning as required under s. 1003.4156;

(f) Alignment of requirements for middle school career planning under s. 1003.4156(1)(a)5., middle and high school career and professional academies or career-themed courses leading to industry certification or postsecondary credit, and high school graduation requirements;

(g) Provisions to ensure that career-themed courses and courses offered through career and professional academies are academically rigorous, meet or exceed appropriate state-adopted subject area standards, result in attainment of industry certification, and, when appropriate, result in postsecondary credit;

(h) Plans to sustain and improve career-themed courses and career and professional academies;

(i) Strategies to improve the passage rate for industry certification examinations if the rate falls below 50 percent;

(j) Strategies to recruit students into career-themed courses and career and professional academies which include opportunities for students who have been unsuccessful in traditional classrooms but who are interested in enrolling in career-themed courses or a career and professional academy. School boards shall provide opportunities for students who may be deemed ~~as~~ potential dropouts to enroll in career-themed courses or participate in career and professional academies;

(k) Strategies to provide sufficient space within academies to meet workforce needs and to provide access to all interested and qualified students;

(l) Strategies to implement career-themed courses or career and professional academy training that lead to industry certification in juvenile justice education programs;

(m) Opportunities for high school students to earn weighted or dual enrollment credit for higher-level career and technical courses;

(n) Promotion of the benefits of the Gold Seal Bright Futures Scholarship;

(o) Strategies to ensure the review of district pupil-progression plans and to amend such plans to include career-themed courses and career and professional academy courses and to include courses that may qualify as substitute courses for core graduation requirements and those that may be counted as elective courses;

(p) Strategies to provide professional development for secondary certified school ~~guidance~~ counselors on the benefits

of career and professional academies and career-themed courses that lead to industry certification; and

(q) Strategies to redirect appropriated career funding in secondary and postsecondary institutions to support career academies and career-themed courses that lead to industry certification.

(4) The State Board of Education shall establish a process for the continual and uninterrupted review of newly proposed core secondary courses and existing courses requested to be considered as core courses to ensure that sufficient rigor and relevance is provided for workforce skills and postsecondary education and aligned to state curriculum standards.

(a) The review of newly proposed core secondary courses shall be the responsibility of a curriculum review committee whose membership is approved by Workforce Florida, Inc., and shall include:

1. Three certified high school ~~guidance~~ counselors recommended by the Florida Association of Student Services Administrators.

2. Three assistant superintendents for curriculum and instruction, recommended by the Florida Association of District School Superintendents and who serve in districts that operate successful career and professional academies pursuant to s. 1003.492 or a successful series of courses that lead to industry certification. Committee members in this category shall employ the expertise of appropriate subject area specialists in the review of proposed courses.

3. Three workforce representatives recommended by the Department of Economic Opportunity.

4. Three admissions directors of postsecondary institutions accredited by the Southern Association of Colleges and Schools, representing both public and private institutions.

5. The Commissioner of Education, or his or her designee, responsible for K-12 curriculum and instruction. The commissioner shall employ the expertise of appropriate subject area specialists in the review of proposed courses.

Section 7. Paragraph (f) of subsection (5) of section 1004.04, Florida Statutes, is amended to read:

1004.04 Public accountability and state approval for teacher preparation programs.—

(5) CONTINUED PROGRAM APPROVAL.—Notwithstanding subsection (4), failure by a public or nonpublic teacher preparation program to meet the criteria for continued program approval shall result in loss of program approval. The Department of Education, in collaboration with the departments and colleges of education, shall develop procedures for continued program approval that document the continuous improvement of program processes and graduates' performance.

(f)1. Each Florida public and private institution that offers a state-approved teacher preparation program must annually report information regarding these programs to the state and the general public. This information shall be reported in a uniform and comprehensible manner that is consistent with definitions and methods approved by the Commissioner of the National Center for Educational Statistics and that is approved by the State Board of Education. This information must include, at a minimum:

a. The percent of graduates obtaining full-time teaching

employment within the first year of graduation.

b. The average length of stay of graduates in their full-time teaching positions.

c. Satisfaction ratings required in paragraph (e).

2. Each public and private institution offering training for school readiness related professions, including training in the fields of child care and early childhood education, whether offering career credit, associate in applied science degree programs, associate in science degree programs, or associate in arts degree programs, shall annually report information regarding these programs to the state and the general public in a uniform and comprehensible manner that conforms with definitions and methods approved by the State Board of Education. This information must include, at a minimum:

a. Average length of stay of graduates in their positions.

b. Satisfaction ratings of graduates' employers.

This information shall be reported through publications, including college and university catalogs and promotional materials sent to potential applicants, certified secondary school ~~guidance~~ counselors, and prospective employers of the institution's program graduates.

Section 8. Paragraphs (a) and (c) of subsection (2) of section 1006.025, Florida Statutes, are amended to read:

1006.025 Guidance services.—

(2) The guidance report shall include, but not be limited to, the following:

(a) Examination of student access to certified school ~~guidance~~ counselors.

(c) Evaluation of the information and training available to certified school ~~guidance~~ counselors and career specialists to advise students on areas of critical need, labor market trends, and technical training requirements.

Section 9. Paragraph (a) of subsection (5) of section 1007.35, Florida Statutes, is amended to read:

1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.—

(5) Each public high school, including, but not limited to, schools and alternative sites and centers of the Department of Juvenile Justice, shall provide for the administration of the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), or Preliminary ACT (PLAN) to all enrolled 10th grade students. However, a written notice shall be provided to each parent that shall include the opportunity to exempt his or her child from taking the PSAT/NMSQT or PLAN.

(a) Test results will provide each high school with a database of student assessment data which certified school ~~guidance~~ counselors will use to identify students who are prepared or who need additional work to be prepared to enroll and be successful in AP courses or other advanced high school courses.

Section 10. Paragraph (b) of subsection (2) of section 1008.42, Florida Statutes, is amended to read:

1008.42 Public information on career education programs.—

(2) The dissemination shall be conducted in accordance with the following procedures:

(b)1. Each district school board shall publish, at a minimum, the most recently available placement rate for each

career certificate program conducted by that school district at the secondary school level and at the career degree level. The placement rates for the preceding 3 years shall be published, if available, shall be included in each publication that informs the public of the availability of the program, and shall be made available to each certified school ~~guidance~~ counselor. If a program does not have a placement rate, a publication that lists or describes that program must state that the rate is unavailable.

2. Each Florida College System institution shall publish, at a minimum, the most recent placement rate for each career certificate program and for each career degree program in its annual catalog. The placement rates for the preceding 3 years shall be published, if available, and shall be included in any publication that informs the public of the availability of the program. If a program does not have a placement rate, the publication that lists or describes that program must state that the rate is unavailable.

3. If a school district or a Florida College System institution has calculated for a program a placement rate that differs from the rate reported by the department, and if each record of a placement was obtained through a process that was capable of being audited, procedurally sound, and consistent statewide, the district or the Florida College System institution may use the locally calculated placement rate in the report required by this section. However, that rate may not be combined with the rate maintained in the computer files of the Department of Education’s Florida Education and Training Placement Information Program.

4. An independent career, trade, or business school may not publish a placement rate unless the placement rate was determined as provided by this section.

Section 11. Subsection (3) of section 1009.53, Florida Statutes, is amended to read:

1009.53 Florida Bright Futures Scholarship Program.—

(3) The Department of Education shall administer the Bright Futures Scholarship Program according to rules and procedures established by the State Board of Education. A single application must be sufficient for a student to apply for any of the three types of awards. The department shall ~~must~~ advertise the availability of the scholarship program and shall ~~must~~ notify students, teachers, parents, certified school ~~guidance~~ counselors, and principals or other relevant school administrators of the criteria and application procedures. The department must begin this process of notification no later than January 1 of each year.

Section 12. Paragraph (b) of subsection (2) of section 1012.01, Florida Statutes, is amended to read:

1012.01 Definitions.—As used in this chapter, the following terms have the following meanings:

(2) INSTRUCTIONAL PERSONNEL.—"Instructional personnel" means any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:

(b) *Student personnel services.*—Student personnel services

include staff members responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions. Included in this classification are certified school ~~guidance~~ counselors, social workers, career specialists, and school psychologists.

Section 13. Subsection (1) of section 1012.71, Florida Statutes, is amended to read:

1012.71 The Florida Teachers Lead Program.—

(1) For purposes of the Florida Teachers Lead Program, the term "classroom teacher" means a certified teacher employed by a public school district or a public charter school in that district on or before September 1 of each year whose full-time or job-share responsibility is the classroom instruction of students in prekindergarten through grade 12, including full-time media specialists and certified school ~~guidance~~ counselors serving students in prekindergarten through grade 12, who are funded through the Florida Education Finance Program. A "job-share" classroom teacher is one of two teachers whose combined full-time equivalent employment for the same teaching assignment equals one full-time classroom teacher.

Section 14. Paragraph (a) of subsection (3) of section 1012.98, Florida Statutes, is amended to read:

1012.98 School Community Professional Development Act.—

(3) The activities designed to implement this section must:

(a) Support and increase the success of educators through collaboratively developed school improvement plans that focus on:

1. Enhanced and differentiated instructional strategies to engage students in a rigorous and relevant curriculum based on state and local educational standards, goals, and initiatives;

2. Increased opportunities to provide meaningful relationships between teachers and all students; and

3. Increased opportunities for professional collaboration among and between teachers, certified school ~~guidance~~ counselors, instructional leaders, postsecondary educators engaged in preservice training for new teachers, and the workforce community.

Section 15. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic School Counselors

Bill Number 154 *(if applicable)*

Name Carole Green

Amendment Barcode *(if applicable)*

Job Title

Address PO Box 07463
Street

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Fort Myers FL 33919
City *State* *Zip*

E-mail carole@capitolstrategiesinc.com

Speaking: ☒ For ☐ Against ☒ Information

Representing Florida School Counselor Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 17, 2013

I respectfully request that **Senate Bill #154**, relating to Certified School Counselors, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

SENATE APPROPRIATIONS
RECEIVED
13 APR 17 PM 2:14
STAFF DIR. _____ STAFF _____

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/CS/SB 156
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Detert
SUBJECT:	Swimming Pools and Spas
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	Kraemer	Imhof	RI	**Fav/1 amendment**
3.	Davis	DeLoach	AGG	**Favorable**
4.	Davis	Hansen	AP	**Fav/CS**
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 156 creates a new, mandatory licensing requirement for residential pool cleaning in Florida. In addition, the bill amends a number of provisions related to building construction in the state.

The bill as filed has an indeterminate fiscal impact. The Department of Business and Professional Regulation (DBPR or department), indicates the bill will increase application and renewal fees from registered electrical, alarm system and electrical specialty contractors grandfathering their registered contractors' licenses to certified contractors' licenses. The DBPR anticipates an increase of $570,080 in application and license fees during Fiscal Year 2013-2014, $447,440 in Fiscal Year 2014-2015, and $570,080 in Fiscal Year 2015-2016.

According to the department, the new, mandatory licensing for water treatment service providers and the reduction in eligibility requirements for the swimming pool/spa servicing contractors' examination in CS/CS/SB 156, which become effective October 1, 2014, will produce an estimated $5.2 million net increase in revenue to the Professional Regulation Trust Fund in Fiscal Year 2014-2015, a net loss of revenue to the Professional Regulation Trust Fund in Fiscal Year 2015-2016, and a $3.7 million net increase in revenue for the Professional Regulation Trust

Fund in Fiscal Year 2016-2017. These impacts include the DBPR's estimated administrative costs necessary to handle the additional workload associated with processing new license and renewal license applications and responding to consumer inquiries. Those estimated administrative costs in Fiscal Year 2014-2015 are $296,747, five full-time-equivalent positions and two Other Personal Services (OPS) positions. See Section V.

Specifically, the bill:

- Revises noticing requirements of alleged violators of local codes and ordinances.
- Clarifies that a state agency constructing or renovating certain buildings is required to select a sustainable building rating system or national model green building code.
- Requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available, and their price, fitness, and quality are equal.
- Exempts specified septic tank system inspections and evaluations when remodeling a home.
- Provides that certain residential construction may not impact sewage treatment or disposal systems or encroach on septic areas as determined by a local health department floor and site plan review.
- Revises the definition of the term "contractor," adds "maintenance for water treatment" to the definition of a contractor, and includes cleaning, maintenance, and water treatment of swimming pools and spas within the licensure scope for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors.
- Removes current licensure exemptions for individuals and businesses that provide only pool and spa cleaning, maintenance and water treatment services.
- Removes the one year experience requirement for swimming pool/spa service contractors and instead requires 20 hours of in-field, hands-on instruction.
- Provides an exemption from licensure requirements for owners or operators, or their direct employees, who maintain a public swimming pool or spa for the purpose of water treatment.
- Revises the meaning of "demolish" as it is used to define licensed contractors.
- Provides that amendments enacted in 2012 related to the licensing of contractors and subcontractors are remedial in nature, are intended to clarify existing law, and apply retroactively.
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor.
- Revises local government and the DBPR collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board.
- Removes a requirement that local governments send minor violation notices to contractors prior to seeking fines and other disciplinary penalties.
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses.
- Adds a definition for "local technical amendment" in the Florida Building Code.
- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code.
- Adds a member to the Florida Building Commission from the natural gas distribution industry.

- Authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site.
- Includes "impact protective systems" among the categories of products that receive approval by the Florida Building Commission.
- Specifies the DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews.
- Renames the statewide standard for energy efficiency.
- Specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment.
- Eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system.
- Creates building energy-efficiency system definitions.
- Provides additional energy-efficiency rating system changes which reflect the DBPR's revised role in the process.

This bill substantially amends the following sections of the Florida Statutes: 162.12, 255.20, 255.257, 255.2575, 381.0065, 489.103, 489.105, 489.111, 489.127, 489.131, 489.514, 489.531, 553.71, 553.73, 553.74, 553.79, 553.842, 553.901, 553.902, 553.903, 553.904, 553.905, 553.906, 553.912, 553.991, 553.993, 553.994, 553.995, 553.996, 553.997, and 553.998.

This bill repeals section 553.992 and creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., by which notices are provided, including by:

> certified mail to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.[, relating to publication of notices and the physical posting of notices, respectively]

The other options for serving notices in s. 162.12(1), F.S., are by:

- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving at the violator's residence with any person residing there above the age of 15; or
- For commercial premises, leaving the notice with the manager or other person in charge.[1]

[1] *See* ss. 162.12(1)(b)-(d), F.S.

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.[2]

Florida Energy Conservation and Sustainable Buildings Act

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,[3] which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that:

> Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.[4]

Section 255.252(3), F.S., provides legislative intent that "it is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code" and "[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code."

"Sustainable building rating or national model green building code" means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative's Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.[5]

Section 255.257(4)(a), F.S., specifies that: "[a]ll state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings." Section 255.2575(2), F.S., provides that "[a]ll county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code."[6]

[2] *See* s.162.12(2), F.S.
[3] Chapter 2008-227, L.O.F.
[4] Section 255.252(2), F.S.
[5] Section 255.253(7), F.S.
[6] This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

The Department of Management Services (DMS) states on its website that:

> State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency's ultimate decision must be made on the basis of long-term cost-effectiveness.7

Administrative rules adopted by the DMS pertaining to sustainable building ratings[8] implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.[9] According to the DMS, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a "voluntary, consensus-based, market-driven" program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries…. For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.[10]

- **International Green Construction Code (IgCC)** is the "first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare…." The IgCC "creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond the baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*…."[11]

- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. "Green Globes offers a streamlined and affordable…way to advance the overall environmental performance and sustainability of

[7] http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.
[8] Chapter 60D, F.A.C.
[9] Rule 60D-4.004(1)(c)1 and 2, F.A.C.
[10] http://new.usgbc.org/leed.
[11] http://www.iccsafe.org/cs/igcc/pages/default.aspx.

commercial buildings. The program has modules supporting new construction… [and]…existing buildings…. It is suitable for a wide range of buildings from large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities."[12]

- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation "dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which 'green' qualification and marketing are based."[13]

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida's 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system, because LEED only awards points for timber that is grown under the Forest Stewardship Council requirements.[14] The DMS has chosen the LEED rating system to meet its own needs.

Florida Timber Industry

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.[15, 16] Although forests cover about 50 percent of the state's land area, Florida's timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50 percent forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90 percent of its area. The peninsula is forested at 40 percent or less and a number of counties in southeast Florida are less than 10 percent forested.[17]

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.[18]

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Forest Stewardship Council, the

[12] http://www.thegbi.org/green-globes/.
[13] http://www.floridagreenbuilding.org/home.
[14] "'Backlash' bill against LEED green-building certification program moving in House," available at: http://www.thefloridacurrent.com/article.cfm?id=32144596.
[15] Florida Forestry Association website: http://floridaforest.org/about-us/fl-forests-facts/.
[16] *2010 Florida's Forestry and Forest Product Industry Economic Impacts*, by the Florida Forest Service (PDF file accessed at http://floridaforest.org/about-us/fl-forests-facts/).
[17] *Ibid.*
[18] *Ibid.*

American Tree Farm System, and the Sustainable Forestry Initiative are some commonly-used programs.

The Forest Stewardship Council (FSC) is an independent, non-profit organization. "[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard…. Certifiers are independent of FSC and the companies they are auditing."[19]

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their "forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value." Further, that the standard "has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world's forests are certified."[20]

The American Tree Farm System (ATFS), another commonly-used program, "offers certification to landowners who are committed to good forest management….Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest…protect[ing] economic, social and environmental benefits."[21]

Florida Lumber Preference in Local Government Construction Contracting

Section 255.20, F.S., specifies requirements for local government construction contracting. Section 255.20(3), F.S., provides as follows:

> All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in this state if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

[19] Forest Stewardship Council website: https://us.fsc.org/about-certification.198.htm.
[20] Sustainable Forestry Initiative website: http://www.sfiprogram.org/sustainable-forestry-initiative/.
[21] American Tree Farm System website: https://us.fsc.org/about-certification.198.htm.

Onsite Sewage Treatment and Disposal Systems and Remodeling

An "onsite sewage treatment and disposal system (system)" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system.[22]

Section 381.0065(3), F.S., authorizes the Department of Health (DOH) to adopt rules administering system statute provisions and to perform system application reviews, site evaluations and issue permits. In addition, DOH may inspect residential system construction, modification, and repair. Currently, a system modification, replacement, or upgrade is not required for a remodeling addition to a single-family home if a bedroom is not added.[23]

Pool Cleaning in Florida

Currently, the practice of pool contracting is regulated by DBPR under the auspices of the Construction Industry Licensing Board (CILB). Pursuant to ss. 489.105(3)(j), (k) and (l), F.S., mandatory licensure is required for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors respectively to construct or repair pools. Contractors must maintain one of these licenses to contract for the installation, repair, or servicing of commercial or residential pools, spas and hot tubs. However, each of these categories specifically exempts persons who offer only cleaning, maintenance and water treatment of pools, spas and hot tubs from mandatory licensing, so long as the work contracted does not affect the structural integrity of the pool, spa or hot tub or require installation, modification or replacement of its permanently attached equipment. This exemption was added by the legislature in 1996.[24]

While DBPR does not currently require licensure for persons offering only pool cleaning services, the Florida Department of Health (DOH) has responsibility under s. 514.075, F.S., to certify public pool service technicians. Public pool service technicians must demonstrate knowledge of pool maintenance and water treatment by passing a 16-hour course approved by DOH. Persons holding a current commercial pool/spa contractor, residential pool/spa contractor, and/or swimming pool/spa servicing contractor license from DBPR are exempt from certification under s. 514.075, F.S.

The DOH estimates there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.[25] According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.[26] Pool service technicians may or may not be direct employees of an owner or operator of a public pool.

[22] Section 381.0065(2)(k), F.S.
[23] Section 381.0065(4)(aa), F.S.
[24] Ch. 96-365, L.O.F.
[25] 2*013 Legislative Analysis for SB 156*, Department of Health, dated January 7, 2013.
[26] 2*013 Legislative Analysis for CS/SB 156 as amended*, Department of Health, dated March 7, 2013.

Currently, applicants for commercial swimming pool/spa contractor and/or residential pool/spa contractor license are eligible to sit for the state certification examination if he or she has at least four years of experience in the required licensure category. Applicants may substitute up to three years of college credits in lieu of years of experience but must have at least one year of experience as a foreman in the license category sought. Pursuant to s. 489.111(2)(c)6.d., F.S., a person is qualified to sit for the swimming pool/spa servicing contractor's examination if they possess one year of experience in swimming pool service work and complete 60 hours of instruction in course work approved by the Construction Industry Licensing Board. All applicants must also establish that they are 18 years of age, of good moral character, and meet minimum financial stability requirements.

Construction Contracting Regulation

Construction and electrical contracting is regulated under ch. 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR).[27] Section 489.115, F.S., provides that contractors must either be certified (licensed by the state to contract statewide) or registered (licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only) to engage in contracting in Florida.

The CILB is divided into two divisions: Division I and Division II.[28] Division I of the CILB has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II of the CILB has jurisdiction over the remaining contractors defined in s. 489.105(3). F.S., which include contractors in sheet metal, roofing, air conditioning, pools and spas, plumbing, underground utilities, solar panels, and pollutant storage systems.

Construction Contracting and Licensure to Demolish

Section 489.105(3), F.S., defines "contractor" as:

> a person, who for compensation undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others . . . .[29]

Of the defined contractor activities, demolish is the sole act that receives additional clarification in the statute.

> For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; *and all buildings or residences.* [30]

[27] See s. 489.103, F.S., for statutory exemptions.
[28] Section 489.107(4)(a)-(b), F.S.
[29] *Italics* added.
[30] Section 489.105(3), F.S. Italics added.

Prior to changes to this definition during the 2012 legislative session,[31] demolition of buildings or residences that were three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less did not require licensure under ch. 489, F.S.

Licensing of Contractors and Subcontractors

Section 489.113(2), F.S., provides that subcontractors who are not certified or registered may perform construction work under the supervision of a certified or registered contractor, provided that the work is within the scope of the supervising contractor's license, the supervising contractor is responsible for the work, and the supervised subcontractor is not engaged in construction work that would require a specialty contractor license under s. 489.105(3)(d)-(o), F.S. This provision was last amended during the 2012 Regular Session by s. 11 of ch. 2012-13, L.O.F., which replaced the term "person" with "subcontractor." It also replaced the term "supervisor's license" with "supervising contractor's license."

Penalties for Unlicensed Contracting

Prohibitions and penalties for construction contracting and electrical and alarm system contracting are found in Part I, ch. 489, F.S., and Part II, ch. 489, F.S., respectively. The local governing body of a county or municipality is authorized to enforce codes and ordinances against unlicensed contractors. The local governing board may enact an ordinance establishing procedures for implementing codes, including a schedule of penalties to be assessed by the code enforcement officer for violations.[32] The maximum civil penalty which may be levied for a citation shall not exceed $500.[33]

A person charged with a violation has two options: correct the cited violation and pay the civil penalty, or, request an administrative hearing before the enforcement or licensing board or designated special magistrate. If either of these entities finds that a violation exists, it may order the violator to pay a civil penalty of not less than the original citation but not more than $1,000 per day for each construction contracting violation and $500 for each electrical contracting violation.[34]

Outstanding Fines Issued by the Florida Construction Industry Licensing Board

Section 489.127(6), F.S., authorizes local municipalities and counties to collect unpaid fines and costs ordered by the CILB. These local governments may retain 25 percent of the total amount collected if they remit the remaining 75 percent to the DBPR.[35] According to the DBPR, the department currently uses the Department of Financial Services' approved collections vendor to collect unpaid fines and costs when a required payment remains delinquent for more than 6 months.[36]The vendor charges a 23 percent

[31] Chapter 2012-13, s. 9, Laws of Fla.
[32] *See* ss. 489.127(5)(c) and 489.531(4)(c), F.S.
[33] *Id.*
[34] *See* 489.127(5)(f) and 489.531(4)(f), F.S.
[35] DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.
[36] Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

fee in order to collect the ordered amount. This fee becomes due upon collection regardless of who collects the unpaid fine.

Compliance with State Law and Local Ordinances on Contracting

Section 489.131(7)(a), F.S., provides that local government contracting fines and other penalties are assessed for the primary purpose of gaining compliance with the laws regulating the unlicensed practice of contracting. The subsection further requires that local jurisdictions issue a notice of noncompliance prior to seeking fines and other penalties for first-time "minor violations."[37] Such notices of non-compliance must identify the ordinance violated, specify a method of compliance, and provide a reasonable time period for compliance. Failure to address a notice of non-compliance is grounds for additional disciplinary proceedings.

Grandfathering Provisions for Electrical and Alarm System Contractors

As noted, ch. 489, F.S., requires that all individuals who practice construction and electrical contracting in Florida must either be "certified" or "registered." Section 489.514, F.S., provides that the CILB issue a "certification" to an electrical, electrical specialty or alarm system contractor who is "registered" upon receipt of a completed application, payment of an appropriate fee, and evidence that he or she meets statutorily specified criteria. The criteria include possessing a registered local license, passing an approved written examination, and having at least five years of contracting. Applicants wishing to obtain a "certificate" pursuant to this statutory "grandfather" allowance were required to make application by November 1, 2004.[38]

Technical Amendments to the Florida Building Code

Under certain conditions, counties and municipalities may adopt by ordinance a technical amendment to the Florida Building Code relating to flood resistance.[39] A technical amendment is authorized to the extent it is more stringent than the base code and is not subject to the requirements governing local government amendments in s. 553.73(4), F.S.

Residential Fire Sprinklers

In 2010, the Legislature amended s. 553.73(17), F.S., to prohibit the Florida Building Commission from adopting or incorporating mandatory fire sprinklers provisions in section R313 of the most current version of the International Residential Code (IRC) as part of the Florida Building Code or as a local amendment to the Code.[40] Pursuant to the enacted prohibition, the Florida Building Commission did not adopt the current version section as part of

[37] A violation is deemed "minor" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.
[38] Chapter 2012-211, s. 6, L.O.F., re-opened and extended a similar grandfather allowance for construction contractors in s. 489.118, F.S.
[39] See s. 553.73(5), F.S.
[40] Chapter 2010-176, s. 32, L.O.F.

the 2010 Florida Building Code and, according to the DBPR, the Commission is not considering it for the next edition of the Code.[41]

Florida Building Commission

The Florida Building Commission is a 25-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.[42]

Electronic Documents

The Building Code requires that a permit applicant submit one or more copies of construction documents to the building official and specifically authorizes applicants to submit such documents electronically when authorized by the local building official.[43] Construction documents include at a minimum "a floor plan; site plan; foundation plan; floor/roof framing plan or truss layout: all fenestration penetrations; flashing; and rough opening dimensions; and all exterior elevations" pursuant to s. 107.3.5, Florida Building Code, Building (2010). Once reviewed and approved by the building official, the Florida Building Code requires that one set of construction documents be retained by the building official and another be provided to the applicant to "be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative" pursuant to s. 107.3.1, Florida Building Code, Building (2010).

Florida Building Code and the State Product Approval Program

The State Product Approval System, which went into effect October 1, 2003, covers certain structural products (i.e., panel walls, exterior doors, roofing products; skylights, windows, shutters, structural components, and new and innovative products) and provides manufacturers of these products with the choice of obtaining state approval as an alternative to receiving local approval.[44]

To obtain state approval for his or her products, a manufacturer must demonstrate compliance with applicable standards and provisions of the Florida Building Code by submitting one of the following reports:

- A certification mark or listing from an approved certification agency;
- A test report from an approved test laboratory;
- A product evaluation report from an evaluation entity authorized under s. 553.842(8)(a), F.S., or
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect.

[41] Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).
[42] *See* ss. 553.74, 553.76 and 553.77, F.S.
[43] *See* s. 468.604(4), F.S.
[44] *See* s. 553.842, F.S.

Currently, applications for product approval using the test report method and evaluation report method are subject to approval by the Florida Building Commission using the normal approval process. However, applications for product approval using the certification method are subject to approval by the DBPR using the expedited 10-day review process as outlined in s. 553.842(5), F.S.

The Florida Energy Code

Part V of ch. 553, F.S.(ss. 553.900 – 553.912), titled "Florida Thermal Efficiency Code," was enacted in 1979 in response to the oil crisis of the 1970s and required the establishment of a "statewide thermal efficiency code." The Florida Building Commission adopted the Florida Energy Efficiency Code for Building Construction (FEECBC), which remained Florida's statewide energy code from 1979 to 2012.

In 2008, s. 553.73(7)(a), F. S., was amended to require the Florida Building Commission to use the International Energy Conservation Code as the foundation for Florida's Energy Code, while retaining the Florida-specific criteria which were established as part of the FEECBC.[45] The 2008 legislation required the Florida Building Commission to effectively adopt both the International Energy Code and the Florida Energy Efficiency Code for Building Construction. On March 15, 2012, the Florida Building Commission adopted the 2010 Florida Building Code – Energy Conservation, which is based on the 2009 IECC but maintains the Florida-specific criteria of the FEECBC.

Although "Florida's 2010 Florida Building Code – Energy Conservation" is different from the "Florida Energy Efficiency Code for Building Construction," according to the DBPR, most of the significant changes to its content result directly from the Florida-specific changes approved by the Florida Building Commission through the code update process.[46]

Air Conditioners and the Florida Energy Code

Section 553.912, F.S, requires all air conditioners sold or installed in the state to meet the minimum efficiency ratings of the Florida Energy Efficiency Code for Building Construction. It is the intent of the Legislature that all replacement air-conditioning systems be installed using energy-saving, quality installation procedures, including, but not limited to, equipment sizing analysis and duct inspection.

The Florida Building Energy Efficiency Rating System (BERS)

Chapter 553, part VIII, F.S., is known as the "Florida Building Energy-Efficiency Rating Act." The Act requires the DBPR to provide a statewide uniform system for rating the energy efficiency of buildings. In addition, the DBPR is required to develop a training and certification program to certify energy raters. The DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters. The DBPR currently outsources

[45] Chapter 2008-227, s. 108, L.O.F.

[46] Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

administration of the BERS program to the Florida Solar Energy Center (FSEC) on a no-cost basis through a Memorandum of Understanding.[47] Energy raters are trained and tested by FSEC and the Department issues the rater a certificate based on completion of the FSEC program. The rating system is a voluntary program and does not require any rating be performed.

Currently, BERS rules adopted by reference the 2006 Mortgage Industry National Home Energy Rating Systems Accreditation Standards, promulgated by the National Association of State Energy Officials (NASEO)/Residential Energy Services Network (RESNET) as the standard for energy rater certifications under the BERS program. As a national program for energy rating, RESNET's services and rating procedures are similar to those of the BERS program. Based on adoption of the NASEO standard, Florida BERS raters are also required to undertake national examinations and certifications.

III. Effect of Proposed Changes:

Section 1 amends s. 162.12, F.S., relating to Code enforcement notice requirements. The bill specifies that a notice sent by certified mail include a return receipt request. The notice may be sent to either an address from the tax collector's office *or* one from the database of the county property appraiser. The bill also allows the local government to provide notices to any address it may have for the property owner or through publication or posting methods.

Section 2 amends s. 255.20, F.S., to exempt transportation projects for which federal aid funds are available from the operation of an existing tiebreaker preference for Florida lumber in local government construction contracting.

Section 3 amends s. 255.2575, F.S., to require all state agencies, when constructing public bridges, buildings, and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This tiebreaker language does not apply to transportation projects for which federal aid funds are available, and mirrors the language in s. 255.20(3), F.S., in section 2 of the bill.

Section 4 amends s. 255.257, F.S., to clarify that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code. The selection is made for each building and renovation to a building.

Section 5 amends s. 381.0065, F.S., which relates to onsite sewage treatment and disposal systems when remodeling a single family home that does not include the addition of a bedroom. Currently, a system modification, replacement, or upgrade of a system is not required in these types of remodeling projects. This bill specifies that an "existing inspection or evaluation and assessment" is also not required for such remodels.

The bill provides that the remodeling addition or modification may not cover any part of the system or encroach upon a required setback or the unobstructed area as determined by a timely local health department floor and site plan review. It provides that the Department of Health

[47] *Id.* The remainder of this section of the analysis is drawn from the DBPR Agency Analysis of the bill.

would determine whether the setback or unobstructed area is impacted through a review and verification of the floor plan for the proposed remodeling of, or addition to, a home. If the review and verification is not completed within seven days, the proposed remodeling or addition is deemed approved.

Section 6 amends s. 489.103, F.S., effective October 1, 2014, to exempt an owner or operator of public swimming pools[48] and spas permitted by the Department of Health, or his or her direct employees, who undertake to maintain the swimming pool or spa for the purpose of water treatment from the licensing requirement of the bill. Pool service technicians for public swimming pools who are employed by or associated with subsidiary entities or third party contractors are not exempted from the licensing requirement.

Section 7 amends s. 489.105(3), F.S., to add the phrase "maintain for purposes of water treatment" to the definition of contracting, specifically including such work within the mandatory licensure requirements of commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors. The bill removes the current exemption for businesses and individuals who engage only in pool/spa cleaning, maintenance and water treatment services from s. 489.105(3)(j)-(l), F.S., requiring any businesses or individuals who provide such services to obtain either a commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor license. The above provisions would become effective on October 1, 2014.

This section also defines the term "demolish," for purposes of licensure, as it existed prior to changes in 2012, and create an exemption from licensure for work that applies to demolition of buildings or residences that are three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less. The effective date for this amended definition is July 1, 2013.

Section 8 reduces the experience requirements for the swimming pool/spa service contractor's license under s. 489.111(2)(c)6.d., F.S., from one year of verifiable experience in swimming pool/spa service work to 20 hours of infield, hands-on instruction. However, all applicants for state certification would be required to pass the certification examination prior to licensure. In addition, all applicants for licensure would be required to meet all other licensure requirements, including the requirements to be at least 18 years old, be of good moral character, and meet biennial renewal requirements. These provisions would become effective on October 1, 2014.

Section 9 creates an undesignated section of law to provide that the amendments to s. 489.113(2), F.S., by s. 11 of ch. 2012, L.O.F., are remedial in nature and intended to clarify existing law relating to subcontractors who perform construction work under the supervision of a

[48] Section 514.011(2), F.S., defines a public swimming pool as a watertight structure . . . located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment . . .[including] a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

certified or registered contractor. It provides that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

Section 10 amends s. 489.127, F.S., relating to construction contracting prohibitions and penalties, to increase the maximum amount local municipalities and counties may charge for unlicensed contracting citations from $500 to $2,000 and to increase the maximum civil penalties for unlicensed contracting from $1,000 to $1,500 per day of each violation. In addition, the bill increases the percentage of funds a local government may retain when they collect unpaid fines and costs ordered by the Construction Industry Licensing Board from 25 percent to 75 percent. The remaining 25 percent would be remitted to the DBPR.

Section 11 amends s. 489.131, F.S., relating to compliance with state law and local ordinances for contractors, to remove the statement of Legislative intent that collection of fines and imposition of other penalties is secondary to the goal of attaining compliance with current regulations. In addition, the bill removes the requirement that local counties and municipalities issue a notice of non-compliance for first time minor violations prior to seeking fines and other disciplinary penalties.

Section 12 amends s. 489.514, F.S., to re-enact and extend the period for grandfathering of "registered" electrical, specialty electrical and alarm system contractor licenses to statewide "certified" licenses until November 1, 2015. Current law requires a license application by November 1, 2004. The extension is similar to a grandfather allowance for construction contractors, which in 2012 was extended to November 1, 2015.

Section 13 amends s. 489.531, F.S., to increase the maximum amount local municipalities and counties may charge for unlicensed electrical and alarm system contracting citations from $500 to $2,000.

Section 14 amends s. 553.71, F.S., to add a definition for purposes of the Florida Building Code to include "local technical amendment" to mean "an action by a local governing authority that results in a technical change to the Florida Building Code and its local enforcement."

Section 15 amends s. 553.73(17), F.S., to prohibit the adoption of any mandatory fire sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code. The section also clarifies that cost-saving incentives for IRC fire sprinklers are permissible when mutually agreed upon between a builder and code official.

Section 16 amends s. 553.74, F.S., to add a 26th member to the Florida Building Commission to represent the natural gas distribution system industry.

Section 17 amends s. 553.79, F.S., to authorize that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site.

Section 18 amends s. 553.842, F.S., to include "impact protective systems" among the categories of products that receive approval by the Florida Building Commission. Current law includes the categories of panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by Commission rule.

In addition, the section requires that the DBPR approve products that demonstrate compliance with the Florida Building Code when product evaluation testing reports from approved evaluation entities are used. Applications for product approval using product evaluation reports may be considered and approved by the DBPR under the expedited 10-day review process. The current procedure requires applications be held until the next meeting of the Florida Building Commission.

Section 19 amends s. 553.901, F.S., to rename the title of the statewide standard for energy efficiency from the Florida Energy Efficiency Code for Building Construction to the Florida Building Code-Energy Conservation, to reflect a coordination of construction standards related to energy efficiency within the Florida Building Code adopted in accordance with s. 553.73(7)(a), F.S.

Section 20 amends s. 553.902, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

Section 21 amends s. 553.903, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

Section 22 amends s. 553.904, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

Section 23 amends s. 553.905, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

Section 24 amends s. 553.906, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

Section 25 amends s. 553.912, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill. The bill also codifies the current energy code provision applicable to *existing* residential heating and cooling equipment to exempt that equipment, including system size and duct sealing, from meeting minimum equipment efficiencies unless necessary to preserve the listing of the equipment.

Section 26 amends s. 553.991, F.S., of Florida Building Energy-Efficiency Rating Act to specify that the purpose of the act is to identify energy rating systems to promote energy efficiency instead of to develop a statewide rating system.

Section 27 repeals s. 553.992, F.S., to eliminate the DBPR's responsibility to adopt, update, and maintain a statewide uniform building energy-efficiency rating system. Provisions in other sections of the bill effectively transfer this type of rating system oversight to specified nationally-recognized energy-efficiency rating system providers.

Section 28 amends s. 553.993, F.S., to include a definition of "building energy-efficiency rating system" as a system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy

Center. The section also provides definitions for "energy auditor," "energy-efficiency rating," and "energy rater."

Section 29 amends s. 553.994, F.S., to reference the "building energy-efficiency system" instead of the "rating system" that applies to all public, commercial, and residential buildings in this state.

Section 30 amends s. 553.995, F.S., to revise minimum requirements of the building energy efficiency rating systems established in section 25 of the bill and to remove a uniform rating scale. In addition, this section deletes the requirement that the DBPR establish a voluntary working group of interested persons to provide input on the adoption and administration of a rating system and also removes the DBPR responsibility to approve training and certification programs applicable to raters each of which reflects the department's changed role in energy efficiency rating systems.

Section 31 amends s. 553.996, F.S., to remove the DBPR's responsibility to prepare, and make available for distribution, at no cost, a brochure that informs the prospective purchasers of real property about the option for an energy efficiency rating on the building. Instead, the bill requires that the building energy-efficiency rating system providers must prepare the information on building ratings and make it available for distribution.

Section 32 amends s. 553.997, F.S., to remove the DBPR's responsibility to make available energy-efficiency practices information for individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments. Other state agencies will continue to provide these services.

Section 33 amends s. 553.998, F.S., to delete the DBPR's responsibility to adopt rules for the tools and procedures used to develop energy-efficiency ratings. Instead, ratings will be developed by the systems recognized in the bill.

Section 34 provides an effective date of July 1, 2013, except as otherwise stated (see sections 6-8).

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:

Section 9 of the bill provides that the amendments to s. 489.113(2), F.S., by s. 11 of ch. 2012, L.O.F., are remedial in nature and intended to clarify existing law. It also provides that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

In regards to the retroactive application of law, the general rule courts follow 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.[49] The Florida Supreme Court has addressed retroactive application of statutes. The court follows an analysis with two interrelated inquiries. The first inquiry is one of statutory construction, which asks whether there is clear evidence of legislative intent to apply the statute retrospectively. If the legislation clearly expresses intent that it apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.[50] If a statute attaches new legal consequences to events completed before its enactment, the courts will not apply the statute to pending cases, absent clear legislative intent favoring retroactive application. This analysis is not necessary where the language of a statute contains an express command that the statute is retroactive.[51]

When the language expressly states that it applies retroactively, the courts review a statute on the basis only of whether it is constitutionally permissible. A court must determine whether substantive or procedural rights are affected by the retroactive application of the new statute. In *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla.1994), the Supreme Court stated that "substantive law prescribes duties and rights and procedural law concerns the means and methods to apply and enforce those duties and rights." A substantive, vested right is "an immediate right of present enjoyment, or a present, fixed right of future enjoyment." A retroactive abolition of substantive vested rights is prohibited by constitutional due process considerations.[52]

In 2001, a Florida court interpreted the possible retroactive application of a 2000 amendment to s. 489.128, F.S.[53] In this case, a contractor brought suit after the owner terminated the contract. The Legislature amended s. 489.128, F.S., while the suit was pending by removing a provision in the statute that provided a contractor with the ability to cure his or her unlicensed status. At issue was whether s. 489.128, F.S., could be applied retroactively without the deleted provision that allowed the contractor to cure its unlicensed status. The court held that the 2000 amendment changed the contractor's substantive rights because it removed the contractor's previously existing right to cure. The 2000 amendment, therefore, did not operate retroactively.

Regarding the provision's intent to clarify existing law, the courts have considered a subsequent amendment to clarify original legislative intent of a statute when the

[49] *Metropolitan Dade County v. Chase Federal Housing Authority Corp.*, 737 So. 2d 494, 499 (Fla. 1999).
[50] *Id.* at 499.
[51] *Id.* at 500.
[52] *Id.* at 503.
[53] *The Palms v. Magil Construction Florida, Inc.*, 785 So. 2d 597 (Fla. 3rd DCA 2001).

amendment was enacted soon after a controversy regarding the statute's interpretation arose.[54] However, courts have held that it is inappropriate to use an amendment to clarify intent when the amendment was enacted seven years after the original statute.[55]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The licensing of pool technicians takes effect October 1, 2014, and the DOH estimates there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.[56] According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.[57] All those pool service technicians that are not direct employees of an owner or operator of a public pool will not be exempt from the licensing requirement.

According to the DBPR, it is estimated that the bill could generate 18,000 new licensees related to the swimming pool and spa provisions. The associated initial license fee, application fee, and exam fee would be approximately $236 per licensee.

In addition, registered electrical, alarm system and electrical specialty contractors grandfathering their registered contractors' licenses to certified contractors' licenses will now pay $295 to renew their certified licenses instead of $150 for renewal of their registrations.

B. Private Sector Impact:

Florida-based lumber and timber companies could see an increase in sales related to the tiebreaker preference provisions of the bill.

According to the DBPR, the current licensure scope for commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor includes many activities that exceed the normal work of a pool/spa cleaner, and those that have difficulty in passing the state examination due to the extensive nature of the subject matter will not be permitted to engage in the pool cleaning profession and will be placed out of business.[58]

The bill amends s. 489.127(6), F.S., to increase the percentage of outstanding fines collected by local government collection from 25 percent to 75 percent. According to the DBPR, certain DFS approved collection vendors currently utilized by the DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill.

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[54] *See Lowry v. Parole & Prob. Comm'n*, 473 So. 2d 1248, 1250 (Fla.1985), in which the relevant statute was signed by the Governor two days before the date of the court's opinion.
[55] *See McKenzie Check Advance of Florida, LLC v. Betts*, 928 So. 2d 1204 (Fla. ,2006).
[56] *See supra* note 2.
[57] *See supra* note 3.
[58] *2013 Legislative Analysis for CS/SB 156*, Department of Business and Professional Regulation, dated March 20, 2013.

C. Government Sector Impact:

The tiebreaker preference for Florida-based lumber and timber only applies if the price is equal to that of such products not produced in Florida, so there should be no fiscal impact.

Section 5, amending s. 381.0065, F.S., does not address whether a local health department may charge a fee for the required review and verification of a floor plan and site plan of a proposed remodeling addition or modification to a single-family home to determine if a setback or the unobstructed area is impacted. However, if a fee is necessary to cover the costs of providing such reviews and verifications, s. 381.0066, F.S., may provide the authority. The DOH indicates the bill will result in a loss of revenue from the prohibition on existing system inspections and evaluations. The loss of revenue is expected to be minimal.

Under sections 7 and 8 of the bill which become effective October 1, 2014, the DBPR will see an increase in license applications resulting in additional fees for examination, initial licensure and biennial renewals. The number of new licensees is indeterminate; however, the DBPR estimates that 18,000 new licensees who are not familiar with the DBPR's licensure requirements could be generated. The increase in calls and additional tasks is estimated by the DBPR to require a total of two additional Full Time Equivalent (FTE)[59] positions and two Other-Personal-Services (OPS) positions, in the Division of Service Operations, including, one additional FTE and two OPS positions[60] (Regulatory Specialist II) in the Bureau of Central Intake and Licensure to process new licensure and renewal applications, and one additional FTE (Regulatory Specialist II) position in the Customer Contact Center to handle increased call volume. The two OPS positions will be staffed for a six month period to process initial license applications. The Division of Regulation will require three additional FTE positions to accommodate the additional workload.

According to the DBPR, the following chart summarizes the impact of CS/SB 156:

REVENUE (PROFESSIONAL REGULATION TRUST FUND)			
	FY 2014-15	FY 2015-16	FY 2016-17
Exam Fees	1,503,000	83,500	83,500
Application Fees:	720,000	40,000	40,000
Initial License Fees:	3,600,000	100,000	200,000
License Renewal – Individual	0	0	3,800,000
Unlicensed Activity	90,000	5,000	5,000
Unlicensed Activity - Renewal	0	0	95,000
Building Commission Fee	72,000	4,000	4,000
Building Commission Fee -Renewal	0	0	76,000
TOTAL:	5,985,000	232,500	4,303,500

[59] FTE, an acronym for full-time equivalent**,** is a unit that indicates the workload of an employee for comparison purposes.
[60] The period of staffing the two OPS positions

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Budget	FY 2014-15	FY 2015-16	FY 2016-17
Salaries/Benefits # of FTE's (5 FTE's)	171,165	228,220	228,220
Salary Rate	157,173	157,173	157,173
Other Personal Services	0	0	0
Expenses	24,272	31,867	31,867
Contract Services	0	0	0
Examination and Testing Services (BET 100106)	25,000	20,000	20,000
Transfer to DMS – HR Services	1,328	1,770	1,770
Subtotal	221,765	281,857	281,857

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Budget	FY 2014-15	FY 2015-16	FY 2016-17
Other Personal Services	29,694	0	0
Expense	36,052	0	0
Operating Capital Outlay	0	0	0
Examination and Testing Services (BET 100106)	9,000	0	0
Transfer to DMS – HR Services OPS	236		
Subtotal	74,982	0	0

Non-Operating Expenditures	FY 2014-15	FY 2015-16	FY 2016-17
Service Charge to GR (8% of revenue)	478,800	18,600	344,280
Indirect Costs (DBPR Administrative Overhead)	0	0	0
Other/Transfers	0	0	0
Subtotal	478,800	18,600	344,280

Net Revenue Over/(Under) Expenditures	**$5,209,453**	**($67,957)**	**$3,677,363**

The DBPR will see an increase in application and renewal fees from registered electrical, alarm system and electrical specialty contractors grandfathering their registered contractors' licenses to certified contractors' licenses. The department anticipates an increase of $570,080 in application and license fees during the first year (Fiscal Year 2013-2014) of the grandfathering cycle.

In addition, according to the DBPR, the amendment to s. 489.127(6), F.S., will have an indeterminate impact on the DBPR and local government revenue. The department does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.[61] It is unknown to what extent the bill's increase in the local government collection retention percentage from 25 percent to 75 percent may entice local governments to begin such collections. Any collections by local governments would increase local revenue at the expense of the DBPR revenue.

[61] Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The tiebreaker preference for Florida lumber created in s. 255.2575, F.S., mirrors the existing local government tiebreaker preference in s. 255.20(3), F.S., and adds state agencies to the list of entities which must use such a preference. The preference will therefore be specified for local government entities in two sections, which is duplicative.

According to the DMS, virtually all construction performed by the DMS is of the commercial, non-combustible type. The wood or timber found within this construction is the plywood specified for monolithic concrete forms, not applicable to the requirement under this bill, or for light framing or millwork. In this construction, the department does not procure "wood or timber" directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.[62]

Consideration of the factors outlined in s. 11.62, F.S., (the Sunrise Act) may be appropriate for regulation of the occupation of pool maintenance and cleaning which is currently exempt from licensing. A Sunrise Act review has not been conducted.

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 Appropriations Committee on April 23, 2013:

- Revises noticing requirements of alleged violators of local codes and ordinances;
- Clarifies that a state agency constructing or renovating certain buildings is required to select a sustainable building rating system or national model green building code;
- Requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available, and their price, fitness, and quality are equal;
- Exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximity to a system;
- Revises the meaning of "demolish" as it is used to define licensed contractors;
- Changes the effective date for the swimming pool and spa provisions from October 1, 2013, to October 1, 2014;
- Provides that amendments enacted in 2012 related to the licensing of contractors and subcontractors are remedial in nature, are intended to clarify existing law, and apply retroactively;
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;

[62] Department of Management Services' bill analysis of SB 1080, dated February 29, 2013.

- Revises local government and the Department of Business and Professional Regulation (DBPR) collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board;
- Removes a requirement that local governments send minor violation notices to contractors prior to seeking fines and other disciplinary penalties;
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses;
- Adds a definition for "local technical amendment" in the Florida Building Code;
- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- Adds a member to Florida Building Commission from the natural gas distribution industry;
- Authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site;
- Specifies the DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews;
- Renames the statewide standard for energy efficiency;
- Specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- Eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system;
- Creates building energy-efficiency system definitions; and
- Provides additional energy-efficiency rating system changes which reflect the DBPR's revised role in the process.

CS by Community Affairs on March 7, 2013:
Exempts owner or operator of public swimming pools and spas, or his or her direct employees, from the licensing requirement of the bill. Provides the Department of Business and Professional Regulation with the authority to adopt rules, rather than the Construction Industry Licensing Board. Changed the effective date to October 1, 2013.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Gardiner) recommended the following:

Senate Substitute for Amendment (269142) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices, or

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to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for ~~provided by~~ the property owner ~~in writing to the local government for the purpose of receiving notices~~. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may ~~also~~ be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

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2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 2. Subsection (3) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—


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(3)(a) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.

(b) This subsection does not apply:

1. To plywood specified for monolithic concrete forms.~~,~~

2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.~~, or~~

3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

4. To transportation projects for which federal aid funds are available.

Section 3. Subsection (4) is added to section 255.2575, Florida Statutes, to read:

255.2575 Energy-efficient and sustainable buildings.—

(4)(a) All state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if

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such products are available and their price, fitness, and quality are equal.

(b) This subsection does not apply:

1. To plywood specified for monolithic concrete forms.

2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.

3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

4. To transportation projects for which federal aid funds are available.

Section 4. Paragraph (a) of subsection (4) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(4) ADOPTION OF STANDARDS.—

(a) Each ~~All~~ state agency ~~agencies~~ shall use ~~adopt~~ a sustainable building rating system or ~~use~~ a national model green building code for each ~~all~~ new building ~~buildings~~ and renovation ~~renovations~~ to an existing building ~~buildings~~.

Section 5. Paragraph (aa) of subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such


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permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service,


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abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(aa) An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed

area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

Section 6. Effective October 1, 2014, subsection (23) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.— This part does not apply to:

(23) An owner or operator of a public swimming pool or spa permitted under s. 514.031, an entity under common ownership or control with the owner or operator, or a direct employee of the owner, operator, or related entity, who undertakes to maintain the swimming pool or spa for the purpose of water treatment.

Section 7. Effective October 1, 2014, subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.— As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for


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compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, maintain for purposes of water treatment, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and, effective July 1, 2013, the term applies to ~~and all~~ buildings or residences more than three stories tall. For purposes of regulation under this part, the phrase "maintain for purposes of water treatment" applies only to cleaning, maintenance, and water treatment of swimming pools and spas. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are


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limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair,

waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any

work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-

conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a person who was registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain,

repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration,


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heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, maintenance, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, ~~any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or~~


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~~its associated equipment.~~

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, maintenance, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, ~~any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.~~

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to,


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the repair, water treatment, maintenance, and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any sanitation, chemical balancing, routine maintenance or cleaning, ~~cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair, ~~or~~ renovation, or water treatment. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.~~

(m) "Plumbing contractor" means a contractor whose services


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are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty


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plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as


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engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the


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experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

Section 8. Effective October 1, 2014, subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship

as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.


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5.a. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor is eligible to take the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is


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certified.

d. An applicant is eligible to take the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses and 20 hours of field hands-on instruction related to the scope of work covered by that license and approved by the Construction Industry Licensing Board by rule ~~and has at least 1 year of proven experience related to the scope of work of such a contractor~~.

Section 9. The amendments to s. 489.113(2), Florida Statutes, by section 11 of chapter 2012-13, Laws of Florida, are remedial in nature and intended to clarify existing law. This section applies retroactively to any action initiated or pending on or after March 23, 2012.

Section 10. Paragraphs (c) and (f) of subsection (5) and subsection (6) of section 489.127, Florida Statutes, are amended to read:

489.127 Prohibitions; penalties.—

(5) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required.

(c) The local governing body of the county or municipality may ~~is authorized to~~ enforce codes and ordinances against unlicensed contractors under the provisions of this subsection and may enact an ordinance establishing procedures for


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implementing this subsection, including a schedule of penalties to be assessed by the code enforcement officer. The maximum civil penalty which may be levied may ~~shall~~ not exceed $2,000 ~~$500~~. Moneys collected pursuant to this subsection shall be retained locally, as provided for by local ordinance, and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

(f) If the enforcement or licensing board or designated special magistrate finds that a violation exists, the enforcement or licensing board or designated special magistrate may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than $1,500 ~~$1,000~~ per day for each violation. In determining the amount of the penalty, the enforcement or licensing board or designated special magistrate shall consider the following factors:

1. The gravity of the violation.

2. Any actions taken by the violator to correct the violation.

3. Any previous violations committed by the violator.

(6) Local building departments may collect outstanding fines against registered or certified contractors issued by the Construction Industry Licensing Board and may retain 75 ~~25~~ percent of the fines they are able to collect, provided that they transmit 25 ~~75~~ percent of the fines they are able to collect to the department according to a procedure to be determined by the department.

Section 11. Paragraph (a) of subsection (7) of section 489.131, Florida Statutes, is amended to read:

489.131 Applicability.—

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(7)(a) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance~~; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance~~ with state laws and local jurisdiction ordinances. ~~It is the intent of the Legislature that a local jurisdiction agency charged with enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. A "notice of noncompliance" is a notification by the local jurisdiction agency charged with enforcing the ordinance, which is issued to the licensee that is subject to the ordinance. A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance. Failure of a licensee to take action correcting the violation within a set period of time would then result in the institution of further disciplinary proceedings.~~

Section 12. Section 489.514, Florida Statutes, is amended to read:

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489.514 Certification for registered contractors; grandfathering provisions.—

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12); ~~or~~

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified

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contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation ~~shall~~ count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of $500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2015 ~~2004~~, to be licensed pursuant to this section.

Section 13. Paragraph (c) of subsection (4) of section 489.531, Florida Statutes, is amended to read:

489.531 Prohibitions; penalties.—

(4) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) against persons who engage in activity for which county or municipal certification is required.

(c) The local governing body of the county or municipality may ~~is authorized to~~ enforce codes and ordinances against unlicensed contractors under the provisions of this section and


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may enact an ordinance establishing procedures for implementing this section, including a schedule of penalties to be assessed by the code enforcement officers. The maximum civil penalty which may be levied may ~~shall~~ not exceed $2,000 ~~$500~~. Moneys collected pursuant to this section shall be retained locally as provided for by local ordinance and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

Section 14. Present subsections (6) through (11) of section 553.71, Florida Statutes, are redesignated as subsections (7) through (12), respectively, and a new subsection (6) is added to that section, to read:

553.71 Definitions.—As used in this part, the term:

(6) "Local technical amendment" means an action by a local governing authority that results in a technical change to the Florida Building Code and its local enforcement.

Section 15. Subsection (17) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(17) A provision ~~The provisions of section R313 of the most current version~~ of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government


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that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

Section 16. Subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are ~~shall be~~ appointed by the Governor subject to confirmation by the Senate. The commission is ~~shall be~~ composed of 26 ~~25~~ members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Electrical Contractors Association and the National Electrical

Contractors Association, Florida Chapter, are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The

Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Products Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.


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(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, 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).

(w) One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) ~~(w)~~ One member who shall be the chair.

Any person serving on the commission under paragraph (c) or


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paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.

Section 17. Subsection (18) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(18) For the purpose of inspection and record retention, site plans for a building may be maintained in the form of an electronic copy at the worksite. These plans must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

Section 18. Paragraph (a) of subsection (5) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(5) Statewide approval of products, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, impact protective systems, and structural components as established by the commission by rule. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris from a hurricane or windstorm unless it is approved pursuant to this section or s. 553.8425. Any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without such approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501

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brought by the enforcing authority as defined in s. 501.203.

(a) Products for which the code establishes standardized testing or comparative or rational analysis methods shall be approved by submittal and validation of one of the following reports or listings indicating that the product or method or system of construction was in compliance with the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code:

1. A certification mark or listing of an approved certification agency, which may be used only for products for which the code designates standardized testing;

2. A test report from an approved testing laboratory;

3. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or

4. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state.

A product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Florida Building Code for the purpose intended is equivalent to a test report and test procedure referenced in the Florida Building Code. An application for state approval of a product under subparagraph 1. or 3. must be approved by the department after the commission staff or a designee verifies

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that the application and related documentation are complete. This verification must be completed within 10 business days after receipt of the application. Upon approval by the department, the product shall be immediately added to the list of state-approved products maintained under subsection (13). Approvals by the department shall be reviewed and ratified by the commission's program oversight committee except for a showing of good cause that a review by the full commission is necessary. The commission shall adopt rules providing means to cure deficiencies identified within submittals for products approved under this paragraph.

Section 19. Section 553.901, Florida Statutes, is amended to read:

553.901 Purpose of thermal efficiency code.—The Department of Business and Professional Regulation shall prepare a thermal efficiency code to provide for a statewide uniform standard for energy efficiency in the thermal design and operation of all buildings statewide, consistent with energy conservation goals, and to best provide for public safety, health, and general welfare. The Florida Building Commission shall adopt the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction within the Florida Building Code~~, and shall modify, revise, update, and maintain the code to implement the provisions of this thermal efficiency code and amendments thereto, in accordance with the procedures of chapter 120. The department shall, at least triennially, determine the most cost-effective energy-saving equipment and techniques available and report its determinations to the commission, which shall update the code to incorporate such equipment and techniques. The


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proposed changes shall be made available for public review and comment no later than 6 months before ~~prior to~~ code implementation. The term "cost-effective," as used in ~~for the purposes of~~ this part, means ~~shall be construed to mean~~ cost-effective to the consumer.

Section 20. Section 553.902, Florida Statutes, is reordered and amended to read:

553.902 Definitions.—As used in ~~For the purposes of~~ this part, the term:

(2)~~(1)~~ "Exempted building" means:

(a) A ~~Any~~ building or portion thereof whose peak design rate of energy usage for all purposes is less than 1 watt (3.4 Btu per hour) per square foot of floor area for all purposes.

(b) A ~~Any~~ building that ~~which~~ is neither heated nor cooled by a mechanical system designed to control or modify the indoor temperature and powered by electricity or fossil fuels.

(c) A ~~Any~~ building for which federal mandatory standards preempt state energy codes.

(d) A ~~Any~~ historical building as described in s. 267.021(3).

The Florida Building Commission may recommend to the Legislature additional types of buildings which should be exempted from compliance with the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~.

(4)~~(2)~~ "HVAC" means a system of heating, ventilating, and air-conditioning.

(6)~~(3)~~ "Renovated building" means a residential or


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nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, if ~~provided~~ the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.

(5) ~~(4)~~ "Local enforcement agency" means the agency of local government which has the authority to make inspections of buildings and to enforce the Florida Building Code. The term ~~It~~ includes any agency within the definition of s. 553.71(5).

(3) ~~(5)~~ "Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which energy may be transferred to or from the exterior.

(1) ~~(6)~~ "Energy performance level" means the indicator of the energy-related performance of a building, including, but not limited to, the levels of insulation, the amount and type of glass, and the HVAC and water heating system efficiencies.

Section 21. Section 553.903, Florida Statutes, is amended to read:

553.903 Applicability.—This part applies ~~shall apply~~ to all new and renovated buildings in the state, except exempted buildings, for which building permits are obtained after March 15, 1979, and to the installation or replacement of building systems and components with new products for which thermal efficiency standards are set by the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~. The provisions of this part shall constitute a statewide uniform code.

Section 22. Section 553.904, Florida Statutes, is amended

to read:

553.904 Thermal efficiency standards for new nonresidential buildings.—Thermal designs and operations for new nonresidential buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ at a minimum take into account exterior envelope physical characteristics, including thermal mass; HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary systems design and selection; and HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary equipment performance, and are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~.

Section 23. Section 553.905, Florida Statutes, is amended to read:

553.905 Thermal efficiency standards for new residential buildings.—Thermal designs and operations for new residential buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ at a minimum take into account exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance, and service water heating design and equipment selection and are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~. HVAC equipment mounted in an attic or a garage is ~~shall~~ not ~~be~~ required to have supplemental insulation in addition to that installed by the manufacturer. All new residential buildings, except those herein exempted, must ~~shall~~ have insulation in ceilings rated at R-19


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or more, space permitting. Thermal efficiency standards do not apply to a building of less than 1,000 square feet which is not primarily used as a principal residence and which is constructed and owned by a natural person for hunting or similar recreational purposes; however, ~~no~~ such person may not build more than one exempt building in any 12-month period.

Section 24. Section 553.906, Florida Statutes, is amended to read:

553.906 Thermal efficiency standards for renovated buildings.—Thermal designs and operations for renovated buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ take into account insulation; windows; infiltration; and HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary systems design and equipment selection and performance. Such buildings are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~. These standards apply only to those portions of the structure which are actually renovated.

Section 25. Section 553.912, Florida Statutes, is amended to read:

553.912 Air conditioners.—All air conditioners that are sold or installed in the state must ~~shall~~ meet the minimum efficiency ratings of the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~. These efficiency ratings must ~~shall~~ be minimums and may be updated in the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~ by the

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department in accordance with s. 553.901, following its determination that more cost-effective energy-saving equipment and techniques are available. It is the intent of the Legislature that all replacement air-conditioning systems in residential applications be installed using energy-saving, quality installation procedures, including, but not limited to, equipment sizing analysis and duct inspection. Notwithstanding this section, existing heating and cooling equipment in residential applications need not meet the minimum equipment efficiencies, including system sizing and duct sealing.

Section 26. Section 553.991, Florida Statutes, is amended to read:

553.991 Purpose.—The purpose of this part is to identify systems ~~provide for a statewide uniform system~~ for rating the energy efficiency of buildings. It is in the interest of the state to encourage the consideration of ~~the~~ energy-efficiency rating systems ~~system~~ in the market so as to provide market rewards for energy-efficient buildings and to those persons or companies designing, building, or selling energy-efficient buildings.

Section 27. Section 553.992, Florida Statutes, is repealed.

Section 28. Section 553.993, Florida Statutes, is amended to read:

553.993 Definitions.—For purposes of this part:

(1) "Acquisition" means to gain the sole or partial use of a building through a purchase agreement.

(2) "Builder" means the primary contractor who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the


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contracting activities of the business organization with which she or he is connected and who has the responsibility to supervise, direct, manage, and control the construction work on a job for which she or he has obtained the building permit. Construction work includes, but is not limited to, foundation, framing, wiring, plumbing, and finishing work.

(3) "Building energy-efficiency rating system" means a whole building energy evaluation system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center.

(4) ~~(3)~~ "Designer" means the architect, engineer, landscape architect, builder, interior designer, or other person who performs the actual design work or under whose direct supervision and responsible charge the construction documents are prepared.

(5) "Energy auditor" means a trained and certified professional who conducts energy evaluations of an existing building and uses tools to identify the building's current energy usage and the condition of the building and equipment.

(6) "Energy-efficiency rating" means an unbiased indication of a building's relative energy efficiency based on consistent inspection procedures, operating assumptions, climate data, and calculation methods.

(7) "Energy rater" means an individual certified by a building energy-efficiency rating system to perform building energy-efficiency ratings for the building type and in the rating class for which the rater is certified.

(8) ~~(4)~~ "New building" means commercial occupancy buildings


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permitted for construction after January 1, 1995, and residential occupancy buildings permitted for construction after January 1, 1994.

(9) ~~(5)~~ "Public building" means a building comfort-conditioned for occupancy that is owned or leased by the state, a state agency, or a governmental subdivision, including, but not limited to, a city, county, or school district.

Section 29. Section 553.994, Florida Statutes, is amended to read:

553.994 Applicability.—Building energy-efficiency ~~The~~ rating systems ~~system shall~~ apply to all public, commercial, and residential buildings in the state.

Section 30. Section 553.995, Florida Statutes, is amended to read:

553.995 Energy-efficiency ratings for buildings.—

(1) Building ~~The~~ energy-efficiency rating systems must, ~~system shall~~ at a minimum:

~~(a) Provide a uniform rating scale of the efficiency of buildings based on annual energy usage.~~

(a) ~~(b)~~ Take into account local climate conditions, construction practices, and building use.

(b) ~~(c)~~ Be compatible with standard federal rating systems and state building codes and standards, where applicable, and shall satisfy the requirements of s. 553.9085 with respect to residential buildings and s. 255.256 with respect to state buildings.

(c) ~~(2) The energy-efficiency rating system adopted by the department shall~~ Provide a means of analyzing ~~and comparing~~ the relative energy efficiency of buildings upon the sale of new or


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existing residential, public, or commercial buildings.

~~(3) The department shall establish a voluntary working group of persons interested in the energy-efficiency rating system or energy efficiency, including, but not limited to, such persons as electrical engineers, mechanical engineers, architects, public utilities, and builders. The interest group shall advise the department in the development of the energy-efficiency rating system and shall assist the department in the implementation of the rating system by coordinating educational programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices.~~

(2)(a) ~~(4) The department shall develop a training and certification program to certify raters. In addition to the department,~~ Ratings may be conducted by a ~~any~~ local government or private entity if~~, provided that~~ the appropriate persons have completed the necessary training established by the applicable building energy-efficiency rating system ~~and have been certified by the department~~.

(b) The Department of Management Services shall rate state-owned or state-leased buildings if~~, provided that~~ the appropriate persons have completed the necessary training established by the applicable building energy-efficiency rating system ~~and have been certified by the Department of Business and Professional Regulation~~.

(c) A state agency that ~~which~~ has building construction regulation authority may rate its own buildings and those it is responsible for~~,~~ if the appropriate persons have completed the necessary training established by the applicable building


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energy-efficiency rating system ~~and have been certified by the Department of Business and Professional Regulation~~. ~~The Department of Business and Professional Regulation may charge a fee not to exceed the costs for the training and certification of raters. The department shall by rule set the appropriate charges for raters to charge for energy ratings, not to exceed the actual costs.~~

Section 31. Section 553.996, Florida Statutes, is amended to read:

553.996 Energy-efficiency information provided by building energy-efficiency rating systems providers ~~brochure~~.—A prospective purchaser of real property with a building for occupancy located thereon shall be provided ~~with a copy of an~~ information ~~brochure,~~ at the time of or before ~~prior to~~ the purchaser's execution of the contract for sale and purchase which notifies~~, notifying~~ the purchaser of the option for an energy-efficiency rating on the building. Building energy-efficiency rating system providers identified in this part shall prepare such information and make it available for distribution ~~Such brochure shall be prepared, made available for distribution, and provided at no cost by the department~~. Such ~~brochure shall contain~~ information relevant to that class of building must include, ~~including,~~ but need not be limited to:

(1) How to analyze the building's energy-efficiency rating.

(2) Comparisons to statewide averages for new and existing construction of that class.

(3) Information concerning methods to improve the building's energy-efficiency rating.

(4) A notice to residential purchasers that the energy-


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efficiency rating may qualify the purchaser for an energy-efficient mortgage from lending institutions.

Section 32. Subsection (2) of section 553.997, Florida Statutes, is amended to read:

553.997 Public buildings.—

(2) ~~The department, together with other~~ State agencies having building construction and maintenance responsibilities, shall make available energy-efficiency practices information to be used by individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

Section 33. Section 553.998, Florida Statutes, is amended to read:

553.998 Compliance.—All ratings must ~~shall~~ be determined using tools and procedures developed by the systems recognized under this part ~~adopted by the department by rule in accordance with chapter 120~~ and must ~~shall~~ be certified by the rater as accurate and correct and in compliance with procedures of the system under which the rater is certified ~~adopted by the department by rule in accordance with chapter 120~~.

Section 34. The sums of $119,618 in recurring funds and $263,143 in nonrecurring funds are appropriated from the Professional Regulation Trust to the Department of Business and Professional Regulation for the implementation of this act during the 2013-2014 fiscal year.

Section 35. Except as otherwise explicitly stated elsewhere, this act shall take effect July 1, 2013.

================ 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 building construction; amending s. 162.12, F.S.; revising notice requirements in the Local Government Code Enforcement Boards Act; amending ss. 255.20 and 255.2575, F.S.; requiring governmental entities to specify certain products associated with public works projects; providing for applicability; amending s. 255.257, F.S.; requiring state agencies to use certain building rating systems and building codes for each new construction and renovation project; amending s. 381.0065, F.S.; specifying that certain actions relating to onsite sewage treatment and removal are not required if a bedroom is not added during a remodeling addition or modification to a single-family home; prohibiting a remodeling addition or modification from certain coverage or encroachment; authorizing a local health board to review specific plans; requiring a review to be completed within a specific time period after receipt of specific plans; creating s. 489.103, F.S.; providing for additional exemptions; amending s. 489.105, F.S.; revising definitions; amending s. 489.111, F.S.; revising eligibility criteria to take the swimming pool/spa examination; providing that amendments to s. 489.113(2), F.S., enacted in s. 11, ch. 2012-13, Laws of Florida, are remedial and

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intended to clarify existing law; providing for retroactivity; amending s. 489.127, F.S.; revising civil penalties; authorizing a local building department to retain 75 percent of certain fines collected if it transmits 25 percent to the Department of Business and Professional Regulation; amending s. 489.131, F.S.; deleting legislative intent referring to a local agency's enforcement of regulatory laws; deleting the definitions of "minor violation" and "notice of noncompliance"; deleting provisions that provide for what a notice of noncompliance should or should not include; deleting a provision that provides for further disciplinary proceedings for certain licensees; amending s. 489.514, F.S.; extending the date by which an applicant must make application for a license to be grandfathered; amending s. 489.531, F.S.; revising a maximum civil penalty; amending s. 553.71, F.S.; providing a definition for the term "local technical amendment"; amending s. 553.73, F.S.; prohibiting any provision of the International Residential Code relating to mandated fire sprinklers from incorporation into the Florida Building Code; amending s. 553.74, F.S.; revising membership of the Florida Building Commission; amending s. 553.79, F.S.; authorizing a site plan to be maintained at the worksite as an electronic copy; requiring the copy to be open to inspection by certain officials; amending s. 553.842, F.S.; requiring an application for state approval of a certain product to be approved by the


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department after the application and related documentation are complete; amending ss. 553.901, 553.902, 553.903, 553.904, 553.905, and 553.906, F.S.; requiring the Florida Building Commission to adopt the Florida Building Code-Energy Conservation; conforming subsequent sections of the thermal efficiency code; amending s. 553.912, F.S.; requiring replacement air conditioning systems in residential applications to use energy-saving quality installation procedures; providing that certain existing heating and cooling equipment is not required to meet the minimum equipment efficiencies; amending s. 553.991, F.S.; revising the purpose of the Florida Building Energy-Efficiency Rating Act; repealing s. 553.992, F.S., relating to the adoption of a rating system; amending s. 553.993, F.S.; providing definitions; amending s. 553.994, F.S.; providing for the applicability of building energy-efficiency rating systems; amending s. 553.995, F.S.; deleting a minimum requirement for the building energy-efficiency rating systems; revising language; deleting provisions relating to a certain interest group; deleting provisions relating to the Department of Business and Professional Regulation; amending s. 553.996, F.S.; requiring building energy-efficiency rating system providers to provide certain information; amending s. 553.997, F.S.; deleting a provision relating to the department; amending s. 553.998, F.S.; revising provisions relating to rating compliance; providing an appropriation; providing

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1405 effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (290726) (with title amendment)

Between lines 1308 and 1309
insert:

Section 34. Concrete Masonry Products Research, Education, and Promotion Act.—

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

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

(a) There is created the Florida Concrete Masonry Council,

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Inc., a nonprofit corporation organized under the laws of this state and operating as a direct-support organization of the Florida Building Commission.

(b) The council shall:

1. Develop, implement, and monitor a system for the definition of masonry products and for the collection of self-imposed voluntary assessments.

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

3. Use the means authorized by this subsection for the purpose of funding research, education, promotion, and consumer and industry information of concrete masonry products in this state and in the nation.

4. Coordinate research, education, promotion, industry, and consumer information programs with national programs or programs of other states.

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

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

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

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

9. Inform and educate the public concerning the

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sustainability and economic benefits of concrete masonry products.

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

(c) The council may:

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

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

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

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

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

6. Employ subordinate officers and employees of the council, prescribe their duties, and fix their compensation and

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terms of employment.

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

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

(d) The council and concrete masonry manufacturers may meet and coordinate the collection of self-imposed voluntary assessments for each concrete masonry unit that is produced and sold by manufacturers in the state.

(e)1. The council may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office or any state or local ballot initiative. This restriction includes, but is not limited to, a prohibition against publishing or distributing any statement.

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

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

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

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

(3) GOVERNING BOARD.—

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

1. Nine members representing concrete masonry manufacturers. Of these board members, at least five must be a representative of a manufacturer that is a member of the Masonry Association of Florida. These members must be representatives of concrete masonry manufacturers of various sizes. A manufacturer may not be represented by more than one member of the board.

2. One member representing the Florida Building Commission.

3. One member representing the Florida Home Builders Association.

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

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

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

(b) The initial board of directors shall be appointed by the chair of the commission based on recommendations from the Masonry Association of Florida. Five of the initial board members shall be appointed to a 1-year term. Five shall be appointed for a 2-year term. The remaining board members shall be appointed for a 3-year term. Thereafter, each member shall be appointed to serve a 3-year term and may be reappointed to serve an additional consecutive term. After the initial appointments are made, each subsequent vacancy shall be filled in accordance

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with the bylaws of the council. A member may not serve more than two consecutive terms. A member representing a manufacturer or a contractor must be employed by a manufacturer or contractor engaging in the trade of manufacture of concrete masonry products for at least 5 years immediately preceding the first day of his or her service on the board. All members of the board shall serve without compensation. However, the board members are entitled to reimbursement for per diem and travel expenses incurred in carrying out the intents and purposes of this section in accordance with s. 112.061, Florida Statutes.

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

(d) The initial board of directors shall adopt bylaws to govern initial terms of directors, governance of board members and meetings, term limits, and procedures for filling vacancies.

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

(5) PAYMENTS TO ORGANIZATIONS.—

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

(b) Before making payments described in this subsection, the council must secure a written agreement that the organization receiving payment will furnish at least annually, or more frequently on request of the council, written or printed

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reports of program activities and reports of financial data that are relative to the council's funding of such activities.

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

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

(a) Each manufacturer that elects to self-impose a voluntary assessment shall commit to the assessment for a period of not less than 1 year and shall annually be authorized to renew or end the self-imposed voluntary assessment.

(b) The manufacturer shall collect all such moneys and forward them quarterly to the council.

(c) The council shall maintain within its financial records a separate accounting of all moneys received under this subsection. The council shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant licensed under chapter 473.

(7) BYLAWS.—The council shall, by September 30, 2013, adopt bylaws to carry out the intents and purposes of this section. These bylaws may be amended upon 30 days' notice to board members at any regular or special meeting called for this purpose. The bylaws must conform to the requirements of this section but may also address any matter not in conflict with the general laws of this state.

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

And the title is amended as follows:

Delete line 1404

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and insert:

compliance; creating the Florida Concrete Masonry Council, Inc.; authorizing the council to levy an assessment on the sale of concrete masonry units under certain circumstances; providing the powers and duties of the council and restrictions upon actions of the council; providing for appointment of the governing board of the council; authorizing the council to submit a referendum to manufacturers of concrete masonry units for authorization to levy an assessment on the sale of concrete masonry units; providing procedure for holding the referendum; authorizing the council to accept grants, donations, contributions, and gifts under certain circumstances; authorizing the council to make payments to other organizations under certain circumstances; providing requirements for the manufacturer’s collection of assessments; requiring the council to adopt bylaws; providing an appropriation; providing

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment to Amendment (290726) (with title amendment)

Delete lines 1309 - 1313.

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

And the title is amended as follows:

Delete line 1404

and insert:

compliance; providing

899032

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment to Amendment (290726)

Delete line 774
and insert:

probation shall count toward the 5 years required under this

By the Committee on Community Affairs; and Senator Detert

578-02024-13 2013156c1

A bill to be entitled

An act relating to swimming pools and spas; amending s. 489.103, F.S.; providing an exemption from licensure requirements for an owner or operator maintaining a swimming pool or spa for the purpose of water treatment; amending s. 489.105, F.S.; revising the definition of the terms "contractor," "commercial pool/spa contractor," "residential pool/spa contractor," and "swimming pool/spa servicing contractor" to include the cleaning, maintenance, and water treatment of swimming pools and spas; conforming provisions to changes made by the act; amending s. 489.111, F.S.; revising eligibility requirements to take the swimming pool/spa servicing contractors' examination; providing the Department of Business and Professional Regulation with the authority to adopt rules; providing an effective date.

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

Section 1. Subsection (23) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(23) An owner or operator of a public swimming pool or spa permitted under s. 514.031, or his or her direct employee, who undertakes to maintain the swimming pool or spa for the purpose of water treatment.

Section 2. Subsection (3) of section 489.105, Florida Statutes, is amended to read:

578-02024-13 2013156c1

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, maintain for purposes of water treatment, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. For purposes of regulation under this part, the phrase "maintain for purposes of water treatment" applies only to cleaning, maintenance, and water treatment of swimming pools and spas. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-

dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials

and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved

disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical

disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a person who was registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or

connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, maintenance, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, ~~any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such~~

~~equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.~~

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, maintenance, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, ~~any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool~~

~~or spa or its associated equipment.~~

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to, the repair, water treatment, maintenance, and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any sanitation, chemical balancing, routine maintenance or cleaning, ~~cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair, ~~or~~ renovation, or water treatment. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the~~

~~structural integrity of the pool or spa or its associated equipment.~~

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The

scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer

collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide services enumerated in this paragraph that are within the scope of the services such

contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

Section 3. Subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours

shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to

take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor

is eligible to take the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

d. An applicant is eligible to take the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses and 20 hours of field hands-on instruction related to the scope of work covered by that license and approved by the department ~~Construction Industry Licensing Board~~ by rule ~~and has at least 1 year of proven experience related to the scope of work of such a contractor~~.

Section 4. This act shall take effect October 1, 2013.

269142

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/10/2013	.	
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The Committee on Regulated Industries (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited

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4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible

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to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors'

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examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor is eligible to take the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

d. An applicant is eligible to take the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses and 20 hours of in-field, hands-on instruction related to the scope of work covered by that license and approved by the Construction Industry Licensing Board by rule, and has not previously engaged in any scope of work described in ss. 489.105(3)(j),(k) or (l) reserved to commercial pool/spa contractors, residential pool/spa contractors and swimming pool/spa servicing contractors, respectively without being properly licensed to engage in same ~~and has at least 1 year of proven experience related to the scope of work of such a contractor~~.

Section 2. Section 489.1131, Florida Statutes, is created to read:

489.1131 Pool/Spa Cleaning.— Any person who cleans a pool or spa in a way that affects the structural integrity of the pool or spa or its associated equipment without being properly licensed as required by this part is subject to the provisions of s. 489.127.

Section 3. This act shall take effect October 1, 2014.

269142

100
101 ================ T I T L E A M E N D M E N T ================
102 And the title is amended as follows:
103 Delete everything before the enacting clause
104 and insert:
105 A bill to be entitled
106 An act relating to swimming pool and spa contracting;
107 amending s. 489.111, F.S.; revising eligibility
108 requirements for taking the swimming pool/spa
109 servicing contractor’s licensure examination; creating
110 s. 489.1131, F.S.; providing penalties for
111 unauthorized contracting by providers of cleaning
112 services; providing an effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2013
Meeting Date

Topic Building Codes

Bill Number CS/SB 156 *(if applicable)*

Name Cam Fentriss

Amendment Barcode 290726 *(if applicable)*

Job Title Legislative Counsel

Address 1400 Village Square Blvd, Number 3-243
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-222-2772

E-mail afentriss@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association Plumbing Heating Cooling Contractors / Florida RACCA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Bld Code / Pools

Bill Number SB 156 *(if applicable)*

Name KARI Hebrank

Amendment Barcode 269142 *(if applicable)*

Job Title

travelling delete-all (Regulated Industries)

Address 7711 Deepwood Tail
Street

Phone 850-566-7824

Tallahassee, FL 32317
City *State* *Zip*

E-mail khebrank@wilsonngt.com

Speaking: ☐ For ☐ Against ☐ Information

Representing FL Homebuilders Assn.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Swimming Pools / Bld Code

Bill Number SB 156 *(if applicable)*

Name Jennifer Hatfield

Amendment Barcode 269142 *(if applicable)*

Job Title

travelling delete-all (Regulated Industries)

Address 34 SE 7th Ave #9
Street

Phone 941-345-3263

Delray Beach FL 33483
City *State* *Zip*

E-mail jen@hatfieldadvantages.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Swimming Pool Assoc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-13
Meeting Date

Topic Swimming Pools

Bill Number 156 *(if applicable)*

Name Cindy Littlejohn

Amendment Barcode 290726 *(if applicable)*

Job Title Consultant

Address 310 W. College
Street

Tall Fl 32301
City *State* *Zip*

Phone 222.7535

E-mail cindy@littlejohnlawfirm.com

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

Representing Plum Creek Timber

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Construction Bill

Bill Number 156 *(if applicable)*

Name Rocky Jenkins

Amendment Barcode 741084 *(if applicable)*

Job Title Director

Address 880 Maple Ridge Drive *Street*
Merritt Island FL 32952 *City State Zip*

Phone 321-543-1415

E-mail rockys.jenkins@cemex.com

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

Representing CEMEX

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-2013
Meeting Date

Topic Construction Bill

Bill Number 156 *(if applicable)*

Name JAMES PAINTER

Amendment Barcode 741084 *(if applicable)*

Job Title OWNER - PAINTER MASONRY INC

Address 2425 NE 19th DR
Street

Phone 352-378-7511

Gainesville FL 32609
City *State* *Zip*

E-mail jim@paintermasonry.com

Speaking: ☐ For ☐ Against ☐ Information

Representing PAINTER MASONRY INC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Construction

Bill Number 156 *(if applicable)*

Name Curtis Leonard

Amendment Barcode 741084 *(if applicable)*

Job Title

Address 645 Riverpark Circle
Street

Phone 407-709-9000

Longwood FL 32779
City *State* *Zip*

E-mail cleonard@titanamerica.co

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

Representing Titan America

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Masonry Bill - Construction Bill Bill Number 156 *(if applicable)*

Name Robert Carlton Amendment Barcode 741084 *(if applicable)*

Job Title Mason Contractor

Address 2362 Olando St Phone 904-376-5070
Street

Green Cove Springs FL 32043 E-mail Robert@ccmsj.ax.com
City *State* *Zip*

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

Representing ~~Florida~~ Capital Concrete and Masonry Inc.

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Construction

Bill Number 156 *(if applicable)*

Name AL Herndon

Amendment Barcode 741084 *(if applicable)*

Job Title Apprenticeship Admin

Address P.O. Box 1345 *Street*

Phone 904 838 6531

Green Cove Springs *City* *State* *Zip*

E-mail herndon30@bellsouth.net

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

Representing Florida Masonry Apprentice And Educational Foundation

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Construction

Bill Number 156 *(if applicable)*

Name Patrick McLaughlin

Amendment Barcode 7410864 *(if applicable)*

Job Title Executive Director

Address 398 Camino Gardens Blvd
Street
Boca Raton FL
City *State* *Zip*

Phone 561-239-2462

E-mail pete@floridamasonry.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Masonry Association of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 17, 2013

I respectfully request that **Senate Bill #156**, relating to Swimming Pools and Spas, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

SENATE APPROPRIATIONS
RECEIVED
13 APR 17 PM 2:14
SUBMITTED BY
STAFF DIR.
STAFF

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/CS/CS/SB 242
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senator Hukill
SUBJECT:	Interstate Insurance Product Regulation Compact
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Naf	McVaney	GO	**Fav/CS**
3.	Betta	DeLoach	AGG	**Favorable**
4.	Betta/Knudson	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact (Compact).The Compact is intended to help states join together to regulate designated insurance products.

There is no fiscal impact to the state.

Specifically, the Compact applies to the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for long-term care insurance in the Compact.

In addition to the opt-out from all uniform standards for long-term care insurance, the bill also prospectively opts out of the Compact for the 10-day period for the unconditional refund of premiums, plus any fees or charges under s. 626.99, F.S.; as well as underwriting criteria limiting

the amount, extent, or kind of life insurance based on past or future travel in a manner inconsistent with s. 626.9541(1)(dd), F.S., as implemented by the OIR. The bill also provides that standards adopted by Florida are not limited or rendered inapplicable by the absence of a Compact standard, and that standards adopted by Florida continue to apply to the content, approval, and certification of products in Florida, notwithstanding the provision in the Compact stating that the rules and uniform standards of the Compact are the exclusive provisions applicable to the content, approval, and certification of such products.

Upon joining the Compact, Florida will become a member of the Interstate Insurance Product Regulation Commission (Commission). The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products; and
- Approve product filings that satisfy applicable uniform standards.

Florida will only participate in the Compact if the Commissioner of the Office of Insurance Regulation (Insurance Commissioner) determines that the uniform standards of the Compact provide consumer protections equal to those under state law. If the Insurance Commissioner determines the Compact does not provide equivalent protections, then an order issued by the Office of Insurance Regulation (OIR) is sufficient to opt out of the Compact or stay the effect of a uniform standard.

The bill has an effective date of July 1, 2014.

This bill creates undesignated sections of the Florida Statutes.

II. Present Situation:

The Interstate Insurance Product Regulation Compact

The Interstate Insurance Product Regulation Compact (Compact) is an agreement among the member states to uniform standards for the regulation of four insurance product lines:

- Life insurance,
- Annuities,
- Disability income, and
- Long-term care insurance.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (Commission).[1] Each member state is represented by one member, who is that state's representative to the Commission. All Compact members[2] receive one vote under the Compact.

[1] The Commission is a multi-state joint public entity that came into existence in March 2004 upon the legislative enactment of two states, Colorado and Utah, respectively. The Commission did not become operational for purposes of adopting uniform product standards until it May 2006, when it met the requirement set by the terms of the Compact. The Commission has 41 Member States representing approximately two-thirds of the premium volume nationwide.

[2] The other Compact members are Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Utah, Vermont, West Virginia and Wyoming

The adoption of a uniform standard requires a two-thirds vote of Commission members. Bylaws require a majority vote of members. The Commission is governed by a 14-member management committee. The Management Committee members currently include the seven largest member states according to premium volume,[3] four mid-sized states with at least 2 percent of the national premium volume[4] and one additional state from each of four regional zones[5]

The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

If Florida joins the Compact, any product whose product line is governed by the Compact and is submitted to the Commission, if approved, will be approved to be offered for sale in Florida[6] if it complies with the requirements of the Compact. The model laws and regulations of the Compact will govern and generally preempt the application of conflicting Florida law governing the product. [7] A state may opt out of a uniform standard via legislation or rule either at the time the state enacts the Compact or prior to the enactment of a new standard or rule approved by the Commission. Florida will opt out of Commission standards for long-term care insurance and join the Compact for life insurance, annuities, and disability income insurance under CS/CS/SB 242.

The Florida Legislature has in the past enacted laws containing greater consumer protections than are generally available in other states. For instance, in Florida, the suitability of an annuity—the appropriateness of a particular annuity product relative to the consumer's age, investment objectives, and current and future financial needs—has been a primary concern with regard to transactions involving consumers, particularly senior consumers. In 2004, the Florida Legislature enacted a model law on annuities, the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (NAIC) in s. 627.4554, F.S.[8] The 2008 Legislature, however, subsequently passed the John and Patricia Seibel Act, which strengthened Florida's annuity standards and procedures.[9] Those standards were further strengthened by the 2010 Legislature.[10]

To date, the Commission has adopted uniform standards for the following individual product lines: term and whole life insurance, variable and non-variable adjustable life insurance, variable and non-variable annuities, long-term care insurance, and disability income insurance. The Commission has also promulgated standards relating to the applications for the various

[3] Illinois, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Texas.
[4] Maryland, Missouri, Virginia, and Wisconsin
[5] Kansas, Mississippi, New Hampshire and Washington
[6] If the insurer is authorized to transact business in Florida.
[7] All lawful actions of the Commission, including all uniform standards, rules, and operating procedures, are binding on compacting states. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General.
[8] Section 146, ch. 2004-390, L.O.F.
[9] Section 9, ch. 2008-237, L.O.F.
[10] Section 52, ch. 2010-175, L.O.F.

individual lines of insurance, the benefit features of individual life policies, the benefit features of individual annuities, and for changes to mortality tables used for individual life insurance. Standards for group term life insurance have also been adopted. The Commission is in the process of developing uniform standards for group annuities and standards for specific benefits offered in group term life insurance policies.

Life Insurance

Life insurance is insurance of human lives.[11] Life insurance provides survivor benefits for designated beneficiaries upon the death of the insured. The three most common types of life insurance are whole life, term life, and universal life. Whole life insurance provides a fixed amount of life insurance coverage while building cash value. The premium remains the same until the maturity date (usually age 100). Benefits are payable upon the death of the insured or on the maturity date. The cash value of the policy increases as premiums are paid and allow loans to be made on the policy for up to the amount of the cash value. Term life insurance is purchased for a specific time period and pays a death benefit only if the insured dies during the specified time period. Term insurance does not build cash value. Term life insurance policies may contain provisions allowing the insured to renew the policy after expiration of the term or convert the policy to a whole life policy. Universal life insurance is a combination of a term life policy and the ability to accumulate cash value.

Annuities

An annuity is a form of life insurance transaction involving a contract between a customer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities can be obtained in either immediate or deferred form. In an immediate annuity, the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years.

Disability Income Insurance

Disability income insurance pays a weekly or monthly income for a specific period if the insured suffers a disability and cannot continue working or obtain work. The disability may involve sickness, injury, or a combination of the two. Disability policies often contain an elimination period, which is a specified time period after the date of disability that must pass before the insured may receive benefits. Most disability insurance plans coordinate benefits with Social Security benefits and workers' compensation to eliminate duplication of coverage.

[11] Section 624.602, F.S.

Long-Term Care Insurance

Long-term care insurance policies provide benefits for a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time for services not covered by a regular health insurance, Medicare or Medicare supplement insurance policy. The need for long-term care insurance may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

Florida law establishes requirements for long-term care policies in the Long-Term Care Insurance Act.[12] The act specifies filing requirements, disclosure, advertising, and performance standards for such policies, minimum standards for home health care benefits, mandatory offers, cancellation requirements, and standards for benefit triggers for receiving benefits under the policy. The act also provides consumers grace periods for late payment and notice of cancellation.[13]

III. Effect of Proposed Changes:

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact. The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for long-term care insurance in the Compact.

Legislative Findings and Declaration of Intent

Section 1 creates an undesignated section of statute stating that Florida intends to join the Interstate Insurance Product Regulation Compact (Compact) and become a member of the Interstate Insurance Product Regulation Commission (Commission). The Legislature finds that the Compact will, through a single source for filing new products and a uniform set of product standards that provide a high level of consumer protection, address the increased mobility of the populace and significant changes in the financial services marketplace that have resulted in asset-based insurance products competing directly with other retirement and estate planning instruments sold by banks and securities firms. The Legislature also declares that it is adopting the Compact under the understanding that no uniform standards long-term care insurance rate increase filings will be developed.

[12] Part XVIII of chapter 627, F.S.
[13] Section 627.94073, F.S.

Enactment of the Compact and Membership in the Commission

Section 2 makes the state a compacting state under the Compact and a member of the Commission, whose purposes are to protect consumer interests, develop uniform standards for insurance products, establish a clearinghouse to promptly review insurance products and related advertisements, give regulatory approval to product filings and advertisements that satisfy the applicable uniform standard, coordinate regulatory resources among states, create the Commission, and perform these and other related functions.

Commission Membership, Voting, and Bylaws

Each compacting state has one member of the Commission, who is entitled to one vote. The Commission is governed by a management committee of up to 14 members consisting of:

- One member each from the four compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products.
- One member from the four compacting states with at least 2 percent of the market described above selected on a rotating basis, other than from the six states with the largest premium volume.
- One member from four compacting states with less than 2 percent of the market described above, with one selecting from each of the four zone regions of the NAIC.

The Commission annually elects officers from the management committee and is authorized to select an executive director who serves as secretary to the Commission but may not be a Commission member.

The Compact requires the establishment of legislative and advisory committees. The legislative committee consists of state legislators and monitors and makes recommendations to the Commission. The management committee must consult with the legislative committee prior to adopting any uniform standard, change in Commission bylaws, annual budget or other significant matter. Two advisory committees must be established, one comprising independent consumer representatives and another composed of insurance industry representatives. Additional advisory committees may be established. Adoption of bylaws requires a majority vote of members.

Amendments to the Compact

Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. An amendment is adopted only if unanimously enacted into law by all of the compacting states.

Powers of the Commission

The bill establishes the Interstate Insurance Product Regulation Commission. The Commission may:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

Uniform Standards

The Commission has authority to adopt uniform standards by rule. A "uniform standard" is a commission standard for a product line, plus subsequent amendments that use a substantially consistent methodology. A uniform standard includes all product requirements in the aggregate. A uniform standard must be construed to prohibit the use of inconsistent, misleading, or ambiguous provisions in a product. The uniform standard must also ensure that the form of any product made available to the public is not unfair, inequitable, or against public policy as determined by the Commission. Adoption of a uniform standard requires a two-thirds vote of Commission members.

For purposes of this act, Florida is adopting all uniform standards that the Commission has adopted as of March 1, 2013, other than for long-term care insurance. The bill states that the Office of Insurance Regulation (OIR) shall opt out of any new uniform standard or amendment to a standard that substantially changes it that is adopted by the Commission after March 1, 2013. The bill directs the OIR to opt out of the uniform standard and authorizes the state Financial Services Commission to adopt rules to opt out of any new uniform standards or substantial amendments until such standards or amendments are approved by the Legislature.

Commission Receipt, Review, and Approval of Products

The Commission also has authority to receive and review products filed with the Commission and rate filings for disability income and long-term care insurance products (Florida is opting out of all uniform standards involving long-term care). Products and disability income insurance rates that satisfy the appropriate uniform standard may be approved. Commission approval has the force and effect of law and is binding on compacting states.

A product is the policy form or contract and includes any application, endorsement, or related form that is attached to and part of the policy or contract. The term also includes any evidence of coverage or certificate for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

The Commission may designate certain products and advertisements that may self-certify compliance with uniform standards and commission rules and are not required to obtain prior approval from the Commission. The Commission may issue subpoenas requiring the testimony of witnesses and production of evidence and may also bring and prosecute legal proceedings if the standing of any state insurance department to sue or be sued is not affected. The Commission has the power to adopt rules that have the force and effect of law and are binding in the compacting states. Such rules include uniform standards for product and related advertisements that are filed with the Commission.

To obtain approval of a product, the insurer must file the Product with the Commission and pay applicable fees. Any product approved by the Commission may be sold or otherwise issued in any compacting state in which the insurer is authorized to do business. An insurer may alternatively file its product with a state insurance department, and such filing will be subject to the laws of that state.

Review of Commission Decisions Regarding Filings

A disapproved product or advertisement may be appealed to a review panel appointed by the Commission within 30 days of the Commission's determination. An allegation that the Commission disapproved a product or advertisement arbitrarily, capriciously, abused its discretion, or otherwise acted not accordance with law is subject to judicial review. Judicial proceedings must be brought in a court where the principal office of the Commission is located (Washington, DC).

Rulemaking by the Commission and State Opt-Out Procedure

The rulemaking process must conform to the Model State Administrative Procedure Act of 1981, as amended. Prior to adopting a uniform standard, the Commission must give written notice to the relevant state legislative committees in each compacting state. In adopting a uniform standard, the Commission must consider all submitted materials and issue a concise explanation of its decision. Uniform standards are effective 90 days after their adoption by the Commission. Judicial review of Commission rules (including uniform standards) or operating procedures is available but limited by the Compact. Any person may petition for judicial review, but the petition does not stay or prevent the rule or operating procedure from becoming effective unless the court finds the petitioner has a substantial likelihood of success. The court may not find a Commission rule or operating procedure unlawful if it represents a reasonable exercise of the Commission's authority

A state may opt out of a uniform standard via legislation or rule. Florida is prospectively opting out of all uniform standards involving long-term care insurance products, as allowed by the terms of the Compact. Opting out of a uniform standard via rule requires the state to give the Commission written notice within 10 business days after the uniform standard is adopted and find that the uniform standard does not provide reasonable protections to the consumers of that state. The OIR Commissioner must make specific findings of fact and conclusions of law detailing the facts that warrant departure of the uniform standards and that those facts outweigh the Legislature's intent to join the Compact and a presumption that the uniform standard provides reasonable consumer protections.

Compliance Enforcement

The Commission monitors compacting states for compliance with Commission bylaws, rules, uniform standards, and operation procedures, and provides written notice to a state that is in noncompliance.

The state insurance commissioner retains authority to oversee the market regulation of the activities of insurers in that state. An insurance product or advertisement that has been approved

or certified by the Commission, however, does not violate the provisions, standards, or requirements of the Compact unless the Commission holds a hearing and issues a final order finding a violation. If an advertisement has not been approved or certified to the Commission, the state insurance commissioner may only bring an action for violating a standard of the Compact if the Commission first authorizes the action.

Withdrawing From or Dissolving the Compact; State Default, Suspension and Termination

A state may withdraw from the Compact by repealing the law that enacted the Compact. Withdrawal from the Compact does not affect product filings approved or self certified, or approved advertisements, except by mutual agreement of the Commission and the withdrawing state, unless the state formally rescinds approval in the same manner as provided by the laws of that state for disapproving products or advertisements previously approved under state law. The Compact is dissolved once there is only one Compact member.

The Commission may suspend a state that is determined to have defaulted in the performance of its obligations or duties under the Compact or the bylaws, rules, or operating procedures of the Compact. The Commission must notify a defaulting state in writing and provide a time period within which the state may cure the default. The state will be terminated from the Compact if the default is not timely cured. Products and advertisements approved by the Commission, or self-certified, remain in force in the same manner as though the state had withdrawn voluntarily. Reinstatement following termination requires reenacting the Compact.

Actions of Commission are Binding on States; Conflict of Laws; Advisory Opinions

All lawful actions of the Commission, including all rules and operating procedures, are binding on compacting states. Agreements between the Commission and compacting states are binding in accordance with their terms. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General. A Compact provision is ineffective as to a state, however, if it exceeds the constitutional limits imposed on the Legislature of a state. If an insurance product is filed with an individual state, it is subject to the law of that state.

If requested by a party to a conflict over the meaning or interpretation of Commission actions and approved by a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

Inspection of Commission Records

The Commission must adopt rules creating conditions and procedures for the public inspection and copying of information and official records, except for records involving the privacy of individuals and insurers' trade secrets. The Commission may also adopt additional rules allowing it make available otherwise exempt records and information to federal and state agencies, including law enforcement. All public requests to inspect or copy records, data, or information of

the Commission that is in the possession of the OIR, insurance commissioner, or commissioner's designee, are subject to Chapter 119, Florida Statutes.

Commission Funding and Expenses

The Commission covers the cost of its operations and activities through the collection of filing fees. The annual budget may not be approved until it has been subject to the required notice and comment period. The Commission is exempt from all taxation by compacting states. The Commission may not pledge the credit of any compacting state except with the legal authorization of the compacting state. Complete and accurate accounts of Commission financial records must be kept and shall be audited annually by an independent certified public accountant. At least every 3 years, the audit must include a management and performance audit of the Commission.

Severability Clause

The Compact provisions are severable from provisions that are deemed unenforceable.

Opt-Out All Uniform Standards Involving Long-Term Insurance Products

Section 3 provides that Florida opts out of all uniform standards of the Commission involving long-term care insurance products.

Participation in Compact Dependent on Determination by Insurance Commissioner; Opt-Out of All Uniform Standards Adopted After March 1, 2013; Continued Application of Florida Standards

Section 4 adopts all uniform standards of the Commission as of March 1, 2013, other than for long-term care insurance. Florida will only participate in the Compact, however, if the Commissioner of the Office of Insurance Regulation (Insurance Commissioner) determines that the uniform standards of the Compact provide consumer protections equal to those under state law. If the Insurance Commissioner determines the Compact does not provide equivalent protections, then an order issued by the Office of Insurance Regulation is sufficient to opt out of the Compact or stay the effect of a uniform standard...

The Office of Insurance Regulation (OIR) must opt out of all new uniform standards that the Commission adopts after March 1, 2013, that substantially alter or add to existing Commission uniform standards that the state adopted pursuant to this bill until the state enacts legislation to adopt or opt out of the new uniform standards or amendments to uniform standards. The OIR must immediately notify the Legislature of any new uniform standard or amendment to an existing standard. Effective October 1, 2014, the state will also opt-out of uniform standards adopted by the Commission for:

- The 10-day period for the unconditional refund of life insurance premiums, plus any fees or charges under s. 626.99, F.S., and
- Underwriting criteria limiting the amount, extent, or kind of life insurance based on past or future travel that is inconsistent with s. 626.9541(1)(dd), F.S., as implemented by the OIR.

The bill states that it is the policy of this state that the exclusivity provision of paragraph (2)(b) of Article XVI of the Compact (stating that the rules and uniform standards of the compact are the exclusive provisions applicable to the content, approval, and certification of such products) applies only to uniform standards adopted by the Commission, and that standards adopted by Florida are not limited or rendered inapplicable by the absence of a standard adopted by the Commission. The bill also applies all Florida standards to the content, approval and certification of products in Florida, notwithstanding the exclusivity provision of the Compact, including, but not limited to:

- The prohibition against a surrender or deferred sales charge of more than 10 percent under s. 627.4554, F.S.
- Notification to an applicant of the right to designate a secondary addressee at the time of application under s. 627.4555, F.S.
- Notification of secondary addressees at least 21 days before the impending lapse of a policy under s. 627.4555, F.S.
- The requirement to include a clear statement that the benefits, values, or premiums under a variable annuity are indeterminate and may vary.
- Interest on surrender proceeds pursuant to s. 627.482, F.S.

Unemployment and Reemployment Taxes

Section 5 imposes state unemployment and reemployment taxes under ch. 443, F.S., on any Commission employees who perform services within this state. The Commission is also subject to state taxation for any business or activity conducted or performed in the state.

Public Requests for Inspection and Copying of Information, Data, or Records

Section 6 specifies that notwithstanding the provisions of the Compact governing public inspection and copying of records (Article VIII, sections 1 and 2) and documents and information related to Commission finances or internal audits (Article XII, section 6), a request by a Florida resident for public inspection and copying of information, data, or official records that include:

- Insurer trade secrets will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 624.4213, F.S.
- Matters of privacy of individuals will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 119.07(1), F.S.

The section also specifies that nothing in the act abrogates a person's right to access information consistent with the Constitution and laws of Florida.

Rulemaking

Section 7 grants rulemaking authority to the Financial Services Commission to administer the act.

Invalidation Clause

Section 8 provides that if any part of section 3 of the bill (the opt-out of all Compact standards for long-term care insurance) or section 4 of the bill (relating to Florida opting out of Compact uniform standards) is invalidated by the courts, such ruling renders the entire act invalid, which eliminates the state's membership in the Compact.

Effective Date

Section 9 provides that the effective date of the act is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

Non-Delegation Doctrine

Statutory authorization to compact or enter reciprocal agreements with other states and authorizing the Insurance Commissioner to prevent Florida from adopting the Compact or opting out of additional uniform standards by administrative rule potentially implicate 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 that "primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines…."[14] Particularly questionable under the non-delegation doctrine is the provision of the bill that authorizes the Insurance Commissioner to prevent Florida from joining the Compact by issuing an order, as it appears to cede a primary policy decision to the Insurance Commissioner.

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."[15] However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."[16]

[14] Askew v. Cross Key Waterways, 372 So.2d 913, 925 (Fla. 1978).
[15] *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)).
[16] *Sims v. State,* 754 So.2d 657, 668 (Fla. 2000).

Further, the nondelegation doctrine precludes the Legislature from delegating its powers "absent ascertainable minimal standards and guidelines."[17] When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide in the execution of the powers delegated."[18]

The CS/CS/CS attempts to comply with the nondelegation doctrine by expressing that it is state policy to prospectively opt-out of all uniform standards and new substantial amendments to such standards that are adopted by the Commission after March 1, 2013. The bill directs the Office of Insurance Regulation to opt out all such uniform standards and new substantial amendments. The Financial Services Commission must use its rulemaking authority under the bill to opt out of uniform standards and substantial amendments until they are approved by the Legislature.

Inspection and Copying of Public Records

Section VIII of the Compact requires the Commission to adopt rules establishing conditions and procedures for the inspection of its information and official records. This implicates Florida's constitutional and statutory laws which provide a broad grant of authority to the public to inspect or copy any public record.

Article I, s. 24 of the State Constitution, provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution."

In addition to the State Constitution, the Public Records Act, which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states that, "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record." Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean, "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

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

[17] *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).
[18] *Martin, 916 So.2d at 770.*

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

The Compact specifies that the Commission rules must allow for the public inspection and copying of its information and official records, except information and records involving the privacy of individuals and trade secrets. Under the CS/CS/CS, a request for public inspection and copying information involving individual privacy will be referred to the state insurance commissioner who will handle it in accordance with s. 119.07(1), F.S. Similarly, a request for public inspection and copying of potential insurer trade secret information will be referred to the state insurance commissioner who will handle it in accordance with s. 624.4213, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Representatives from the Florida Department of Revenue state that, "[e]ven though Article XII of the Compact exempts the Commission from all taxation, if the Commission employs persons who work in Florida, it will be subject to the labor laws of Florida in ch. 443, F.S. Federal law (26 U.S.C. 3309) requires states to make nonprofit entities and governmental entities liable for reemployment tax. Certain employers are allowed to elect to reimburse Florida for reemployment benefits (not a tax) paid to any of its employees instead of paying the Florida reemployment tax. The Commission, as a non-profit entity, would be permitted to elect to be a reimbursing employer in Florida. If the Commission does not make such election for any Florida employees, the Commission would be required to pay the reemployment tax."

The bill specifies that the Commission is subject to state unemployment or reemployment taxes imposed pursuant to ch. 443, F.S., in compliance with the Federal Unemployment Tax Act, for any persons employed by the Commission who perform services for it within the state. The bill also specifies that the Commission is subject to taxation for any commission business or activity conducted or performed in Florida.

B. Private Sector Impact:

Representatives from the Office of Insurance Regulation indicate that the state's membership in the Compact could potentially reduce the cost of filing and obtaining approval of asset-based insurance products.

C. Government Sector Impact:

If Florida becomes a member of the Compact, the Office of Insurance Regulation may experience a reduction in its workload for those functions now performed by the Commission. That reduction in workload could result in decreased appropriation needs. Representatives from the OIR indicate that the office will not incur a fiscal impact if Florida adopts the Compact.

VI. Technical Deficiencies:

Section 4 of the bill exercises the opt-out of uniform standards related to the 10-day period for the unconditional refund of premiums, plus any fees or charges under s. 626.99, F.S., and underwriting criteria inconsistent with s. 626.9541(1)(dd), F.S., effective October 1, 2014. The bill is effective July 1, 2014. If the intent is to prevent application of Compact uniform standards contrary to these provisions, the October 1, 2014 effective date should be amended to make the opt-out effective July 1, 2014.

VII. Related Issues:

Other Comments: Exclusivity of Compact Standards and Rules

Section 4 of the CS/CS/CS provides that "[n]otwithstanding paragraph(2)(b) of Article XVI of the compact, standards adopted by this state continue to apply to the content, approval, and certification of products in this state…." Paragraph (2)(b) of Article XVI states that "for any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products." The continued application of Florida law to all products sold in this state appears to be in conflict with the Compact requirement that the Compact's rules, uniform standards and requirements be the exclusive provisions applicable to products submitted to the compact. A state becomes a "compacting state" when it enacts the compact legislation. Given this substantial conflict with the terms of the Compact, the Commission may determine that this bill does not enact the Compact in this state, and thus Florida has not become a compacting state.

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/CS by Appropriations on April 23, 2013:
The CS adds the following provisions to the bill:

- If any part of section 3 of the bill (the opt-out of all Compact standards for long-term care insurance) or section 4 of the bill (relating to Florida opting out of Compact uniform standards) is invalidated by the courts, such ruling renders the entire act invalid, which eliminates the state's membership in the Compact.
- Florida will only participate in the Compact, however, if the Commissioner of the Office of Insurance Regulation (Insurance Commissioner) determines that the uniform standards of the compact provide consumer protections equal to those under state law.
- Effective October 1, 2014, the state will also opt-out of uniform standards adopted by the Commission for the 10-day period for the unconditional refund of life insurance premiums, plus any fees or charges under s. 626.99, F.S., and underwriting criteria limiting the amount, extent, or kind of life insurance based on past or future travel that is inconsistent with s. 626.9541(1)(dd), F.S., as implemented by the OIR.
- Provides that it is the policy of this state that the exclusivity provision of paragraph (2)(b) of Article XVI of the Compact applies only to uniform standards

adopted by the Commission, and that standards adopted by Florida are not limited or rendered inapplicable by the absence of a standard adopted by the Commission.

- The bill also applies all Florida standards to the content, approval and certification of products in Florida, including, but not limited to:
  - The prohibition against a surrender or deferred sales charge of more than 10 percent under s. 627.4554, F.S.
  - Notification to an applicant of the right to designate a secondary addressee at the time of application under s. 627.4555, F.S.
  - Notification of secondary addressees at least 21 days before the impending lapse of a policy under s. 627.4555, F.S.
  - The requirement to include a clear statement that the benefits, values, or premiums under a variable annuity are indeterminate and may vary.
  - Interest on surrender proceeds pursuant to s. 627.482, F.S.
- The effective date of the act is July 1, 2014.

CS/CS by Governmental Oversight and Accountability on April 9, 2013:
The CS/CS amends a requirement that certain public records requests be handled in accordance with s. 119.071, F.S., to instead require such requests to be handled in accordance with s. 119.07(1), F.S.

CS by Banking and Insurance on April 2, 2013:
The CS adds the following provisions to the bill:

- Standards clarifying the extent of immunity from liability granted to the Commission executive director, members, officers, employees, and representatives.
- Specifies that the OIR must opt-out of all uniform standards and amendments to such standards adopted by the Commission after March 1, 2013, and that the Financial Services Commission must adopt rules making the opt-out effective until the Legislature approves the new uniform standard or amendment.
- Specifies that the Compact may not violate provisions of the State Constitution and law relating to public inspection and copying of documents and information and requires the insurance commissioner to handle such requests related to matters of privacy of individuals and insurer trade secrets.
- Specifies that the Commission is subject to state unemployment taxes, state reemployment taxes, and taxation for business or activity conducted or performed in Florida.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2013	.	
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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1046 - 1125

and insert:

Section 3. Opt out from long-term care products standards.—Pursuant to Article VII of the Interstate Insurance Product Regulation Compact, adopted by this act, this state prospectively opts out of all uniform standards adopted by the Interstate Insurance Product Regulation Commission involving long-term care insurance products, and such opt out may not be treated as a material variance in the offer or acceptance of this state to participate in the compact.

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Section 4. Effective date of compact standards; opt out procedures; state law exemptions; legislative notice.—

(1) Except as provided in section 3 of this act and this section, all uniform standards adopted by the Interstate Insurance Product Regulation Commission as of March 1, 2013, are adopted by this state.

(2) Notwithstanding subsections (3), (4), (5), and (6) of Article VII of the Interstate Insurance Product Regulation Compact as adopted by this act, it is the policy of this state as a participant in the compact:

(a) To opt out, and for the Office of Insurance Regulation to opt out, of any new uniform standard, or amendments to existing uniform standards, adopted by the Interstate Insurance Product Regulation Commission after March 1, 2013, if such amendments substantially alter or add to existing uniform standards adopted by this state pursuant to subsection (1) until such time as this state enacts legislation to adopt or opt out of, adopts rules to adopt or opt out of, or executes an order to adopt or opt out of new uniform standards or amendments to existing standards adopted by the commission after March 1, 2013.

(b) That, notwithstanding the adoption of the Interstate Product Regulation Compact pursuant to this act, participation in the compact is contingent upon a determination by the Commissioner of Insurance Regulation that the uniform standards of the compact provide consumer protections equivalent to those under state law and, if the commissioner determines otherwise, an order issued by the Office of Insurance Regulation constitutes the action required by the commission to not join


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the compact, or to opt out of, or to stay the effect of, any uniform standard not otherwise opted out of pursuant to this act.

(c) That the authority under the compact to opt out of a uniform standard includes an order issued under chapter 120, Florida Statutes, the Administrative Procedure Act.

(3) In addition to any other uniform standards the state may opt out of pursuant to subsection (2), effective October 1, 2014, this subsection constitutes the legislation required to be enacted pursuant to subsections (4) and (5) of Article VII of the Interstate Insurance Product Regulation Compact by which this state opts out of the following uniform standards adopted by the Interstate Insurance Product Regulation Commission:

a. The 10-day period for the unconditional refund of premiums, plus any fees or charges under s. 626.99, Florida Statutes.

b. Underwriting criteria limiting the amount, extent, or kind of life insurance based on past or future travel in a manner that is inconsistent with s. 626.9541(1)(dd), Florida Statutes, as implemented by the Office of Insurance Regulation.

(4) It is the policy of this state that the exclusivity provision of paragraph (2)(b) of Article XVI of the Interstate Insurance Product Regulation Compact applies only to those uniform standards adopted by the Interstate Insurance Product Regulation Commission in accordance with the terms of the compact and does not apply to those standards that this state has opted out of pursuant to this act or the compact. In addition, it is the policy of this state that under the exclusivity provision, standards adopted by this state are not

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limited or rendered inapplicable by the absence of a standard adopted by the commission. Notwithstanding paragraph (2)(b) of Article XVI of the compact, standards adopted by this state continue to apply to the content, approval, and certification of products in this state, including, but not limited to, the following:

a. Prohibition of a surrender or deferred sales charge of more than 10 percent pursuant to s. 627.4554, Florida Statutes.

b. Notification to an applicant of the right to designate a secondary addressee at the time of application under s. 627.4555, Florida Statutes.

c. Notification of secondary addressees at least 21 days before the impending lapse of a policy under s. 627.4555, Florida Statutes.

d. Inclusion of a clear statement pursuant to s. 627.803, Florida Statutes, that the benefits, values, or premiums under a variable annuity are indeterminate and may vary.

e. Interest on surrender proceeds pursuant to s. 627.482, Florida Statutes.

(5) After enactment of this section, if the Interstate Insurance Product Regulation Commission adopts any new uniform standard or amendment to the existing uniform standard as specified in subsection (2), the Office of Insurance Regulation shall immediately notify the Legislature of such new standard or amendment. If the office or the court finds that the procedure specified in subsection (2) has not been followed, notice shall be given to the Legislature.

Section 5. Notwithstanding subsection (4) of Article XII of the Interstate Insurance Product Regulation Compact, the


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Interstate Insurance Product Regulation Commission is subject to:

(1) State unemployment or reemployment taxes imposed pursuant to chapter 443, Florida Statutes, in compliance with the Federal Unemployment Tax Act, for any persons employed by the commission who perform services for it within this state.

(2) Taxation on any commission business or activity conducted or performed in this state.

Section 6. Access to records.—

(1) Notwithstanding subsections (1) and (2) of Article VIII, subsection (2) of Article X, and subsection (6) of Article XII of the Interstate Insurance Product Regulation Compact, a request by a resident of this state for public inspection and copying of information, data, or official records that includes:

(a) An insurer's trade secrets shall be referred to the Commissioner of Insurance Regulation who shall respond to the request, with the cooperation and assistance of the Financial Services Commission, in accordance with s. 624.4213, Florida Statutes; or

(b) Matters of privacy of individuals shall be referred to the Commissioner of Insurance Regulation who shall respond to the request, with the cooperation and assistance of the Financial Services Commission, in accordance with s. 119.07(1), Florida Statutes.

(2) This act does not abrogate the right of a person to access information consistent with the State Constitution and laws of this state.

Section 7. The Financial Services Commission may adopt rules to administer this act.


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Section 8. If any part of section 3 or section 4 of this act is invalidated by the courts, such ruling renders the entire act invalid.

Section 9. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete lines 60 - 69

and insert:

opting out of and adopting new uniform standards or amendments to existing standards; providing for the preemption of certain state laws; requiring the office to notify the Legislature of any new uniform standards or amendments to existing standards; providing that the commission is subject to certain state tax requirements; providing for public access to records; authorizing the Financial Services Commission to adopt rules to implement this act; providing that if any part of this act is invalidated the entire act is invalid;

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senator Hukill

585-04025-13 2013242c2

A bill to be entitled

An act relating to the Interstate Insurance Product Regulation Compact; providing legislative findings and intent; providing purposes; providing definitions; providing for the establishment of an Interstate Insurance Product Regulation Commission; providing responsibilities of the commission; specifying the commission as an instrumentality of the compacting states; providing for venue; specifying the commission as a separate, not-for-profit entity; providing powers of the commission; providing for organization of the commission; providing for membership, voting, and bylaws; designating the Commissioner of Insurance Regulation as the representative of the state on the commission; allowing the commissioner to designate a person to represent the state on the commission, as is necessary, to fulfill the duties of being a member of the commission; providing for a management committee, officers, and personnel of the commission; providing authority of the management committee; providing for legislative and advisory committees; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; providing for meetings and acts of the commission; providing rules and operating procedures; providing rulemaking functions of the commission; providing for opting out of uniform standards; providing procedures and requirements; providing for commission records and enforcement; authorizing the

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585-04025-13 2013242c2

commission to adopt rules; providing for disclosure of certain information; specifying that certain records, data, or information of the commission, wherever received, by and in possession of the Office of Insurance Regulation is subject to ch. 119, F.S.; requiring the commission to monitor for compliance; providing for dispute resolution; providing for product filing and approval; requiring the commission to establish filing and review processes and procedures; providing for review of commission decisions regarding filings; providing for finance of commission activities; providing for payment of expenses; authorizing the commission to collect filing fees for certain purposes; providing for approval of a commission budget; exempting the commission from all taxation, except as otherwise provided; prohibiting the commission from pledging the credit of any compacting states without authority; requiring the commission to keep complete accurate accounts, provide for audits, and make annual reports to the Governors and Legislatures of compacting states; providing for amendment of the compact; providing for withdrawal from the compact, default by compacting states, and dissolution of the compact; providing severability and construction; providing for binding effect of this compact and other laws; prospectively opting out of all uniform standards adopted by the commission involving long-term care insurance products; adopting all other existing uniform standards that have been

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

adopted by the commission; providing a procedure for adoption of any new uniform standards or amendments to existing uniform standards of the commission; requiring the office to notify the Legislature of any new uniform standards or amendments to existing uniform standards of the commission; providing that any new uniform standards or amendments to existing uniform standards of the commission may only be adopted via legislation; authorizing the Financial Services Commission to adopt rules to implement this act and opt out of certain uniform standards; providing an effective date.

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

Section 1. Legislative findings; intent.—

(1) The Legislature finds that the financial services marketplace has changed significantly in recent years and that asset-based insurance products, which include life insurance, annuities, disability income insurance, and long-term care insurance, now compete directly with other retirement and estate planning instruments that are sold by banks and securities firms.

(2) The Legislature further finds that the increased mobility of the population and the risks borne by these asset-based products are not local in nature.

(3) The Legislature further finds that the Interstate Insurance Product Regulation Compact Model adopted by the National Association of Insurance Commissioners and endorsed by

the National Conference of Insurance Legislators and the National Conference of State Legislatures is designed to address these market changes by providing a uniform set of product standards and a single source for filing of new products.

(4) The Legislature further finds that the product standards that have been developed provide a high level of consumer protection. Further, it is noted that the Interstate Insurance Product Regulation Compact Model includes a mechanism for opting out of any product standard that the state determines would not reasonably protect its citizens. With respect to long-term care insurance, the Legislature understands that the compact does not intend to develop a uniform standard for rate increase filings, thereby leaving the authority over long-term care rate increases with the state. The state relies on that understanding in adopting this legislation. The state, pursuant to the terms and conditions of this act, seeks to join with other states and establish the Interstate Insurance Product Regulation Compact, and thus become a member of the Interstate Insurance Product Regulation Commission. The Commissioner of Insurance Regulation is hereby designated to serve as the representative of this state on the commission. The commissioner may designate a person to represent this state on the commission, as is necessary, in order to fulfill the duties of being a member of the commission.

Section 2. Interstate Insurance Product Regulation Compact.—The Interstate Insurance Product Regulation Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

Interstate Insurance Product Regulation Compact

Preamble

This compact is intended to help states join together to establish an interstate compact to regulate designated insurance products. Pursuant to the terms and conditions of this compact, this state seeks to join with other states and establish the Interstate Insurance Product Regulation Compact and thus become a member of the Interstate Insurance Product Regulation Commission.

Article I

PURPOSES.—The purposes of this compact are, through means of joint and cooperative action among the compacting states, to:

(1) Promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.

(2) Develop uniform standards for insurance products covered under the compact.

(3) Establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.

(4) Give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform

standard.

(5) Improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact.

(6) Create the Interstate Insurance Product Regulation Commission.

(7) Perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II

DEFINITIONS.—For purposes of this compact, the term:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission adopted as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent.

(2) "Bylaws" means those bylaws adopted by the commission as of March 1, 2013, for its governance or for directing or controlling the commission's actions or conduct.

(3) "Compacting state" means any state which has enacted this compact legislation and has not withdrawn pursuant to subsection (1) of Article XIV of this compact or been terminated pursuant to subsection (2) of Article XIV of this compact.

(4) "Commission" means the "Interstate Insurance Product

Regulation Commission" established by this compact.

(5) "Commissioner" means the chief insurance regulatory official of a state, including, but not limited to, the commissioner, superintendent, director, or administrator. For purposes of this compact, the Commissioner of Insurance Regulation is the chief insurance regulatory official of this state.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

(8) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(9) "Noncompacting state" means any state which is not at the time a compacting state.

(10) "Office" means the Office of Insurance Regulation of the Financial Services Commission.

(11) "Operating procedures" means procedures adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, implementing a rule, uniform standard, or provision of this compact.

(12) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care

insurance product that an insurer is authorized to issue.

(13) "Rule" means a statement of general or particular applicability and future effect adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, including a uniform standard developed pursuant to Article VII of this compact, designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(14) "State" means any state, district, or territory of the United States.

(15) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(16) "Uniform standard" means a standard adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, for a product line pursuant to Article VII of this compact and shall include all of the product requirements in aggregate; provided, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

Article III

COMMISSION; ESTABLISHMENT; VENUE.—

(1) The compacting states hereby create and establish a

joint public agency known as the Interstate Insurance Product Regulation Commission. Pursuant to Article IV of this compact, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed with the commission, and give approval to those product filings satisfying applicable uniform standards; provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in this article shall prohibit any insurer from filing its product in any state in which the insurer is licensed to conduct the business of insurance and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities, except as otherwise specifically provided in this compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

(5) The commission is a not-for-profit entity, separate and distinct from the individual compacting states.

Article IV

POWERS.—The commission shall have the following powers to:

(1) Adopt rules, pursuant to Article VII, which shall have the force and effect of law and shall be binding in the

compacting states to the extent and in the manner provided in this compact.

(2) Exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission; provided a compacting state shall have the right to opt out of such uniform standard pursuant to Article VII to the extent and in the manner provided in this compact and any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall provide at least, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

(3) Receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and give approval of those products and rate filings that satisfy the applicable uniform standard, and such approval shall have the force and effect of law and be binding on the compacting states to the extent and in

the manner provided in the compact.

(4) Receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this subsection shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact.

(5) Exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) Adopt operating procedures, pursuant to Article VII, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

(7) Bring and prosecute legal proceedings or actions in its name as the commission; provided the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) Establish and maintain offices.

(10) Purchase and maintain insurance and bonds.

(11) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state. Any action under this subsection concerning employees of this state may only be taken upon the express written consent of the state.

(12) Hire employees, professionals, or specialists; elect or appoint officers and fix their compensation, define their duties, give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(13) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and to receive, use, and dispose of the same; provided at all times the commission shall avoid any appearance of impropriety.

(14) Lease, purchase, and accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided at all times the commission shall avoid any appearance of impropriety.

(15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(16) Remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

(17) Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

(18) Provide for dispute resolution among compacting states.

(19) Advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

(20) Provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments.

(21) Establish a budget and make expenditures.

(22) Borrow money, provided that this power does not, in any manner, obligate the financial resources of the State of Florida.

(23) Appoint committees, including advisory committees, comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

(24) Provide and receive information from and to cooperate with law enforcement agencies.

(25) Adopt and use a corporate seal.

(26) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V

ORGANIZATION.—

(1) Membership; voting; bylaws.—

(a)1. Each compacting state shall have and be limited to

one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state in which the vacancy exists. Nothing in this article shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner. However, the commissioner may designate a person to represent this state on the commission, as is necessary, in order to fulfill the duties of being a member of the commission.

2. The Commissioner of Insurance Regulation is hereby designated to serve as the representative of this state on the commission. However, the commissioner may designate a person to represent this state on the commission, as is necessary, in order to fulfill the duties of being a member of the commission.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any other provision of this article, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor of such action.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including, but not limited to:

1. Establishing the fiscal year of the commission.

2. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

3. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees.

b. Governing any general or specific delegation of any authority or function of the commission.

4. Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including, but not limited to, trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in total or in part. The commissioner of this state, or the commissioner's designee, may attend, or otherwise participate in, a meeting or executive session that is closed in total or part to the extent such attendance or participation is consistent with Florida law. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting. All notices of commission meetings, including instructions for public participation, provided to the office, the commissioner, or the commissioner's designee shall be published in the Florida Administrative Register.

5. Establishing the titles, duties, and authority and

reasonable procedures for the election of the officers of the commission.

6. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

7. Adopting a code of ethics to address permissible and prohibited activities of commission members and employees. This code does not supersede or otherwise limit the obligations and duties of this state's commissioner or the commissioner's designee under ethics laws or rules of the State of Florida. To the extent there is any inconsistency between the standards imposed by this code and the standards imposed under this state's ethics laws or rules, the commissioner or the commissioner's designee must adhere to the stricter standard of conduct.

8. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all debts and obligations of the commission.

(d) The commission shall publish its bylaws in a convenient form and file a copy of such bylaws and a copy of any amendment to such bylaws, with the appropriate agency or officer in each of the compacting states.

(2) Management committee, officers, and personnel.—

(a) A management committee comprising no more than 14 members shall be established as follows:

1. One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the National Association of Insurance Commissioners for the prior year.

2. Four members from those compacting states with at least 2 percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

3. Four members from those compacting states with less than 2 percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

1. Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

2. Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of

the members of the management committee.

3. Overseeing the offices of the commission.

4. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(3) Legislative and advisory committees.—

(a) A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to the commission, including the management committee; provided the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one comprising consumer representatives independent of the

insurance industry and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as the bylaws may provide for the carrying out of commission functions.

(4) Corporate records of the commission.—The commission shall maintain its corporate books and records in accordance with the bylaws.

(5) Qualified immunity, defense and indemnification.—

(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The liability of the members, officers, executive director, employees, and representatives of the commission acting within the scope of such persons' employment or duties, for acts, errors, or omissions occurring within this state, may not exceed the limits of liability set forth under the constitution and laws of this state for state officials, employees, and agents. The commission is an instrumentality of

the state for the purposes of any such action. This subsection does not protect such persons from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

(c) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or where the person against whom the claim is made has a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct. This article does not prohibit that person from retaining his or her own counsel.

(d) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI

MEETINGS; ACTS.—

(1) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Article VII

RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE COMMISSION; OPTING OUT OF UNIFORM STANDARDS.—

(1) Rulemaking authority.—The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding such requirement, if the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under this compact, such action by the commission shall be invalid and have no force and effect.

(2) Rulemaking procedure.—Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to

the Model State Administrative Procedure Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) Effective date and opt out of a uniform standard.—A uniform standard shall become effective 90 days after its adoption by the commission or such later date as the commission may determine; provided a compacting state may opt out of a uniform standard as provided in this act. The term "opt out" means any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(4) Opt out procedure.—

(a) A compacting state may opt out of a uniform standard by legislation or regulation adopted by the compacting state under such state's Administrative Procedure Act. If a compacting state elects to opt out of a uniform standard by regulation, such state must:

1. Give written notice to the commission no later than 10 business days after the uniform standard is adopted, or at the time the state becomes a compacting state.

2. Find that the uniform standard does not provide

reasonable protections to the citizens of the state, given the conditions in the state.

(b) The commissioner of a compacting state other than this state shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

1. The intent of the Legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact.

2. The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding this subsection, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted.

(5) Effect of opting out.—If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time as the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

(6) Stay of uniform standard.—If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if the commission determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended by the commission; provided a stay may not be permitted to remain in effect for more than 1 year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited

to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(7) Judicial review.—Within 30 days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure; provided the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII

COMMISSION RECORDS AND ENFORCEMENT.—

(1) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which the commission may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality

provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission; provided disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner; however, all requests from the public to inspect or copy records, data, or information of the commission, wherever received, by and in the possession of the office, commissioner, or the commissioner's designee shall be subject to chapter 119, Florida Statutes.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in Article XIV of this compact.

(4) The commissioner of any state in which an insurer is authorized to do business or is conducting the business of

insurance shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

Article IX

DISPUTE RESOLUTION.—The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and

noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes.

Article X

PRODUCT FILING AND APPROVAL.—

(1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state in which the insurer is licensed to conduct the business of insurance and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision of this article, the commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI

REVIEW OF COMMISSION DECISIONS REGARDING FILINGS.—

(1) Within 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection (4) of Article III.

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1).

Article XII

FINANCE.—

(1) The commission shall pay or provide for the payment of the reasonable expenses of the commission's establishment and organization. To fund the cost of the commission's initial operations, the commission may accept contributions and other

forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of commission duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until the budget has been subject to notice and comment as set forth in Article VII.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every 3 years, the review of the independent auditor shall

include a management and performance audit of the commission. The commission shall make an annual report to the Governor and the presiding officers of the Legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request; provided any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII

COMPACTING STATES, EFFECTIVE DATE, AMENDMENT.—

(1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than 40 percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the National Association

of Insurance Commissioners for the prior year. Thereafter, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV

WITHDRAWAL; DEFAULT; DISSOLUTION.—

(1) Withdrawal.—

(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided a compacting state may withdraw from the compact by enacting a law specifically repealing the law which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing law. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing law becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph (e).

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the

withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after the commission's receipt of notice of such legislation.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2) Default.—

(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly adopted rules or operating procedures, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited

to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (1).

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3) Dissolution of compact.—

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to a single compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect and the business and affairs of the commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XV

SEVERABILITY; CONSTRUCTION.—

(1) The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVI

BINDING EFFECT OF COMPACT AND OTHER LAWS.—

(1) Binding effect of this compact.—

(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) If any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state and those obligations, duties, powers, or jurisdiction shall remain

in the compacting state and shall be exercised by the agency of such state to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

(2) Other laws.—

(a) Nothing in this compact prevents the enforcement of any other law of a compacting state, except as provided in paragraph (b).

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding this paragraph, no action taken by the commission shall abrogate or restrict:

1. The access of any person to state courts;

2. Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

3. State law relating to the construction of insurance contracts; or

4. The authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states

shall be subject to the laws of those states.

Section 3. Election to opt out of all uniform standards adopted by the commission involving long-term care insurance products; adoption of existing uniform standards of the commission; procedure for adoption of new or amended uniform standards; notification of new or amended uniform standards:

(1) Pursuant to Article VII of the compact, authorized in this act, the State of Florida prospectively opts out of all uniform standards adopted by the commission involving long-term care insurance products, and such opt out shall not be treated as a material variance in the offer or acceptance of this state to participate in the compact.

(2) Except as provided in subsection (1), all uniform standards adopted by the commission as of March 1, 2013 are adopted by this state.

(3) Notwithstanding subsections (3), (4), (5), and (6) of Article VII, as a participant in this compact, it is the policy of the State of Florida to opt out, and the office shall opt out, of any new uniform standard adopted by the commission after March 1, 2013 or amendments to existing uniform standards adopted by the commission after March 1, 2013 where such amendments substantially alter or add to existing uniform standards adopted by this state in subsection (2) until such time as this state enacts legislation to adopt or opt out of new uniform standards or such amendments to uniform standards adopted by the commission after March 1, 2013.

(4) The Financial Services Commission may adopt rules to implement this act. It is the policy of the State of Florida that this state's participation in new uniform standards or

amendments to uniform standards adopted after March 1, 2013 as set out in subsection (3) that have not been legislatively approved by this state may not reasonably protect the citizens of this state based on Article XVI(1)(d) of this act. The Financial Services Commission shall use the rulemaking authority granted in this subsection to opt out of any new uniform standards or amendments to existing uniform standards where such amendments substantially alter or add to existing uniform standards adopted by the State of Florida in subsection (2) until such uniform standards are legislatively approved by this state.

(5) After enactment of this section, if the commission adopts any new uniform standard or amendment to uniform standards as set out in subsection (3), the office shall immediately notify the legislature of such new uniform standard or amendment to existing uniform standard. If the office or a court of competent jurisdiction finds that the procedure set out in subsection(3) has not been followed, notice shall be given to the legislature, and reasonable and prompt measures shall be taken to opt out of a uniform standard that has not been legislatively approved by the State of Florida.

Section 4. Notwithstanding subsection (4) of Article XII, the commission is subject to:

(1) State unemployment or reemployment taxes imposed pursuant to chapter 443, Florida Statutes, in compliance with the Federal Unemployment Tax Act, for any persons employed by the commission who perform services for it within this state.

(2) Taxation for any commission business or activity conducted or performed in the State of Florida.

Section 5. Notwithstanding subsections (1) and (2) of Article VIII, subsection (2) of Article X, and subsection (6) of Article XII of this act, a request by a resident of this state for public inspection and copying of information, data, or official records that includes:

(1) Insurer's trade secrets shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with section 624.4213, Florida Statutes; or

(2) Matters of privacy of individuals shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with s. 119.07(1), Florida Statutes.

(3) Nothing in this act abrogates a person's right to access information consistent with the Constitution and laws of the State of Florida.

Section 6. The Financial Services Commission may adopt rules to implement this act. The Financial Services Commission may use the rulemaking authority granted in this section to opt out of any new uniform standards adopted after October 1, 2013, pursuant to Article VII, until such standards are approved by the Legislature.

Section 7. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 17, 2013

The Honorable Joe Negron
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Negron:

Senate Bill 242 relating to Interstate Insurance Product Regulation Compact has been referred to the Appropriations Committee. I am requesting your consideration on placing SB 242 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Mike Hansen, Staff Director of the Appropriations Committee
Alicia Weiss, Administrative Assistant of the Appropriations Committee

SENATE APPROPRIATIONS
RECEIVED
13 APR 17 PM 2:11
STAFF DIR. _____ STAFF _____

REPLY TO:
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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/CS/SB 274 (164746)
INTRODUCER:	Appropriations Committee (Recommended by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development Appropriations); Rules Committee; Transportation Committee; and Senator Dean and others
SUBJECT:	Freemasonry License Plates
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Everette	Phelps	RC	**Fav/CS**
3.	Carey	Martin	ATD	**Fav/CS**
4.	Carey	Hansen	AP	**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:

PCS/CS/CS/SB 274 requires the Department of Highway Safety and Motor Vehicles (DHSMV, department) to establish a method to issue a specialty license plate voucher to allow for the presale of the Freemasonry specialty license plate and provides for a $25 annual use fee for the plate. The specialty license plate organization must record, within 24 months, a minimum of 1,000 voucher sales before the department can begin manufacturing the specialty license plate.

The proceeds will be distributed to the Masonic Home Endowment Fund, Inc., for the operation of the Masonic Home of Florida which is dedicated to the care of Masons and their families.

The bill has no fiscal impact as the sponsoring organization must meet the pre-sale requirements prior to the department manufacturing the plate. The department will recover any development costs from the fee associated with the sale of 1,000 plates.

This bill substantially amends sections 320.08056 and 320.08058, Florida Statutes.

II. Present Situation:

Specialty License Plates

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee, in addition to other registration fees, for the privilege using that plate. Specialty license plate annual use fees range from $15 to $25, and are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Annual use fees, and any interest earned from those fees, may be used by the authorized organization for public or private purposes; however, the annual fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

The sponsoring organization wishing to receive a specialty license plate is required to comply with the requirements of s. 320.08053, F.S., which include submitting the following information to the department at least 90 days prior to the convening of the next regular session of the Legislature:

- A description of the proposed specialty license, including a sample plate that conforms to specifications set by the department;
- Payment of a $60,000 processing fee which defrays the department's cost of reviewing the application and developing the specialty license plate; and
- A marketing strategy outlining short-term and long-term marketing plans and a projected financial analysis outlining the anticipated and planned revenues from the sale of the license plate.

If the specialty license plate is approved by law, the sponsoring organization must pre-sell a minimum of 1,000 vouchers within 24 months before the department can begin manufacturing the specialty license plate. If the specialty license plate is not approved by the Legislature, or if the pre-sell requirements are not met, the department shall refund the application fee to the requesting organization.

Currently, there is a moratorium on the issuance of new specialty license plates. Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223, L.O.F., provides that "[e]except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014."

A person wishing to purchase a specialty license plate must pay, in addition to the required license plate fee and license tax, a license plate annual use fee (from $15 to $25) and a processing fee of $5.

Statutory Approval Process

There is a moratorium on the issuance of new specialty license plates which expires on July 1, 2014.[1]

Under s. 320.08503, F.S., an organization seeking authorization of a new specialty license plate is required to submit to the Department of Highway Safety and Motor Vehicles, at least 90 days prior to the Session at which they seek authorization, the following:

- A description of the proposed specialty plate;
- Payment of a $60,000 processing fee, and
- A marketing strategy and a financial analysis outlining the anticipated and planned revenues from the sale of the license plate.

If approved, the entity must pre-sell a minimum of 1,000 vouchers within 24 months before the department will begin manufacturing the plate. If the specialty license plate is not authorized by the Legislature, or if the pre-sell requirements are not met, the department refunds the application fee.

Freemasonry License Plate

Thirty nine states offer the Freemasonry license plate for a cost raging from $20 to $40[2]

The Masonic Home Endowment Fund, Inc., is a 501(c)(3), public charity organization. The Masonic Home Endowment Fund, Inc., was founded around 1987 in the Jacksonville, Florida area.[3] The Grand Lodge of Florida[4] is just one company under the auspices of the Masonic Home Endowment Fund, Inc. The Grand Lodge of Florida is a retirement living facility for senior masons and their spouses/widows. The facility has two-levels of care; round the clock care and assisted living with geriatric physicians and specialists on the premises.

III. Effect of Proposed Changes:

Section 1 amends s. 302.08056, F.S., to authorize the department to develop and issue the Freemasonry specialty license plate with an annual use fee of $25.

Section 2 amends s. 302.08058, F.S., to create the Freemasonry specialty license plate, notwithstanding the moratorium on new specialty license plates[5], and the provisions of s. 302.08053(1), F.S., requiring a description of the plate, an application of $60,000, and a

[1] Section 45 of Chapter 2008-176, Laws of Florida.
[2] http://www.daylightlodge.org/licenseplates.htm (last visited on 3/17/2013)
[3] http://www.lincc.us/PubApps/showVals.php?ein=592740213 (last visited on 3/18/2013)
[4] http://masonichomeofflorida.org/aboutus.html (last visited on 3/18/2013)
[5] Section 45, ch. 2008-176, L.O.F., as amended by s. 21, 2010-223, L.O.F.

marketing strategy on the anticipated revenues and planned expenditures of the plate. The bill requires the pre-sale of 1,000 vouchers for the Freemasonry plate before the department can begin manufacturing the plate. The annual use fees from the sale of the Freemasonry specialty license will be distributed to the Masonic Home Endowment Fund, Inc., which may use up to 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds must be used for the operation of the Masonic Home of Florida.

Section 3 provides an effective date of October 1, 2013.

Other Potential Implications:
The specialty plate does not qualify to be exempted from the requirements of the moratorium.

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:

Persons who purchase the Freemasonry specialty license plate will pay a $25 annual use fee in addition to normal registration fees.

Proceeds from the sale of the Freemasonry specialty license plate will be distributed to the Masonic Home Endowment Fund, Inc.

C. Government Sector Impact:

The department's Information Systems Administration Office will require approximately 88 hours of work to develop, design, manufacture, and distribute the specialty license plate, and to implement the provisions of this bill. These costs will be absorbed by the department.

The bill has no fiscal impact as the sponsoring organization must meet the pre-sale requirements prior to the department manufacturing the plate. The department will

recover any development costs from the normal fee associated with the sale of 1,000 plates.

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.)

Recommended CS/CS/CS by the Appropriations Subcommittee on Transportation, Tourism and Economic Development on April 17, 2013:
The CS/CS/CS maintains the requirement that the specialty plate sponsoring organization meet the pre-sale requirements in current law, which also provides for the recovery of any costs borne by the department in the development of the plate.

CS/CS by Rules Committee on April 9, 2013:
The CS/CS clarifies that the department shall retain all annual use fees from the sale of the Freemasonry specialty license plate until all startup costs for developing and issuing the plates have been recovered.

CS by Transportation Committee on March 21, 2013:
The CS added provisions authorizing the department, notwithstanding provisions of s. 320.08053, F.S., to develop and issue a Freemasonry specialty license plate. However, once all of the requirements are met, the department will distribute the $25 use fees to Masonic Home Endowment Fund, Inc.

The CS also changed the effective date to October 1, 2013.

B. Amendments:

None.

576-04539A-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to specialty license plates; amending ss. 320.08056 and 320.08058, F.S.; creating a Freemasonry license plate; establishing an annual use fee for the plate; providing for the distribution of annual use fees received from the sale of the plate; providing an effective date.

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

Section 1. Paragraph (aaaa) is added to subsection (4) of section 320.08056, Florida Statutes, to read:

320.08056 Specialty license plates.—

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

(aaaa) Freemasonry license plate, $25.

Section 2. Subsection (79) is added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(79) FREEMASONRY LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 320.08053(1), the department shall develop a Freemasonry license plate as provided in s. 320.08053(2) and (3), and this section. The word "Florida" must appear at the top of the plate, and the words "In God We Trust" must appear at the bottom of the

576-04539A-13

plate.

(b) The license plate annual use fees shall be distributed to the Masonic Home Endowment Fund, Inc., which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by the Masonic Home Endowment Fund, Inc., to invest and reinvest and use the interest for the operation of the Masonic Home of Florida, a five-star facility dedicated to the care of Masons and their families.

Section 3. This act shall take effect October 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/CS/SB 274
INTRODUCER:	Appropriations Committee (Recommended by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development Appropriations); Rules Committee; Transportation Committee; and Senator Dean and others
SUBJECT:	Freemasonry License Plates
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Everette	Phelps	RC	**Fav/CS**
3.	Carey	Martin	ATD	**Fav/CS**
4.	Carey	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 274 requires the Department of Highway Safety and Motor Vehicles (DHSMV, department) to establish a method to issue a specialty license plate voucher to allow for the presale of the Freemasonry specialty license plate and provides for a $25 annual use fee for the plate. The specialty license plate organization must record, within 24 months, a minimum of 1,000 voucher sales before the department can begin manufacturing the specialty license plate.

The proceeds will be distributed to the Masonic Home Endowment Fund, Inc., for the operation of the Masonic Home of Florida which is dedicated to the care of Masons and their families.

The bill has no fiscal impact as the sponsoring organization must meet the pre-sale requirements prior to the department manufacturing the plate. The department will recover any development costs from the fee associated with the sale of 1,000 plates.

This bill substantially amends sections 320.08056 and 320.08058, Florida Statutes.

II. Present Situation:

Specialty License Plates

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee, in addition to other registration fees, for the privilege using that plate. Specialty license plate annual use fees range from $15 to $25, and are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Annual use fees, and any interest earned from those fees, may be used by the authorized organization for public or private purposes; however, the annual fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

The sponsoring organization wishing to receive a specialty license plate is required to comply with the requirements of s. 320.08053, F.S., which include submitting the following information to the department at least 90 days prior to the convening of the next regular session of the Legislature:

- A description of the proposed specialty license, including a sample plate that conforms to specifications set by the department;
- Payment of a $60,000 processing fee which defrays the department's cost of reviewing the application and developing the specialty license plate; and
- A marketing strategy outlining short-term and long-term marketing plans and a projected financial analysis outlining the anticipated and planned revenues from the sale of the license plate.

If the specialty license plate is approved by law, the sponsoring organization must pre-sell a minimum of 1,000 vouchers within 24 months before the department can begin manufacturing the specialty license plate. If the specialty license plate is not approved by the Legislature, or if the pre-sell requirements are not met, the department shall refund the application fee to the requesting organization.

Currently, there is a moratorium on the issuance of new specialty license plates. Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223, L.O.F., provides that "[e]except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014."

A person wishing to purchase a specialty license plate must pay, in addition to the required license plate fee and license tax, a license plate annual use fee (from $15 to $25) and a processing fee of $5.

Statutory Approval Process

There is a moratorium on the issuance of new specialty license plates which expires on July 1, 2014.[1]

Under s. 320.08503, F.S., an organization seeking authorization of a new specialty license plate is required to submit to the Department of Highway Safety and Motor Vehicles, at least 90 days prior to the Session at which they seek authorization, the following:

- A description of the proposed specialty plate;
- Payment of a $60,000 processing fee, and
- A marketing strategy and a financial analysis outlining the anticipated and planned revenues from the sale of the license plate.

If approved, the entity must pre-sell a minimum of 1,000 vouchers within 24 months before the department will begin manufacturing the plate. If the specialty license plate is not authorized by the Legislature, or if the pre-sell requirements are not met, the department refunds the application fee.

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III. Effect of Proposed Changes:

Section 1 amends s. 302.08056, F.S., to authorize the department to develop and issue the Freemasonry specialty license plate with an annual use fee of $25.

Section 2 amends s. 302.08058, F.S., to create the Freemasonry specialty license plate, notwithstanding the moratorium on new specialty license plates[5], and the provisions of s. 302.08053(1), F.S., requiring a description of the plate, an application of $60,000, and a

[1] Section 45 of Chapter 2008-176, Laws of Florida.
[2] http://www.daylightlodge.org/licenseplates.htm (last visited on 3/17/2013)
[3] http://www.lincc.us/PubApps/showVals.php?ein=592740213 (last visited on 3/18/2013)
[4] http://masonichomeofflorida.org/aboutus.html (last visited on 3/18/2013)
[5] Section 45, ch. 2008-176, L.O.F., as amended by s. 21, 2010-223, L.O.F.

marketing strategy on the anticipated revenues and planned expenditures of the plate. The bill requires the pre-sale of 1,000 vouchers for the Freemasonry plate before the department can begin manufacturing the plate. The annual use fees from the sale of the Freemasonry specialty license will be distributed to the Masonic Home Endowment Fund, Inc., which may use up to 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds must be used for the operation of the Masonic Home of Florida.

Section 3 provides an effective date of October 1, 2013.

Other Potential Implications:
The specialty plate does not qualify to be exempted from the requirements of the moratorium.

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:

Persons who purchase the Freemasonry specialty license plate will pay a $25 annual use fee in addition to normal registration fees.

Proceeds from the sale of the Freemasonry specialty license plate will be distributed to the Masonic Home Endowment Fund, Inc.

C. Government Sector Impact:

The department's Information Systems Administration Office will require approximately 88 hours of work to develop, design, manufacture, and distribute the specialty license plate, and to implement the provisions of this bill. These costs will be absorbed by the department.

The bill has no fiscal impact as the sponsoring organization must meet the pre-sale requirements prior to the department manufacturing the plate. The department will

recover any development costs from the normal fee associated with the sale of 1,000 plates.

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/CS by Appropriations on April 23, 2013:
The CS/CS/CS maintains the requirement that the specialty plate sponsoring organization meet the pre-sale requirements in current law, which also provides for the recovery of any costs borne by the department in the development of the plate.

CS/CS by Rules Committee on April 9, 2013:
The CS/CS clarifies that the department shall retain all annual use fees from the sale of the Freemasonry specialty license plate until all startup costs for developing and issuing the plates have been recovered.

CS by Transportation Committee on March 21, 2013:
The CS added provisions authorizing the department, notwithstanding provisions of s. 320.08053, F.S., to develop and issue a Freemasonry specialty license plate. However, once all of the requirements are met, the department will distribute the $25 use fees to Masonic Home Endowment Fund, Inc.

The CS also changed the effective date to October 1, 2013.

B. Amendments:

None.

By the Committees on Rules; and Transportation; and Senators Dean, Evers, and Latvala

595-03971-13 2013274c2

A bill to be entitled

An act relating to specialty license plates; amending ss. 320.08056 and 320.08058, F.S.; creating a Freemasonry license plate; establishing an annual use fee for the plate; providing for the distribution of annual use fees received from the sale of such plates; providing an effective date.

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

Section 1. Paragraph (aaaa) is added to subsection (4) of section 320.08056, Florida Statutes, to read:

320.08056 Specialty license plates.—

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

(aaaa) Freemasonry license plate, $25.

Section 2. Subsection (79) is added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(79) FREEMASONRY LICENSE PLATES.—

(a) Notwithstanding the provisions of s. 320.08053, the department shall develop a Freemasonry license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "In God We Trust" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the license plate annual use fees shall be distributed to the

595-03971-13 2013274c2

Masonic Home Endowment Fund, Inc., which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by the Masonic Home Endowment Fund, Inc., to invest and reinvest and use the interest for the operation of the Masonic Home of Florida, a five-star facility dedicated to the care of Masons and their families.

Section 3. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

April 4, 2013

The Honorable Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request you place Senate Bill 274, relating to Freemasonry License Plates, on your Appropriations Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Mike Hansen, Staff Director

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STAFF DIR. STAFF

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☐ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
☐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 288
INTRODUCER:	Judiciary Committee and Senator Bradley
SUBJECT:	Costs of Prosecution, Investigation, and Representation
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.	Shankle	Cibula	JU	**Fav/CS**
3.	Harkness	Sadberry	ACJ	**Favorable**
4.	Harkness	Hansen	AP	**Favorable**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 288 adds costs of prosecution and costs of representation to the fees, costs, and penalties to be withheld from cash bond posted on behalf of a defendant. The bill provides clarification regarding the collection of cost payments in certain traffic cases and requires the assessment of costs of prosecution in juvenile delinquency proceedings. The committee substitute allows a court to order the juvenile to complete community service in lieu of paying the cost of prosecution if the court finds that the juvenile is unable to pay the cost.

The bill has an effective date of July 1, 2013.

The bill has a positive, but indeterminate fiscal impact.

This bill substantially amends the following sections of the Florida Statutes: 903.286, 938.27, 985.032, and 988.455.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases, unless the prosecutor proves that costs are higher in the particular case before the court.[1] The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.[2]

Convicted persons are also liable for payment of investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.[3] Conviction, for this purpose, includes "a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld."[4]

Costs of Representation

Section 938.29, F.S., provides that convicted persons are liable for payment of the $50 public defender application fee under s. 27.52(1)(b), F.S., and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.[5]

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.[6] The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing, or otherwise disposing of any debt or lien imposed.[7]

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

[1] Section 938.27(8), F.S.
[2] *Id.*
[3] Section 938.27(1), F.S.
[4] *Id.*
[5] Section 27.562, F.S.
[6] Section 938.29(1)(c), F.S.
[7] Section 938.29(3), F.S.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.[8] The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.[9]

Criminal Traffic Case Disposition

The clerk of the court is authorized by s. 318.14, F.S., to dispose of certain misdemeanor criminal traffic violations in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date. Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S. The clerk is statutorily authorized to accept a nolo contendere plea, waive the misdemeanor fines, and assess costs listed in s. 318.14(10)(b), F.S.

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent[10] to pay the following:

- Court fees;
- Court costs; and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

Clerks are not currently authorized to withhold costs of prosecution or costs of representation.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Delinquency Cases Exempt

Currently, juveniles who are adjudicated delinquent or who have had the adjudication of delinquency withheld are not required to pay the costs of prosecution although they can be required to pay for the costs of representation.[11] A lien-enforcement procedure is currently available which allows the clerk to collect the costs of representation from the parents or guardians of the child.[12]

[8] Section 28.246(4), F.S.
[9] "A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12." Section 28.246(4), F.S.
[10] Licensed under ch. 648, F.S.
[11] Sections 27.52 (6) and 938.29(2)(a)2., F.S.
[12] *Id.*

III. Effect of Proposed Changes:

The bill adds the costs of prosecution and the costs of representation by the public defender to the list of costs that a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant, or if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The bill requires the clerk to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court. These particular cases may include criminal traffic violations disposed of pursuant to s. 318.14(10), F.S.[13] (See the Technical Deficiencies section below.)

The bill also requires that costs of prosecution be assessed for juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. Although current law provides for a lien against the child's parents to aid in collecting costs of representation, there is no such provision in the bill for costs of prosecution. If the juvenile is found by the court to be unable to pay, the bill allows the court to order the juvenile to complete community service in lieu of paying the cost.

The bill takes effect July 1, 2013.

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.

[13] In these cases, the defendant may elect to show proof of compliance to the clerk of the court and enter a plea of nolo contendere. The clerk is authorized by s. 318.14(10), F.S., to assess certain fees. The assessment and collection of costs of prosecution are not specified in s. 318.14(10), F.S. Although s. 938.27(6), F.S., requires the clerk to "collect and dispense cost payments in any case," which would include costs of prosecution and investigation listed in s. 938.27(8), F.S., state attorneys report that the costs are not being collected in the criminal traffic cases disposed of pursuant to ch. 318, F.S.

B. Private Sector Impact:

Costs of prosecution will be assessed by the court in delinquency cases, which is a new cost not previously assessed. This assessment may be paid by the delinquent child if he or she has the ability to pay.

C. Government Sector Impact:

This bill appears to have a positive fiscal impact on state attorneys and public defenders because:

- The costs of prosecution and costs of representation will be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This provision is likely to result in a positive fiscal impact for state attorneys and public defenders.
- The costs of prosecution will now be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.
- The state attorney may experience a positive fiscal impact from the costs of prosecution collected by the clerks of court in certain traffic violation cases.

VI. Technical Deficiencies:

State attorneys have reported that costs of prosecution are not being collected in criminal traffic cases that are disposed of by the clerk of the court prior to a court appearance by the defendant as authorized in s. 318.14, F.S. If the bill is intended to address this issue, clarity could be gained by adding a cross-reference to s. 938.27(6), F.S., as amended by the bill, within s. 318.14(10), 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 by Judiciary on April 8, 2013:
The committee substitute allows a court to order the juvenile to complete community service in lieu of paying the cost of prosecution if the court finds that the juvenile is unable to pay the cost. The committee substitute also makes a number of minor technical changes.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Bradley

590-03886-13 2013288c1

A bill to be entitled

An act relating to costs of prosecution, investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; amending s. 985.455, F.S.; providing that a child adjudicated delinquent may perform community service in lieu of certain costs and fees; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided

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by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 2. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs of prosecution and investigation ~~on conviction~~.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of

violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or pursuant to a payment plan under s. 28.246(4).

(b) The end of such period or the last such installment must not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, the obligation to pay any unpaid amounts does not expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs must ~~shall~~ be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs

shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

(7) Investigative costs that are recovered must ~~shall~~ be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement must ~~shall~~ be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney must ~~shall~~ be set in all cases at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per

case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section must ~~shall~~ be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 3. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

Section 4. Paragraph (d) is added to subsection (1) of section 985.455, Florida Statutes, to read:

985.455 Other dispositional issues.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(d) Order the child, upon a determination of the child's inability to pay, to perform community service in lieu of all court costs assessed against the delinquent child, including

costs of prosecution, public defender application fees, and costs of representation.

Section 5. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic COST OF PROSECUTION/REPRESENTATION Bill Number 288 *(if applicable)*

Name MONICA HOFHEINZ Amendment Barcode *(if applicable)*

Job Title ASSISTANT STATE ATTORNEY

Address 17th JUDICIAL CIRC *Street* Phone 954-831-8543

FORT LAUDERDALE E-mail

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA STATE ATTORNEYS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Cost of Prosecution

Bill Number SB 758 *(if applicable)*

Name Robert Trammell

Amendment Barcode *(if applicable)*

Job Title Gen Counsel

Address PO Box 1799 *Street*

Phone 850-510-2487

Tallahassee FL 32302 *City* *State* *Zip*

E-mail

Speaking: ☐ For ☐ Against ☐ Information

Representing FL Public Defenders

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

WAIVE IN Support

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

I respectfully request that **Senate Bill # 288**, relating to Costs of Prosecution, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

SENATE APPROPRIATIONS
RECEIVED
13 APR 11 PM 3:35
SENT TO CHAIR'S STAFF DIR.
STAFF

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/SB 370
INTRODUCER:	Regulated Industries Committee and Senator Sachs
SUBJECT:	Disposition of Human Remains
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Fav/CS**
2.	Looke	Stovall	HP	**Favorable**
3.	Munroe	Cibula	JU	**Favorable**
4.	Brown	Hansen	AP	**Favorable**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 370 amends various statutory provisions relating to the disposition of human remains.

The bill has no fiscal impact.

The bill:

- Addresses technical issues such as adding the Department of Health (DOH) as an authorized issuer of extensions of time to provide the medical certification and of burial-transit permits, permitting electronic transfer of medical certification for cause of death, adding appropriate district medical examiners as persons who may file a death certificate, and clarifying the obligations of primary and attending physicians of a deceased person;
- Authorizes nontransplant anatomical donation organizations (NADOs) to accept donations of human remains;
- Directs any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at public expense to notify the anatomical board at the University of Florida Health Science Center (board);

- Defines the reasonable efforts that must be undertaken to dispose of unclaimed remains and to identify deceased persons, including veterans who may be eligible for burial in a national cemetery;
- Permits a licensed funeral director to act as a legally authorized person for the unclaimed remains when no family exists or is available and releases a funeral director from liability for damages when exercising that authority;
- Provides that, when the identity of the unclaimed remains cannot be ascertained, the remains may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state;
- Authorizes counties to dispose of unclaimed remains by burial or cremation pursuant to an ordinance or resolution if the remains are not claimed by the board;
- Clarifies that competing claims for unclaimed remains are prioritized according to the priority of legally authorized persons;
- Permits the board to lend remains to accredited colleges of mortuary science for education or research purposes;
- Requires the board, rather than the Department of Financial Services (DFS), to keep a record of all fees and other financial transactions, and authorizes the University of Florida to audit these records using an accounting firm paid by the board at least once every three years and provide DFS with the audit results;
- Allows third parties to convey human remains or any part thereof outside the state for dental education or research purposes, with proper notice to and approval by the board;
- Requires that the original burial-transit permit accompany human remains received by the board or a NADO;
- Requires that a NADO obtain written consent to dissect, segment, or disarticulate human remains, with such consent expressly stating such long-term preservation or extensive preparation methods that may be used on the remains being dissected, segmented or disarticulated; and
- Prohibits any person, institution or organization from giving any monetary inducement or other valuable consideration to the donor's estate, or other third party for human remains. The payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, payment or reimbursement to a funeral establishment or removal service, and payment for the reasonable costs after use, including the disposition of human remains are not considered valuable consideration.

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.006, 382.008, 382.011, 406.50, 406.51, 406.52, 406.53, 406.55, 406.56, 406.57, 406.58, 406.59, 406.60, 406.61, 497.005, 497.382, 497.607, and 765.513.

The bill creates section 406.49, Florida Statutes.

The bill repeals section 406.54, Florida Statutes.

II. Present Situation:

The Disposition of Human Remains

The transportation, handling, and disposition of human remains is addressed by multiple Florida laws regulating various departments and persons:

- The Department of Health (DOH), Office of Vital Statistics (ch. 382, F.S., the Florida Vital Statistics Act);
- Medical examiners and state anatomical board (ch. 406, F.S., the Medical Examiners Act);
- Funeral directors, crematories, and direct disposers (ch. 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act);[1] and
- Persons making advance directives (health care surrogate designations and living wills) and anatomical gifts, i.e., donations of a person's body (or portions thereof) for transplantation, therapy, research, or education, to organ procurement organizations, eye banks or tissue banks (ch. 765, F.S.).[2]

Section 382.002, F.S., defines "final disposition" as burial, interment, cremation, removal from the state, or other authorized disposition. Cremation, rather than dispersion of the resulting ashes or residue, is deemed final disposition. Death certificates are to be filed by the funeral director assuming custody of a dead body or a physician or other person in attendance at or after the death. Within 72 hours after receipt of a death certificate, the medical certification of cause of death must be completed by the physician in charge of the decedent's care for the illness or condition that resulted in death, the physician in attendance at the time of death (or immediately before or after death), or the medical examiner.[3]

Medical examiners must investigate and determine the cause of death when:

- Death is due to unlawful acts, unlawful neglect, violence, accident, or suicide;
- Sudden death occurs while the deceased was in apparent good health;
- Death occurs in prison, in police custody, under suspicious or unusual circumstances, or unattended by a physician;
- Death occurs by criminal abortion, by poison, or by disease constituting a public health threat;
- Death occurs by disease, injury, or toxic agent resulting from employment;
- The dead body is brought into the state without proper medical certification; or
- A body is to be cremated, dissected, or buried at sea.[4]

There are 24 medical examiner districts in Florida and 22 chief medical examiners. Some of the medical examiners serve more than one district.[5]

The legal disposition of human remains is further regulated in s. 406.50 through s. 406.61, F.S. Anyone (typically public officers and employees of governmental entities, and those in charge of

[1] Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, includes defined terms concerning the various methods of final disposition of dead human bodies, including procedures, descriptions of facilities and merchandise, and priority of those persons legally authorized to decide upon and direct such disposition.
[2] Chapter 765, F.S., addresses advance directives (health care surrogate designations and living wills) and anatomical gifts, i.e., donations of a person's body (or parts thereof) for transplantation, therapy, research, or education, to organ procurement organizations, eye banks, or tissue banks. The term "anatomical gift" is defined in s. 765.511(2), F.S., as "a donation of all or part of a human body to take effect after the donor's death and to be used for transplantation, therapy, research, or education."
[3] Section 382.008, F.S.
[4] Section 406.11, F.S.
[5] *See* http://myfloridamedicalexaminer.com/ (Last visited March 12, 2013).

prisons, morgues, hospitals, funeral parlors, or mortuaries) coming into possession of human remains that are not claimed by a legally authorized person as defined in s. 497.005, F.S., or of remains to be buried or cremated at public expense, must notify the anatomical board. However, such notification is not required if the death was caused by crushing injury, the deceased had a contagious disease, an autopsy was required to determine the cause of death, the body was in a state of severe decomposition, or a family member objects to the use of the body for medical education and research.[6]

There are special requirements for the identification and handling of veterans or others entitled to burial in a national cemetery. The person in control of such dead bodies must contact certain county or federal offices.[7] Similar provisions exist for the handling of unclaimed bodies of indigent persons.[8]

The Anatomical Board

The stated mission of the board is to supply anatomical materials for teaching and research programs in the State of Florida.[9] The program provides donated bodies for the training of physicians, dentists, physician assistants, and other health workers.[10]

The board is permitted to accept and receive the bodies of those who die within the state of Florida, if they executed wills leaving their body to the board for the advancement of medical science.[11] Bodies received by the board may not be used for medical science purposes until 48 hours after receipt.[12] If there is a surfeit of bodies, or if the board deems a body unfit for anatomical purposes, the board may notify the county where the person died for identification and contact of relatives.

After the delivery of a body to the board, friends, representatives of a fraternal society of which the deceased was a member, or representatives of any charitable or religious organization, may claim a body, and the board must surrender the body after its reasonable expenses have been reimbursed.[13]

The board or its duly authorized agent shall distribute any bodies it receives to medical and dental schools, teaching hospitals, medical institutions, and health-related teaching programs that require cadaveric material for study. Alternately, those bodies may be loaned for examination or study purposes to recognized associations of licensed embalmers or funeral directors or medical or dental examining boards.[14]

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[6] Section 406.50, F.S.
[7] *Id.*
[8] Section 406.53, F.S.
[9] The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.
[10] *See* http://old.med.ufl.edu/anatbd/ (Last visited March 12, 2013).
[11] Section 406.56, F.S.
[12] Section 406.52, F.S.
[13] Section 406.54, F.S.
[14] Section 406.57, F.S.

The board is prohibited from entering into any contract – oral or written – for the payment of any sum of money to a living person in exchange for the delivery of the body of that person upon death[15] Moreover, the buying or selling of bodies or parts of bodies (except transmittal or conveyances by recognized Florida medical or dental schools) is prohibited in this state, which is punishable as a misdemeanor of the first degree.[16]

Fees may be charged by the board to defray the costs of obtaining and preparing the bodies. The board is also empowered to receive money from public or private sources to defray the costs of embalming, handling, shipping, storage, cremation, or other costs relating to the obtaining and use of the bodies. The record of all fees and other financial transactions are audited annually by the Department of Financial Services (DFS), and a report of the audit is provided to the University of Florida.[17]

Nontransplant Anatomical Donation Organizations

According to the American Association of Tissue Banks (AATB), an organization that promulgates industry standards and accredits tissue banks in the United States and Canada,[18] a nontransplant anatomical donation organization (NADO) is a tissue bank or other organization that facilitates nontransplant anatomical donations. Facilitating activities include referral, obtaining informed consent or authorization, acquisition, traceability, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluating intended use, distribution, and final disposition of nontransplant anatomical donations.[19] The AATB developed accreditation standards for NADOs in 2012. There are currently four NADOs accredited by AATB, including one in Florida.[20]

Organ Procurement Organizations

In addition to the organizations mentioned, the law defines several types of organizations permitted to handle human organs, human eye tissue, or other human tissue. An organ procurement organization is defined as an organization designated by the Secretary of the United States Department of Health and Human Services which engages in the retrieval, screening, testing, processing, storage, or distribution (hereafter collectively the "evaluation and conveyance") of human organs.[21] Four major organ and tissue procurement organizations operate in Florida to facilitate the process of organ donation. These organizations are certified by the federal Centers for Medicare and Medicaid Services (CMS) and operate in Florida to increase the number of registered donors and coordinate the donation process when organs become available.[22] Each organization serves a different region of the state.[23] In addition to federal

[15] Section 406.55, F.S.
[16] Section 406.61(1), F.S.
[17] Section 406.58, F.S.
[18] Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB (Last visited March 12, 2013).
[19] *See* http://www.aatb.org/index.asp?bid=271# for accreditation requirements (Last visited March 12, 2013).
[20] *See supra* note 19.
[21] Section 765.511(15), F.S.
[22] Organ Procurement Organizations, Organdonor.gov, available at http://organdonor.gov/materialsresources/materialsopolist.html, (last visited Mar. 12, 2013).

certification of organ procurement organizations, Florida's Agency for Healthcare Administration (AHCA) also certifies these organ procurement organizations and other eye and tissue organizations.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 382.002, F.S. The definition of "final disposition" is amended to include "anatomical donation" as an authorized final disposition of a dead body and to indicate that such a donation is considered final disposition. The term "funeral director" is amended to delete a reference to other persons as individuals who may first assume custody of, or who effect the final disposition of, a dead body.

Section 2 amends s. 382.006, F.S., to add the Department of Health (DOH) as an authorized issuer of burial-transit permits.[25]

Section 3 amends s. 382.008, F.S., to:

- Require, in the absence of a funeral director who first assumes custody of the body, the district medical examiner of the county in which the death occurred or the body was found to file a death certificate;
- Permit electronic transfer of the medical certification of cause of death;
- Allow the decedent's primary or attending physician, or the local district medical examiner in the event of a death in violent or suspicious circumstances, to provide certification of cause of death. Under existing law, the certification could be supplied only by the physician in charge of care for the illness or condition which resulted in death or the physician in attendance at the time of, or immediately before or after, the death;
- Define the term "primary or attending physician" as a physician who treated the deceased through examination, medical advice, or medication during the 12 months preceding the date of death;
- Conform additional references to physicians and medical examiners to the definition of "primary physician or attending physician" created in the section; and
- Identify the appropriate medical examiner as the district medical examiner of the county in which the death occurred or the body was found.

Section 4 amends s. 382.011, F.S., to:

- Mandate that a medical examiner determine the cause of death when death occurs more than 12 months (rather than only 30 days) after last treatment by a primary or attending physician; and
- Add the medical examiner of the county in which the body was found to the people to whom a case may be referred for investigation.

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[23] Id.; LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida.
[24] AHCA's authority for certifying organ, eye, and tissue banks can be found in s. 765.542, F.S., and a list of organ, eye and tissue banks is available on FloridaHealthFinder at www.floridahealthfinder.gov, (last visited on Mar. 12, 2013.)
[25] The county health departments appoint the registrars and deputy registrars.

Section 5 creates s. 406.49, F.S., to:

- Create definitions of "cremated remains," "final disposition," "human remains or remains," and "legally authorized person" that are identical to definitions of those terms contained in s. 497.005, F.S.;
- Create the definition of "nontransplant anatomical donation organization" as a tissue bank or other organization that facilitates nontransplant anatomical donations, including activities such as referral, obtaining of consents and authorizations, acquisition, transport, assessment of acceptability of donors, preparation, storage, release, evaluation of intended use, distribution, and final disposition of nontransplant donations;
- Create a definition for "anatomical board"[26] and "indigent person;"[27]
- Define the term "unclaimed remains" to mean human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense; and
- Define "human remains" or "remains" to mean the body of a deceased human person for which a death certificate or fetal death certificate is required under chapter 382, F.S., and includes the body in any stage of decomposition.[28] "Final disposition" is defined, in part, to mean the final disposal of a dead human body by earth interment, aboveground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.[29]

Section 6 amends s. 406.50, F.S., to direct a person or entity that comes into possession, charge, or control of unclaimed remains that are required to be buried or cremated at public expense to notify the board.[30] The notice is not required if:

- The unclaimed remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease;
- A legally authorized person objects to the use of the remains for medical education or research; or
- The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a national cemetery.

The bill deletes an exception to the notification requirements for death caused by crushing injury.

[26]The definition of "anatomical board" is comparable to the term as used in s 406.50, F.S. Section 406.50(4), F.S., defines "anatomical board" to mean the anatomical board of this state located at the University of Florida Health Science Center.
[27] The definition of "indigent person" is comparable to the definition of the term as used in s. 406.53(3), F.S. "Indigent" is defined to be 100 percent of the federal poverty level recognized by the Federal Income Guidelines produced by the United States Department of Health and Human Services. *See* s. 406.53(3), F.S.
[28] *See* s. 497.005(38), F.S.
[29] See s. 497.005(32), F.S.
[30] The duty of notification is presently on "all public officers, agents, or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons" coming into possession of such remains.

The bill amends provisions to require that before final disposition, the person or entity that comes into possession, charge, or control of unclaimed remains make reasonable effort to identify the remains, contact relatives, and determine if the deceased person is eligible for burial in a national cemetery. A reasonable effort is defined to include contacting the National Cemetery Scheduling Office in addition to contacting the county veterans' service office and the regional office of the United States Department of Veterans Affairs. If the deceased is eligible for burial in a national cemetery,[31] the person or entity in charge of the remains make those arrangements in accordance with federal regulations and must also make a reasonable effort to cause the remains or cremated remains to be delivered to a national cemetery.

The bill provides that a funeral director licensed under chapter 497, F.S., may assume the responsibility of a legally authorized person when no family exists or is available. The funeral director after 24 hours has elapsed since the time of death may authorize arterial embalming for the purpose of storage and delivery of the unclaimed remains to the board. Funeral directors are released from liability for damages relating to embalming and delivering the remains to the board.

The bill provides that the remains of a deceased person whose identity cannot be ascertained may not be:

- Cremated;
- Donated as an anatomical gift;
- Buried at sea; or
- Removed from the state.

The bill deletes current-law provisions that competing claims for a body for interment by legally authorized persons shall be prioritized in accordance with s. 732.103, F.S.

The bill creates provisions that allow the board of county commissioners, or its designated department, of the county in which the remains were found or the death occurred to authorize and arrange for the burial or cremation of the entire remains if the anatomical board does not accept unclaimed remains. Boards of county commissioners may, by ordinance or resolution, prescribe policies and procedures for final disposition of unclaimed remains.

Section 7 amends s. 406.51, F.S., to make conforming changes and clarify references to federal law.

Section 8 substantially rewords s. 406.52, F.S., which relates to the retention of human remains and the process for reclaiming remains from the board. The bill:

- Authorizes the anatomical board to embalm human remains upon receipt and to refuse to accept unclaimed remains or the remains of an indigent person;
- Provides that, at any point prior to use for medical education or research, human remains may be claimed by a legally authorized person, after payment of the board's expenses incurred for transporting, embalming, and storing the remains; and

[31] The bill clarifies who is eligible by referencing 38 C.F.R. s. 38.620.

- Exempt licensees under ch. 497, F.S., from liability for any damages resulting from cremating or burying human remains at the written direction of the county.

The bill deletes provisions that:

- Deem county commissioners of the county where the death occurred as a legally authorized person under s. 497.005, F.S.;
- Allow the board to provide written notice to the appropriate county commission or other legally authorized persons that more bodies had been made available than could be used for medical science or that a body had been deemed unfit for anatomical purposes. In such cases the unclaimed body must be buried or cremated in compliance with rules, laws, and practices for disposing of unclaimed bodies; and
- Require the county to make reasonable efforts to determine the identity of the body, contact relatives, and accommodate the requests of relatives if a preference is expressed for either burial or cremation.

Section 9 substantially rewords s. 406.53, F.S. Notwithstanding the provisions of s. 406.50(1), F.S.,[32] a county is not required to notify the anatomical board of the unclaimed remains of an indigent person if:

- The remains are decomposed or mutilated by wounds;
- An autopsy is performed;
- A legally authorized person or a relative by blood or marriage claims the remains for final disposition at his or her expense;
  - If such person or relative is also an indigent person, the person must provide for final disposition in a manner consistent with policies of the county in which the death occurred or the remains were found;
- The deceased person was a veteran, or the spouse or dependent child of a veteran, of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery; or
- A licensed funeral director certifies that the board has been notified and either accepted or declined the remains.

The bill deletes notification exceptions for the following circumstances:

- In the event of death caused by crushing injury;
- Where the deceased had a contagious disease; or
- Where the body is claimed for burial at the expense of any friend or a representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization, or a governmental agency that was providing residential care to the indigent person at the time of his or her death.

The bill also deletes the provision directing the DOH to assess fees for burial pursuant to s. 402.33, F.S., when the DOH claims the body of an indigent client.

[32] This section deals with unclaimed human remains generally.

Section 10 amends s. 406.55, F.S., to make conforming and technical changes.

Section 11 amends s. 406.56, F.S., to make conforming and technical changes.

Section 12 amends s. 406.57, F.S., to make conforming and technical changes and to require the board to loan remains to accredited colleges of mortuary science for education or research purposes.

Section 13 amends s. 406.58, F.S., to make conforming and technical changes and specify that the board may pay or reimburse the reasonable expenses, as determined by the board, for the removal, storage, or transportation of unclaimed remains by licensed funeral establishments or removal services.

The bill requires the board, not the DFS, to keep records of all fees and other financial transactions. The bill directs the University of Florida to audit these records at least once every three years or more frequently if deemed necessary, and to provide a copy of the audit to DFS within 90 days after completion. The bill authorizes the University of Florida to contract with a licensed public accounting firm "to provide for" the audit, and the accounting firm "may be paid from the fees collected by the board."

Section 14 amends s. 406.59, F.S., to make conforming and technical changes and mandate that entities receiving remains from the board may not use them for any purposes other than medical education or research.

Section 15 amends s. 406.60, F.S., to reference "human remains" and to provide that the board or a cinerator facility licensed under ch. 497, F.S., may dispose of human remains by cremation when such remains have been used for, and are not of any further value to, medical or dental education or research.

Section 16 amends s. 406.61, F.S., to make conforming and technical changes and to affirmatively state that the anatomical board may transport human remains outside the state for educational or scientific purposes. The bill allows other persons, institutions or organizations that convey human remains or any part thereof outside the state to do so for dental education or research purposes, but only upon the required notification to, and approval from, the anatomical board.

The bill allows a nontransplant anatomical donation association (NADO) that is accredited by the American Association of Tissue Banks (AATB) to convey human remains into or outside the state, for medical or dental education or research purposes without notifying the board or receiving board approval for the conveyance. The bill also requires that a NADO be accredited by the AATB effective October 1, 2014.

The bill makes buying or selling human remains or conveying human remains out of the state a misdemeanor of the first degree. Recognized Florida medical and dental schools are exceptions to this provision.

The bill requires that an original burial-transit permit issued pursuant to s. 382.007, F.S., accompany human remains received by the board or a NADO. It also prohibits the dissection, segmentation, or disarticulation of the remains until the district medical examiner of the county in which the death occurred or the remains were found grants approval under s. 406.11, F.S.

The bill requires that a NADO obtain specific written consent for the dissection, segmentation, or disarticulation of any part of the remains from all persons who are authorized to consent to an anatomical gift as described in s. 765.512, F.S. Such consent must expressly state that the remains may undergo long-term preservation or extensive preparation, including but not limited to, removal of the head, arms, legs, hands, feet, spine, organs, tissues, or fluids.

The bill prohibits any person from offering any monetary inducement or other valuable consideration, including goods and services, to a donor, legally authorized person, the donor's estate, or any other third party, in exchange for human remains. The bill provides, however, that the term "valuable consideration" does not include, and does not prohibit payment or reimbursement of the following expenses:

- Reasonable costs associated with the removal, storage, and transportation of human remains;
- Fees of a licensed funeral establishment or removal service;
- Reasonable costs after use of the human remains; or
- Disposition by cremation of human remains after use when they are deemed of no further value to medical or dental education or research.

The bill also deletes language that provides a substitute format to comply with required documentation for plastinated remains exhibited before July 1, 2009, by entities accredited by the American Association of Museums. The substitute method of compliance expired on January 1, 2012, by the terms of the subsection.

Section 17 amends s. 497.005, F.S., to redefine "final disposition" as it relates to the Florida Funeral, Cemetery, and Consumer Services Act to include provisions relating to anatomical donation. Delivery of an anatomical donation is deemed to be final disposition if the medical institution or entity receiving it assumes responsibility for disposition after use.

Section 18 amends s. 497.382, F.S., to require that reports of embalming or other handling of dead bodies be recorded and signed monthly as appropriate by embalmers, funeral directors or direct disposers, and maintained at the business premises for inspection by staff of the Division of Funeral, Cemetery, and Consumer Services within the DFS. The bill deletes the requirement that the reports be submitted to or filed with the division. The bill also revises the reporting procedure for funeral directors performing a disinterment.

Section 19 amends s. 497.607, F.S., to require a reasonable effort be made by a funeral or direct disposal establishment to determine whether remains that have not been claimed within 120 days after cremation are those of a veteran or the spouse or dependent child of a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard eligible for burial in a national cemetery. If they are, the establishment must arrange for interment in a national cemetery and may use the assistance of a veterans' service organization for this purpose. A

funeral or direct disposal establishment or veterans' service organization acting in good faith is not liable for damages resulting from the release of required information to determine eligibility.

There is no requirement to determine if the deceased is an eligible veteran if the funeral or direct disposal establishment is informed by a legally authorized person that the deceased was not a veteran. Similarly, there is no requirement to relinquish possession of cremated remains to a veteran's service organization if the establishment is informed by a legally authorized person that the deceased did not desire any funeral, ceremony, or interment-related services recognizing the deceased's service as a veteran.

The bill defines "reasonable effort" to include contacting the National Cemetery Scheduling Office, the county veterans' service office, the regional office of the U.S. Department of Veterans Affairs, or a veteran's service organization. The term "veterans' service organization" is defined as a tax-exempt entity under s. 501(c)(3) or 501(c)(10) of the Internal Revenue Code, organized for the benefit of veterans' burial and interment, that is recognized by the Memorial Affairs Division of the U.S. Department of Veterans Affairs. This includes members and employees of those organizations that assist in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

Section 20 amends s. 765.513, F.S., to specify that the anatomical board or a NADO may be a donee of the whole body for medical or dental education or research.

Section 21 repeals s. 406.54, F.S., which relates to the anatomical board surrendering a body to the claimant after payment of certain expenses. This is addressed by the bill in s. 406.52, F.S.

Section 22 provides an effective date of July 1, 2013.

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:

Effective October 1, 2014, a nontransplant anatomical donation organization must be accredited by the AATB to convey human remains outside and into the state. Staff at the American Association of Tissue Banks report that the initial application cost is $5,000, and annual renewals thereafter range between a minimum of $3,250 and $75,000 annually, based on gross revenues.[33]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, the title of part II of chapter 406, F.S., remains "Disposition of Dead Bodies," even though all references therein will refer to "human remains" or "remains." The Division of Law Revision and Information in the Office of Legislative Services should conform the reference accordingly as needed.

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 7, 2013:
The committee substitute:

- Conforms the bill to its House companion (CS/HB 171);
- Allows the Department of Health as well as the local health department registrar to grant an extension of time for the submission of the medical certification of the cause of death;
- Defines nontransplant anatomical donation organizations (NADO) as authorized to accept donations of human remains;
- Describes specific requirements for the contents of consents to be obtained by NADOs;
- Provides that an institution or organization may not offer monetary or other valuable consideration in exchange for human remains; and
- Defines the term "valuable consideration" to exclude payments or reimbursement of reasonable costs associated with the handling of the remains before and after use, including cremation.

[33] Teleconference by the Senate Committee on Regulated Industries with D. Newman at AATB March 5, 2013.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Sachs

580-02033-13 2013370c1

A bill to be entitled

An act relating to disposition of human remains; amending s. 382.002, F.S.; revising definitions for purposes of the Florida Vital Statistics Act; amending s. 382.006, F.S.; authorizing the Department of Health to issue burial-transit permits; amending s. 382.008, F.S.; revising procedures for the registration of certificates of death or fetal death and the medical certification of causes of death; providing a definition; amending s. 382.011, F.S.; extending the time by which certain deaths must be referred to the medical examiner for investigation; creating s. 406.49, F.S.; providing definitions; amending s. 406.50, F.S.; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; limiting the liability of licensed funeral directors who authorize the embalming of unclaimed remains under certain circumstances; amending s. 406.51, F.S.; requiring that local governmental contracts for the final disposition of unclaimed remains comply with certain federal regulations; amending s. 406.52, F.S.; revising procedures for the anatomical board's retention of human remains before their use; providing for claims by, and the release of human remains to, legally authorized persons after payment of certain expenses; authorizing county ordinances or resolutions for the final disposition of the unclaimed remains of

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indigent persons; limiting the liability of certain licensed persons for cremating or burying human remains under certain circumstances; amending s. 406.53, F.S.; revising exceptions from requirements for notice to the anatomical board of the death of indigent persons; deleting a requirement that the Department of Health assess fees for the burial of certain bodies; amending ss. 406.55, 406.56, and 406.57, F.S.; conforming provisions; amending s. 406.58, F.S.; requiring audits of the financial records of the anatomical board; conforming provisions; amending s. 406.59, F.S.; conforming provisions; amending s. 406.60, F.S.; authorizing certain facilities to dispose of human remains by cremation; amending s. 406.61, F.S.; revising provisions prohibiting the selling or buying of human remains or the transmitting or conveying of such remains outside the state; providing penalties; excepting accredited nontransplant anatomical donation organizations from requirements for the notification of and approval from the anatomical board for the conveyance of human remains for specified purposes; requiring that nontransplant anatomical donation organizations be accredited by a certain date; requiring that human remains received by the anatomical board be accompanied by a burial-transit permit; requiring approval by the medical examiner and consent of certain persons before the dissection, segmentation, or disarticulation of such remains;

prohibiting the offer of any monetary inducement or other valuable consideration in exchange for human remains; providing a definition; deleting an expired provision; conforming provisions; amending s. 497.005, F.S.; revising a definition for purposes of the Florida Funeral, Cemetery, and Consumer Services Act; amending s. 497.382, F.S.; revising certain reporting requirements for funeral establishments, direct disposal establishments, cinerator facilities, and centralized embalming facilities; amending s. 497.607, F.S.; providing requirements for the disposal of unclaimed cremated remains by funeral or direct disposal establishments; limiting the liability of funeral or direct disposal establishments and veterans' service organizations related to the release of information required to determine the eligibility for interment in a national cemetery of the unclaimed cremated remains of a veteran; providing definitions; amending s. 765.513, F.S.; revising the list of donees who may accept anatomical gifts and the purposes for which such a gift may be used; repealing s. 406.54, F.S., relating to claims of bodies after delivery to the anatomical board; providing an effective date.

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

Section 1. Subsections (8) and (9) of section 382.002, Florida Statutes, are amended to read:

382.002 Definitions.—As used in this chapter, the term:

(8) "Final disposition" means the burial, interment, cremation, removal from the state, anatomical donation, or other authorized disposition of a dead body or a fetus as described in subsection (7). In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final disposition; the cremation itself is considered final disposition. In the case of anatomical donation of a dead body, the donation itself is considered final disposition.

(9) "Funeral director" means a licensed funeral director or direct disposer licensed pursuant to chapter 497 ~~or other person~~ who first assumes custody of or effects the final disposition of a dead body or a fetus as described in subsection (7).

Section 2. Subsection (2) of section 382.006, Florida Statutes, is amended to read:

382.006 Burial-transit permit.—

(2) A burial-transit permit shall be issued by the department or the local registrar or subregistrar of the registration district in which the death occurred or the body was found. A burial-transit permit may ~~shall~~ not be issued:

(a) Until a complete and satisfactory certificate of death or fetal death is ~~has been~~ filed in accordance with the requirements of this chapter and adopted rules, unless the funeral director provides adequate assurance that a complete and satisfactory certificate will be so registered.

(b) Except under conditions prescribed by the department, if the death occurred from some disease that ~~which~~ is deemed ~~held~~ by the department to be infectious, contagious, or communicable and dangerous to the public health.

Section 3. Paragraph (a) of subsection (2) and subsections

(3), (4), and (5) of section 382.008, Florida Statutes, are amended to read:

382.008 Death and fetal death registration.—

(2)(a) The funeral director who first assumes custody of a dead body or fetus shall file the certificate of death or fetal death. In the absence of the funeral director, the physician or other person in attendance at or after the death or the district medical examiner of the county in which the death occurred or the body was found shall file the certificate of death or fetal death. The person who files the certificate shall obtain personal data from the next of kin or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail or electronic transfer, by the physician or medical examiner responsible for furnishing such information. For fetal deaths, the physician, midwife, or hospital administrator shall provide any medical or health information to the funeral director within 72 hours after expulsion or extraction.

(3) Within 72 hours after receipt of a death or fetal death certificate from the funeral director, the medical certification of cause of death shall be completed and made available to the funeral director by the decedent's primary or attending physician ~~in charge of the decedent's care for the illness or condition which resulted in death, the physician in attendance at the time of death or fetal death or immediately before or after such death or fetal death,~~ or, if s. 382.011 applies, the district medical examiner of the county in which the death occurred or the body was found ~~if the provisions of s. 382.011~~

~~apply~~. The primary or attending physician or medical examiner shall certify over his or her signature the cause of death to the best of his or her knowledge and belief. As used in this section, the term "primary or attending physician" means a physician who treated the decedent through examination, medical advice, or medication during the 12 months preceding the date of death.

(a) The local registrar may grant the funeral director an extension of time upon a good and sufficient showing of any of the following conditions:

1. An autopsy is pending.

2. Toxicology, laboratory, or other diagnostic reports have not been completed.

3. The identity of the decedent is unknown and further investigation or identification is required.

(b) If the decedent's primary or attending physician or district medical examiner of the county in which the death occurred or the body was found indicates ~~has indicated~~ that he or she will sign and complete the medical certification of cause of death~~,~~ but will not be available until after the 5-day registration deadline, the local registrar may grant an extension of 5 days. If a further extension is required, the funeral director must provide written justification to the registrar.

(4) If the department or local registrar grants ~~has granted~~ an extension of time to provide the medical certification of cause of death, the funeral director shall file a temporary certificate of death or fetal death which shall contain all available information, including the fact that the cause of

death is pending. The decedent's primary or attending physician or the district medical examiner of the county in which the death occurred or the body was found shall provide an estimated date for completion of the permanent certificate.

(5) A permanent certificate of death or fetal death, containing the cause of death and any other information that ~~which~~ was previously unavailable, shall be registered as a replacement for the temporary certificate. The permanent certificate may also include corrected information if the items being corrected are noted on the back of the certificate and dated and signed by the funeral director, physician, or district medical examiner of the county in which the death occurred or the body was found, as appropriate.

Section 4. Subsection (1) of section 382.011, Florida Statutes, is amended to read:

382.011 Medical examiner determination of cause of death.—

(1) In the case of any death or fetal death due to causes or conditions listed in s. 406.11, any ~~or where the~~ death that occurred more than 12 months ~~30 days~~ after the decedent was last treated by a primary or attending physician as defined in s. 382.008(3) ~~unless the death was medically expected as certified by an attending physician~~, or any death for which ~~where~~ there is reason to believe that the death may have been due to an unlawful act or neglect, the funeral director or other person to whose attention the death may come shall refer the case to the district medical examiner of the county ~~district~~ in which the death occurred or the body was found for investigation and determination of the cause of death.

Section 5. Section 406.49, Florida Statutes, is created in

part II of chapter 406, Florida Statutes, to read:

406.49 Definitions.—As used in this part, the term:

(1) "Anatomical board" means the anatomical board of the state headquartered at the University of Florida Health Science Center.

(2) "Cremated remains" has the same meaning as provided in s. 497.005.

(3) "Final disposition" has the same meaning as provided in s. 497.005.

(4) "Human remains" or "remains" has the same meaning as provided in s. 497.005.

(5) "Indigent person" means a person whose family income does not exceed 100 percent of the current federal poverty guidelines prescribed for the family's household size by the United States Department of Health and Human Services.

(6) "Legally authorized person" has the same meaning as provided in s. 497.005.

(7) "Nontransplant anatomical donation organization" means a tissue bank or other organization that facilitates nontransplant anatomical donation, including referral, obtaining informed consent or authorization, acquisition, traceability, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluating intended use, distribution, and final disposition of nontransplant anatomical donations.

(8) "Unclaimed remains" means human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense.

Section 6. Section 406.50, Florida Statutes, is amended to read:

406.50 Unclaimed ~~dead bodies or human~~ remains; disposition, procedure.—

(1) A person or entity that comes ~~All public officers, agents, or employees of every county, city, village, town, or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons coming~~ into possession, charge, or control of unclaimed ~~any dead human body or~~ remains that ~~which are unclaimed or which~~ are required to be buried or cremated at public expense shall ~~are hereby required to notify,~~ immediately notify~~,~~ the anatomical board, unless:

(a) The unclaimed remains are decomposed or mutilated by wounds;

(b) An autopsy is performed on the remains;

(c) The remains contain ~~whenever any such body, bodies, or remains come into its possession, charge, or control. Notification of the anatomical board is not required if the death was caused by crushing injury, the deceased had~~ a contagious disease;

(d) A legally authorized person~~, an autopsy was required to determine cause of death, the body was in a state of severe decomposition, or a family member~~ objects to use of the remains ~~body~~ for medical education or ~~and~~ research; or

(e) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a

national cemetery.

(2)~~(1)~~ Before the final disposition of unclaimed remains, the person or entity in charge or control of the ~~dead body or human~~ remains shall make a reasonable effort to ~~determine~~:

(a) Determine the identity of the deceased person and ~~shall further make a reasonable effort to~~ contact any relatives of the ~~such~~ deceased person.

(b) Determine whether ~~or not~~ the deceased person is eligible under 38 C.F.R. s. 38.620 for ~~entitled to~~ burial in a national cemetery as a veteran of the armed forces and, if eligible ~~so~~, to cause the deceased person's remains or cremated remains to be delivered to a national cemetery ~~shall make arrangements for such burial services in accordance with the provisions of 38 C.F.R~~.

For purposes of this subsection, "a reasonable effort" includes contacting the National Cemetery Scheduling Office, the county veterans service office, or the regional office of the United States Department of Veterans Affairs.

(3)~~(2)~~ Unclaimed remains ~~Such dead human bodies as described in this chapter~~ shall be delivered to the anatomical board as soon as possible after death. When no family exists or is available, a funeral director licensed under chapter 497 may assume the responsibility of a legally authorized person and may, after 24 hours have elapsed since the time of death, authorize arterial embalming for the purposes of storage and delivery of unclaimed remains to the anatomical board. A funeral director licensed under chapter 497 is not liable for damages under this subsection.

(4) The remains of a deceased person whose identity is not known may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state.

(5) If the anatomical board does not accept the unclaimed remains, the board of county commissioners or its designated county department of the county in which the death occurred or the remains were found may authorize and arrange for the burial or cremation of the entire remains. A board of county commissioners may by resolution or ordinance, in accordance with applicable laws and rules, prescribe policies and procedures for final disposition of unclaimed remains.

(6)~~(3)~~ This part does not ~~Nothing herein shall~~ affect the right of a medical examiner to hold human ~~such dead body or~~ remains for the purpose of investigating the cause of death or~~,~~ ~~nor shall this chapter affect~~ the right of any court of competent jurisdiction to enter an order affecting the disposition of such ~~body or~~ remains.

~~(4) In the event more than one legally authorized person claims a body for interment, the requests shall be prioritized in accordance with s. 732.103.~~

~~For purposes of this chapter, the term "anatomical board" means the anatomical board of this state located at the University of Florida Health Science Center, and the term "unclaimed" means a dead body or human remains that is not claimed by a legally authorized person, as defined in s. 497.005, for interment at that person's expense.~~

Section 7. Section 406.51, Florida Statutes, is amended to read:

406.51 Final disposition of unclaimed deceased veterans; contract requirements.—Any contract by a local governmental entity for the final disposition ~~disposal~~ of unclaimed ~~human~~ remains must provide for compliance with s. 406.50(2) ~~406.50(1)~~ and require that the procedures in 38 C.F.R. s. 38.620, relating to disposition of unclaimed deceased veterans, are ~~be~~ followed.

Section 8. Section 406.52, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 406.52, F.S., for present text.)

406.52 Retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains of indigent persons.—

(1) The anatomical board shall keep in storage all human remains that it receives for at least 48 hours before allowing their use for medical education or research. Human remains may be embalmed when received. The anatomical board may, for any reason, refuse to accept unclaimed remains or the remains of an indigent person.

(2) At any time before their use for medical education or research, human remains delivered to the anatomical board may be claimed by a legally authorized person. The anatomical board shall release the remains to the legally authorized person after payment of the anatomical board's expenses incurred for transporting, embalming, and storing the remains.

(3)(a) A board of county commissioners may by resolution or ordinance, in accordance with applicable laws and rules, prescribe policies and procedures for the burial or cremation of the entire unclaimed remains of an indigent person whose death

occurred, or whose remains were found, in the county.

(b) A person licensed under chapter 497 is not liable for any damages resulting from cremating or burying such human remains at the written direction of the board of county commissioners or its designee.

Section 9. Section 406.53, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 406.53, F.S., for present text.)

406.53 Unclaimed remains of indigent person; exemption from notice to the anatomical board.—A board of county commissioners or its designated county department that receives a report of the unclaimed remains of an indigent person, notwithstanding s. 406.50(1), is not required to notify the anatomical board of the remains if:

(1) The indigent person's remains are decomposed or mutilated by wounds or if an autopsy is performed on the remains;

(2) A legally authorized person or a relative by blood or marriage claims the remains for final disposition at his or her expense or, if such relative or legally authorized person is also an indigent person, in a manner consistent with the policies and procedures of the board of county commissioners of the county in which the death occurred or the remains were found;

(3) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a

national cemetery; or

(4) A funeral director licensed under chapter 497 certifies that the anatomical board has been notified and either accepted or declined the remains.

Section 10. Section 406.55, Florida Statutes, is amended to read:

406.55 Contracts for delivery of human remains ~~body~~ after death prohibited.—The anatomical board may not enter ~~is specifically prohibited from entering~~ into any contract, oral or written, that provides for ~~whereby~~ any sum of money to ~~shall~~ be paid to any living person in exchange for ~~which~~ the delivery of that person's remains ~~body of said person shall be delivered~~ to the anatomical board when the ~~such living~~ person dies.

Section 11. Section 406.56, Florida Statutes, is amended to read:

406.56 Acceptance of human remains ~~bodies~~ under will.—If any person ~~being~~ of sound mind executes ~~shall execute~~ a will leaving his or her remains ~~body~~ to the anatomical board for ~~the advancement of~~ medical education or research ~~science~~ and the ~~such~~ person dies within the geographical limits of the state, the anatomical board may ~~is hereby empowered to~~ accept and receive the person's remains ~~such body~~.

Section 12. Section 406.57, Florida Statutes, is amended to read:

406.57 Distribution of human remains ~~dead bodies~~.—The anatomical board or its duly authorized agent shall take and receive human remains ~~the bodies~~ delivered to it as provided in ~~under the provisions of~~ this chapter and shall:

(1) Distribute the remains ~~them~~ equitably ~~to and~~ among the

medical and dental schools, teaching hospitals, medical institutions, and health-related teaching programs that require cadaveric material for study; or

(2) Loan the remains ~~same may be loaned for examination or study purposes~~ to accredited colleges of mortuary science ~~recognized associations of licensed embalmers or funeral directors,~~ or medical or dental examining boards for educational or research purposes ~~at the discretion of the anatomical board~~.

Section 13. Section 406.58, Florida Statutes, is amended to read:

406.58 Fees; authority to accept additional funds; annual audit.—

(1) The anatomical board may:

(a) Adopt ~~is empowered to prescribe~~ a schedule of fees to be collected from the institutions ~~institution or association~~ to which the human remains ~~bodies, as described in this chapter,~~ are distributed or loaned to defray the costs of obtaining and preparing the remains ~~such bodies~~.

(b) ~~(2) The anatomical board is hereby empowered to~~ Receive money from public or private sources, in addition to the fees collected from the institutions ~~institution or association~~ to which human remains ~~the bodies~~ are distributed, to be used to defray the costs of embalming, handling, shipping, storing, cremating, and otherwise ~~storage, cremation, and other costs relating to the~~ obtaining and using the remains. ~~use of such bodies as described in this chapter; the anatomical board is empowered to~~

(c) Pay or reimburse the reasonable expenses, as determined by the anatomical board, incurred by a funeral establishment or

removal service licensed under chapter 497 for the removal, storage, and transportation ~~any person delivering the bodies as described in this chapter~~ to the anatomical board of unclaimed human remains. ~~and is further empowered to~~

(d) Enter into contracts and perform such other acts ~~as are~~ necessary for ~~to~~ the proper performance of its duties.~~.~~

(2) The anatomical board shall keep a complete record of all fees and other financial transactions. The University of Florida shall conduct an audit of the financial records of the anatomical board at least once every 3 years or more frequently as the university deems necessary. Within 90 days after completing an audit, the university shall provide a copy of the audit to the Department of Financial Services. The university may contract with a licensed public accounting firm to provide for the audit, which firm may be paid from the fees collected by the ~~of said~~ anatomical board ~~shall be kept and audited annually by the Department of Financial Services, and a report of such audit shall be made annually to the University of Florida~~.

Section 14. Section 406.59, Florida Statutes, is amended to read:

406.59 Institutions receiving human remains ~~bodies~~.—A ~~No~~ university, school, college, teaching hospital, or institution may not~~, or association shall be allowed or permitted to~~ receive any human remains from the anatomical board ~~such body or bodies as described in this chapter~~ until its facilities are ~~have been~~ inspected and approved by the anatomical board. Human remains ~~All such bodies~~ received by such university, school, college, teaching hospital, or institution may not~~, or association shall~~ be used for any ~~no other~~ purpose other than ~~the promotion of~~

medical education or research ~~science~~.

Section 15. Section 406.60, Florida Statutes, is amended to read:

406.60 Disposition of human remains ~~bodies~~ after use.—~~At any time~~ When human remains ~~any body or bodies or part or parts of any body or bodies, as described in this chapter, shall~~ have been used for, and are not ~~deemed~~ of any ~~no~~ further value to, medical or dental education or research ~~science~~, ~~then~~ the anatomical board or a cinerator facility licensed under chapter 497 ~~person or persons having charge of said body or parts of said body~~ may dispose of the remains or any part thereof by cremation.

Section 16. Section 406.61, Florida Statutes, is amended to read:

406.61 Selling, buying, or conveying human remains ~~bodies~~ outside state prohibited; exceptions~~;~~, ~~penalty.~~—

(1)(a) The anatomical board may transport human remains outside the state for educational or scientific purposes. ~~Any person who sells or buys any body or parts of bodies as described in this chapter or any person except a recognized Florida medical or dental school who transmits or conveys or causes to be transmitted or conveyed such body or parts of bodies to any place outside this state commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083. However,~~ This chapter does not prohibit the transport of ~~anatomical board from transporting~~ human remains, any part of such remains ~~specimens outside the state for educational or scientific purposes or prohibit the transport of bodies, parts of bodies~~, or tissue specimens in furtherance of lawful

examination, investigation, or autopsy conducted pursuant to s. 406.11.

(b) A ~~Any~~ person, institution, or organization that conveys human remains ~~bodies~~ or any part thereof ~~parts of bodies~~ into or outside ~~out of~~ the state for medical or dental education or research purposes must ~~shall~~ notify the anatomical board of such intent and receive approval from the board.

(c) Notwithstanding paragraph (b), a nontransplant anatomical donation organization accredited by the American Association of Tissue Banks may convey human remains or any part thereof into or outside the state for medical or dental education or research purposes without notifying or receiving approval from the anatomical board. Effective October 1, 2014, a nontransplant anatomical donation organization must be accredited by the American Association of Tissue Banks.

(d) A person who sells or buys human remains or any part thereof, or a person who transmits or conveys or causes to be transmitted or conveyed such remains or part thereof to any place outside this state, in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This paragraph does not apply to a recognized Florida medical or dental school.

(2)(a) Human remains received in this state by the anatomical board or a nontransplant anatomical donation organization must be accompanied by the original burial-transit permit issued pursuant to s. 382.007. The remains may not be dissected, segmented, or disarticulated until the district medical examiner of the county in which the death occurred or the remains were found grants approval pursuant to s. 406.11.

(b) A nontransplant anatomical donation organization must obtain specific written consent for the dissection, segmentation, or disarticulation of any part of the remains from a person who is authorized under s. 765.512 to give such consent. Such consent must expressly state that the remains may undergo long-term preservation or extensive preparation, including, but not limited to, removal of the head, arms, legs, hands, feet, spine, organs, tissues, or fluids.

(3) A person, institution, or organization may not offer in exchange for human remains any monetary inducement or other valuable consideration, including goods or services, to a donor, a legally authorized person, the donor's estate, or any other third party. As used in this subsection, the term "valuable consideration" does not include, and this subsection does not prohibit, payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, including payment or reimbursement of a funeral establishment or removal service licensed under chapter 497 or the reasonable costs after use, including payment or reimbursement for the disposition of human remains pursuant to s. 406.60.

(4) ~~(2)~~ An ~~Any~~ entity accredited by the American Association of Museums may convey plastinated human remains ~~bodies~~ or any part thereof within, ~~parts of bodies~~ into, or outside ~~out of~~ the state for exhibition and public educational purposes without the consent of the anatomical board if the accredited entity:

(a) Notifies the anatomical board of the conveyance and the duration and location of the exhibition at least 30 days before the intended conveyance.

(b) Submits to the anatomical board a description of the remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name and address of the company providing the remains ~~bodies~~ or any part thereof ~~parts of bodies~~.

(c) Submits to the anatomical board documentation that the remains or each part thereof ~~body~~ was donated by the decedent or his or her next of kin for purposes of plastination and public exhibition, or, in lieu of such documentation, an affidavit stating that the remains or each part thereof ~~body~~ was donated directly by the decedent or his or her next of kin for such purposes to the company providing the remains ~~body~~ and that such company has a donation form on file for the remains ~~body~~.

~~(3) Notwithstanding paragraph (2)(c) and in lieu of the documentation or affidavit required under paragraph (2)(c), for a plastinated body that, before July 1, 2009, was exhibited in this state by any entity accredited by the American Association of Museums, such an accredited entity may submit an affidavit to the board stating that the body was legally acquired and that the company providing the body has acquisition documentation on file for the body. This subsection expires January 1, 2012.~~

Section 17. Subsection (32) of section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter, the term:

(32) "Final disposition" means the final disposal of a dead human body by earth interment, aboveground interment, cremation, burial at sea, anatomical donation, or delivery to a medical institution for lawful dissection if the medical institution or entity receiving the anatomical donation assumes responsibility for disposition after use pursuant to s. 406.60 ~~disposal~~. The

term ~~"Final disposition"~~ does not include the disposal or distribution of cremated remains and residue of cremated remains.

Section 18. Section 497.382, Florida Statutes, is amended to read:

497.382 Reports of cases embalmed and bodies handled.—

(1) Each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility shall record monthly ~~report~~ on a form prescribed and furnished by the licensing authority the name of the deceased and such other information as may be required by rule with respect to each dead human body embalmed or otherwise handled by the establishment or facility. Such forms shall be signed monthly by the embalmer who performs the embalming, if the body is embalmed, and the funeral director in charge of the establishment or facility or by the direct disposer who disposes of the body and shall be maintained at the business premises of the establishment or facility for inspection by division staff. The licensing authority shall prescribe by rule the procedures for preparing and retaining ~~in submitting~~ such forms ~~documentation~~. ~~Reports required by this subsection shall be filed by the 20th day of each month for final dispositions handled the preceding month.~~

(2) Funeral directors performing disinterments shall record monthly on the form specified in subsection (1) and pursuant to ~~report, using a form and~~ procedures prescribed ~~specified~~ by rule~~,~~ the name of the deceased and such other information as may be required by rule with respect to each dead human body disinterred.

Section 19. Subsection (2) of section 497.607, Florida Statutes, is amended to read:

497.607 Cremation; procedure required.—

(2)(a) With respect to any person who intends to provide for the cremation of the deceased, if, after a period of 120 days from the time of cremation the cremated remains have not been claimed, the funeral or direct disposal establishment may dispose of the cremated remains. Such disposal shall include scattering them at sea or placing them in a licensed cemetery scattering garden or pond or in a church columbarium or otherwise disposing of the remains as provided by rule.

(b) A reasonable effort shall be made before such disposal to determine whether the cremated remains are those of a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard eligible for burial in a national cemetery or a spouse or dependent child of a veteran eligible for burial in a national cemetery.

(c) If the unclaimed cremated remains are those of an eligible veteran or the spouse or dependent child of an eligible veteran, the funeral or direct disposal establishment shall arrange for the interment of the cremated remains in a national cemetery. A funeral or direct disposal establishment may use the assistance of a veterans' service organization for this purpose. A funeral or direct disposal establishment or veterans' service organization acting in good faith is not liable for any damages resulting from the release of required information to determine eligibility for interment.

(d) This subsection does not require a funeral or direct disposal establishment to:

1. Determine whether the cremated remains are those of a veteran if the funeral or direct disposal establishment is informed by a legally authorized person that the decedent was not a veteran.

2. Relinquish possession of the cremated remains to a veterans' service organization if the funeral or direct disposal establishment is informed by a legally authorized person that the decedent did not desire any funeral, ceremony, or interment-related services recognizing the decedent's service as a veteran.

(e) For purposes of this subsection, the term:

1. "Reasonable effort" includes contacting the National Cemetery Scheduling Office, the county veterans service office, the regional office of the United States Department of Veterans Affairs, or a veterans' service organization.

2. "Veterans' service organization" means an association, corporation, or other entity that qualifies under s. 501(c)(3) or s. 501(c)(19) of the Internal Revenue Code as a tax-exempt organization, that is organized for the benefit of veterans' burial and interment, and that is recognized by the Memorial Affairs Division of the United States Department of Veterans Affairs. The term includes a member or employee of an eligible nonprofit veterans' corporation, association, or entity that specifically assists in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

Section 20. Subsection (1) of section 765.513, Florida Statutes, is amended to read:

765.513 Donees; purposes for which anatomical gifts may be

made.—

(1) The following persons or entities may become donees of anatomical gifts of bodies or parts of them for the purposes stated:

(a) Any procurement organization or accredited medical or dental school, college, or university for education, research, therapy, or transplantation.

(b) Any individual specified by name for therapy or transplantation needed by him or her.

(c) The anatomical board or a nontransplant anatomical donation organization, as defined in s. 406.49, for donation of the whole body for medical or dental education or research.

Section 21. Section 406.54, Florida Statutes, is repealed.

Section 22. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2013
Meeting Date

Topic Disposition of Human Remains

Bill Number 370 *(if applicable)*

Name Ross A. McVoy

Amendment Barcode NA *(if applicable)*

Job Title General Counsel and Lobbyist

Address 660 E. Jefferson St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 412 2112

E-mail rmcvoy@ssclawfirm.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Cemetery Cremation and Funeral Association, Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Disposition of Human Remains Bill Number 370 *(if applicable)*

Name Jim Wylie Amendment Barcode *(if applicable)*

Job Title Govt Affairs

Address 5359 Pembridge Place Phone 850-567-1705
Street

Tallahassee FL. 32309 E-mail JAMESWYLIE@GMAIL.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Funeral & Cemetery Consumer Advocacy, Inc.

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Disposition of Human Remains

Bill Number 370 *(if applicable)*

Name Susan Harbin

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Advocate

Address 110 S. Monroe
Street
Tallahassee FL 32301
City *State* *Zip*

Phone (850) 922-4300

E-mail sharbin@fl-counties.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

370

Topic Disposition of Human Remains Bill Number ~~732~~
(if applicable)

Name GEORGIA McKEOWN Amendment Barcode
(if applicable)

Job Title Consultant

Address 200 W College #225 Phone
Street

Tallahassee E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA CEMETERY, CREMATION & FUNERAL ASSOC

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

Topic _____ Bill Number SB 370 *(if applicable)*

Name Elizabeth Boyd Amendment Barcode _____ *(if applicable)*

Job Title Deputy Director, Legislative Affairs

Address 400 S Monroe *Street* Phone _____

Tallahassee FL 32399 *City* *State* *Zip* E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Dept. of Financial Services

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Senator Maria Lorts Sachs
Minority Leader Pro Tempore
District 34

Committees:

Gaming
Vice Chair

Agriculture

Education

Appropriations
Subcommittee on
Education

Appropriations
Subcommittee on Finance
and Tax

Military Affairs, Space,
and Domestic Security

Regulated Industries

STAFF:

Matthew Damsky
Legislative Assistant

Joshua Freeman
Legislative Assistant

Caitlin Lewis
Legislative Assistant

April 9, 2013

The Office of Senator Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Negron:

I am writing to request that Senate Bill 370 (Disposition of Human Remains) be heard during the Appropriations Committee Meeting on Thursday April 18th. If you have any questions feel free to contact me or my staff. Thank you for your consideration.

Very truly yours,

Sen. Maria Sachs,
District 34

Cc: Mike Hansen
Cindy Kynoch
Alicia Weiss
Holly Demers
Carrie Lira
Audra Robitaille

SENATE APPROPRIATIONS
RECEIVED
13 APR -9 PM 12:47
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STAFF DIR. _____ STAFF _____

17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427
Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: *www.flsenate.gov*

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 410 (783148)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Bean
SUBJECT:	Money Services Businesses
DATE:	April 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Favorable**
2.	Davis	DeLoach	AGG	**Fav/CS**
3.	Davis	Hansen	AP	**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:

PCS/SB 410 provides for the establishment of a check-cashing database within the Office of Financial Regulation (OFR) for regulators and law enforcement to access in order to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities documented in a statewide grand jury report and a subsequent Chief Financial Officer Work Group. The OFR regulates money services businesses (MSBs) that offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. Currently, licensed check cashers are required to maintain specified records, such as copies of all checks cashed, and for checks exceeding $1,000, certain transactional data in an electronic log. These records are reviewed as part of OFR's examination authority under ch. 560, F.S.

After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. The bill has no fiscal impact on state government for the 2013-2014 fiscal year.

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. The bill requires that check cashers, after implementation of the new check cashing database, to enter specified transactional information into the database.

This bill amends section 560.310, Florida Statutes.

II. Present Situation:

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository institutions and other entities, such as money service businesses, which are subject to the provisions of ch. 560, F.S.

Licensure of Check Cashers

Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are licensed under part III. Current law provides that the requirement for licensure does not apply to a person cashing payment instruments that have an aggregate face value of less than $2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.[1] Deferred presentment providers (DPPs; commonly known as payday lenders) are subject to regulation under part II or part III and part IV of chapter 560, F.S.[2] As of February 27, 2013, OFR indicated there were 159 companies in Florida that had filed a notice of intent with OFR to engage in deferred presentment transactions. In addition, 1,115 companies were licensed to conduct check-cashing transactions.[3]

Check Cashing Fees

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater.
- In excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.[4]

In addition, check cashers are authorized to collect a fee linked to the direct costs of verifying a customer's identity or employment. That fee, established by rule,[5] may not exceed $5. Rule 69V-560.801, F.A.C., provides:

[1] Section 560.304, F.S.
[2] Section 560.403, F.S., provides a DPP is required to be licensed under part II or part III of chapter 560, F.S., and have on file with the OFR a declaration of intent to engage in deferred presentment transactions.
[3] Information provided by OFR on March 29, 2013, and on file with Banking and Insurance Committee Staff.
[4] Section 560.309(8), F.S.
[5] Id.

- In addition to the fees established in s. 560.309(8), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the OFR's administered database for DPP transactions prior to cashing the payment instrument or accepting a personal check in connection with a DPP transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed $5 per transaction. For example, a check casher may not charge a drawer more than one (1) verification fee per day, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.
- For purposes of s. 560.309(8), F.S., and this rule, the "direct costs of verification" are the costs that are allocated by the provider to a particular function or are readily ascertainable based upon standard commercial practices and include internal staff and infrastructure costs incurred by the provider in performing the verification function and payments to third party vendors who provide verification related services.

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of five years. In addition, s. 560.310, F.S., requires check casher licensees to maintain customer files on all customers cashing corporate instruments exceeding $1,000. Rule 69V-560.704, F.A.C., requires licensees to maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and customer files for those cashing corporate and third party payment instruments. Further, the rule requires that for payment instruments of $1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Location where instrument was accepted, and
- Identification type and number presented by customer.

Licensees must maintain this information in an electronic format that is "readily retrievable and capable of being exported to most widely available software applications including Microsoft Excel." This information was intended to be reviewed during OFR's examination process. While this can be useful, it does not allow regulators and law enforcement to analyze information in a "real time" format through a central database, for the purpose of identifying and targeting persons engaged in violations of ch. 560, F.S., or other unlawful activity.

Workers' Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashers have colluded on a scheme allowing these contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage. In addition to the workers' compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, the check cashers may receive a fee of 7 percent of the value of the check or more for cashing the checks, which exceeds the statutory limit check cashers are allowed to charge.[6]

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. The Statewide Grand Jury report described a typical scheme.[7] First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the United States. This company has no real operations or employees. This shell company will then buy a minimum premium policy to procure the certificate of insurance that the contractor needs to document proof of workers' compensation insurance coverage. A certificate of insurance does not show the amount of coverage because the number and class code of employees can vary throughout the year. The contractor then writes checks to this shell company playing the part of the phony subcontractor.

According to the statewide grand jury report, one indicted Miami check casher created mobile check cashing units that would provide check cashing at the contractor's construction site. In reality, the contractor is actually cashing the check that he or she has just written to the phony company and taking the cash back to pay his employees without maintaining any documentation regarding the actual payroll. On paper, however, it appears the contractor is paying another company for their work on the project. According to the statewide grand jury, the amount of these checks is usually over the $10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government.[8] The check casher actively participates in this scheme by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are third degree felonies. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR. However, the fraud continues.

The dollar magnitude of this fraud is tremendous. For example, the Division of Insurance Fraud of the Department of Financial Services collaborated with the North Florida High Intensity Drug Trafficking Area (HIDTA) Task Force in 2011 on a case that targeted individuals who were running a shell company scheme using undocumented foreign national laborers to avoid paying workers' compensation insurance premiums and federal and state taxes. The suspects were documented to have cashed checks totaling approximately $4 million at a check-cashing store to

[6] *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008.
[7] *Id.*
[8] The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. For example, cash transaction reports (CTRs) are required to be filed for cash transactions involving more than $10,000. Section 560.1235, F.S., requires MSBs to comply with all state and federal laws relating to the detection and prevention of money laundering.

pay the workers under the table. The suspects were arrested; three vehicles and $67,000 in cash were seized.

Typically, the insurance company will attempt to conduct a premium audit of an insured, such as the shell company, after the end of the policy year. However, by this time, the shell company has ceased operating and the nominee owner has disappeared, having usually gone back to his home country. If any workers' compensation claims occur, the insurer is forced to try to offset such costs by increasing rates on legitimate contractors who secure adequate coverage.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Subsequently, in 2012, legislation[9] was enacted that incorporated consensus recommendations of the work group. These changes increase the regulatory oversight of MSBs and provide greater prevention, detection, and prosecution of workers' compensation premium fraud by:

- Requiring licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within five business days.
- Prohibiting any money services business, its authorized vendor, or affiliated party from possessing any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizing the OFR to issue a cease and desist order, to issue a removal order, to deny, suspend, or revoke a license, or to take any other action permitted by ch. 560, F.S., for failing to maintain a federally insured depository account, deposit all checks accepted into a depository account or submit transactional information to the office.
- Requiring a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and to prohibit the resumption of check cashing operations until the licensee has secured a new depository relationship.

The work group also recommended the establishment of a statewide database for regulators and law enforcement to access for the detection of workers' compensation insurance fraud.

Deferred Presentment Provider Database

Part IV of chapter 560, F.S., regulates deferred presentment providers (DPPs). Section 560.404, F.S., requires payday lenders to access a database that is maintained by an OFR service provider. This database allows DPPs to comply with s. 560.404(19), F.S., which prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer already has an outstanding deferred presentment agreement, or terminated an agreement within the previous 24 hours. Section 560.404(23), F.S., specifies that DPPs can charge $1 for each transaction, which partly supports the operation and maintenance of the database and partly supports the OFR's regulatory functions.

[9] Ch. 2012-85, L.O.F.

III. Effect of Proposed Changes:

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. Upon implementation of the database, check cashers are required to enter specified transactional information into the real-time, online database for payment instruments exceeding $1,000. The transactional information is substantially similar to what check cashers are currently required to maintain in electronic logs, with the addition of a payee's workers' compensation insurance policy or exemption certificate number and any additional information required by rule. In addition, the bill requires the OFR to ensure that the database would interface with databases maintained by the DFS, for purposes of determining proof of coverage for workers' compensation and by the Secretary of State for purposes of verifying corporate registration and articles of incorporation.

The bill provides that after completing the competitive solicitation, but prior to execution of any contract, the OFR may request funds in the Fiscal Year 2014-2015 Legislative Budget Request and submit any necessary draft legislation needed to implement the act.

The bill also grants rulemaking authority to the Financial Services Commission to administer the section, to require additional information to be submitted into the database, and to ensure that licensees are using the database in accordance with the section.

The act will take effect July 1, 2013.

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 database will aid in the detection and deterrence of unscrupulous contractors committing workers' compensation insurance fraud, thereby creating a more level playing field for legitimate contractors. The database may also reduce some administrative burden for licensees.

C. Government Sector Impact:

The bill will provide regulators and law enforcement with additional enforcement tools to detect and prosecute workers' compensation insurance fraud and other criminal activities.

The bill has no fiscal impact on state or local government.

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.)

Recommended CS by Appropriations Subcommittee on General Government on April 17, 2013:
The committee substitute:

- Authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database.
- Lists requirements for the types of data to be input into the database upon implementation.
- Authorizes the Financial Services Commission to adopt rules to administer this section of law.
- Deletes the term "database" and its definition.
- Deletes authority of the Financial Services Commission to use up to $0.25 of an existing fee authorized for the operation of the deferred presentment database for the use of implementing and operating the check-cashing database.
- Deletes language that is substantially similar to language in current statute under s. 560.404(23), F.S., regarding a DPP's reliance on database information and the right of a DPP to enforce deferred presentment agreements. This language is inapplicable to the check-cashing context.

B. Amendments:

None.

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576-04582-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to money services businesses; amending s. 560.310, F.S.; requiring licensees engaged in check cashing to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; requiring the office to maintain the transaction information in a centralized check cashing database; requiring the office to issue a competitive solicitation for a database to maintain certain transaction information relating to check cashing; authorizing the office to request funds and to submit draft legislation after certain requirements are met; authorizing the Financial Services Commission to adopt rules; providing an effective date.

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

Section 1. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds $1,000, the following additional information must be maintained or submitted:

(a) Customer files, as prescribed by rule, on all customers

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576-04582-13

who cash corporate payment instruments that exceed $1,000.

(b) A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) The office shall, at a minimum, require licensees to submit the following information to the check cashing database or electronic log, before entering into each check cashing transaction for each ~~A~~ payment instrument being cashed, in such format as required ~~log that must be maintained electronically as prescribed~~ by rule:

1. Transaction date.

2. Payor name as displayed on the payment instrument.

3. Payee name as displayed on the payment instrument.

4. Conductor name, if different from the payee name.

5. Amount of the payment instrument.

6. Amount of currency provided.

7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.

8. Amount of the fee charged for cashing of the payment instrument.

9. Branch or location where the payment instrument was

accepted.

10. The type of identification and identification number presented by the payee or conductor.

11. Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business.

12. Such additional information as required by rule.

For purposes of this subsection ~~paragraph~~, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported in ~~on~~ the check cashing database or on the log.

(3) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

(4) The office shall issue a competitive solicitation as provided in s. 287.057 for a statewide, real time, online check cashing database to combat fraudulent check cashing activity. After completing the competitive solicitation process, but before executing a contract, the office may request funds in its 2014-2015 fiscal year legislative budget request and submit necessary draft conforming legislation, if needed, to implement this act.

(5) The office shall ensure that the check cashing database:

(a) Provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial

Services' database for purposes of determining proof of coverage for workers' compensation.

(6) The commission may adopt rules to administer this section, require that additional information be submitted to the check cashing database, and ensure that the database is used by the licensee in accordance with this section.

Section 2. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/SB 410
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Bean
SUBJECT:	Money Services Businesses
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Favorable**
2.	Davis	DeLoach	AGG	**Fav/CS**
3.	Davis	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 410 provides for the establishment of a check-cashing database within the Office of Financial Regulation (OFR) for regulators and law enforcement to access in order to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities documented in a statewide grand jury report and a subsequent Chief Financial Officer Work Group. The OFR regulates money services businesses (MSBs) that offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. Currently, licensed check cashers are required to maintain specified records, such as copies of all checks cashed, and for checks exceeding $1,000, certain transactional data in an electronic log. These records are reviewed as part of OFR's examination authority under ch. 560, F.S.

After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. The bill has no fiscal impact on state government for the 2013-2014 fiscal year.

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. The bill requires that check cashers, after implementation of the new check cashing database, to enter specified transactional information into the database.

This bill amends section 560.310, Florida Statutes.

II. Present Situation:

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository institutions and other entities, such as money service businesses, which are subject to the provisions of ch. 560, F.S.

Licensure of Check Cashers

Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are licensed under part III. Current law provides that the requirement for licensure does not apply to a person cashing payment instruments that have an aggregate face value of less than $2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.[1] Deferred presentment providers (DPPs; commonly known as payday lenders) are subject to regulation under part II or part III and part IV of chapter 560, F.S.[2] As of February 27, 2013, OFR indicated there were 159 companies in Florida that had filed a notice of intent with OFR to engage in deferred presentment transactions. In addition, 1,115 companies were licensed to conduct check-cashing transactions.[3]

Check Cashing Fees

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater.
- In excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.[4]

In addition, check cashers are authorized to collect a fee linked to the direct costs of verifying a customer's identity or employment. That fee, established by rule,[5] may not exceed $5. Rule 69V-560.801, F.A.C., provides:

[1] Section 560.304, F.S.
[2] Section 560.403, F.S., provides a DPP is required to be licensed under part II or part III of chapter 560, F.S., and have on file with the OFR a declaration of intent to engage in deferred presentment transactions.
[3] Information provided by OFR on March 29, 2013, and on file with Banking and Insurance Committee Staff.
[4] Section 560.309(8), F.S.
[5] Id.

- In addition to the fees established in s. 560.309(8), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the OFR's administered database for DPP transactions prior to cashing the payment instrument or accepting a personal check in connection with a DPP transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed $5 per transaction. For example, a check casher may not charge a drawer more than one (1) verification fee per day, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.
- For purposes of s. 560.309(8), F.S., and this rule, the "direct costs of verification" are the costs that are allocated by the provider to a particular function or are readily ascertainable based upon standard commercial practices and include internal staff and infrastructure costs incurred by the provider in performing the verification function and payments to third party vendors who provide verification related services.

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of five years. In addition, s. 560.310, F.S., requires check casher licensees to maintain customer files on all customers cashing corporate instruments exceeding $1,000. Rule 69V-560.704, F.A.C., requires licensees to maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and customer files for those cashing corporate and third party payment instruments. Further, the rule requires that for payment instruments of $1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Location where instrument was accepted, and
- Identification type and number presented by customer.

Licensees must maintain this information in an electronic format that is "readily retrievable and capable of being exported to most widely available software applications including Microsoft Excel." This information was intended to be reviewed during OFR's examination process. While this can be useful, it does not allow regulators and law enforcement to analyze information in a "real time" format through a central database, for the purpose of identifying and targeting persons engaged in violations of ch. 560, F.S., or other unlawful activity.

Workers' Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashers have colluded on a scheme allowing these contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage. In addition to the workers' compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, the check cashers may receive a fee of 7 percent of the value of the check or more for cashing the checks, which exceeds the statutory limit check cashers are allowed to charge.[6]

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. The Statewide Grand Jury report described a typical scheme.[7] First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the United States. This company has no real operations or employees. This shell company will then buy a minimum premium policy to procure the certificate of insurance that the contractor needs to document proof of workers' compensation insurance coverage. A certificate of insurance does not show the amount of coverage because the number and class code of employees can vary throughout the year. The contractor then writes checks to this shell company playing the part of the phony subcontractor.

According to the statewide grand jury report, one indicted Miami check casher created mobile check cashing units that would provide check cashing at the contractor's construction site. In reality, the contractor is actually cashing the check that he or she has just written to the phony company and taking the cash back to pay his employees without maintaining any documentation regarding the actual payroll. On paper, however, it appears the contractor is paying another company for their work on the project. According to the statewide grand jury, the amount of these checks is usually over the $10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government.[8] The check casher actively participates in this scheme by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are third degree felonies. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR. However, the fraud continues.

The dollar magnitude of this fraud is tremendous. For example, the Division of Insurance Fraud of the Department of Financial Services collaborated with the North Florida High Intensity Drug Trafficking Area (HIDTA) Task Force in 2011 on a case that targeted individuals who were running a shell company scheme using undocumented foreign national laborers to avoid paying workers' compensation insurance premiums and federal and state taxes. The suspects were documented to have cashed checks totaling approximately $4 million at a check-cashing store to

[6] *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008.
[7] *Id.*
[8] The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. For example, cash transaction reports (CTRs) are required to be filed for cash transactions involving more than $10,000. Section 560.1235, F.S., requires MSBs to comply with all state and federal laws relating to the detection and prevention of money laundering.

pay the workers under the table. The suspects were arrested; three vehicles and $67,000 in cash were seized.

Typically, the insurance company will attempt to conduct a premium audit of an insured, such as the shell company, after the end of the policy year. However, by this time, the shell company has ceased operating and the nominee owner has disappeared, having usually gone back to his home country. If any workers' compensation claims occur, the insurer is forced to try to offset such costs by increasing rates on legitimate contractors who secure adequate coverage.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Subsequently, in 2012, legislation[9] was enacted that incorporated consensus recommendations of the work group. These changes increase the regulatory oversight of MSBs and provide greater prevention, detection, and prosecution of workers' compensation premium fraud by:

- Requiring licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within five business days.
- Prohibiting any money services business, its authorized vendor, or affiliated party from possessing any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizing the OFR to issue a cease and desist order, to issue a removal order, to deny, suspend, or revoke a license, or to take any other action permitted by ch. 560, F.S., for failing to maintain a federally insured depository account, deposit all checks accepted into a depository account or submit transactional information to the office.
- Requiring a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and to prohibit the resumption of check cashing operations until the licensee has secured a new depository relationship.

The work group also recommended the establishment of a statewide database for regulators and law enforcement to access for the detection of workers' compensation insurance fraud.

Deferred Presentment Provider Database

Part IV of chapter 560, F.S., regulates deferred presentment providers (DPPs). Section 560.404, F.S., requires payday lenders to access a database that is maintained by an OFR service provider. This database allows DPPs to comply with s. 560.404(19), F.S., which prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer already has an outstanding deferred presentment agreement, or terminated an agreement within the previous 24 hours. Section 560.404(23), F.S., specifies that DPPs can charge $1 for each transaction, which partly supports the operation and maintenance of the database and partly supports the OFR's regulatory functions.

[9] Ch. 2012-85, L.O.F.

III. Effect of Proposed Changes:

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. Upon implementation of the database, check cashers are required to enter specified transactional information into the real-time, online database for payment instruments exceeding $1,000. The transactional information is substantially similar to what check cashers are currently required to maintain in electronic logs, with the addition of a payee's workers' compensation insurance policy or exemption certificate number and any additional information required by rule. In addition, the bill requires the OFR to ensure that the database would interface with databases maintained by the DFS, for purposes of determining proof of coverage for workers' compensation and by the Secretary of State for purposes of verifying corporate registration and articles of incorporation.

The bill provides that after completing the competitive solicitation, but prior to execution of any contract, the OFR may request funds in the Fiscal Year 2014-2015 Legislative Budget Request and submit any necessary draft legislation needed to implement the act.

The bill also grants rulemaking authority to the Financial Services Commission to administer the section, to require additional information to be submitted into the database, and to ensure that licensees are using the database in accordance with the section.

The act will take effect July 1, 2013.

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 database will aid in the detection and deterrence of unscrupulous contractors committing workers' compensation insurance fraud, thereby creating a more level playing field for legitimate contractors. The database may also reduce some administrative burden for licensees.

C. Government Sector Impact:

The bill will provide regulators and law enforcement with additional enforcement tools to detect and prosecute workers' compensation insurance fraud and other criminal activities.

The bill has no fiscal impact on state or local government.

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 Appropriations on April 23, 2013:
The committee substitute:

- Authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database.
- Lists requirements for the types of data to be input into the database upon implementation.
- Authorizes the Financial Services Commission to adopt rules to administer this section of law.
- Deletes the term "database" and its definition.
- Deletes authority of the Financial Services Commission to use up to $0.25 of an existing fee authorized for the operation of the deferred presentment database for the use of implementing and operating the check-cashing database.
- Deletes language that is substantially similar to language in current statute under s. 560.404(23), F.S., regarding a DPP's reliance on database information and the right of a DPP to enforce deferred presentment agreements. This language is inapplicable to the check-cashing context.

B. Amendments:

None.

By Senator Bean

4-00749-13 2013410__

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; providing a definition; amending s. 560.309, F.S.; authorizing the Financial Services Commission to use a portion of the fees that licensees may charge for the direct costs of verification of payment instruments cashed for certain purposes; amending s. 560.310, F.S.; requiring licensees engaged in check cashing to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; requiring the office to maintain the transaction information in a centralized database; providing liability protection for licensees relying on database information; providing rulemaking authority; providing an effective date.

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

Section 1. Present subsections (12) through (35) of section 560.103, Florida Statutes, are renumbered as subsections (13) through (36), respectively, and a new subsection (12) is added to that section, to read:

560.103 Definitions.—As used in this chapter, the term:

(12) "Database" means the common database implemented pursuant to s. 560.404(23).

Section 2. Subsection (8) of section 560.309, Florida Statutes, is amended, present subsections (9) and (10) of that section are renumbered as subsections (10) and (11),

4-00749-13 2013410__

respectively, and a new subsection (9) is added to that section, to read:

560.309 Conduct of business.—

(8) Exclusive of the direct costs of verification and database submission, which shall be established by rule not to exceed $5, a check casher may not:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.

(9) The commission may, by rule, use up to $0.25 of an existing fee authorized under s. 560.404(23) for data that must be submitted by a licensee for purposes of the operation and maintenance of the database.

Section 3. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds $1,000, the following

additional information must be maintained:

(a) Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed $1,000.

(b) A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) A payment instrument log that must be maintained electronically as prescribed by rule. For purposes of this paragraph, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported on the log.

(e) The office shall require licensees to submit the following information to the database, which must be accessible to the office and the licensee in order to submit all transactional check cashing data, before entering into each check cashing transaction for all checks being cashed in such format as required by rule:

1. Transaction date.

2. Payor name.

3. Payee name.

4. Customer name, if different from the payee name.

5. Amount of the payment instrument.

6. Amount of currency provided.

7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.

8. Amount of the fee charged for cashing the payment instrument.

9. Branch or location where the payment instrument was accepted.

10. The type of identification and identification number presented by the payee or customer.

11. Payee's workers' compensation insurance policy number, if the payee is a business.

(3) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

(4) The office shall ensure that the database:

(a) Provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial Services' database for purposes of determining proof of coverage for workers' compensation.

(c) Maintains an electronic log of the sale or issuance of payment instruments pursuant to this section.

(5) A licensee may rely on the information contained in the database as accurate, and such licensee is not subject to any administrative penalty or civil liability due to relying on inaccurate information contained in the database.

(6) This section does not affect the rights of the licensee to enforce the contractual provisions of the money service business agreements through any civil action allowed by law. The office may adopt rules to administer this section, require that additional information be submitted to the database, and ensure that the database is used by the licensee in accordance with this section.

Section 4. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

Topic SB 410 Bill Number SB 410 *(if applicable)*

Name Ashley Mayer Amendment Barcode *(if applicable)*

Job Title Director, Legislative, Cabinet & Policy

Address 400 S Monroe Phone 850-413-2829
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Tallahassee FL 32399 E-mail Ashley.Mayer@myfloridacfo.com
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Speaking: [X] For [ ] Against [ ] Information

Representing CFO, Dept of Financial Services

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 18, 2013

The Honorable Joe Negron
Chairman, Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I am writing to respectfully request you consider placing Senate Bill 410, relating to Money Services Businesses on the next Appropriations Committee agenda.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

Aaron Bean

Aaron Bean
Senator District 4

Cc: Mike Hansen, Director
201 Capitol

REPLY TO:
☐ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 500
INTRODUCER:	Health Policy Committee, Community Affairs Committee, Regulated Industries Committee and Senators Clemens and Sobel
SUBJECT:	Massage Establishments
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Fav/CS**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	McElheney	Stovall	HP	**Fav/CS**
4.	Cantral	Hansen	AP	**Favorable**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 500 strengthens the regulation of massage establishments. The bill requires the denial of a massage establishment license upon a finding that an owner, officer, director, or managing employee of an applicant has been arrested, is awaiting final disposition, or has been convicted, of certain offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction. The bill provides that denial of a license or a disciplinary action may be based on advertising with the intent to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

The bill has an insignificant fiscal impact on the Department of Health. In addition, the bill has an insignificant impact on the prison population and a minimal impact, if any, on the community supervision population. See Section V.

The bill creates s. 480.0475, F.S., to prohibit the operation of massage establishments between the hours of midnight and 5 a.m., with certain exemptions based on location of the facility or the type of supervision over those persons performing massages. This section also prohibits the use of a massage establishment as a principal domicile in areas that are not zoned for residential use

by local ordinance. A first violation of these provisions is a misdemeanor of the first degree and a subsequent violation is a felony of the third degree.

Certain massage establishments that violate the bill's provisions pertaining to hours of operation or residential use or the identification provisions currently required of persons practicing massage in a massage establishment can be declared nuisances that may be abated or enjoined pursuant to Florida law.

The bill expands the definition of 'Board-approved massage school' to include a college or university that is eligible to participate in the Florida Resident Access Grant Program.

The bill provides an October 1, 2013 effective date.

The bill amends sections 480.033, 480.043, 480.046, 480.047, 480.052, and 823.05, Florida Statutes. The bill creates section 480.0475, Florida Statutes.

II. Present Situation:

Massage Practice Act

Chapter 480, F.S., the "Massage Practice Act," (Act) regulates the practice of massage. "Massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.[1]

A person must apply to the Board of Massage Therapy (Board) within the Department of Health (DOH) for approval to practice massage or to operate a massage establishment.[2] A massage therapist is a person licensed to administer massages for compensation,[3] and a massage establishment is a site or premises, or portion thereof, wherein a massage therapist practices massage.[4]

Section 480.046(1), F.S., specifies numerous grounds for disciplinary action by the Board,[5] including the following acts that are grounds for denial of a license or disciplinary action:

- Attempting to procure a license by bribery or fraudulent misrepresentation;
- Having a license to practice massage denied, revoked, suspended, or otherwise acted against by the licensing authority of another state, territory, or country;
- Being convicted, found guilty or entering a plea of nolo contendere, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage;
- False, deceptive, or misleading advertising;

[1]Section 480.033(3), F.S.
[2]See ss. 480.041 and 480.043, F.S.
[3]Section 480.033(4), F.S.
[4]Section 480.033(7), F.S.
[5]Section 480.046, F.S.

- Aiding, assisting, procuring, or advising any unlicensed person to practice massage in violation of the act or a rule of the DOH or the Board;
- Making deceptive, untrue, or fraudulent representations in the practice of massage;
- Being unable to practice massage with reasonable skill and safety because of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or due to any mental or physical condition;
- Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances;
- Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform;
- Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform;
- Violating a lawful order of the Board or the DOH previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the DOH;
- Refusing to permit the DOH to inspect the business premises of the licensee during regular business hours;
- Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition;
- Practicing massage at a site, location, or place which is not licensed as a massage establishment, excepting certain services permitted by Board rule, at the residence or office of a client, at a sports event, at a convention, or at a trade show; or
- Violating any provision of the Act, ch. 456, F.S., regarding Health Professions and Occupations, or any rules adopted pursuant to these laws.

Pursuant to s. 480.046(2), F.S., licensure may also be denied, or certain penalties imposed, against licensees found guilty of violating any of the provisions of s. 480.046(1) and s. 456.072(1), F.S. The penalties include:

- Refusal to certify, or to certify with restrictions, an application for a license.
- Suspension or permanent revocation of a license.
- Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.
- Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the Board must impose a fine of $10,000 per count or offense.
- Issuance of a reprimand or letter of concern.
- Placement of the licensee on probation for a period of time and subject to such conditions as the Board may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined,

work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
- Corrective action.
- Imposition of an administrative fine in accordance with s. 381.0261, F.S., for violations regarding patient rights.
- Refund of fees billed and collected from the patient or a third party on behalf of the patient.
- Requirement that the practitioner undergo remedial education.

The Board also has the power to revoke or suspend the license of a massage establishment or deny subsequent licensure if the license was obtained by fraud or misrepresentation or the licensee was found guilty of fraud, deceit, gross negligence, incompetency, or misconduct in the operation of the establishment.[6]

Disciplinary proceedings shall be conducted pursuant to the provisions of ch. 120, F.S., the Administrative Procedure Act.[7]

Sexual misconduct in the practice of massage therapy is prohibited, and is defined as violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient.[8]

Violations of the law or rules associated with practices of massage therapists and massage establishments are investigated by the DOH.[9] Sexual activity by any person or persons in any massage establishment is also prohibited.[10]

In an attempt to address human trafficking, the 2012 Legislature enacted ch. 2012-97, Laws of Florida, requiring employees and persons performing massages in a massage establishment to present a valid government identification upon request by a DOH investigator or a law enforcement officer and requiring the person operating the massage establishment to ensure that the identification is available. A person who violates this provision, faces criminal prosecution with increasing penalties for subsequent violation.

Nuisances

Section 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors punishable by up to 60 days in jail and a fine not exceeding $500, and that a violation of

[6]Section 480.046(3), F.S.
[7]Section 480.046(4), F.S.
[8]Section 480.0485, F.S., Section 456.063, F.S., which applies to all licensed health care practitioners, prohibits violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession.
[9]Section 480.039, F.S.
[10]*See* Rule 64B7-26.010, F.A.C., which provides a definition of sexual activity.

s. 823.10, F.S., regarding certain places where controlled substances are illegally kept, sold, or used, is a third degree felony punishable by a term of imprisonment not to exceeding 5 years and a fine not exceeding $5,000.

Section 60.05, F.S., provides that when a nuisance defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. In accordance with s. 60.06, F.S., the court shall enter orders to abate the nuisance, and has the authority to enforce injunctions by contempt.

Florida Human Trafficking

Labor trafficking is the most prevalent type of human trafficking that occurs in Florida. The largest number of trafficking victims identified in Florida between 2004 and 2010 involved persons exploited for forced labor, and debt servitude is often the preferred means of coercion. The two sectors of Florida's economy where forced labor appears most prevalent are the agricultural sector and the tourism and hospitality industries. Massage establishments have been noted as sites where trafficking occurs.[11]

III. Effect of Proposed Changes:

Section 1 amends s. 480.033, F.S., to revise the definition of the term "Board-approved massage school" to include a college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.

Section 2 amends s. 480.043, F.S., to require the Board to deny a massage establishment license upon a finding that an owner, officer, director, or managing employee of an applicant has been arrested, is awaiting final disposition, or has been convicted, of certain offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction. Section 435.04(2), F.S., includes offenses relating to sexual misconduct, abuse of aged or disabled adults, murder, certain manslaughter offenses, vehicular homicide, certain offenses against minors, kidnapping, false imprisonment, prostitution, lewd and lascivious behavior, indecent exposure, arson, burglary, certain firearms offenses, and certain felony offenses.

Section 3 amends s. 480.046, F.S., to provide that denial of a license or a disciplinary action may be based on advertising with the intent to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

Section 4 amends s. 480.047, F.S., to conform penalties for massage therapy to changes made in the bill.

[11] Florida Strategic Plan on Human Trafficking. October 2010. Last visited April 7, 2013 *available* at: http://www.cahr.fsu.edu/sub_category/floridastrategicplanonhumantrafficking.pdf

Section 5 creates s. 480.0475, F.S., to restrict the time of operations for certain massage establishments, by prohibiting operations between midnight and 5 a.m. The bill creates exclusions from the time restrictions for certain massage establishments including those:

- Located on the premises of an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or certain licensed nursing home components.[12]
- Located on the premises of a clinic defined in part X of ch. 400, F.S.;
- Located on the premises of a hotel, motel or bed and breakfast as defined in s. 509.242, F.S., or a timeshare property as defined in s. 721.05, F.S.;
- Located on the premises of a public airport as defined in s. 330.27, F.S.;
- Located on the premises of a pari-mutuel facility as defined in s. 550.002, F.S.;
- Located on the premises of an independent postsecondary educational institution licensed and approved by the Commission for Independent Education pursuant to ch. 1005, F.S.;
- In which every massage performed between midnight and 5 a.m. is performed by a massage therapist acting under the prescription of licensed persons such as physicians, physicians' assistants, chiropractic physicians, podiatric physicians, advanced registered nurse practitioners or dentists.

The bill prohibits the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use by local ordinance. The phrase "principal domicile" is not defined, however, a legal domicile in Florida may be evidenced in accordance with s. 222.17, F.S., by a person filing a sworn statement at the office of the Clerk of Circuit Court showing that he or she "resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home."

A person convicted of a first degree misdemeanor for violating s. 480.0475, F.S., may be sentenced to up to 1 year in jail and a fine not exceeding $1,000.[13] A person may be convicted of a third degree felony for a second or subsequent violation, and may be sentenced to a term of imprisonment not exceeding 5 years and a fine not to exceed $5,000.[14] More severe consequences result for offenders classified as habitual felony offenders, habitual violent felony offenders, or three-time violent felony offenders.[15]

Section 6 amends s. 480.052, F.S., to allow counties or municipalities to waive the restriction on the hours of operation of massage establishments for special local events within their jurisdiction.

Section 7 amends s. 823.05, F.S., to declare that a massage establishment that operates in violation of the restrictions on hours of operation, or that fails to immediately present to an

[12]Section 408.07(24), F.S.
[13]*See* ss. 775.082 and 775.083, F.S.
[14]*Id.*
[15]*See* s. 775.084, F.S.

investigator of the DOH or a law enforcement officer, all required government identification for each employee or for any person performing massage in the establishment is a nuisance and may be abated[16] or enjoined pursuant to ss. 60.06 and 60.06, F.S.

Section 8 provides an October 1, 2013, 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:

CS/CS/CS/SB 500 will limit the operating hours of massage establishments that are not otherwise excluded from the time restriction between midnight and 5 a.m. Since the use of a massage establishment as a principal domicile is no longer permitted unless the location of the establishment is zoned for residential use by local ordinance, operators will be required to discontinue any existing use and monitor their locations for compliance by its employees in the future, unless the establishment is located in a zoning classification that includes residential use.

C. Government Sector Impact:

The DOH will incur non-recurring costs for rulemaking. The DOH can absorb these costs within its current budget. The DOH and Board may also experience a recurring increase in workload associated with additional complaints, investigations and prosecutions due to non-compliance with the new requirements contained in this legislation. Any such impact is indeterminate at this time.[17]

[16] Abated is defined as eliminated or put an end to (Black's Law Dictionary (9th ed. 2009).
[17] The DOH Bill Analysis for HB7005, dated January 25, 2013, on file with the Senate Health Policy Committee

The Criminal Justice Impact Conference has not yet determined the impact of the bill. The Department of Corrections anticipates that the impact of the bill will be insignificant on the prison population and minimal on the community supervision population.[18]

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/CS by Health Policy on April 9, 2013:
The committee substitute clarifies that the license application for a massage establishment must be denied when an *owner, officer, director, or managing employee* of an applicant has been arrested or committed certain offenses and clarifies the grounds for denial of a license or disciplinary action relating to advertising to induce a client to engage in sexual activity.

CS/CS by Community Affairs on April 2, 2013:
The committee substitute adds that an independent postsecondary educational institution licensed and approved by the Commission for Independent Education pursuant to chapter 1005 may operate between midnight and 5 a.m. Also, adds that a college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program may be a 'Board-approved massage school'.

CS by Regulated Industries on March 14, 2013:
The committee substitute requires the Board to deny a massage establishment license upon a finding that an applicant has been arrested, is awaiting final disposition, or has been convicted of offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction, which include offenses relating to sexual misconduct, abuse of aged or disabled adults, murder, certain manslaughter offenses, vehicular homicide, certain offenses against minors, kidnapping, false imprisonment, prostitution, lewd and lascivious behavior, indecent exposure, arson, burglary, certain firearms offenses, and certain felony offenses.

The committee substitute provides that denial of a license or a disciplinary action may be based upon the act of advertising to induce or attempt to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

[18] *See 2013 Legislative Analysis for SB 500, Office of Legislative Affairs, Florida Department of Corrections,* January 31, 2013

The committee substitute revises the restriction on hours of operation for massage establishments to the range of midnight to 5 a.m. It exempts from the restriction on hours of operation those massage establishments located on the premises of a clinic defined in part X of ch. 400, F.S., a timeshare property defined in s. 721.05, F.S., a public airport defined in s. 330.27, F.S., or a pari-mutuel facility defined in s. 550.002, F.S. It clarifies the exemption for massages performed pursuant to prescriptions of certain licensees.

The committee substitute amends s. 480.052, F.S., to allow counties and municipalities to waive the restriction on hours of operation of massage establishments for special local events within their jurisdiction. It amends the title to conform to the provisions of the bill.

B. Amendments:

None.

By the Committees on Health Policy; Community Affairs; and Regulated Industries; and Senators Clemens and Sobel

588-03982-13 2013500c3

A bill to be entitled

An act relating to massage practice; amending s. 480.033, F.S.; revising the definition of the term "board-approved massage school"; amending s. 480.043, F.S.; requiring an application to be denied upon specified findings; amending s. 480.046, F.S., adding additional grounds for denial of a license; amending s. 480.047, F.S.; revising penalties; creating s. 480.0475, F.S.; prohibiting the operation of a massage establishment during specified times; providing exceptions; prohibiting the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use under a local ordinance; providing criminal penalties; amending s. 480.052, F.S., authorizing a county or municipality to waive the restriction on operating hours of a massage establishment in certain instances; amending s. 823.05, F.S.; declaring that a massage establishment operating in violation of specified statutes is a nuisance that may be abated or enjoined; providing an effective date.

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

Section 1. Subsection (9) of section 480.033, Florida Statutes, is amended to read:

480.033 Definitions.—As used in this act:

(9) "Board-approved massage school" means a facility that ~~which~~ meets minimum standards for training and curriculum as

588-03982-13 2013500c3

determined by rule of the board and that ~~which~~ is:

(a) Licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state; ~~or is~~

(b) Within the public school system of this state; or

(c) A college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.

Section 2. Subsection (2) of section 480.043, Florida Statutes, is amended to read:

480.043 Massage establishments; requisites; licensure; inspection.—

(2) The board shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process. An application shall be denied upon finding that an owner, officer, director, or managing employee of an applicant has been arrested for and is awaiting final disposition of, or has been convicted of, regardless of adjudication, an offense under s. 435.04(2) or a similar law of another jurisdiction.

Section 3. Present paragraphs (e) though (o) of subsection (1) of section 480.046, Florida Statutes, are redesignated as paragraphs (f) though (p), respectively, and a new paragraph (e) is added to that subsection, to read:

480.046 Grounds for disciplinary action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Advertising with the intent to induce a client to

engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

Section 4. Section 480.047, Florida Statutes, is amended to read:

480.047 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a massage therapist or to practice massage unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.

(b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage in this state at a board-approved massage school.

(c) Permit an employed person to practice massage unless duly licensed as provided herein.

(d) Present as his or her own the license of another.

(e) Allow the use of his or her license by an unlicensed person.

(f) Give false or forged evidence to the department in obtaining any license provided for herein.

(g) Falsely impersonate any other licenseholder of like or different name.

(h) Use or attempt to use a license that has been revoked.

(i) Otherwise violate any of the provisions of this act.

(2) Except as otherwise provided in this chapter, any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 480.0475, Florida Statutes, is created to read:

480.0475 Massage establishments; prohibited practices.—

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a clinic as defined in part X of chapter 400; a hotel, motel, or bed and breakfast inn as defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; a pari-mutuel facility as defined in s. 550.002; or an independent postsecondary educational institution licensed and approved by the Commission for Independent Education pursuant to chapter 1005; or

(b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced registered nurse practitioner licensed under part I of chapter 464, or a dentist licensed under chapter 466.

(2) A person who operates a massage establishment may not use the establishment or allow it to be used as a principal domicile unless the establishment is zoned for residential use under a local ordinance.

(3) A person who violates the provisions of this section commits a misdemeanor of the first degree, punishable as

provided in s. 775.082 or s. 775.083. A second or subsequent violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Section 480.052, Florida Statutes, is amended to read:

480.052 Power of county or municipality to regulate massage.—

(1) A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

(2) A county or municipality may waive the restriction on the hours of operation of a massage establishment provided in s. 480.0475 during special events that occur within the county's or municipality's jurisdiction.

Section 7. Subsection (3) is added to section 823.05, Florida Statutes, to read:

823.05 Places and groups engaged in criminal gang-related activity declared a nuisance; may be abated and enjoined.—

(3) A massage establishment as defined in s. 480.033(7) which operates in violation of s. 480.0475 or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

Section 8. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

4.23.13
Meeting Date

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

Topic Massage Parlors

Bill Number 500 *(if applicable)*

Name Lt. Morgan

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 569 *Street*

Phone 3862541537

DeLand *City* FL *State* *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Volusia County Sheriffs Office & Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS
27th District

April 9, 2013

Chair Negron
201 Capitol
404 S. Monroe St
Tallahassee, Fl 32399

Dear Chair Negron:

I respectfully request that SB 500, An Act Relating to Massage Establishments, be placed on the agenda for the Appropriations Committee.

Please feel free to contact myself or my staff, should you have any questions.

Best Regards,

Jeff Clemens
Senate District 27

Cc: Mike Hanson

SENATE APPROPRIATIONS
RECEIVED
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STAFF DIR. STAFF

REPLY TO:
☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 582
INTRODUCER:	Appropriations Committee; Commerce and Tourism Committee and Senator Galvano
SUBJECT:	Manufacturing Development
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**Fav/CS**
2.	Toman	Yeatman	CA	**Favorable**
3.	Pingree	Martin	ATD	**Favorable**
4.	Pingree	Hansen	AP	**Fav/CS**
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 582 creates the "Manufacturing Competitiveness Act," and authorizes local governments to adopt a local manufacturing development program to grant master development approval for the development, expansion, or modification of manufacturing facilities located within its jurisdiction. The bill provides that a local government may enact an ordinance to establish a local manufacturing development program. If a manufacturer chooses to develop or expand in the jurisdiction of that local government, the required applications for specified state permits must be reviewed by specified "participating agencies" in a coordinated and simultaneous manner, within prescribed timeframes. The bill provides that each participating agency must take final agency action on the application within 60 days after the application is filed, unless the deadline is waived by the manufacturer or a federally delegated permitting program mandates a different deadline. If an application is not approved or denied within 60 days, it is deemed approved.

The bill has an indeterminate fiscal impact to the departments of Economic Opportunity, Environmental Protection, Transportation, the Fish and Wildlife Conservation Commission and the state's five water management districts. See Section V.

The Department of Economic Opportunity (DEO) is tasked with developing a model ordinance for use by local governments by December 1, 2013. If the local government enacts an ordinance establishing a local manufacturing development program, it must be submitted to the DEO within 20 days of enactment. The ordinance must remain in effect for at least 24 months. If the ordinance is repealed, any application for a master development plan received by the local government is "vested" and entitled to participate in the coordinated approval process.

The bill directs the Department of Economic Opportunity to coordinate the manufacturing development approval process with the Department of Environmental Protection, the Department of Transportation, the Fish and Wildlife Conservation Commission, and the state's five water management districts ("participating agencies"). The approval process must provide for coordinated and simultaneous review of applications for permits by the participating agencies, under their respective authorities. A manufacturer may request that the DEO convene a meeting with one or more of the participating agencies to facilitate the process. The bill provides that each participating agency must take final agency action on the application within 60 days after a complete application is filed, unless the deadline is waived by the manufacturer or a federally delegated permitting program mandates a different deadline. If an application is not approved or denied within 60 days, it is deemed approved.

If a participating agency plans to deny an application, it must notify the DEO and the DEO must convene an informal meeting to facilitate a resolution, unless waived by the manufacturer. Throughout the process, the manufacturer may initiate an administrative hearing under ch. 120, F.S.

This bill creates the following sections of the Florida Statutes: 163.325, 163.3251, 163.3252, 163.3253, and 288.111.

II. Present Situation:

Manufacturing Industry in Florida

Florida's manufacturing industry includes companies in traditional manufacturing industries, such as plastics, food processing and printing, as well as those that are engaged in innovative technologies, like electronics, medical devices, and aviation/aerospace. The state is home to nearly 18,000 manufacturers accounting for approximately 5 percent of Florida's gross domestic product.[1] The manufacturing industry employs more than 311,000 individuals in Florida.[2]

Enterprise Florida, Inc. (EFI), has identified manufacturing as a targeted industry, along with corporate headquarters, research and development, clean technologies, life sciences, information technology, aviation/aerospace, homeland security/defense, financial/professional services, and emerging technologies. Of the 122 economic development incentive contracts project commitments by EFI for Fiscal Year 2011-2012, manufacturing ranked highest in terms of the number of project commitments by industry (38), and expected capital investment (over $425

[1] Enterprise Florida, Inc., *The Florida Economy* (Jan. 2013), *available at* http://www.eflorida.com/IntelligenceCenter/download/ER/SI_Florida_Economy_Glance.pdf (last visited Apr. 4, 2013).
[2] *Id.*

million). These manufacturing projects contracted to create 2,474 jobs paying an average annual wage of $37,352.[3]

Permits

Currently, the responsibility for issuance of permits for the development, expansion, or modification of manufacturing facilities resides in several state agencies, as well as local governments.

State Permits

The Department of Transportation (DOT), Fish and Wildlife Conservation Commission (FWCC), Department of Environmental Protection (DEP), and water management districts[4] may each have responsibilities in the permitting process.

The DOT is responsible for regulating work activities that impact state roads, such as access permits,[5] utility permits,[6] and drainage permits,[7] among other things. The FWCC is responsible for protecting threatened or endangered species.[8] The DEP works in conjunction with the water management districts to regulate and issue permits for such programs as stormwater management, surface water management, and consumptive use of water.[9] The DEP also issues permits for items relating to air quality, among other things.

Current State Expedited Permitting Programs

Section 403.973, F.S., directs the DEP to create and implement regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments for certain projects.[10] Section 380.0657, F.S., directs the DEP and the water management districts to adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified as a target industry business.[11]

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[3] Enterprise Florida, Inc., *2012 Annual Incentives Report* (2012), *available at* http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf (last visited on Apr. 4, 2013).
[4] There are five water management districts: Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District, and Southwest Florida Water Management District.
[5] Sections 335.18 – 335.199, F.S.
[6] Section 337.401, F.S.
[7] Section 334.044(15), F.S.
[8] Section 379.2291, F.S.
[9] DEP, Water Management Districts, *available at* http://www.dep.state.fl.us/secretary/watman/default.htm (last visited Apr 4, 2013).
[10] Those projects that may apply for expedited permitting under this provision include businesses creating at least 50 jobs (or at least 25 jobs if the project is located in an enterprise zone or in a county with limited population), projects located in a designated brownfield area, projects that are a part of the state-of-the-art biomedical research institution and campus, and certain projects relating to the production of biofuels. Certain other projects may be considered for expedited permitting at the request of the local government.
[11] Section 288.106, F.S.

The DOT has implemented a One Stop Permitting process for the permits it administers. The DOT staff indicates that most applications are processed within 30 days of receipt of the completed application.[12]

Local Permits

Local governmental agencies are responsible for issuing building permits within their respective jurisdictions. Chapter 163, F.S., requires local governments to adopt comprehensive plans and land development regulations to regulate the development and growth in their jurisdictions. However, no uniform, statutory process exists for local governments to approve master development plans for manufacturing facilities.

III. Effect of Proposed Changes:

Section 1 creates s. 163.325, F.S., providing that the act may be cited as the "Manufacturing Competitiveness Act (the act)."

Section 2 creates s. 163.3251, F.S., providing definitions for the following terms used in the act: "department," "local government development approval," "local manufacturing development program," "manufacturer," "participating agency," and "state development approval." A "participating agency" means the Department of Environmental Protection, the Department of Transportation, the Fish and Wildlife Conservation Commission, and water management districts.

Section 3 creates s. 163.3252, F.S., providing the process a local government may use to implement a local manufacturing development program. Specifically, a local government is authorized to adopt an ordinance to establish a local manufacturing development program through which it can grant master development approval to manufacturers for the development or expansion of sites at specified locations within the local government's geographic boundaries.

The establishment of a local manufacturing development program is voluntary; however, if a local government elects to establish one, it must submit a copy of the ordinance to the DEO within 20 days of enacting the ordinance.

The DEO must develop a model ordinance[13] by December 1, 2013, which must include:

- Application procedures for a manufacturer to apply for a master development plan and procedures for the local government to review and approve a master development plan;
- Identification of those areas within the local government's jurisdiction which are subject to the program;
- Minimum elements for a master development plan, including but not limited to:
  - A site map;
  - A list proposing the site's land uses;

[12] Department of Transportation, *Legislative Bill Review HB 357* (Feb. 11, 2013) (on file with the Senate Commerce and Tourism Committee).
[13] A local government is not required to adopt the model ordinance.

- Maximum square footage, floor area ratio, and building heights for future development on the site;
- Development conditions;
- A list of development impacts which the local government will require to be addressed, if applicable, in a master development plan, including but not limited to, drainage, wastewater, vehicular and pedestrian entrance and exit from the site, and offsite transportation impacts;
- A provision vesting any existing development rights authorized by the local government prior to approval of a master development plan, if requested by the manufacturer;
- If required, a provision stating that the expiration date of the master development plan may not be earlier than 10 years after the plan's adoption;
- A provision limiting the circumstances that require an amendment to an approved master development plan, such as the enactment of a state or local law that addresses a direct and immediate threat to public safety or a revision to the master development plan initiated by the manufacturer;
- A provision limiting the scope of review for an amendment to a master development plan to a review of the proposed amendment and no other provisions of the plan;
- A provision stating that during the term of a master development plan, a local government may not require additional local development approvals other than a building permit to ensure compliance with the state building code and any other applicable state-mandated life and safety code,
- A provision requiring the manufacturer, prior to commencement of work, to submit a certification signed by an appropriate professional attesting that the construction or site development work complies with the master development plan; and
- A provision establishing the form the local government will use to certify that a manufacturer is eligible to participate in the local manufacturing development program adopted by that jurisdiction.

Any local ordinance established must be consistent with the DEO's model ordinance and must establish procedures for the review and approval of a master development plan, the development of the site in a manner consistent with the master development plan without requiring additional local approvals other than building permits, and the certification that a manufacturer is eligible to participate in the local manufacturing development program.
If the local government has enacted an ordinance prior to the effective date of the act, it is deemed to have established a local manufacturing development program, as long as it meets the minimum standards, as outlined above. A copy of such an ordinance must be submitted to the department on or before September 1, 2013.

If a local government establishes a local development program ordinance, the ordinance must remain in effect for at least 24 months. If the ordinance is repealed, any application for a master development plan submitted prior to the effective date of the repeal is vested and remains subject to the local manufacturing development plan in effect at the time the application is submitted.

Section 4 creates s. 163.3253, F.S., which outlines the manufacturing development coordinated approval process (process). The Department of Economic Opportunity must coordinate the manufacturing development approval process with participating agencies for manufacturers that are developing or expanding in a jurisdiction that has a local manufacturing development

process. The participating agencies must coordinate, collaborate, and simultaneously review applications for the following state development approvals: wetland or environmental permits, surface water management permits, stormwater permits, consumptive water use permits, wastewater permits, air emission permits, permits relating to listed species, highway or roadway access permits, and any other state development approval within the scope of a participating agency's authority.

At the time the manufacturer files its application for state development approval with the DEO and each participating agency, it must also file proof that its development or expansion is located in the jurisdiction of a local government that has a local development-manufacturing program. If the local government repeals its local manufacturing development program, a manufacturer that has submitted its application for a state or local government development application prior to the date of repeal, remains eligible to participate in the process.

During the coordinated manufacturing development approval process, if a manufacturer requests a meeting with one or more of the participating agencies, the DEO must convene a meeting and involved participating agencies must attend such meeting. The DEO is not required to mediate between the participating agencies and the manufacturer, but may participate as necessary to accomplish the purposes set forth in s. 20.60(4)(f), F.S.[14] The DEO may not be a party to any proceeding initiated under ss. 120.569 and 120.57, F.S., that relates to approval or disapproval of an application for state development approval processed under this section. The bill provides that the DEO's participation in the coordinated manufacturing approval process shall have no effect on its approval or disapproval of any application for economic development incentives sought under s. 288.061, F.S., or any other incentive that requires the DEO's approval.[15]

If a participating agency determines that the application is incomplete, it must notify the applicant, and the DEO, in writing. Unless the manufacturer waives the deadline in writing, a request for additional information from a participating agency must be provided to the manufacturer within 20 days after the application is filed with the participating agency. If a participating agency fails to request additional information within the 20-day period, it cannot later deny the application based on the manufacturer's failure to provide such information. Once the manufacturer has responded to the request for additional information, the participating agency has 10 days to make a second request for additional information, but such request is limited to obtaining clarification of the manufacturer's response.

Unless the manufacturer waives the deadline in writing, each participating agency must take final agency action on a state development approval within 60 days after a complete application is filed.[16] If a participating agency intends to deny an application, it must notify the manufacturer and the DEO must timely convene an informal meeting to facilitate a resolution, unless waived by the manufacturer in writing. An application will be deemed approved if the approving agency failed to act within the specified time frames unless the time limit is waived by the manufacturer in writing:

[14] Section 20.60(4)(f), F.S., directs the Department of Economic Opportunity to coordinate with state agencies on the processing of state development approvals or permits to minimize the duplication of information provided by the applicant and the time before approval or disapproval.
[15] Section 288.061, F.S., outlines the economic development incentive application process.
[16] The 60-day period is tolled if a proceeding is initiated under ch. 120, F.S.

- Within the 60-day period;
- Within the time allowed by a federally-delegated permit program; or
- Within 45 days of a recommended order issued under ss.120.569 and 120.57, F.S.[17]

If a manufacturer seeks to claim approval by default, it must notify the clerk of the participating agency, and the DEO's clerk, in writing of that intent. No action may be taken by the manufacturer until such notification is received by both clerks.

The timeframes described above do not apply to permit applications for federally-delegated or approved permitting programs to the extent they are prohibited by, or inconsistent with, such program requirements.

If the manufacturer initiates a proceeding under ch. 120, F.S., it may, at any time, demand an expeditious resolution by noticing the administrative law judge (ALJ) and all other parties to the proceeding. The ALJ must set the matter for hearing within 30 days of receipt of the notice.

The DEO is given authority to adopt rules to administer the coordinated manufacturing development approval process.

Section 5 creates s. 288.111, F.S., to provide that the DEO will develop materials identifying local governments that have established local manufacturing development programs. Enterprise Florida, Inc., must provide these materials to prospective, new, expanding, and relocating manufacturing businesses seeking to conduct business in Florida. Other state agencies are also authorized to distribute such materials.

Section 6 provides that this act takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[17] Section 120.569, F.S., requires the agency to issue a final order within 90 days of the recommended order. Section 120.57, F.S., requires a final order to be issued within 30 days of the recommended order.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Manufacturers may benefit from the coordinated approval process for state permit applications in those communities that implement a local manufacturing development program.

C. Government Sector Impact:

The Department of Environmental Protection, the Department of Transportation, the Fish and Wildlife Conservation Commission, and the five water management districts ("participating agencies") may incur costs associated with implementing the manufacturing development coordinated approval process created in the bill. The participating agencies must coordinate and simultaneously review applications for permits within specified timeframes. Costs incurred by participating agencies will be based on how many local governments enact ordinances that establish a local manufacturing development program and how many manufacturers apply for various state permits. The costs are indeterminate at this time.

The DEO may incur costs associated with developing:

- A model ordinance to guide local governments that intend to establish a local manufacturing development program; and
- Materials identifying those local governments that establish a local manufacturing development program as provided in the bill.[18]

The DEO may also incur costs to adopt rules to administer the coordinated manufacturing development approval process and to coordinate and participate in that process. Although the costs are indeterminate at this time, the department has indicated that the bill can be implemented within existing resources.

The DEO is required to update the local manufacturing development program information at least annually. The bill requires Enterprise Florida, Inc., and allows other state agencies, to distribute the materials to prospective, new, expanding, and relocating manufacturing businesses seeking to conduct business in Florida. The costs associated with these requirements of the bill are indeterminate at this time.

To the extent that local governments adopt a local manufacturing development program, the streamlined process may reduce administrative costs for those communities.[19]

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[18]Florida Department of Economic Opportunity, *Agency Analysis of SB 582* (Feb. 18, 2013) *available at* http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=499&yr=2013.
[19] *Id.*

VI. Technical Deficiencies:

The bill requires that participating agencies simultaneously review applications for various state development approvals, but does not address how such a simultaneous review among participating agencies would function, or what repercussions would exist for participating agencies who fail to simultaneously review applications.

The bill may need to be clarified to indicate that the initial review period does not begin until the appropriate application fee is received.

VII. Related Issues:

According to the DEO, use of the term "vested" in the bill may need clarification. The department's analysis of SB 582 noted in part:

> "Vested" generally means a land use can be developed notwithstanding changes to statutes or regulations. It is unclear whether "vested" in this bill means the applicant is authorized to develop the program described in the application even if the local government and the reviewing agencies have not reviewed and approved the application. Another interpretation is that the application is entitled to be reviewed under the local manufacturing development program ordinance in effect when the application was submitted.[20]

The bill authorizes the DEO to adopt rules to administer the bill.

VIII. Additional Information:

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

CS/CS by Appropriations on April 23, 2013:
The committee substitute does the following:

- Requires the Department of Economic Opportunity to coordinate the manufacturing development approval process with participating agencies.
- Provides that the DEO is not required to mediate between the participating agencies and the manufacturer, and is not a party to certain proceedings initiated under ch. 120, F.S.
- Provides that the DEO's participation in the coordinated manufacturing development approval process shall have no effect on the department's approval or disapproval of any application for economic development incentives or any other incentive requiring the DEO's approval.
- Gives the DEO the authority to adopt rules to implement the coordinated manufacturing development approval process.

[20] *Id.*

CS by Commerce and Tourism on April 1, 2013:
The committee substitute does the following:

- Places provisions of the bill under ch. 163, F.S., rather than ch. 288, F.S.
- Adds a definition for the term "department."
- Deletes the definition for the term "local government."
- Removes the Department of Economic Opportunity from the coordinated manufacturing development approval process.
- Deletes the grant of rule-making authority to the Department of Economic Opportunity.
- Requires Enterprise Florida, Inc., to distribute materials that identify local governments that have established a local manufacturing development program, as provided in the bill, to prospective, new, expanding, and relocating manufacturers seeking to conduct business in Florida.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 197 - 284
and insert:
163.3253 Coordinated manufacturing development approval process.—The department shall coordinate the manufacturing development approval process with participating agencies, as set forth in this section, for manufacturers that are developing or expanding in a local government that has a local manufacturing development program.
(1) The approval process must include collaboration and coordination among, and simultaneous review by, the

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participating agencies of applications for the following state development approvals:

(a) Wetland or environmental resource permits.

(b) Surface water management permits.

(c) Stormwater permits.

(d) Consumptive water use permits.

(e) Wastewater permits.

(f) Air emission permits.

(g) Permits relating to listed species.

(h) Highway or roadway access permits.

(i) Any other state development approval within the scope of a participating agency's authority.

(2)(a) When filing its application for state development approval, a manufacturer shall file with the department and each participating agency proof that its development or expansion is located in a local government that has a local manufacturing development program.

(b) If a local government repeals its local manufacturing development program ordinance, a manufacturer developing or expanding in that jurisdiction remains entitled to participate in the process if the manufacturer submitted its application for a local government development approval before the effective date of repeal.

(3) At any time during the process, if a manufacturer requests that the department convene a meeting with one or more participating agencies to facilitate the process, the department shall convene a meeting that the involved participating agencies must attend.

(a) The department is not required to mediate between the

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participating agencies and the manufacturer, but may participate as necessary to accomplish the purposes set forth in s. 20.60(4)(f).

(b) The department may not be a party to any proceeding initiated under ss. 120.569 and 120.57 which relates to approval or disapproval of an application for state development approval processed under this section.

(c) The department's participation in a coordinated manufacturing development approval process under this section shall have no effect on its approval or disapproval of any application for economic development incentives sought under s. 288.061 or any other incentive requiring department approval.

(4) If a participating agency determines that an application is incomplete, the participating agency shall notify the applicant and the department in writing of the additional information necessary to complete the application.

(a) Unless the deadline is waived in writing by the manufacturer, a participating agency shall provide a request for additional information to the manufacturer and the department within 20 days after the date the application is filed with the participating agency.

(b) If the participating agency does not request additional information within the 20-day period, the participating agency may not subsequently deny the application based on the manufacturer's failure to provide additional information.

(c) Within 10 days after the manufacturer's response to the request for additional information, a participating agency may make a second request for additional information for the sole purpose of obtaining clarification of the manufacturer's

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response.

(5)(a) Unless the deadline is waived in writing by the manufacturer, each participating agency shall take final agency action on a state development approval within its authority within 60 days after a complete application is filed. The 60-day period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57.

(b) A participating agency shall notify the department if the agency intends to deny a manufacturer's application and, unless waived in writing by the manufacturer, the department shall timely convene an informal meeting to facilitate a resolution.

(c) Unless waived in writing by the manufacturer, if a participating agency does not approve or deny an application within the 60-day period, within the time allowed by a federally delegated permitting program, or, if a proceeding is initiated under ss. 120.569 and 120.57, within 45 days after a recommended order is submitted to the agency and the parties, the state development approval within the authority of the participating agency is deemed approved. A manufacturer seeking to claim approval by default under this subsection shall notify, in writing, the clerks of both the participating agency and the department of that intent. A manufacturer may not take action based upon the default approval until such notice is received by both agency clerks.

(d) At any time after a proceeding is initiated under ss. 120.569 and 120.57, the manufacturer may demand expeditious resolution by serving notice on an administrative law judge and all other parties to the proceeding. The administrative law

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judge shall set the matter for final hearing no more than 30 days after receipt of such notice. After the final hearing is set, a continuance may not be granted without the written agreement of all parties.

(6) Subsections (4) and (5) do not apply to permit applications governed by federally delegated or approved permitting programs to the extent that subsections (4) and (5) impose timeframes or other requirements that are prohibited by or inconsistent with such federally delegated or approved permitting programs.

(7) The department may adopt rules to administer this section.

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

And the title is amended as follows:

Delete lines 18 - 32

and insert:

the department, in cooperation with participating agencies, to establish a manufacturing development coordinated approval process for certain manufacturers; requiring participating agencies to coordinate and review applications for certain manufacturers; requiring participating agencies to coordinate and review applications for certain state development approvals; requiring the department to convene a meeting when requested by a certain manufacturer; requiring participating agencies to attend meetings convened by the department; specifying that the department is not required to mediate between

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the participating agencies and a manufacturer; providing that the department may not be a party to certain proceedings involving state development approvals; requiring that the coordinated approval process have no effect on the department's economic development incentive approval process; providing for requests for additional information and specifying time periods; requiring participating agencies to take final action on applications within a certain time period; requiring the department to facilitate the resolution of certain applications; providing for approval by default; providing for applicability with respect to permit applications governed by federally delegated or approved permitting programs; authorizing the department to adopt rules; creating s.

By the Committee on Commerce and Tourism; and Senator Galvano

577-03301-13 2013582c1

A bill to be entitled

An act relating to manufacturing development; creating s. 163.325, F.S.; providing a short title; establishing the Manufacturing Competitiveness Act; creating s. 163.3251, F.S.; providing definitions; creating s. 163.3252, F.S.; authorizing local governments to establish a local manufacturing development program that provides for master development approval for certain sites; providing specific time periods for action by local governments; requiring the Department of Economic Opportunity to develop a model ordinance containing specified information and provisions; requiring a local manufacturing development program ordinance to include certain information; providing certain restrictions on the termination of a local manufacturing development program; creating s. 163.3253, F.S.; requiring participating agencies to establish a manufacturing development coordinated approval process for certain manufacturers; requiring participating agencies to coordinate and review applications for certain state development approvals; requiring participating agencies to convene and attend a meeting when requested by a certain manufacturer; providing for requests for additional information and specifying time periods; requiring participating agencies to take final action on applications within a certain time period; requiring participating agencies to facilitate the resolution of certain applications; providing for

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approval by default; providing for applicability with respect to permit applications governed by federally delegated or approved permitting programs; creating s. 288.111, F.S.; requiring the department to develop materials that identify local manufacturing development programs; requiring Enterprise Florida, Inc., and authorizing other state agencies, to distribute such material; providing an effective date.

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

Section 1. Section 163.325, Florida Statutes, is created to read:

163.325 Short title.—Sections 163.325-163.3253 may be cited as the "Manufacturing Competitiveness Act."

Section 2. Section 163.3251, Florida Statutes, is created to read:

163.3251 Definitions.—As used in ss. 163.3251-163.3253, the term:

(1) "Department" means the Department of Economic Opportunity.

(2) "Local government development approval" means a local land development permit, order, or other approval issued by a local government, or a modification of such permit, order, or approval, which is required for a manufacturer to physically locate or expand and includes, but is not limited to, the review and approval of a master development plan required under s. 163.3252(2)(c).

(3) "Local manufacturing development program" means a

program enacted by a local government for approval of master development plans under s. 163.3252.

(4) "Manufacturer" means a business that is classified in Sectors 31-33 of the National American Industry Classification System (NAICS) and is located, or intends to locate, within the geographic boundaries of an area designated by a local government as provided under s. 163.3252.

(5) "Participating agency" means:

(a) The Department of Environmental Protection.

(b) The Department of Transportation.

(c) The Fish and Wildlife Conservation Commission, when acting pursuant to statutory authority granted by the Legislature.

(d) Water management districts.

(6) "State development approval" means a state or regional permit or other approval issued by a participating agency, or a modification of such permit or approval, which must be obtained before the development or expansion of a manufacturer's site, and includes, but is not limited to, those specified in s. 163.3253(1).

Section 3. Section 163.3252, Florida Statutes, is created to read:

163.3252 Local manufacturing development program; master development approval for manufacturers.—A local government may adopt an ordinance establishing a local manufacturing development program through which the local government may grant master development approval for the development or expansion of sites that are, or are proposed to be, operated by manufacturers at specified locations within the local government's geographic

boundaries.

(1)(a) A local government that elects to establish a local manufacturing development program shall submit a copy of the ordinance establishing the program to the department within 20 days after the ordinance is enacted.

(b) A local government ordinance adopted before the effective date of this act establishes a local manufacturing development program if it satisfies the minimum criteria established in subsection (3) and if the local government submits a copy of the ordinance to the department on or before September 1, 2013.

(2) By December 1, 2013, the department shall develop a model ordinance to guide local governments that intend to establish a local manufacturing development program. The model ordinance, which need not be adopted by a local government, must include:

(a) Procedures for a manufacturer to apply for a master development plan and procedures for a local government to review and approve a master development plan.

(b) Identification of those areas within the local government's jurisdiction which are subject to the program.

(c) Minimum elements for a master development plan, including, but not limited to:

1. A site map.

2. A list proposing the site's land uses.

3. Maximum square footage, floor area ratio, and building heights for future development on the site, specifying with particularity those features and facilities for which the local government will require the establishment of maximum dimensions.

4. Development conditions.

(d) A list of the development impacts, if applicable to the proposed site, which the local government will require to be addressed in a master development plan, including, but not limited to:

1. Drainage.

2. Wastewater.

3. Potable water.

4. Solid waste.

5. Onsite and offsite natural resources.

6. Preservation of historic and archeological resources.

7. Offsite infrastructure.

8. Public services.

9. Compatibility with adjacent offsite land uses.

10. Vehicular and pedestrian entrance to and exit from the site.

11. Offsite transportation impacts.

(e) A provision vesting any existing development rights authorized by the local government before the approval of a master development plan, if requested by the manufacturer.

(f) Whether an expiration date is required for a master development plan and, if required, a provision stating that the expiration date may not be earlier than 10 years after the plan's adoption.

(g) A provision limiting the circumstances that require an amendment to an approved master development plan to the following:

1. Enactment of state law or local ordinance addressing an immediate and direct threat to the public safety that requires

an amendment to the master development order.

2. Any revision to the master development plan initiated by the manufacturer.

(h) A provision stating that the scope of review for any amendment to a master development plan is limited to the amendment and does not subject any other provision of the approved master development plan to further review.

(i) A provision stating that, during the term of a master development plan, the local government may not require additional local development approvals for those development impacts listed in paragraph (d) that are addressed in the master development plan, other than approval of a building permit to ensure compliance with the state building code and any other applicable state-mandated life and safety code.

(j) A provision stating that, before commencing construction or site development work, the manufacturer must submit a certification, signed by a licensed architect, engineer, or landscape architect, attesting that such work complies with the master development plan.

(k) A provision establishing the form that will be used by the local government to certify that a manufacturer is eligible to participate in the local manufacturing development program adopted by that jurisdiction.

(3) A local manufacturing development program ordinance must, at a minimum, be consistent with subsection (2) and establish procedures for:

(a) Reviewing an application from a manufacturer for approval of a master development plan.

(b) Approving a master development plan, which may include

conditions that address development impacts anticipated during the life of the development.

(c) Developing the site in a manner consistent with the master development plan without requiring additional local development approvals other than building permits.

(d) Certifying that a manufacturer is eligible to participate in the local manufacturing development program.

(4)(a) A local government that establishes a local manufacturing development program may not abolish the program until it has been in effect for at least 24 months.

(b) If a local government repeals its local manufacturing development program ordinance:

1. Any application for a master development plan which is submitted to the local government before the effective date of the repeal is vested and remains subject to the local manufacturing development program ordinance in effect when the application was submitted; and

2. The manufacturer that submitted the application is entitled to participate in the manufacturing development coordinated approval process established in s. 163.3253.

Section 4. Section 163.3253, Florida Statutes, is created to read:

163.3253 Coordinated manufacturing development approval process.—Participating agencies shall coordinate the manufacturing development approval process, as set forth in this section, for manufacturers that are developing or expanding in the jurisdiction of a local government that has a local manufacturing development program.

(1) Participating agencies shall collaborate and coordinate

the simultaneous review of applications for the following state development approvals:

(a) Wetland or environmental resource permits.

(b) Surface water management permits.

(c) Stormwater permits.

(d) Consumptive water use permits.

(e) Wastewater permits.

(f) Air emission permits.

(g) Permits relating to listed species.

(h) Highway or roadway access permits.

(i) Any other state development approval within the scope of a participating agency's authority.

(2)(a) When filing its application for state development approval, a manufacturer shall file with each participating agency proof that its development or expansion is located in the jurisdiction of a local government that has a local manufacturing development program.

(b) If a local government repeals its local manufacturing development program ordinance, a manufacturer developing or expanding in that jurisdiction remains entitled to participate in the process if the manufacturer submitted its application for a local government development approval before the effective date of repeal.

(3) At any time during the process, if a manufacturer requests a meeting with one or more participating agencies to facilitate the process, such participating agency shall convene and attend such meeting.

(4) If a participating agency determines that an application is incomplete, the participating agency shall notify

the applicant, in writing, of the additional information necessary to complete the application.

(a) Unless the deadline is waived in writing by the manufacturer, a participating agency shall provide a request for additional information to the manufacturer within 20 days after the date the application is filed with the participating agency.

(b) If the participating agency does not request additional information within the 20-day period, the participating agency may not subsequently deny the application based on the manufacturer's failure to provide additional information.

(c) Within 10 days after the manufacturer's response to the request for additional information, a participating agency may make a second request for additional information for the sole purpose of obtaining clarification of the manufacturer's response.

(5)(a) Unless the deadline is waived in writing by the manufacturer, each participating agency shall take final agency action on a state development approval within its authority within 60 days after a complete application is filed. The 60-day period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57.

(b) A participating agency shall notify the manufacturer if the agency intends to deny a manufacturer's application and, unless waived in writing by the manufacturer, the participating agency shall timely convene an informal meeting to facilitate a resolution.

(c) Unless waived in writing by the manufacturer, if a participating agency does not approve or deny an application within the 60-day period, within the time allowed by a federally

delegated permitting program, or, if a proceeding is initiated under ss. 120.569 and 120.57, within 45 days after a recommended order is submitted to the agency and the parties, the state development approval within the authority of the participating agency is deemed approved. A manufacturer seeking to claim approval by default under this subsection shall notify, in writing, the clerk of the participating agency of that intent. A manufacturer may not take action based on the default approval until such notice is received by the agency clerk.

(d) At any time after a proceeding is initiated under ss. 120.569 and 120.57, the manufacturer may demand expeditious resolution by serving notice on an administrative law judge and all other parties to the proceeding. The administrative law judge shall set the matter for final hearing no more than 30 days after receipt of such notice. After the final hearing is set, a continuance may not be granted without the written agreement of all parties.

(6) Subsections (4) and (5) do not apply to permit applications governed by federally delegated or approved permitting programs to the extent that subsections (4) and (5) impose timeframes or other requirements that are prohibited by or inconsistent with such federally delegated or approved permitting programs.

Section 5. Section 288.111, Florida Statutes, is created to read:

288.111 Information concerning local manufacturing development programs.—The department shall develop materials that identify each local government that establishes a local manufacturing development program under s. 163.3252. The

materials, which the department may elect to develop and maintain in electronic format or in any other format deemed by the department to provide public access, must be updated at least annually. Enterprise Florida, Inc., shall, and other state agencies may, distribute the materials to prospective, new, expanding, and relocating manufacturing businesses seeking to conduct business in this state.

Section 6. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Manufacturing Development

Bill Number 582 *(if applicable)*

Name Leticia Adams

Amendment Barcode *(if applicable)*

Job Title Policy Director

Address *Street*

Phone 8505446866

Tall FL 32301

City *State* *Zip*

E-mail

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

Representing Florida Chamber of Commerce

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

Topic Manufacturing Development

Bill Number SB 582 *(if applicable)*

Name Rheb Harbison

Amendment Barcode _____ *(if applicable)*

Job Title Senior Government Consultant, Carlton Fields, PA

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City *State* *Zip*

Phone 850-224-1585

E-mail rharbison@carltonfields.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

423/2013
Meeting Date

Topic Manufacturing Development

Bill Number SB 582 *(if applicable)*

Name Martha Chumbler

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

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Phone 850-224-1585

E-mail mchumbler@carltonfields.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 17, 2013

Senator Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 582, Manufacturing Development, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Mike Hansen
Alicia Weiss
Ann Roberts

REPLY TO:
☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 644
INTRODUCER:	Banking and Insurance Committee and Senator Richter
SUBJECT:	Licensure by the Office of Financial Regulation
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Erickson	Cannon	CJ	**Favorable**
3.	Sadberry	Sadberry	ACJ	**Favorable**
4.	Sadberry	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 644 allows the Office of Financial Regulation (OFR) to exercise discretion regarding whether to deny an application for licensure as a mortgage broker or mortgage lender if the applicant's licensure or its equivalent was revoked in any jurisdiction. Current law requires the automatic denial of the licensure application. The bill also changes the method by which the OFR collects fingerprints from applicants for registration as securities dealers, associated persons, or securities issuers and applicants for money services business licensure. The new method of fingerprinting is live-scan processing. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

The Department of Law Enforcement would see an insignificant reduction in the amount of revenue generated from the fees for collecting fingerprints. The department has indicated the fiscal impact would be insignificant on their operations.

Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 494.00321, 494.00611, 517.12, 560.141, and 560.143.

II. Present Situation:

Licensure as a Mortgage Broker or Mortgage Lender

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 sets a minimum federal standard that an individual who is an applicant for a state loan originator license must have never had his or her loan originator license revoked in any governmental jurisdiction.[1] In 2009, Florida adopted this requirement for loan originators in s. 494.00312(5), F.S.[2] Florida also adopted parallel requirements for persons (employers, businesses, and individuals) who are applicants for licenses as mortgage brokers and mortgage lenders, exceeding the federal requirement.

According to representatives from the Office of Financial Regulation, the issue that has arisen is that states may use the term "revoked" differently. In Florida, if a licensee does not timely complete the annual renewal or pay the annual fee, their license "expires" on December 31. In other states, if the licensee does not pay that state's annual assessment when due, the regulatory process may be to administratively revoke the permanent license. Therefore, because the license status will be "revoked" in the other state, it would cause the Florida license to be revoked, or a new license application in Florida to be denied, under current law.[3]

Office of Financial Regulation Fingerprint Requirements

Under ch. 517, F.S., no dealer, associated person, or issuer of securities may sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, without being registered with the OFR. Under ch. 560, F.S., persons engaged in business as a money services business (payment instrument seller, foreign currency exchanger, check casher, or money transmitter) must be licensed with the Office. The application for such registration or licensure requires the applicant to submit fingerprint cards that are subsequently processed by the Florida Department of Law Enforcement (FDLE) and Federal Bureau of Investigation (FBI). The FDLE and FBI no longer accept physical fingerprint cards; they now only accept electronic or live-scan fingerprints for processing.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 494.00321(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage broker licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

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[1] *See* 12 U.S.C. Sec. 5104(b)(1).
[2] *See* Ch. 2009-241, L.O.F.
[3] Information for this paragraph comes from Analysis of SB 644, Office of Financial Regulation, Financial Services Commission (dated March 26, 2013) (on file with the Committee on Criminal Justice). This analysis is further cited as "OFR Analysis."
[4] *Id.*

Section 2 amends s. 494.00611(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage lender licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

Section 3 amends s. 517.12(7), F.S., to require securities dealers, associated persons, or securities issuers to submit the fingerprints for live scan processing as part of the mandatory requirement to register with the OFR. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency or in a manner otherwise approved by rule, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

Section 4 amends s. 560.141, F.S., to require the applicant for money services business licensure to submit the fingerprints for live scan processing as part of the mandatory licensure requirements to register with the OFR. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

The bill also requires the fingerprints to be entered into the statewide automated fingerprint identification system. The OFR must pay an annual fee to the Department of Law Enforcement to participate in the system. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

Section 5 amends s. 560.143, F.S., to provide that OFR fingerprint retention fees are prescribed by rule.

Section 6 provides effective dates. Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

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 provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may result in additional fees imposed on persons required to undergo live-scan fingerprinting.

The Florida Department of Law Enforcement has provided the following information regarding private sector impact:

Year 1: 500 new applicants x $40.50 + 725 license renewals x $40.50 = $49,613

Year 2: 500 new applicants x $40.50 + 1450 license renewals x $40.50 + 1225 fingerprints retained x $6 = $86,325

Year 3: 500 new applicants x $40.50 + 725 license renewals x $40.50 + 3175 fingerprints retained x $6 = $ 68,663

Each request is $40.50; $24 goes into the FDLE Operating Trust Fund; $16.50 from each request is forwarded to the FBI; not revenue for Florida; but expense for private sector.[5]

C. Government Sector Impact:

The Office of Financial Regulation currently collects fingerprint fees from applicants that are subsequently transferred to the Florida Department of Law Enforcement. Switching from fingerprint cards to live-scan fingerprint processing is estimated to result in the following reductions for Fiscal Year 2013-2014:

- A reduction of $13,275 related to fingerprinting required under ch. 494, F.S. (mortgage brokers and mortgage lenders) and ch. 560, F.S. (money services businesses). The estimated non-operating budget authority needed in Category 310175 is reduced by $95,000.
- A reduction of $121,500 related to elimination of the processing fee for fingerprinting. The estimated non-operating budget authority needed in category 310175 is reduced by $150,000.[6]

The provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may alter the fiscal impact of the bill.

[5] Analysis of SB 644 (dated March 20, 2013), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice).
[6] Telephonic conversation with OFR staff on March 26, 2013, and OFR Analysis.

The Florida Department of Law Enforcement has provided the following information regarding fiscal impact:

			(FY 13-14) Amount/FTE	(FY 14-15) Amount/FTE	(FY 15-16) Amount/FTE
A.	Revenues	OTF	29,400	54,150	48,450

Year 1: 500 new applicants x $24 + 725 license renewals x $24 = $29,400

Year 2: 500 new applicants x $24 + 1450 license renewals x $24 + 1225 fingerprints retained x $6 = $54,150

Year 3: 500 new applicants x $24 + 725 license renewals x $24 + 3175 fingerprints retained x $6 = $ 48,450[7]

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 March 20, 2013:

- Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.
- Eliminates the repeal of s. 560.143(1)(f), F.S.
- Specifies that the OFR fingerprint retention fees will be prescribed by rule.

B. Amendments:

None.

[7] *Id.*

By the Committee on Banking and Insurance; and Senator Richter

597-02827-13 2013644c1

A bill to be entitled

An act relating to licensure by the Office of Financial Regulation; amending s. 494.00321, F.S.; authorizing, rather than requiring, the office to deny a mortgage broker license application if the applicant had a mortgage broker license revoked previously; amending s. 494.00611, F.S.; authorizing, rather than requiring, the office to deny a mortgage lender license application if the applicant had a mortgage lender license revoked previously; amending s. 517.12, F.S.; revising the procedures and requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; removing conflicting language; amending s. 560.141, F.S.; revising the procedures and requirements for submitting fingerprints to apply for a license as a money services business; requiring the Office of Financial Regulation to pay an annual fee to the Department of Law Enforcement; removing conflicting language; amending s. 560.143, F.S.; revising license application fees to include fingerprint retention fees as prescribed by rule; providing effective dates.

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

Section 1. Effective upon this act becoming a law, subsection (5) of section 494.00321, Florida Statutes, is amended to read:

494.00321 Mortgage broker license.—

597-02827-13 2013644c1

(5) The office may ~~shall~~ deny a license if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction, and shall deny a license ~~or~~ if any of the applicant's control persons has had a loan originator license, or its equivalent, revoked in any jurisdiction.

Section 2. Effective upon this act becoming a law, subsection (5) of section 494.00611, Florida Statutes, is amended to read:

494.00611 Mortgage lender license.—

(5) The office may deny ~~not issue~~ a license if the applicant has had a mortgage lender license or its equivalent revoked in any jurisdiction, and shall deny a license if ~~or~~ any of the applicant's control persons has ~~ever~~ had a loan originator license or its equivalent revoked in any jurisdiction.

Section 3. Subsection (7) of section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(7) The application must ~~shall~~ also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan

processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements ~~file a complete set of fingerprints. A fingerprint card submitted to the office must be taken by an authorized law enforcement agency or in a manner approved by the commission by rule. The office shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the background check. The Department of Law Enforcement shall submit an invoice to the office for the fingerprints received each month. The office shall screen the background results to determine if the applicant meets licensure requirements~~. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15), submit ~~file a set of~~ fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal

Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

Section 4. Subsection (1) of section 560.141, Florida Statutes, is amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(a) ~~Submit~~ An application to the office on forms prescribed by rule which includes the following information:

1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The applicant's history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.

6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.

7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating in this state. For each branch office and each

location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable.

9. The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person.

11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.

12. Any other information specified in this chapter or by rule.

(b) ~~In addition to the application form, submit:~~

~~1.~~ A nonrefundable application fee as provided in s. 560.143.

(c)~~2.~~ Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. The Department of Law Enforcement must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal

Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and shall inform the Department of Law Enforcement of any person whose fingerprints no longer must be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

6. For purposes of this paragraph, fingerprints are not required to be submitted if ~~A fingerprint card for each of the persons listed in subparagraph (a)3. unless~~ the applicant is a publicly traded corporation~~,~~ or is exempted from this chapter under s. 560.104(1). ~~The fingerprints must be taken by an authorized law enforcement agency. The office shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the criminal records background check. The office shall screen the background results to determine if the applicant meets licensure requirements. As used in this section,~~ The term

"publicly traded" means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the commission.

7. Licensees initially approved before October 1, 2013, seeking renewal must submit fingerprints for each person listed in subparagraph (a)3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before the office may renew licenses set to expire between April 30, 2014, and December 31, 2015.

(d)~~3.~~ A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 103.125.

(e)~~4.~~ Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.

Section 5. Subsections (1) and (2) of section 560.143, Florida Statutes, are amended to read

560.143 Fees.—

(1) LICENSE APPLICATION FEES.—The applicable non-refundable fees must accompany an application for licensure:

(a) Part II.....$375.

(b) Part III.....$188.

(c) Per branch office.....$38.

(d) For each location of an authorized vendor.....$38.

(e) Declaration as a deferred presentment provider.....$1,000.

(f) Fingerprint retention fees as prescribed by rule.

(g) License application fees for branch offices and authorized vendors are limited to $20,000 when such fees are assessed as a result of a change in controlling interest as defined in s. 560.127.

(2) LICENSE RENEWAL FEES.—The applicable non-refundable license renewal fees must accompany a renewal of licensure:

(a) Part II.....$750.

(b) Part III.....$375.

(c) Per branch office.....$38.

(d) For each location of an authorized vendor.....$38.

(e) Declaration as a deferred presentment provider.....$1,000.

(f) Renewal fees for branch offices and authorized vendors are limited to $20,000 biennially.

(g) Fingerprint retention fees as prescribed by rule.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic OFR Licensure

Bill Number SB 644 *(if applicable)*

Name Warren Husband

Amendment Barcode *(if applicable)*

Job Title —

Address PO Box 10909 *Street*

Phone 850 205 9000

Tallahassee *City* FL *State* 32302 *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Securities Industry & Financial Markets Assoc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

Topic Licensure by OFR

Bill Number 644 *(if applicable)*

Name FRENCH BROWN

Amendment Barcode *(if applicable)*

Job Title Legislative Affairs Director

Address 200 E GAINES St
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Speaking: [X] For [ ] Against [ ] Information

Representing OFFICE OF FINANCIAL REGULATION

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
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Rules
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JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

April 11, 2013

The Honorable Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

Senate Bill 644, related to Licensure by the Office of Financial Regulation, has just been found favorable in the Committee on Criminal and Civil Justice Appropriations. This bill is a very simple, non controversial bill, but an important bill that has passed 3 committees with zero nay votes.

I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Mike Hansen, Staff Director

SENATE APPROPRIATIONS
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Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 662
INTRODUCER:	Appropriations Committee and Senator Hays
SUBJECT:	Workers' Compensation
DATE:	April 25, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Favorable**
2.	Davlantes	Stovall	HP	**Favorable**
3.	Betta/Johnson	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

I. Summary:

CS/SB 662 revises provisions relating to reimbursement for prescription medications under chapter 440, F.S., Florida's Workers' Compensation Law in the following manner:

It is estimated that the implementation of the bill would reduce workers' compensation insurance costs by 0.7 percent or approximately $20 million based on preliminary 2012 statewide workers' compensation insurance premium (insurers and self-insurers).[1]

The Division of Risk Management in the Department of Financial Services estimates that implementation of the bill would result in an estimated annual increase in prescription drug costs of $210,377 to the State Risk Management Program.

The bill:

- Revises the amount of reimbursement for prescription medications of workers' compensation claimants by providing that the reimbursement rate for repackaged or relabeled drugs dispensed by a dispensing practitioner would be capped at 112.5 percent of the average wholesale price (AWP), plus $8.00 for the dispensing fee.
- Maintains the reimbursement rate for other prescription medications at AWP plus $4.18 dispensing fee.
- Provides that the average wholesale price would be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of

[1] National Council on Compensation Insurers, Preliminary Estimate of the impact of the delete-all amendment(barcode 213550) to SB 662, April 22, 2013. On file with Banking and Insurance Committee staff.

the underlying drug dispensed, based upon the published manufacturer average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing.
- Provides an exception to the reimbursement schedule if the employer or carrier, or a third party acting on behalf of the employer or carrier, directly contracts with a provider seeking reimbursement at a lower rate.
- Prohibits a dispensing practitioner from possessing such medications unless payment has been made to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of the medication.

Chapter 440, F.S., generally requires employers and carriers to provide medical and indemnity benefits to workers who are injured due to an accident arising out of and during the course of employment. Medical benefits can include, but are not limited to, medically necessary care and treatment, and prescription medications. In Florida, the prescription reimbursement rate for dispensing physicians and pharmacies is the AWP plus a $4.18 dispensing fee, or the contracted rate, whichever is lower.[2]

This bill amends the following section of the Florida Statutes: 440.13.

II. Present Situation:

State and Federal Regulation of Prescription Drugs

Section 510 of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. s. 360, requires registered drug establishments to provide the Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by it for commercial distribution. Drug products are identified and reported to the FDA using a unique, three-segment number, called the National Drug Code (NDC), which is a universal product identifier for human drugs. The current edition of the NDC Directory is limited to prescription drugs and insulin products that have been manufactured, prepared, propagated, compounded, or processed by registered establishments for commercial distribution.[3]

The term "repackaged" drugs refers to drugs that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients. Repackagers of drugs are required to register and list all such drug products repackaged and relabeled with the FDA.

In Florida, the Department of Business and Professional Regulation (DBPR) regulates prescription drug repackagers. A permit as a prescription drug repackager is required for any person that repackages a prescription drug in Florida. The permit authorizes the wholesale distribution of prescription drugs repackaged at the establishment.

Rule 64F-12, F.A.C., defines "repackaging or otherwise changing the container, wrapper, or labeling to further the distribution" to mean:

[2] Section 440.13(12), F.S.
[3] *National Drug Code Database Background Information*, U.S. Food and Drug Administration. Found at: <http://www.fda.gov/drugs/developmentapprovalprocess/ucm070829

- Altering a packaging component that is or may be in direct contact with the drug, device, or cosmetic. For example, repackaging from bottles of 1,000 to bottles of 100.
- Altering a manufacturer's package for sale under a label different from the manufacturer. For example: a kit that contains an injectable vaccine from manufacturer A; a syringe from manufacturer B; alcohol from manufacturer C; and sterile gauze from manufacturer D; packaged together and marketed as an immunization kit under a label of manufacturer Z.
- Altering a package of multiple-units, which the manufacturer intended to be distributed as one unit, for sale or transfer to a person engaged in the further distribution of the product.[4]

According to the Workers' Compensation Research Institute, some states, such as Massachusetts, New York, and Texas prohibit physicians from dispensing drugs.[5] In Florida, s. 465.0276(1), F.S., authorizes physicians and pharmacies to dispense, as provided below:

> A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.

To become a dispensing practitioner in Florida, a practitioner is required to register under s. 465.0276, F.S., with the applicable professional licensing board as a dispensing practitioner and pay a $100 fee.[6] Dispensing practitioners must comply with all laws and rules applicable to pharmacists and pharmacies including undergoing inspections. A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III in s. 893.03, F.S.[7]

Section 458.347, F.S., allows a supervising physician to delegate dispensing authority to his or her physician assistant (PA). No registration is required for a PA to dispense. The PA may prescribe under his or her supervising physician; however, a PA cannot prescribe controlled substances.

According to advocates of physician dispensers, there are some advantages for patients from physicians dispensing drugs. These benefits may include greater compliance by the patient in taking a drug dispensed directly by the physician, more convenience for patients residing in remote areas, and the benefit of prompt treatment.

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[4] The Rule provides that repackaging does not include:
a. Selling or transferring an individual unit which is a fully labeled self-contained package that is shipped by the manufacturer in multiple units, or
b. Selling or transferring a fully labeled individual unit, by adding the package insert, by a person authorized to distribute prescription drugs to an institutional pharmacy permit, health care practitioner, or emergency medical service provider for the purpose of administration and not for dispensing or further distribution.

[5] *Prescription Benchmarks for Massachusetts* by the Workers' Compensation Research Institute, March 2010.

[6] If the practitioner is dispensing complimentary packages of medicinal drugs, the practitioner is not required to register.

[7] *See* s. 465.0276(1)(b), F.S.

Health Care Providers in Florida's Workers' Compensation System

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C., by the Department of Financial Services (DFS) or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1) (d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

The DFS is authorized to investigate health care providers to determine whether they are complying with the provisions of chapter 440, F.S. In addition, the DFS may impose penalties and sanctions on health care providers for violations of chapter 440, F.S., such as engaging in a pattern or practice of overutilization or improper billing practices.[8]

Section 440.13(14), F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under ch. 440, F.S., and department rule. However, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules are allowed.

Reimbursement for Prescription Drugs in Workers' Compensation

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the DFS is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment and prescription drugs.[9]

The reimbursement method for a prescription medication to pharmacies and dispensing physicians is found in s. 440.13(12)(c), F.S. The reimbursement amount is the average wholesale price (AWP) of the drug plus $4.18 for the dispensing fee, unless the carrier has contracted for a lower amount. The AWP is comparable to a wholesaler's suggested price and the term, AWP, is not defined in ch. 440, F.S. Current law does not provide caps on reimbursements for repackaged or relabeled prescription drugs.

An NDC is assigned to each drug and used to identify the medication and the manufacturer or repackager of the medication. The original drug manufacturer creates an AWP for each drug. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer, then relabel, and

[8] *See* s. 440.13(8) and (11), F.S.
[9] Section 440.13(2)(a), F.S.

repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they do sell them in different quantities. By repackaging a drug, a new NDC is created and a new AWP is assigned to the repackaged drug.

Costs of Prescription Drugs in the Workers' Compensation System

According to a recent Workers' Compensation Research Institute (WCRI)[10] report,[11] the average payment per claim for prescription drugs in Florida was $536, which was the second highest average prescription cost per claim among the 17 states in the study. [12] Between 2005-2006 and 2007-2008, the average prescription cost per claim increased 14 percent in Florida. Over the same period, prices per pill paid to physicians grew more rapidly than prices paid to pharmacies for the same prescription. In 2007-2008, the prices paid to physician dispensers for many common drugs were 40-80 percent higher than what was paid to pharmacies for the same drugs. For generic drugs, physicians were paid much higher prices per pill than pharmacies for the same prescription. According to the WCRI, this suggests that if physicians stop dispensing prescription drugs in response to a large price drop, more pharmacies would dispense the same prescriptions at a lower price, resulting in a decline in prescription costs.

III. Effect of Proposed Changes:

The bill amends s. 440.13, F.S., relating to reimbursement rates for prescription medications under chapter 440, F.S., by providing the following changes:

- Creates a new reimbursement schedule for repackaged or relabeled prescription medications dispensed by a dispensing practitioner and requires reimbursement at 112.5 percent of the average wholesale price (AWP), plus $8.00 for the dispensing fee.
- Maintains the reimbursement rate for other prescription medications at AWP plus $4.18 dispensing fee.
- Provides that the AWP is calculated by multiplying the number of units dispensed times the per-unit AWP set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer AWP published in the Medi-Span Master Drug Database as of the date of dispensing.
- Provides an exception to the reimbursement schedule if the employer or carrier, or a third party acting on behalf of the employer or carrier, directly contracts with a provider seeking reimbursement at a lower rate.
- Prohibits a dispensing practitioner from possessing such medications unless payment has been made to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of the medication.

[10] The Workers Compensation Research Institute is an independent, not-for-profit research organization providing information about public policy issues involving workers' compensation systems. Organized in late 1983, the WCRI does not take positions on the issues it researches.
[11] *Prescription Benchmarks for Florida, 2ND Edition,* by Workers' Compensation Research Institute, July 2011.
[12] The following states were included in the WCRI study: Florida, California, Tennessee, Indiana, Texas, Louisiana, Michigan, Minnesota, North Carolina, Iowa, Pennsylvania, Illinois, Maryland, Wisconsin, New Jersey, New York, and Massachusetts.

Under current law, the reimbursement amount is the average wholesale price (AWP) of the drug plus $4.18 for the dispensing fee, unless the carrier has contracted for a lower amount. The term, AWP, is not defined in ch. 440, F.S.

Presently, a National Drug Code (NDC) is assigned to each drug and used to identify the medication and the manufacturer or repackager of the medication. The original drug manufacturer creates an AWP for each drug. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer, then relabel and repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they do sell them in different quantities. By repackaging a drug, a new NDC is created and a new AWP is assigned to the repackaged drug. Current law does not provide caps on reimbursements for repackaged or relabeled prescription drugs.

The act takes effect July 1, 2013.

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 NCCI[13] estimates that the changes proposed in the bill to revise reimbursements for repackaged or relabeled prescription drugs would result in a savings of 0.7 percent or $20 million on overall workers' compensation costs for employers in Florida

C. Government Sector Impact:

The Division of Risk Management in the DFS estimates that implementation of the bill would result in an increase in recurring prescription drug costs of the state risk management program of $210,377 on an annual basis.

[13] In Florida, the National Council on Compensation Insurance (NCCI) is the rating and statistical organization that files rates on behalf of worker's compensation insurers in the state. The Office of Insurance Regulation licenses the NCCI.

The current contract with the DFS and Progressive contains repackaged drug pricing provisions. As the pharmacy benefits manager, Progressive, contracts on behalf of the DFS for a network of pharmacy providers. The repackaged drug price in the PBM contract allows the DFS to argue if reimbursement is disputed that this price controls what is paid to a dispensing physician under s. 440.13(12)(c) F.S., which provides:

> (c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower. No such contract shall rely on a provider that is not reasonably accessible to the employee. (Underlining supplied for emphasis)

For the period of 6/1/11 to 5/31/12, the number of repackaged/relabeled drug transactions for the State Risk Management program was 9,259. Assuming an increase of $3.82 in the dispensing fee for each of those transactions, the total cost increase due to the increased dispensing fee is $35,369.

The total amount paid as the average wholesale price for these transactions, unaffected by any increase in the AWP due to repackaging or relabeling, was $1,400,071. According to the DFS, increasing that amount by 112.5 percent results in $1,575,079, an increase of $175,008.

The total of the $175,008 increase is a result of using 112.5 percent of AWP, and the increase of $35,369 is a result of raising the dispensing fee to $8.00, is an estimated yearly increase in drug costs of $210,377 to the State Risk Management Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, section 440.13(12)(e), F.S., would prohibit a dispensing practitioner from possessing such medication unless payment has been made to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of the medication. It is unclear whether there is a specific sanction or penalty under chapter 440, F.S., that the DFS could impose on a dispensing practitioner for noncompliance with this provision.

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 Appropriations on April 23, 2013:

The committee substitute makes the following changes:

- Creates a new reimbursement schedule for repackaged or relabeled prescription medications dispensed by a dispensing practitioner and requires reimbursement at 112.5 percent of the average wholesale price (AWP), plus $8.00 for the dispensing fee.
- Maintains the reimbursement rate for other prescription medications at AWP plus $4.18 dispensing fee.
- Provides that the AWP is calculated by multiplying the number of units dispensed times the per-unit AWP set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer AWP published in the Medi-Span Master Drug Database as of the date of dispensing.
- Provides an exception to the reimbursement schedule if the employer or carrier, or a third party acting on behalf of the employer or carrier directly contracts with a provider seeking reimbursement at a lower rate.
- Prohibits a dispensing practitioner from possessing such medications unless payment has been made to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of the medication.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's

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designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.

(b) It is the intent of the Legislature to increase the

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schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:

1. Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

2. Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

3. Outpatient reimbursement for scheduled surgeries shall be reduced from 75 percent of charges to 60 percent of charges.

4. Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be increased to 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

5. Maximum reimbursement for surgical procedures shall be increased to 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee~~, except where the carrier has contracted for a lower amount~~. For repackaged or

213550

relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount. ~~Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower. No Such contract shall rely on a provider that is not reasonably accessible to the employee.~~

(d) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the

uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability

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of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to certified health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey certified health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 1, 2003, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report

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regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 2. This act shall take effect July 1, 2013.

========== 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 workers' compensation; amending s. 440.13, F.S.; revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication; providing an exception; prohibiting a dispensing manufacturer from possession of a medicinal drug until certain persons are paid; providing an effective date.

By Senator Hays

11-00036D-13 2013662__

A bill to be entitled

An act relating to workers' compensation; amending s. 440.13, F.S.; revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication; providing limitations; providing an effective date.

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

Section 1. Paragraph (c) of subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(c) As to reimbursement for a prescription medication, regardless of the location from which or the provider from whom the claimant receives the prescription medication, the reimbursement amount ~~for a prescription~~ shall be the average wholesale price plus $4.18 for the dispensing fee, unless ~~except where~~ the carrier has contracted for a lower amount. If the drug has been repackaged or relabeled, the reimbursement amount shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug, which may not be the manufacturer of the repackaged or relabeled drug, plus a $4.18 dispensing fee, unless the carrier has contracted for a lower amount. The repackaged or relabeled drug price may not exceed the amount otherwise payable had the drug not been repackaged or

11-00036D-13 2013662__

relabeled. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. If ~~Where~~ the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower. ~~No~~ Such contract may not ~~shall~~ rely on a provider that is not reasonably accessible to the employee.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Repackaging

Bill Number 662 *(if applicable)*

Name Rebecca O'Hara

Amendment Barcode 213550 *(if applicable)*

Job Title VP Govt Affairs

Address 113 E College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 339 6211

E-mail rohara@flmedical.org

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

Representing Fla Medical Assn

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2013
Meeting Date

Topic Workers' Compensation — Bill Number SB 662 *(if applicable)*

Name Cam Fentriss — Amendment Barcode 213550 *(if applicable)*

Job Title Legislative Counsel

Address 1400 Village Square Blvd, Number 3-243 *Street* — Phone 850-222-2772

Tallahassee *City* FL *State* 32312 *Zip* — E-mail afentriss@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Roofing, Sheet Metal and Air Conditioning Contractors Association

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Workers Compensation

Bill Number 662 *(if applicable)*

Name Tom Panza

Amendment Barcode *(if applicable)*

Job Title

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Street

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Fort Lauderdale FL 33308
City *State* *Zip*

E-mail Tpanza@panzamaurer.com

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

Representing Automated Health Care Solutions

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Workers Comp

Bill Number 662 *(if applicable)*

Name Melissa Joiner

Amendment Barcode _____ *(if applicable)*

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Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic WORKERS COMP

Bill Number SB 662 *(if applicable)*

Name DAVID HART

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Speaking: ☑ For ☐ Against ☐ Information

Representing FL CHAMBER

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Workers' Comp

Bill Number 662 *(if applicable)*

Name Tammy Perdue

Amendment Barcode _____ *(if applicable)*

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Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

CC: Mike Hansen, Staff Director
Alicia Weiss, Administrative Assistant

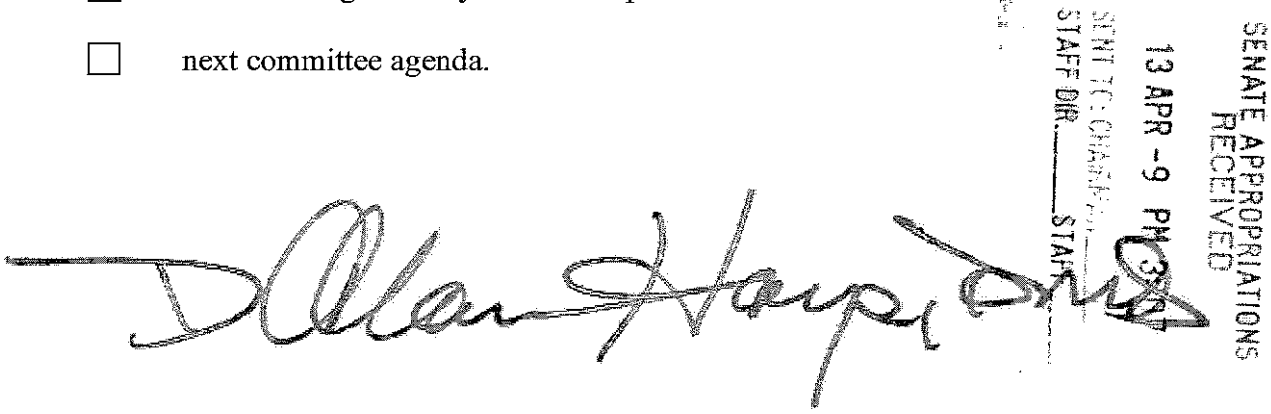
Subject: Committee Agenda Request

Date: April 9, 2013

I respectfully request that **Senate Bill #662**, relating to Workers' Compensation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.



Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/CS/SB 732
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Pharmacy
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Favorable**
3.	Brown	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 732 requires a Class II institutional pharmacy to add biological products, biosimilars, and biosimilar interchangeables to its institutional formulary system.

Under the bill, pharmacists may provide biosimilar products to patients in place of biologics if:

- The federal Food and Drug Administration (FDA) has determined that the substitute biological product is biosimilar to and interchangeable for the prescribed biological product;
- The prescriber does not express any preference against such a substitution;
- The person presenting the prescription is notified of the substitution in a manner consistent with s. 465.025(3), F.S.; and
- The pharmacist retains a record of the substitution for at least two years.

The bill is estimated to have no immediate fiscal impact while representing an indeterminate amount of possible cost savings in out-years.

A pharmacist who practices in a Class II or modified Class II institutional pharmacy must comply with the reporting provisions by entering the substitution into the institution's medical

record system. The bill also requires the Board of Pharmacy to maintain on its public website a list of biological products that the FDA has determined to be biosimilar and interchangeable.

The bill amends section 465.019, Florida Statutes.

The bill creates section 465.0252, Florida Statutes.

II. Present Situation:

"Brand Name" Chemical Drugs and Generic Chemical Drugs

A "brand name" chemical drug is manufactured with simple chemical ingredients that have uniform, predictable structures which are easy to characterize and replicate. The potency of a "brand name" chemical drug is determined by a defined chemical process. A generic chemical drug has the identical active substance and biological effect as its "brand name" counterpart. A generic chemical drug differs from a "brand name" chemical drug by inactive ingredients contained in the chemical structure and the rate and extent of absorption by the human body.

The federal Food, Drug and Cosmetic Act, as amended by the Drug Price Competition and Patent Term Restoration Act of 1984 (the Hatch-Waxman Act), established the Abbreviated New Drug Application process, creating a pathway for approval of generic medications, primarily for chemical drugs.[1] Since 1984, the FDA has approved more than 8,000 generic drugs, resulting in hundreds of billions of dollars in cost savings to consumers.[2] In 2009, almost 75 percent of pharmaceutical prescriptions dispensed in the U.S. were generic medications.[3]

Biological Products and Biosimilar Biological Products

A biological product (biologic), in contrast to a chemical drug, is a large and complex protein, generally produced using a living system or organism.[4] It is heterogeneous and difficult to characterize. The effectiveness of a biologic is expressed in a biological system, meaning the biologic interacts with the human body, or an animal's body, to produce the desired effect. A biologic can be manufactured through a biotechnological process, derived from natural sources, or completely synthesized in a laboratory setting.[5]

A biosimilar biological product (biosimilar) has a similar, but not identical, active substance to another biologic. The biological activity of a biosimilar may vary as compared to another

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[1] The Federal Food, Drug and Cosmetic Act, s. 505(b)(2); 21 U.S.C. 355(b)(2).
[2] U.S. Dept. of Health and Human Services, Food and Drug Administration, Regulatory Information, *Fact Sheet: New "Biosimilars" User Fees Will Enhance Americans' Access to Alternatives to Biologic Drugs*, July 16, 2012, available at www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm311121.htm. (last viewed on February 14, 2013).
[3] Kozlowski, S., Woodcock, J., et al., *Developing the Nation's Biosimilar Program*, N Engl J Med 365:5, 385 (August 4, 2011).
[4] U.S. Dept. of Health and Human Services, Food and Drug Administration, Sherman, M.D., Rachel, *Biosimilar Biological Products-Biosimilar Guidance Webinar*, February 15, 2012, slide 3, available at www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm292463.pdf.
[5] Id.

biologic. Because of the variable nature of a biosimilar, it is critical to identify the differences and determine which differences matter clinically. The determination of clinically meaningful differences between a biologic and its biosimilar can be exhibited through animal studies that measure toxicity, clinical studies on humans, and other scientifically accepted metrics.

In 2011, roughly 25 percent of the $320 billion spent on pharmaceuticals in the U.S., was spent on biologics.[6] Each year, patients in the U.S. receive over 200 million vaccinations, 29 million transfusions of blood and blood components, and 1.6 million transplants of musculoskeletal tissue, all of which require the use of biologics.[7]

There is no existing market for biosimilars currently in the U.S.[8] Twelve biologics with global sales exceeding $67 billion will lose patent protection by 2020 and will be open to biosimilar competition.[9] By 2015, sales of biosimilars worldwide are expected to range between $1.9 billion and $2.6 billion, up from $378 million in the first half of 2011.[10] The U.S. is forecast to be the largest potential market for biosimilar sales by 2020, with a market value between $11 billion and $25 billion, representing a 4 percent to 10 percent share of the total biologics market.[11] Biosimilars are forecast to represent up to 50 percent of the off-patent biological market by 2020, with an assumed price discount between 20 percent and 30 percent when compared to biologics.[12]

The U.S. Federal Trade Commission predicts that the availability of biosimilars will significantly reduce the cost of biologics and increase their accessibility.[13]

The Biologics Price Competition and Innovation Act of 2010

The Biologics Price Competition and Innovation Act (BPCIA) was enacted as part of the Patient Protection and Affordable Care Act on March 23, 2010.[14] The BPCIA amends the Public Health Service Act and other statutes to create an abbreviated licensure pathway for biologics demonstrated to be biosimilar to or interchangeable with a reference biologic.[15] The BPCIA

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[6] IMS Health, *Top Therapeutic Classes by U.S. Spending-2011*, available at www.imshealth.com/deployedfiles/ims/Global/Content/Corporate/Press%20Room/Top_Therapy_Classes_by_Sales[1].pdf.
[7] U.S. Dept. of Health and Human Services, Food and Drug Administration, *About FDA*, available at www.fda.gov/AboutFDA/CentersOffices/ucm193951.htm. (last viewed on Feb. 13, 2013).
[8] One product exists in the U.S. that may meet the current definition of "biosimilar" contained in the BPCIA. Omnitrope, a form of synthetic human growth hormone used to treat long-term growth failure in children and adult onset growth deficiency, and manufactured by Sandoz, was approved for sale in the U.S. under a special ruling from FDA in 2007.
[9] Genetics and Biosimilar Initiative, *US$67 billion worth of biosimilar patents expiring before 2020*, June 29, 2012 (on file with the Health Quality subcommittee staff).
[10] IMS Health, *Shaping the biosimilars opportunity: A global perspective on the evolving biosimilars landscape*, December 2011, page 1, available at www.imshealth.com/deployedfiles/ims/Global/Content/Insights/IMS%20Institute%20for%20Healthcare%20Informatics/Documents/Biosimilars_White_Paper.pdf.
[11] Id. at pages 3 and 6.
[12] Id. at page 6.
[13] U.S. Federal Trade Commission, *Emerging health care issues: follow-on biologic drug competition*, 2009, available at www.ftc.gov/os/2009/06/P083901biologicsreport.pdf.
[14] PPACA (Pub. L. 111-148), title VII, subtitle A, §§7001 to 7003.
[15] A reference product is an existing biological product against which another biological product is compared to determine biosimilarity and interchangeability.

establishes the requirements for an application for a proposed biosimilar and an application for a proposed interchangeable product.[16]

The application must include information demonstrating biosimilarity, based on data derived in part from "analytical studies that demonstrate that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components;"[17] animal studies that include an assessment of toxicity;[18] and a clinical study or studies sufficient to establish safety, purity, and potency of the biosimilar.[19] Biosimilarity means that a biologic is highly similar to the reference biologic, even when considering the differences in clinically inactive components, and that there are no clinically meaningful differences between the biologic and the reference biologic in terms of safety, purity, and potency.[20]

The FDA will use a totality-of-the evidence approach in reviewing biosimilar applications, meaning all available data submitted in support of biosimilarity and the proposed biosimilar will be evaluated before a determination is made regarding biosimilarity and interchangeability.[21] To meet the standard of interchangeability, an applicant must provide sufficient information to demonstrate biosimilarity and also demonstrate that the biologic can be expected to produce the same clinical result as the reference product in any given patient. In addition, an applicant must demonstrate that, if the biologic is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biosimilar and the reference product is not greater than the risk of using the reference product without an alternation or switch in products.[22]

Pending FDA Rules on Biosimilars and Interchangeability

On February 9, 2012, the FDA issued three draft guidance documents regarding biosimilars and interchangeability. The documents, referenced as *Guidance for Industry*, answered questions regarding implementation of the BPCIA[23] and detailed scientific and quality considerations to be addressed in demonstrating biosimilarity.[24] The guidance documents have not yet been finalized by the FDA.

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[16] S. 351(k) of the PHS Act (42 U.S.C. 262(k)).
[17] 42 U.S.C. §262(k)(2)(A)(i)(I)(aa).
[18] 42 U.S.C. §262(k)(2)(A)(i)(I)(bb).
[19] 42 U.S.C. §262(k)(2)(A)(i)(I)(cc).
[20] 42 U.S.C. §262(i)(2).
[21] U.S. Dept. of Health and Human Services, Food and Drug Administration, *Biosimilars Fact Sheet: Issuance of Draft Guidances on Biosimilar Products*, available at www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm291197.htm .
[22] 42 U.S.C. §262(i)(3).
[23] U.S. Dept. of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research, *Guidance for Industry, Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009*, February 2012, available at www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm259797.htm. (last viewed on February 15, 2013).
[24] U.S. Dept. of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research, *Guidance for Industry, Scientific Considerations in Demonstrating Biosimilarity to a Reference Product* and *Guidance for Industry, Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product*, February 2012, both documents available at

The Federal Food, Drug, and Cosmetic Act, as amended by the Biosimilar User Fee Act of 2012 (BsUFA), authorizes the FDA to assess and collect fees for biosimilars from October 2012 through September 2017.[25] The FDA dedicates these fees to expediting the review process for approval of biosimilars. The FDA has determined that biosimilars represent an important public health benefit, with the potential to offer life-saving or life-altering benefits at reduced cost to the patient. According to the FDA, BsUFA facilitates the development of safe and effective biosimilars for the American public.[26]

The FDA is currently meeting with sponsors of proposed biosimilars, having received 50 requests for meetings and fulfilling 37 of those requests.[27] In addition, the FDA has approved 14 Investigative New Drug applications (INDs) for clinical development of proposed biosimilars.[28] The FDA has also noted it is engaged in active discussions with many sponsors at the pre-IND stage, indicating further clinical development of biosimilars in the near future.[29] The FDA does not expect to diverge greatly from the policies established by the European Medicines Agency for approval of biosimilars for sale in the European Union and other specific countries.[30]

Biosimilars in Europe

The European Medicines Agency (EMA) is a decentralized agency of the European Union (EU), located in London, England. It is the scientific body of the European Commission (EC).[31] The EMA's primary responsibility is the "protection and promotion of public and animal health through the evaluation and supervision of medicines for human and veterinary use."[32]

The EMA is responsible for the scientific evaluation of applications for EU marketing authorizations for human and veterinary medicines governed by the "centralised procedure."[33] Under the "centralised procedure," pharmaceutical companies submit a single marketing-authorization application to the EMA.[34] Medicines are then approved by the EC based on the positive scientific opinion of the EMA and its expert committee, the Committee on Human

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www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm290967.htm. (last viewed on February 15, 2013).

[25] Biosimilar User Fee Act of 2012, Pub. L. 112-144, title IV, ss. 401-408 (21 U.S.C. 379j-51 through 53).

[26] U.S. Dept. of Health and Human Services, Food and Drug Administration, *For Industry: Biosimilar User Fee Act (BsUFA)*, available at www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/default.htm. (last viewed on February 16, 2013).

[27] Comments of Dr. Janet Woodcock, Director, Center for Drug Evaluation and Research, Food and Drug Administration, at Bloomberg State of Health Care 2013 Summit, February 11, 2013 (video available at www.bloomberg.com/video/fda-sees-more-breakthrough-drugs-woodcock-says-~Obd9FUMQ7qWka0CfYq3dg.html) (last viewed on February 15, 2013).

[28] Id.

[29] Id.

[30] Id.

[31] European Generic Medicines Association, *EGA FACT SHEET on generic medicines, FAQs about Biosimilar Medicines*, July 2011, available at www.egagenerics.com/index.php/biosimilar-medicines/faq-on-biosimilars. (last viewed on February 15, 2013).

[32] European Medicines Agency, *What we do*, available at http://www.ema.europa.eu/ema/index.jsp?curl=pages/about_us/general/general_content_000091.jsp&mid=WC0b01ac05800028a42. (last viewed on February 15, 2013)

[33] Id.

[34] Id.

Medicinal Products.[35] Once granted by the EC, a centralized marketing authorization is valid in all EU Member States, as well as Iceland, Liechtenstein, and Norway.[36] By law, a company can only market a medicine once it has received a marketing authorization.[37]

The "centralised procedure" is mandatory for:

- Human medicines for the treatment of HIV/AIDS, cancer, diabetes, neurodegenerative diseases, auto-immune and other immune dysfunctions, and viral diseases;
- Veterinary medicines for use as growth or yield enhancers;
- Medicines derived from biotechnology processes, such as genetic engineering;
- Advanced-therapy medicines, such as gene-therapy, somatic cell-therapy, or tissue-engineered medicines; and
- Officially designated medicines used for rare human diseases.[38]

Biologics and biosimilars fall within the mandatory "centralised procedure" for approval and marketing within the EU and other specified European countries.

In 2003, the EMA created a new pathway for approving biosimilar medicines.[39] The central feature of the evaluation process is the comparison of the biosimilar with its reference product to show that there are no significant differences between them.[40] The EMA further explains the evaluation process to determine biosimilarity, which is very similar to the proposed pathway process in the U.S.:

> The relevant regulatory authority applies stringent criteria in their evaluation of the studies comparing the quality, safety and effectiveness of the two medicines. The studies on quality include comprehensive comparisons of the structure and biological activity of their active substances, while the studies on safety and effectiveness should show that there are no significant differences in their benefits and risks, including the risk of immune reactions.

One critical difference between the approval process established by the EMA and the proposed pathway outlined by the FDA is that the EMA does not make recommendations on whether a biosimilar can be used interchangeably with its reference product.[41] The FDA will determine interchangeability, which in turn will determine whether a biosimilar can be substituted for a prescription biologic by a pharmacist.

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[35] *See supra*, FN 23.
[36] Id.
[37] Id.
[38] European Medicines Agency, *Central authorization of medicines*, available at http://www.ema.europa.eu/ema/index.jsp?curl=pages/about_us/general/general_content_000109.jsp&mid=WC0b01ac05800 28a47. (last viewed on February 15, 2013).
[39] European Medicines Agency, *Questions and answers on biosimilar medicines (similar biological medicinal products)*, available at www.ema.europa.eu/docs/en_GB/document_library/Medicine_QA/2009/12/WC500020062.pdf. (last viewed on February 15, 2013).
[40] *See supra*, FN 38.
[41] *See supra*, FN 39.

The EMA published general guidelines on biosimilars in 2005 and approved its first biosimilar in 2006.[42] As of February 2012, the EMA had approved 14 biosimilar products,[43] with reference products including filgrastim,[44] epoetin,[45] and somatropin.[46]

Institutional Pharmacy

Florida law requires any institution, such as a hospital, seeking to operate a pharmacy to obtain a permit from the Department of Health (DOH).[47] The DOH has established three classes of permit for institutional pharmacies:

- Class I:[48] All medicinal drugs are administered from individual prescription containers to individual patients. Medicinal drugs are not dispensed on premises. An exception is noted to allow licensed nursing homes to purchase and administer oxygen to residents.
- Class II:[49] The pharmacy employs a licensed pharmacist to dispense medication to patients in the institution for use on the premises. Class II institutional pharmacies are most often located in hospitals.
- Modified Class II:[50] The pharmacy is located in a short-term, primary care treatment center which meets all the requirements for a Class II permit. Modified Class II pharmacies are classified according to the type of pharmaceutical delivery system, either a patient-specific or bulk drug system, as Type A, Type B, and Type C.[51]

Medicinal drugs can only be dispensed from an institutional pharmacy with a community pharmacy permit from DOH.[52] In a Class II institutional pharmacy, medical staff of the institution may approve a formulary system that identifies medicinal drugs and proprietary preparations that may be dispensed by the institutional pharmacist.[53] Any facility with a Class II institutional pharmacy permit must develop policies and procedures regarding the formulary that are consistent with established standards by the American Hospital Association and the American Society of Hospital Pharmacists.[54]

Pharmacist Substitution in Florida

In general, a pharmacist in Florida is required to substitute a less expensive generic medication for a prescribed brand name medication.[55] The presenter of the prescription may specifically

[42] European Medicines Agency, *Guideline on similar biological medicinal products*, 2005, available at www.emea.europa.eu/pdfs/human/biosimilar/043704en.pdf .
[43] *See supra*, FN 4 at slide 23.
[44] A white blood cell booster used to reduce infection risks in persons receiving strong chemotherapy treatment.
[45] Also known as EPO, it treats anemia caused by chronic kidney disease in dialysis patients by promoting red blood cell production.
[46] Synthetic human growth hormone (hGH).
[47] S. 465.019(1), F.S.
[48] S. 465.019(2)(a), F.S.
[49] S. 465.019(2)(b), F.S.
[50] S. 465.019(2)(c), F.S.
[51] Rule 64B-16-28.702(2)(b)-(d), F.A.C.
[52] S. 465.019(4), F.S.; see also s. 465.018, F.S., regarding community pharmacy permits.
[53] S. 465.019(6), F.S.
[54] Id.
[55] S. 465.025(2), F.S.

request the brand name medication.[56] Also, the prescriber may prevent substitution by indicating the brand name medication is "medically necessary" in writing, orally, or, in the case of an electronic transmission of the prescription, by making an overt act to indicate the brand name medication is "medically necessary."[57] The pharmacist must inform the presenter of the prescription that a substitution has been made, advise the presenter that he or she may refuse the substitution and request the brand name medication, and pass on to the consumer the full amount of any savings realized by the substitution.[58]

Each pharmacy is required to establish a formulary of brand name medications and generic medications which, if selected as the drug product of choice, pose no threat to patient health and safety.[59] The Board of Pharmacy and the Board of Medicine are required to establish a formulary which lists brand name medications and generic medications that are determined to be clinically different so as to be biologically and therapeutically inequivalent.[60] Substitution of the drugs included in this formulary would pose a threat to patient health and safety.[61] The boards are required to distribute the formulary to licensed and registered pharmacies and pharmacists.[62] Each board that regulates practitioners licensed by the state to prescribe medications must incorporate the formulary into its rules.[63] No pharmacist may substitute a generic medication for a brand name medication if either medication is included in the formulary.[64]

There is no provision in Florida law regarding substitution for biosimilars.

III. Effect of Proposed Changes:

Section 1 amends s. 465.019, F.S., to authorize a Class II institutional pharmacy to add biological products, biosimilars, and biosimilar interchangeables to its institutional formulary system.

Section 2 creates s. 465.0252, F.S., relating to substitution of biosimilar products. The bill provides definitions for "biological product," "biosimilar, and "interchangeable" consistent with how these terms are defined in the federal Public Health Service Act.[65] The bill offers guidelines for when pharmacists may substitute a biosimilar product for a prescribed biologic. This substitution may occur if:

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[56] Id.
[57] Id.
[58] S. 465.025(3)(a), F.S.; *see also* Rule 64B-16-27.530, F.A.C.
[59] S. 465.025(5), F.S.; *see also* Rule 64B-16.27.520, F.A.C.
[60] S. 465.025(6), F.S.; *see also* Rule 64B-16.27.500, F.A.C.
[61] Id.
[62] S. 465.025(6)(b), F.S.
[63] Id.
[64] Id.
[65] 42 U.S.C. s. 262. In this section, "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings. "Biosimilar" means that the biological product is highly similar to the reference product notwithstanding minor differences in chemically inactive components and there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product. "Interchangeable" means that the biological product may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product.

- The FDA has determined that the substitute biological product is biosimilar to and interchangeable for the prescribed biological product;
- The prescriber does not express any preference against such a substitution;
- The pharmacist notifies the person presenting the prescription of the substitution in a manner consistent with s. 465.025(3), F.S; and
- The pharmacist retains a written or electronic record of the substitution for at least two years.

A pharmacist who practices in a Class II or modified Class II institutional pharmacy must comply with the notification provisions by entering the substitution into the institution's medical record system. The bill also requires the Board of Pharmacy to maintain on its public website a list of biological products that the FDA has determined to be biosimilar and interchangeable.

Section 3 provides an effective date of July 1, 2013.

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 provides a pathway to establish a broader market for biosimilars in Florida through interchangeability with biologics. Once the FDA approves a biosimilar, it may be prescribed in Florida without intervention from the Legislature if the prescriber writes specifically for that biosimilar. However, this bill allows a biosimilar which the FDA approves to be interchangeable with a biologic to be lawfully substituted for a prescribed biologic. Patients will have the opportunity to use biosimilars in place of biologic products, potentially at a reduced cost.

C. Government Sector Impact:

While a biosimilar market does not currently exist in the U.S., it is anticipated that once biosimilars are approved by the FDA and deemed interchangeable with prescription

biologics, Medicaid and the state group insurance program may realize cost savings due to substitution of less expensive biosimilars for prescription biologics. The estimate of cost savings is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDA has yet to approve any biosimilars. Under the bill, the state will pass legislation allowing biosimilars to be interchanged with biologics when such biosimilars do not exist.

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 Appropriations on April 23, 2013:
The CS removes from the bill requirements for pharmacists to notify prescribers of substitutions and for prescribers to retains records of substitutions.

CS by Health Policy on April 2, 2013:
The CS authorizes a Class II institutional pharmacy to add biological products, biosimilars, and biosimilar interchangeables to its institutional formulary system. It provides definitions for "biological product," "biosimilar," and "interchangeable" consistent with how these terms are defined in the federal Public Health Service Act and deletes the requirement that pharmacists verify that a substituted biological product is biosimilar with the prescribed product *for the specified, indicated use*. The bill reduces the time a pharmacist has to notify a prescribing practitioner of a substitution and the time a pharmacist and a practitioner must retain a record of such substitution to five days and two years, respectively.

The bill permits pharmacists at Class II or modified Class II pharmacies to fulfill reporting requirements by entering the substitution into the institution's medical record system. The bill also requires the Board of Pharmacy to maintain on its public website a list of biological products that the FDA has determined to be biosimilar and interchangeable.

B. Amendments:

None.

613416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(6) In a Class II institutional pharmacy, an institutional formulary system may be adopted with approval of the medical staff for the purpose of identifying those medicinal drugs, ~~and~~ proprietary preparations, biologics, biosimilars, and biosimilar interchangeables that may be dispensed by the pharmacists

613416

employed in such institution. A facility with a Class II institutional permit which is operating under the formulary system shall establish policies and procedures for the development of the system in accordance with the joint standards of the American Hospital Association and American Society of Hospital Pharmacists for the utilization of a hospital formulary system, which formulary shall be approved by the medical staff.

Section 2. Section 465.0252, Florida Statutes, is created to read:

465.0252 Substitution of interchangeable biosimilar products.—

(1) As used in this section, the terms "biological product," "biosimilar," and "interchangeable" have the same meanings as defined in s. 351 of the federal Public Health Service Act, 42 U.S.C. s. 262.

(2) A pharmacist may only dispense a substitute biological product for the prescribed biological product if:

(a) The United States Food and Drug Administration has determined that the substitute biological product is biosimilar to and interchangeable for the prescribed biological product.

(b) The prescribing health care provider does not express a preference against substitution in writing, verbally, or electronically.

(c) The pharmacist notifies the person presenting the prescription of the substitution in the same manner as provided in s. 465.025(3)(a).

(d) The pharmacist retains a written or electronic record of the substitution for at least 2 years.

(3) A pharmacist who practices in a class II or modified

613416

class II institutional pharmacy shall comply with the notification provisions of paragraph (2)(c) by entering the substitution in the institution's written medical record system or electronic medical record system.

(4) The board shall maintain on its public website a current list of biological products that the United States Food and Drug Administration has determined are biosimilar and interchangeable as provided in paragraph (2)(a).

Section 3. This act shall take effect July 1, 2013.

========== 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 pharmacy; amending s. 465.019, F.S.; permitting a class II institutional pharmacy formulary to include biologics, biosimilars, and biosimilar interchangeables; creating s. 465.0252, F.S.; providing definitions; providing requirements for a pharmacist to dispense a substitute biological product that is determined to be biosimilar to and interchangeable for the prescribed biological product; providing notification requirements for a pharmacist in a class II or modified class II institutional pharmacy; requiring the Board of Pharmacy to maintain a current list of interchangeable biosimilar products; providing an effective date.

By the Committee on Health Policy; and Senator Grimsley

588-03414A-13 2013732c1

A bill to be entitled

An act relating to pharmacy; amending s. 465.019, F.S.; permitting a class II institutional pharmacy formulary to include biologics, biosimilars, and biosimilar interchangeables; creating s. 465.0252, F.S.; providing definitions; providing requirements for a pharmacist to dispense a substitute biological product that is determined to be biosimilar to and interchangeable for the prescribed biological product; providing notification requirements for a pharmacist in a class II or modified class II institutional pharmacy; requiring the Board of Pharmacy to maintain a current list of interchangeable biosimilar products; providing an effective date.

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

Section 1. Subsection (6) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(6) In a Class II institutional pharmacy, an institutional formulary system may be adopted with approval of the medical staff for the purpose of identifying those medicinal drugs, ~~and~~ proprietary preparations, biological products, biosimilars, and biosimilar interchangeables that may be dispensed by the pharmacists employed in such institution. A facility with a Class II institutional permit which is operating under the formulary system shall establish policies and procedures for the development of the system in accordance with the joint standards

588-03414A-13 2013732c1

of the American Hospital Association and American Society of Hospital Pharmacists for the utilization of a hospital formulary system, which formulary shall be approved by the medical staff.

Section 2. Section 465.0252, Florida Statutes, is created to read:

465.0252 Substitution of interchangeable biosimilar products.—

(1) As used in this section, the terms "biological product," "biosimilar," and "interchangeable" have the same meanings as defined in s. 351 of the federal Public Health Service Act, 42 U.S.C. s. 262.

(2) A pharmacist may only dispense a substitute biological product for the prescribed biological product if:

(a) The United States Food and Drug Administration has determined that the substitute biological product is biosimilar to and interchangeable for the prescribed biological product.

(b) The practitioner ordering the prescription does not express a preference against substitution in writing, verbally, or electronically.

(c) The pharmacist notifies the person presenting the prescription of the substitution in the same manner as provided in s. 465.025(3)(a).

(d) The pharmacist or the pharmacist's agent, within 5 business days after dispensing the substitute biological product in lieu of the prescribed biological product, notifies the practitioner ordering the prescription of the substitution by facsimile, telephone, voicemail, e-mail, electronic medical record, or other electronic means.

(e) The pharmacist and the practitioner ordering the

prescription each retain a written or electronic record of the substitution for at least 2 years.

(3) A pharmacist who practices in a class II or modified class II institutional pharmacy shall comply with the notification provisions of paragraphs (2)(c) and (d) by entering the substitution in the institution's written medical record system or electronic medical record system.

(4) The board shall maintain on its public website a current list of biological products that the United States Food and Drug Administration has determined are biosimilar and interchangeable as provided in paragraph (2)(a).

Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Pharmacy

Bill Number 732 *(if applicable)*

Name Melissa Joiner

Amendment Barcode 613416 *(if applicable)*

Job Title Director of Govt Affairs

Address 228 Adams St.
Street
Tallahassee FL
City *State* *Zip*

Phone 850 570 0269

E-mail Melissa@frf.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic BIOSIMILARS

Bill Number SB732 *(if applicable)*

Name TOMMY SUTER

Amendment Barcode 613416 *(if applicable)*

Job Title ASSOC. DIR., STATE AND EXTERNAL AFFAIRS

Address 2974 GOLDEN EAGLE DR. E.
Street

Phone 919-609-8555

TALLAHASSEE FL 32312
City *State* *Zip*

E-mail TOMMY.SUTER@NOVARTIS.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing NOVARTIS / SANDOZ

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Biosimilars

Bill Number 732 *(if applicable)*

Name Kelly Mallette

Amendment Barcode 613416 *(if applicable)*

Job Title

Address 104 West Jefferson Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-3427

E-mail kelly@rlbadpa.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Teva Pharmaceuticals

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Biosimilars

Bill Number 732 *(if applicable)*

Name Rebecca O'Hara

Amendment Barcode 613416 *(if applicable)*

Job Title VP Govt Affairs

Address 113 E College Ave
Street

Phone 339 6211

Tallahassee FL 32301
City *State* *Zip*

E-mail rohara@flmedical.org

Speaking: ☐ For ☒ Against ☐ Information

Representing Fla Medical Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/2013
Meeting Date

Topic Pharmacy

Bill Number CS/SB 732 *(if applicable)*

Name Michael Garnen

Amendment Barcode *(if applicable)*

Job Title Pres & CEO

Address 200 W. College Ave., Suite 104
Street

Phone (850) 445-6552

Tallahassee, FL 32301
City *State* *Zip*

E-mail michael@fahp.net

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic _____ Bill Number 732 *(if applicable)*

Name Chris Nuland Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115 Phone 904-355-1555
Street

Jacksonville, FL 32204 E-mail nulandlawpad.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Chapter, American College of Physicians

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

Topic _____ Bill Number 732 *(if applicable)*

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

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

Speaking: ☑ For IN part ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 17, 2013

I respectfully request that **Senate Bill #732**, relating to Pharmacy, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

HAS been Amended in House. I will amend IN COMMITTEE

(per our previous conservation)

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 21

SENATE APPROPRIATIONS
RECEIVED
13 APR 19 AM 9:37
TO: CHAIRMAN
STAFF DIR.
STAFF

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	SB 742
INTRODUCER:	Senator Evers
SUBJECT:	Parole Interview Dates for Certain Inmates
DATE:	April 24, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Favorable**
2.	Shankle	Cibula	JU	**Favorable**
3.	Cantral	Sadberry	ACJ	**Favorable**
4.	Cantral	Hansen	AP	**Favorable**
5.				
6.				

I. Summary:

SB 742 permits the Florida Parole Commission to increase the interval between parole interviews to 7 years for offenders convicted of kidnapping or attempted kidnapping, or of a completed or attempted offense of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering when a human being is present and a sexual act is completed or attempted. Interviews for those offenders are currently every 2 years.

The bill has an indeterminate, but likely insignificant, fiscal impact.

The bill has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 947.16, 947.174, and 947.1745.

This bill reenacts section 947.165(1), Florida Statutes.

II. Present Situation:

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission ("the commission"). The only inmates who are eligible for parole consideration are those who committed capital sexual battery prior to October 1, 1995, capital sexual murder prior to October 1, 1994, or another crime prior to October 1, 1983.[1] Approximately 5,200 Florida

[1] See s. 921.002(1)(e), F.S., requiring a person convicted of a crime that occurred on or after October 1, 1988, to serve at least 85 percent of the sentence and excluding such persons from eligibility for parole under chapter 947, F.S. This section is a

inmates are still eligible for parole consideration because parole applied to their offense at the time it was committed.[2]

An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections. As of December 31, 2012, 350 offenders were actively supervised on parole from Florida sentences.[3]

The parole process begins with an initial interview that is the first step in setting the inmate's presumptive parole release date (PPRD). The date of the initial interview depends upon the length and character of the parole-eligible sentence. The PPRD is set by the commission after a parole examiner reviews the inmate's file, interviews the inmate, and makes an initial recommendation.[4]

In many cases, the commission will establish a PPRD that does not result in release of the inmate within a short period of time. A release order by the commission may also be altered in two other ways before it is implemented: (1) it may be vacated pursuant to s. 947.16(4), F.S., by a sentencing court that has retained jurisdiction over the offender; or (2) it may be modified by the commission after considering the objections of a sentencing court that has not retained jurisdiction pursuant to s. 947.1745(6), F.S. In all three situations, the inmate is entitled to a subsequent reinterview. The time frame for holding a reinterview (and any further reinterviews) is determined by the inmate's criminal history:

- An inmate who was not convicted of murder or attempted murder, sexual battery or attempted sexual battery, or serving a 25-year minimum mandatory sentence under s. 775.082, F.S., must be reinterviewed within 2 years after the initial interview and every 2 years thereafter.[5]
- An inmate who was convicted of one of the above offenses may have a reinterview scheduled within 7 years after the initial interview and every 7 years thereafter if the commission makes a written finding that it is not reasonable to expect that parole will be granted during the following years.[6]

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each reinterview. At this hearing, the commission considers the written recommendation of the parole examiner, documentary evidence, and any testimony presented on behalf of the victim or the inmate. Although the inmate is not entitled to appear at the hearing, he

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revision of ch. 83-87, s. 2, Laws of Fla. (1983), which mandated that all criminals convicted of non-capitol offenses occurring after October 1, 1983, are ineligible for parole.

[2] Florida Parole Commission, *Annual Report: 2011-2012*, p. 21, *available at* https://fpc.state.fl.us/PDFs/FPCannualreport201112.pdf.

[3] Florida Department of Corrections, *Community Supervision Population Monthly Status Report*, p. 2, http://www.dc.state.fl.us/pub/spop/2012/12/tab01.html (last visited Mar. 28, 2013).

[4] Section 947.172, F.S.

[5] Section 947.16(g), F.S.

[6] *Id*.

or she may be represented by an attorney. It is also common for the victim or victim's representative and law enforcement representatives to appear.

III. Effect of Proposed Changes:

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to extend the commission's authority to increase the interval between parole consideration re-interviews to include cases in which the offender was convicted of: (1) kidnapping or attempted kidnapping; or (2) a completed or attempted offense of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, when a human being is present and a sexual act is completed or attempted. The interval may be increased from the standard 2 years to 7 years if the commission makes a written finding that it is unlikely to grant parole to the offender.

The groups that would be most affected by this bill are victims and their families, parole-eligible inmates and their families, and the commission itself. For victims, reduction of the frequency of an opportunity for parole can be expected to lessen the stress associated with potential release of the offender. Because victims and families often attend the parole hearings, there is also a potential financial savings. For offenders, the normally-scheduled interviews would be reduced if their record indicates that granting of parole is not likely. For the commission, there would be some reduction in workload and the opportunity to focus on the cases that are more frequently reviewed.

The bill has an effective date of July 1, 2013.

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:

Although parole is a matter of grace and is not a right, alteration of parole-consideration procedures must be considered in light of the constitutional prohibition against ex post facto punishment. In *California Department of Corrections v. Morales*, 514 U.S. 499 (1995), the United States Supreme Court held that a California statute increasing the interval between parole interviews did not violate the ex post facto clause. Subsequent cases have relied on *Morales* to uphold the constitutionality of current s. 947.174(1)(b), F.S., which permitted an increase of the interview interval from two to

five years.[7] Because there is no legal distinction between increasing the interval from two to five years and increasing it from five to seven years, the bill's provisions do not violate the ex post facto clauses of the United States and Florida constitutions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Holding parole hearings less frequently would reduce the costs incurred by persons who would attend the hearings. This could include victims and their families and representatives, victims' advocacy groups, law enforcement agencies, and the families and representatives of inmates. The amount of reduction cannot be quantified because a reduction of frequency would depend upon the individual merits of the inmate's case and the cost to attend hearings is variable depending upon individual circumstances.

C. Government Sector Impact:

Authorization to reduce the frequency of parole hearings has the potential to reduce the number of hearings conducted by the commission, which may result in cost savings or reallocation of resources to other cases. If the interview interval for an inmate is changed from two years to seven years, there would be five fewer hearings over a fourteen year period. The total amount of any savings cannot be determined until the commission considers individual cases and makes a decision on whether to apply its new authority to the case. The commission indicates that in Fiscal Year 2015-2016 the bill could result in 44 inmates having their next interview date set within seven years rather than within two years.[8] However, the bill can have no fiscal impact before Fiscal Year 2015-2016 because it does not alter interview dates that are already scheduled at the time of the effective date.

There would be additional cost to incarcerate an inmate whose interview schedule is extended from two years to seven years if he or she is paroled at the seven year interview interval and would also have been paroled if the interview had been conducted earlier. The cost of incarcerating such an inmate would be approximately $15,500 for each extra year of incarceration.[9] However, it is anticipated that few inmates would fall into this category because the expanded interview interval applies only to those inmates whom the commission finds are unlikely to be granted parole.

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[7] See *Tuff v. State*, 732 So. 2d 461 (Fla. 3d DCA 1999) and *Pennoyer v. Briggs*, 206 Fed.Appx. 962 (11th Cir. 2006).
[8] Florida Parole Commission Proposal Analysis and Economic Impact of HB 685 and SB 742 (February 18, 2013), on file with the Senate Committee on Criminal Justice.
[9] The average annual cost per inmate for adult male custody DOC facilities, except private facilities, is approximately $15,500. Department of Corrections Budget Summary (Fiscal Year 2010-2011), available at http://www.dc.state.fl.us/pub/annual/1011/budget.html (last viewed on February 22, 2013).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Evers

2-00741-13 2013742__

A bill to be entitled

An act relating to parole interview dates for certain inmates; amending ss. 947.16, 947.174, and 947.1745, F.S.; extending from 2 years to 7 years the period between parole interview dates for inmates convicted of committing certain specified crimes; reenacting s. 947.165(1), F.S., relating to the development and implementation by the Parole Commission of objective parole guidelines to serve as the criteria upon which parole decisions are to be made, to incorporate the amendments made to s. 947.1745, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 947.16, Florida Statutes, is amended to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.—

(4) A person who has become eligible for an initial parole interview and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, burglary of a dwelling or burglary of a structure or conveyance in which a human being is present, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act,

2-00741-13 2013742__

lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, ~~then~~ the jurisdiction of the trial court judge ~~as provided herein~~ applies to the first one-third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction of the trial court judge ~~as provided herein~~ applies to one-third of the total consecutive sentences imposed.

(g) The decision of the original sentencing judge or, in her or his absence, the chief judge of the circuit, to vacate any parole release order as provided in this section is not appealable. An ~~Each~~ inmate whose parole release order has been vacated by the court must ~~shall~~ be reinterviewed within 2 years after the date of receipt of the vacated release order and every 2 years thereafter, or earlier by order of the court retaining jurisdiction. However, an ~~each~~ inmate whose parole release order has been vacated by the court and who has been:

1. Convicted of murder or attempted murder;

2. Convicted of sexual battery or attempted sexual battery;

~~or~~

3. Convicted of kidnapping or attempted kidnapping;

4. Convicted of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, or the attempt of any of these crimes, in which a human being is present and a sexual act is attempted or completed; or

5.~~3.~~ Sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082,

shall be reinterviewed once within 7 years after the date of receipt of the vacated release order and once every 7 years thereafter, if the commission finds that it is not reasonable to expect that parole would be granted during the following years and states the bases for the finding in writing. For an ~~any~~ inmate who is within 7 years of his or her tentative release date, the commission may establish a reinterview date before ~~prior to~~ the 7-year schedule.

Section 2. Paragraph (b) of subsection (1) of section 947.174, Florida Statutes, is amended to read:

947.174 Subsequent interviews.—

(1)

(b) For an ~~any~~ inmate convicted of murder, attempted murder, sexual battery, or attempted sexual battery, kidnapping or attempted kidnapping; or of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering or the attempt of any of these crimes, in which a human being is present and a sexual act is attempted or completed, or for an ~~any~~ inmate who has been sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082, and whose presumptive parole release date is more than 7 years after the

date of the initial interview, a hearing examiner shall schedule an interview for review of the presumptive parole release date. The interview must ~~shall~~ take place once within 7 years after the initial interview and once every 7 years thereafter if the commission finds that it is not reasonable to expect that parole will be granted at a hearing during the following years and states the bases for the finding in writing. For an ~~any~~ inmate who is within 7 years of his or her tentative release date, the commission may establish an interview date before the 7-year schedule.

Section 3. Subsection (6) of section 947.1745, Florida Statutes, is amended to read:

947.1745 Establishment of effective parole release date.—If the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:

(6) Within 90 days before the effective parole release date interview, the commission shall send written notice to the sentencing judge of an ~~any~~ inmate who has been scheduled for an effective parole release date interview. If the sentencing judge is no longer serving, the notice must be sent to the chief judge of the circuit in which the offender was sentenced. The chief judge may designate any circuit judge within the circuit to act in the place of the sentencing judge. Within 30 days after receipt of the commission's notice, the sentencing judge, or the designee, shall send to the commission notice of objection to parole release, if the judge objects to the ~~such~~ release. If there is an objection by the judge, the ~~such~~ objection may constitute good cause in exceptional circumstances as described

in s. 947.173, and the commission may schedule a subsequent review within 2 years, extending the presumptive parole release date beyond that time. However, for an inmate who has been:

(a) Convicted of murder or attempted murder;

(b) Convicted of sexual battery or attempted sexual battery; ~~or~~

(c) Convicted of kidnapping or attempted kidnapping;

(d) Convicted of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, or the attempt of any of these crimes, in which a human being is present and a sexual act is attempted or completed; or

(e) ~~(c)~~ Sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082,

the commission may schedule a subsequent review under this subsection once every 7 years, extending the presumptive parole release date beyond that time if the commission finds that it is not reasonable to expect that parole would be granted at a review during the following years and states the bases for the finding in writing. For an ~~any~~ inmate who is within 7 years of his or her release date, the commission may schedule a subsequent review before ~~prior to~~ the 7-year schedule. With any subsequent review the same procedure outlined above will be followed. If the judge remains silent with respect to parole release, the commission may authorize an effective parole release date. This subsection applies if the commission desires to consider the establishment of an effective release date without delivery of the effective parole release date interview. Notice of the effective release date must be sent to the

sentencing judge, and either the judge's response to the notice must be received or the time period allowed for such response must elapse before the commission may authorize an effective release date.

Section 4. For the purpose of incorporating the amendment made by this act to section 947.1745, Florida Statutes, in a reference thereto, subsection (1) of section 947.165, Florida Statutes, is reenacted to read:

947.165 Objective parole guidelines.—

(1) The commission shall develop and implement objective parole guidelines which shall be the criteria upon which parole decisions are made. The objective parole guidelines shall be developed according to an acceptable research method and shall be based on the seriousness of offense and the likelihood of favorable parole outcome. The guidelines shall require the commission to aggravate or aggregate each consecutive sentence in establishing the presumptive parole release date. Factors used in arriving at the salient factor score and the severity of offense behavior category shall not be applied as aggravating circumstances. If the sentencing judge files a written objection to the parole release of an inmate as provided for in s. 947.1745(6), such objection may be used by the commission as a basis to extend the presumptive parole release date.

Section 5. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parole Interview Dates

Bill Number 742 *(if applicable)*

Name Kevin Reilly

Amendment Barcode *(if applicable)*

Job Title Legislative Director

Address 4070 ESPlanade Way
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Tall ahassee FL
City *State* *Zip*

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Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Parole Commission

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

I respectfully request that **Senate Bill #742**, relating to Parole Interview Dates for Certain Inmates, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Greg Evers
Florida Senate, District 2

SENATE APPROPRIATIONS
RECEIVED
13 APR 11 AM 11:15
SENT TO CHAIRMAN
STAFF DIR. _____ STAFF _____

S-020 (03/2004)

File signed original with committee office

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 Committee on Appropriations

BILL:	PCS/CS/SB 844 (873636)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Grimsley
SUBJECT:	Medicaid Fraud
DATE:	April 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Johnson	Burgess	BI	**Favorable**
3.	Brown	Pigott	AHS	**Fav/CS**
4.		Hansen	AP	**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:

PCS/CS/SB 844 modifies existing statutory provisions relating to fraud and abuse, provider controls, and accountability in the Medicaid program.

The bill is expected to have an indeterminate fiscal impact on the Agency for Health Care Administration (AHCA). See Section V.

The bill:

- Provides that the AHCA may enroll as a Medicaid provider a provider located outside the state of Florida if the provider is actively licensed in Florida and provides diagnostic services through telecommunications and information technology in order to provide clinical health care at a distance;
- Amends the Medicaid Third-party Liability Act to ensure compliance with federal law;
- Increases the records retention time for all medical and Medicaid-related records from five to six years for Medicaid providers;

- Requires Medicaid providers to report a change in any principal of the provider to the AHCA in writing no later than 30 days after the change occurs;
- Defines "administrative fines" for purposes of liability for payment of such fines in the event of a change of ownership;
- Authorizes, rather than requires, the AHCA to perform onsite inspections of the service location of a provider applying for a provider agreement to determine that provider's ability to provide services in compliance with Medicaid regulations;
- Provides a definition for principals of a provider with a controlling interest for hospitals and nursing homes, for purposes of conducting criminal background checks;
- Removes certain exceptions to background screenings requirements for Medicaid providers;
- Expands the list of offenses for which the AHCA may terminate the participation of a Medicaid provider;
- Requires the AHCA to impose the sanction of termination for cause against providers that voluntarily relinquish their Medicaid provider numbers under certain circumstances;
- Requires that when the AHCA determines that an overpayment has been made, the AHCA must base its determination solely on the information available before the issuance of an audit report and upon contemporaneous records;
- Clarifies when the interest rate accrues on provider payments paid by the AHCA that had been withheld on a suspicion of fraud or abuse, if it is determined that there was no fraud or abuse;
- Removes the 30-day provision related to records that may be presented to contest an overpayment or sanction;
- Requires overpayments or fines be paid to the AHCA within 30 days after the date of the final order;
- Clarifies the scope of immunity from civil liability for persons who report fraudulent acts or suspected fraudulent acts;
- Amends s. 624.351, F.S., relating to the Medicaid and Public Assistance Fraud Strike Force, to authorize members or their designees to serve on the strike force and to provide that s. 624.351, F.S., is repealed effective June 30, 2014; and
- Repeals s. 624.352, F.S., relating to interagency agreements to detect and deter Medicaid and public assistance fraud, effective June 30, 2014.

The bill has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 409.907, 409.913, and 409.920.

II. Present Situation:

Health Care Fraud

In 2009, the Legislature passed CS/CS/CS/SB 1986 to comprehensively address systematic health care fraud in Florida. That bill increased the Medicaid program's authority to address fraud, particularly as it relates to home health services and health care facility and health care practitioner standards to keep fraudulent actors from obtaining a health care license in Florida.

The bill also created disincentives to commit Medicaid fraud and created additional criminal felonies for committing health care fraud.

With more than three years of history with the implementation of CS/CS/CS/SB 1986, some changes have been identified that would enhance Florida's efforts to prevent health care fraud and abuse in the Medicaid program. This bill addresses some of the gaps in enforcement authority, strengthens the reporting requirements by Medicaid providers and Medicaid managed care organizations, and defines the consequences for failure to comply with the requirements.

Regulatory Authority of AHCA

The AHCA regulates hospitals and nursing homes under the authority of chapters 395 and 400, F.S., respectively, along with dozens of other health care entities such as clinical laboratories, ambulatory surgical centers, hospices, and home health agencies. General licensing provisions for these providers are found in part II of ch. 408, F.S. The Bureau for Health Facility Regulation conducts the activities that certify and license the entities under the AHCA's jurisdiction.

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled persons with costs of nursing facility care and other medical expenses. The AHCA is designated as the single state agency responsible for Medicaid. Medicaid serves approximately 3.3 million people in Florida. The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for covered goods and services and only for individuals who are eligible for Medicaid assistance from Medicaid. Section 409.907, F.S., establishes requirements for Medicaid provider agreements, which include background screening requirements, notification requirements for change of ownership of a Medicaid provider, authority for AHCA site visits of provider service locations, and surety bond requirements.

Under s. 409.913, F.S., the AHCA is responsible for overseeing the integrity of the Medicaid program, to ensure that fraudulent and abusive behavior and neglect of recipients is minimized, and to recover overpayments and impose sanctions as appropriate.

Sections 409,920, 409.9201, 409.9203, and 409.9205, F.S., contain provisions relating specifically to Medicaid fraud. A person who provides the state with information about fraud or suspected fraud by a Medicaid provider, including a managed care organization, is immune from civil liability for providing that information unless the person knew the information was false or acted with reckless disregard for the truth or falsity of the information.[1]

Part IV of ch. 409, F.S., requires all Medicaid recipients to enroll in a managed care plan unless they are specifically exempted. The Statewide Medicaid Managed Care (SMMC) program includes a long-term care managed care component and a managed medical assistance

[1] *See* s. 409.920(8), F.S.

component. The law directs the AHCA to begin implementation of the long-term managed care program by July 1, 2012, with full implementation in all regions of the State by October 1, 2013. The state received federal approval of this component on February 1, 2013.[2] Although the AHCA has received conditional approval,[3] the AHCA is still awaiting final approval of the managed medical assistance program; full implementation is anticipated by October 1, 2014.

Background Screening

Chapter 435, F.S., establishes standards for background screening for employment. Section 435.03, F.S., sets standards for Level 1 background screening. Level 1 background screening includes, but is not limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

Level 2 background screenings includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement and national criminal history records checks through the Federal Bureau of Investigation. They may also include local criminal records checks through local law enforcement agencies. Section 435.04(2), F.S., lists the offenses that will disqualify an applicant from employment.

Section 408.809, F.S., establishes background screening requirements and procedures for entities licensed by the AHCA. The AHCA must conduct Level 2 background screening for specified individuals. Each person subject to this section is subject to Level 2 background screening every five years. This section of law also specifies additional disqualifying offenses beyond those included in s. 435.04(2), F.S.

Medicaid and Third-party Recovery in Florida

Section 409.910, F.S. is known as the Medicaid Third-Party Liability Act (Act). Pursuant to the Act, third-party benefits for medical services are primary to any medical assistance provided to a recipient by Medicaid. As such, a Medicaid recipient who receives a settlement, award, or judgment in a third-party tort action is required to reimburse the ACHA for any related Medicaid medical costs. The medical costs are calculated as the lesser of 37.5 percent of the total recovery or the total amount of medical assistance paid by Medicaid. The recipient cannot contest the amount designated by the ACHA as recovered medical expense damages.

The U.S Supreme Court, in *Wos v. E.M.A.*, recently invalidated a North Carolina statute that authorized the recovery of third-party benefits from Medicaid recipients.[4] North Carolina's Medicaid third-party liability statute provides that the state will be paid from a tort settlement or

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[2] Agency for Health Care Administration, *February 1, 2013 Waiver Approval Letter*, http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Signed_approval_FL0962_new_1915c_02-01-2013.pdf (Last visited on March 4, 2013).
[3] Agency for Health Care Administration, *February 20, 2013 Agreement in Principle Letter*, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Letter_from_CMS_re_Agreement_in_Principal_2013-02-20.pdf (Last visited on March 4, 2013).
[4] *Wos v. E.M.A. ex rel. Johnson*, ___ U.S. ___, 2013 WL 1131709 (U.S. March 20, 2013).

judgment the lesser of the total amount expended on the recipient's behalf by Medicaid or 33 percent of the total settlement or judgment amount.[5] The Court held that North Carolina's statute was preempted by the federal anti-lien provision due to the fact that the state statute created an irrebuttable, one-size-fits-all statutory presumption that one-third of a tort recovery is attributable to medical expenses. Such an irrebuttable presumption was found to be incompatible with the federal Medicaid Act's mandate that a state may not demand any portion of a beneficiary's tort recovery except the share that is attributable to medical expenses.[6]

Medicaid and Public Assistance Fraud Strike Force

In 2010 the Legislature found that there was a need to develop and implement a statewide strategy to coordinate state and local agencies, law enforcement entities, and investigative units in order to increase the effectiveness of programs and initiatives dealing with the prevention, detection, and prosecution of Medicaid and public assistance fraud.[7] Interagency agreements for the coordination of prevention, investigation, and prosecution of Medicaid and public assistance fraud were executed by various agencies.[8] Thus, the Medicaid and Public Assistance Fraud Strike Force was created within the Department of Financial Services to oversee and coordinate state and local efforts to eliminate Medicaid and public assistance fraud and to recover state and federal funds.

Telemedicine

Telemedicine utilizes various advances in communication technology to provide healthcare services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include:[9]

- **Primary Care and Specialist Referral Services** – Telemedicine in this context involves a primary care or allied health professional providing consultation with a patient or a specialist assisting the primary care physician with a diagnosis. The process may involve live interactive video or the use of store and forward transmission of diagnostic images, vital signs and/or video clips with patient data for later review.
- **Remote patient monitoring** – Telemedicine in this context includes home health services and uses devices to remotely collect and send data to home health agencies or remote diagnostic testing facilities.

[5] N.C. Gen. Stat. Ann. s. 108A-57(a).
[6] The federal Medicaid Act requires states to have in effect laws pursuant to which states have the right to recover third party benefits for medical assistance provided by the state Medicaid program. *See* 42 U.S.C. § 1396a(a)(25)(H). Federal law also mandates that state Medicaid programs must require recipients to assign to the state any rights the recipient has to benefits from third parties related to medical care. *See* 42 U.S.C. § 1396k(a)(1)(A). Notwithstanding the foregoing provisions, the Medicaid Act's "anti-lien provision" prohibits states from imposing a lien on the property of a recipient prior to his death on account of medical assistance provided by the state's Medicaid program. *See* 42 U.S.C. § 1396p(a)(1).
[7] *See* s. 624.351, F.S.
[8] *See* s. 624.352, F.S.
[9] American Telemedicine Association, *What is Telemedicine*, http://www.americantelemed.org/learn/what-is-telemedicine (last visited Mar. 26, 2013).

- **Consumer medical and health information** – In this context, telemedicine offers consumers specialized health information and on-line discussion groups for peer-to-peer support.
- **Medical education** – In this context, telemedicine provides continuing medical education credits.

Telemedicine Services in Florida

Since 2006, the Children's Medical Services Network (CMS Network) has provided specified telemedicine services under Florida's 1915(b) Medicaid Managed Care Waiver in compliance with federal and state regulations. Authorized CMS Network telemedicine services include certain evaluation and consultation services already covered by the Medicaid state plan.

The Child Protection Team (CPT) program under Children's Medical Services also utilizes a telemedicine network. The CPT is a medically directed multi-disciplinary program that works with local sheriffs offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.[10] The telemedicine network connects the child in one location ("remote site") where a registered nurse greets the child and assists with the examination by the health care professionals in another location ("hub site").[11] The hub site is a comprehensive medical facility with a wide range of medical and interdisciplinary staff that can assist with the exam and review. Special equipment allows for live assessments between the remote and hub sites, including professional participation from multiple locations.[12]

The use of telemedicine for the CPTs is further defined under rule at Rule 64C-8.001, F.A.C. Rule 64C-8.003, F.A.C, allows medical diagnosis and evaluation to be conducted in person or through telemedicine. However, the use of telemedicine specifically requires the presence of a CMS-approved physician or advanced registered nurse practitioner at the hub site and a registered nurse at the remote site.

In December 2010, Florida Medicaid submitted a state plan amendment to the federal Centers for Medicare and Medicaid Services to allow for the provision of specified physician, dental, mental health, and substance abuse telemedicine services. The amendment was requested because the program had been reimbursing only the physician rendering services using telemedicine, not the provider physically with the patient. The state plan amendment specifies that covered telemedicine services under Medicaid must include, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the Medicaid recipient and the health care practitioner.[13] Telephone conversations, chart review, electronic mail messages or facsimile transmissions are not considered telemedicine.[14]

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[10] Florida Department of Health, *Child Protection Teams*, http://www.cms-kids.com/families/child_protection_safety/child_protection_teams.html (last visited Mar. 26, 2013).
[11] Florida Department of Health, *CPT Telemedicine and Telehealth Network*, http://www.cms-kids.com/families/child_protection_safety/cpt_telemedicine.html (last visited Mar. 26, 2013).
[12] Florida Department of Health, *Child Protection Team Telemedicine Network Fact Sheet*, http://www.cms-kids.com/families/child_protection_safety/documents/cpt_telemedicine_fact_sheet.pdf (last visited Mar. 26. 2013).
[13] Florida Medicaid State Plan, Attachment 3.1-B, Page 11.
[14] Ibid.

Only a specific list of provider types are eligible for Medicaid reimbursement for telemedicine services and such providers or entities must be licensed under chs. 394, 397, 458, 459, 464, 466, 490, or 491, F.S.[15] The state plan amendment was approved in March 2011 and was retroactively effective to October 1, 2010. The 2012-2015 Model Contracts with Medicaid Managed Care Organizations, however, limit telemedicine services to behavioral health care and dental services.[16,17]

The contract language specifically excludes reimbursement for telephone conversations, video cell phone interactions, electronic mail messages, facsimile transmission, telecommunications with the enrollee at a location other than a "spoke site," which is the provider office location where an approved service is being furnished.[18] Reimbursement is also excluded for "store and forward" visits and consultations that are transmitted after the Medicaid recipient is no longer available.[19] Medicaid does not reimburse for the costs or fees of any of the equipment necessary to provide the services.

Fee-for-service (FFS) Medicaid providers may provide telemedicine services within the requirements of the current Medicaid Services Coverage and Limitations Handbook.[20] Currently, the approved FFS providers are physicians, dental providers, and behavioral health care providers.[21] The managed care contracts are currently being amended to include the provision of telemedicine services by physicians.[22]

Florida law allows the Florida Board of Medicine (Board) to establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedures manuals. In 2003, the Board adopted Rule 64B8-9.014, F.A.C., "Standards for Telemedicine Prescribing Practice." The rule prohibits prescribing based solely on an electronic questionnaire. The rule permits a doctor to provide treatment recommendations, include issuing a prescription based on a documented patient evaluation, discussion between the patient and physician regarding treatment, and treatment options and maintenance of appropriate medical records.

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[15] The eligible provider types are: physicians, dentists, psychiatric nurses, registered nurses, advanced registered nurse practitioners, physician's assistants, clinical social workers, mental health counselors, marriage and family therapists, masters level certified addiction professionals (CAP) and psychologists.

[16] According to the February 17, 2010 minutes of a Medicaid Medical Advisory Committee meeting, Medicaid reimburses telemedicine dental services for oral prophylaxis, topical fluoride application, oral hygiene instructions when a dental hygienists performs these services via video teleconferencing with a supervising licensed dentist.

[17] Agency for Health Care Administration, *House Bill 499/Senate Bill 898 Bill Analysis and Economic Impact Statement,* p. 2, (Mar. 27, 2013) (on file with the Senate Health Policy Committee).

[18] Ibid.

[19] Agency for Health Care Administration, 2012-2015 Health Plan Model Contract Attachment II – Core Contract Provisions, Paragraph 22, http://ahca.myflorida.com/MCHQ/Managed_Health_Care/MHMO/docs/contract/1215_Contract/2012-2015/Jan2013/2012-15_HP-ContractAtt-II_GEN-AMEND1-JAN-2013-CLEAN.pdf (last visited Mar. 26, 2013).

[20] Agency for Health Care Administration, *supra*, note 9, at 2.

[21] Ibid.

[22] Agency for Health Care Administration, *supra*, note 9, at 2.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 409.907, F.S., relating to Medicaid provider agreements, to require Medicaid providers to retain all medical and Medicaid-related records for six years, rather than the current statutory retention period of five years, consistent with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 administrative simplification regulations.[23]

The bill requires a Medicaid provider to report in writing any change of any principal of the provider whose ownership interest is equal to five percent or more to the AHCA no later than 30 days after the change occurs. The bill specifies who is included in the term "principal." The definition of a controlling interest is already defined by statute under s. 408.803(7), F.S., and includes:

- The applicant or licensee;
- A person or entity that serves as an officer of, is on the board or has a five percent or greater ownership interest in the applicant or licensee; or
- A person or entity that serves as an officer of, is on the board, or has a five percent or greater management interest in the management company or other entity, related or unrelated, that the applicant or licensee contracts with to manage the provider.
- The term does not include a voluntary board member.

The bill clarifies the statutory provisions relating to the liability of Medicaid providers in a change of ownership for outstanding overpayments, administrative fines, and any other moneys owed to the AHCA. The bill defines "administrative fines" to include any amount identified in any notice of a monetary penalty or fine that has been issued by the AHCA or any other regulatory or licensing agency that governs the provider.

The requirement for the AHCA to conduct random onsite inspections of Medicaid providers' service locations within 60 days after receipt of a fully complete new provider's application and prior to making the first payment to the provider for Medicaid services, is amended to authorize, rather than require, the AHCA to perform onsite inspections. The inspection would be conducted prior to the AHCA entering into a Medicaid provider agreement with the provider and would be used to determine the applicant's ability to provide services in compliance with the Medicaid program and professional regulations. The law currently only requires the AHCA to determine the applicant's ability to provide the services for which they will seek Medicaid payment.

The bill also removes an exception to the current onsite-inspection requirement for a provider or program that is licensed by the AHCA, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Families, since the selection of providers for onsite inspections is no longer a random selection, but is left up to the discretion of the AHCA under the bill.

[23] *See* 45 CFR 164.316(b)(2). Found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=be9877c2440a17a8ebe3b02b0948a06a&rgn=div8&view=text&node=45:1.0.1.3.79.3.27.8&idno=45> (Last visited on March 1, 2013).

The bill amends existing surety bond requirements for certain Medicaid providers. The bill clarifies that the additional bond required by the AHCA, if a provider's billing during the first year exceeds the bond amount, need not exceed $50,000 for certain providers. A provider could have a bond greater than $50,000, if the provider so elects.

The bill amends the requirements for a criminal history record check of each Medicaid provider, or each principal of the provider, to remove an exemption from such checks for hospitals, nursing homes, hospices, and assisted living facilities. The bill specifies that for hospitals and nursing homes, the principals of the provider are those who meet the definition of a controlling interest in s. 408.803, F.S., under the general licensing provisions for health care facilities regulated by the AHCA.

The bill removes the provision that proof of compliance with Level 2 background screening under ch. 435, F.S., conducted within 12 months before the date the Medicaid provider application is submitted to the AHCA, satisfies the requirements for a criminal history background check. This conforms to screening provisions in ch. 435, F.S., and ch. 408, F.S.

The bill provides that the AHCA may enroll as a Medicaid provider a provider located outside the state of Florida if the provider is actively licensed in Florida and provides diagnostic services through telecommunications and information technology in order to provide clinical health care at a distance.

Section 2 of the bill amends s. 409.910, F.S., to address the recent U.S. Supreme Court ruling in *Wos v. E.M.A.* Section 409.910, F.S., creates an irrebuttable presumption that the amount that the ACHA is entitled to from a Medicaid recipient's judgment, award, or settlement in a tort action is the lesser of 37.5 percent of the total recovery or the total amount of medical assistance paid by Medicaid. This provision is similar to the North Carolina provision recently struck down by the Court. To ensure compliance with federal law, the bill amends this section to create a presumption of accuracy as to the ACHA's determination of the reimbursement amount but allows this determination to be rebutted by clear and convincing evidence. The bill establishes the mechanism for these challenges by providing Medicaid recipients with the right to an administrative hearing at the Division of Administrative Hearings (DOAH) to contest the amount of AHCA's recoupment. The bill establishes Leon County as venue for these hearings and the First District Court of Appeal as venue for any related appeals. The bill also provides that each party is to bear its own attorney fees and costs.

Section 3 of the bill amends s. 409.913, F.S., relating to oversight of the integrity of the Medicaid program. The bill amends the length of time that Medicaid providers are required to retain their records to be consistent with federal law. Medicaid providers are required to retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for six years, rather than the current statutory retention period of five years.

The bill deletes a requirement that the AHCA *immediately* terminate participation of a Medicaid provider that has been convicted of certain offenses. In order to terminate a provider immediately, the AHCA must show an immediate harm to the public health, which is not always possible. The AHCA still must terminate a Medicaid provider from participation in the Medicaid

program, unless the AHCA determines that the provider did not participate or acquiesce in the offense. The change will resolve a current conflict with the Administrative Procedure Act.[24]

The AHCA may seek civil remedies or impose administrative sanctions if a provider *has been convicted* of any of the following offenses:

- A criminal offense under federal law or the law of any state relating to the practice of the provider's profession;
- An offense listed in s. 409.907(10), F.S., relating to factors the AHCA may consider when reviewing an application for a Medicaid provider agreement, which includes:
  - Making a false representation or omission of any material fact in making an application for a provider agreement;
  - Exclusion, suspension, termination, or involuntary withdrawal from participation in any Medicaid program or other governmental or private health care or health insurance program;
  - Being convicted of a criminal offense relating to the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program including the performance of management or administrative services relating to the delivery of goods or services under any such program;
  - Being convicted of a criminal offense under federal or state law related to the neglect or abuse of a patient in connection with the delivery of any health care goods or services;
  - Being convicted of a criminal offense under federal or state law related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;
  - Being convicted of any criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
  - Being convicted of a criminal offense under federal or state law punishable by imprisonment of one year or more which involves moral turpitude;
  - Being convicted in connection with the interference or obstruction of any investigation into any criminal offense listed above;
  - Violation of federal or state laws, rules, or regulations governing any Medicaid program, the Medicare program, or any other publicly funded federal or state health care or health insurance program, if they have been sanctioned accordingly;
  - Violation of the standards or conditions relating to professional licensure or certification or the quality of services provided; or
  - Failure to pay fines and overpayments under the Medicaid program;
- An offense listed in s. 408.809(4), F.S., relating to background screening of licensees, which includes the following offenses or any similar offense of another jurisdiction:
  - Any authorizing statutes, if the offense was a felony;
  - Chapter 408, F.S., if the offense was a felony;
  - Section 409.920, F.S., relating to Medicaid provider fraud;
  - Section 409.9201, F.S., relating to Medicaid fraud;
  - Section 741.28, F.S., relating to domestic violence;

[24] *See* s. 120.569(2)(n), F.S. which requires that "if any agency head finds that an immediate danger to the public health , safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date ordered."

- Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems;
- Section 817.234, F.S., relating to false and fraudulent insurance claims;
- Section 817.505, F.S., relating to patient brokering;
- Section 817.568, F.S., relating to criminal use of personal identification information;
- Section 817.60, F.S., relating to obtaining a credit card through fraudulent means;
- Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony;
- Section 831.01, F.S., relating to forgery;
- Section 831.02, F.S., relating to uttering forged instruments;
- Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes;
- Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes;
- Section 831.30, F.S., relating to fraud in obtaining medicinal drugs; or
- Section 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony;

- An offense listed in s. 435.04(2), F.S., relating to employee background screening, which includes the following offenses or any similar offense of another jurisdiction:
  - Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct;
  - Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct;
  - Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults;
  - Section 782.04, F.S., relating to murder;
  - Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child;
  - Section 782.071, F.S., relating to vehicular homicide;
  - Section 782.09, F.S., relating to killing of an unborn quick child by injury to the mother;
  - Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony;
  - Section 784.011, F.S., relating to assault, if the victim of the offense was a minor;
  - Section 784.03, F.S., relating to battery, if the victim of the offense was a minor;
  - Section 787.01, F.S., relating to kidnapping;
  - Section 787.02, F.S., relating to false imprisonment;
  - Section 787.025, F.S., relating to luring or enticing a child;
  - Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings;
  - Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person;
  - Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school;
  - Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property;
  - Section 794.011, F.S., relating to sexual battery;

- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority;
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
- Chapter 796, F.S., relating to prostitution;
- Section 798.02, F.S., relating to lewd and lascivious behavior;
- Chapter 800, F.S., relating to lewdness and indecent exposure;
- Section 806.01, F.S., relating to arson;
- Section 810.02, F.S., relating to burglary;
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony;
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony;
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony;
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony;
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult;
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony;
- Section 826.04, F.S., relating to incest;
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child;
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child;
- Former s. 827.05, F.S., relating to negligent treatment of children;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 843.01, F.S., relating to resisting arrest with violence;
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication;
- Section 843.12, F.S., relating to aiding in an escape;
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions;
- Chapter 847, F.S., relating to obscene literature;
- Section 874.05(1), F.S., relating to encouraging or recruiting another to join a criminal gang;
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor;
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct;
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm;
- Section 944.40, F.S., relating to escape;
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner;
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility;
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs; or
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

The bill amends provisions relating to noncriminal actions of Medicaid providers for which the AHCA may impose sanctions, to include the act of *authorizing* certain services that are

inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality, or *authorizing* certain requests and reports that contain materially false or incorrect information. The bill also authorizes the AHCA to sanction a provider if the provider is charged by information or indictment with any offense listed above. The AHCA may impose sanctions if the provider or certain persons affiliated with the provider participated or acquiesced in the proscribed activity.

The bill provides that if a Medicaid provider voluntarily relinquishes its Medicaid provider number after receiving notice of an audit or investigation for which the sanction of suspension or termination will be imposed, the AHCA must impose the sanction of termination for cause against the provider. Under current law, if a Medicaid provider receives notification that it is going to be suspended or terminated, the provider is able to voluntarily terminate its contract. By doing so, a provider has the ability to avoid sanctions of suspension or termination, which would affect the ability of the provider to reenter the program in the future. Current law gives the secretary of the AHCA authority to make a determination that imposition of a sanction is not in the best interest of the Medicaid program, in which case a sanction may not be imposed.

The bill specifies that when the AHCA is making a determination that an overpayment has occurred, the determination must be based solely upon information available before it issues the audit report and, in the case of documentation obtained to substantiate claims for Medicaid reimbursement, based solely upon contemporaneous records.

In addition, the bill provides that a provider may not present records to contest an overpayment or sanction unless the records are contemporaneous and, if requested during the audit process, were provided to the AHCA or its agent. Also, all documentation to be offered as evidence in an administrative hearing on an administrative sanction (in addition to Medicaid overpayments) must be exchanged by all parties at least 14 days before the administrative hearing or excluded from consideration.

The bill clarifies when interest will accrue on provider payments withheld by the AHCA based on suspected fraud or criminal activity, if it is determined later that there was no fraud or that a crime did not occur. Interest on provider payments to be paid after an investigation will accrue at 10 percent a year, beginning after the 14th day after the determination. A provision relating to the placement of funds in a suspended account held by the AHCA is deleted and a payment deadline of 14 days to the provider is removed. Payment arrangements for overpayments and fines owed to the AHCA must be made within 30 days after the date of the final order and are not subject to further appeal.

The bill requires the AHCA to terminate a provider's participation in the Medicaid program if the provider fails to pay a fine within 30 days after the date of the final order imposing the fine. The time within which a provider must reimburse an overpayment is reduced from 35 to 30 days after the date of the final order. The bill requires that fines, as well as overpayments, are due upon the issuance of a final order at the conclusion of a requested administrative hearing.

Section 4 of the bill amends s. 409.920, F.S., relating to Medicaid provider fraud, to clarify that the existing immunity from civil liability extended to persons who provide information about fraud or suspected fraudulent acts pertains to civil liability for libel, slander, or any other relevant

tort. The bill defines "fraudulent acts" for purposes of immunity from civil liability to include actual or suspected fraud and abuse, insurance fraud, licensure fraud, or public insurance fraud; including any fraud-related matters that a provider or health plan is required to report to the AHCA or a law enforcement agency. The immunity from civil liability extends to reports conveyed to the AHCA in any manner, including forums, and incorporates all discussions subsequent to the report and subsequent inquiries from the AHCA, unless the person reporting acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information.

Section 5 of the bill amends s. 624.351, F.S., relating to the Medicaid and Public Assistance Fraud Strike Force, to authorize members or their designees to serve on the strike force and to provide that s. 624.351, F.S., is repealed effective June 30, 2014.

Section 6 of the bill amends s. 624.352, F.S., relating to interagency agreements to detect and deter Medicaid and public assistance fraud, to provide that the section is repealed effective June 30, 2014.

Section 7 of the bill provides an effective date of July 1, 2013.

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:

Entities and individual health care providers under Medicaid currently exempt from background checks will be required to complete the same requirements as other Medicaid providers.

The total fee for a Level 2 background screening is $64.50 ($24.00 for the state portion, $16.50 for the national portion, and $24.00 for retention). There is an additional fee of

$11-to-$16 for electronic screening, depending on the provider. The cost of the screening is borne by the individual provider.[25]

C. Government Sector Impact:

To the extent that the bill deters fraud and abuse in the Medicaid program, the bill will have an indeterminate positive fiscal impact.

The bill also creates an indeterminate negative fiscal impact. From March 2012 to February 2013, the ACHA's Third Party Liability (TPL) vendor closed 302 cases and made recoveries based on the current provisions of s. 409.910, F.S. The ACHA recovered $4.9 million from these cases, approximately $2 million of which is utilized by the Legislature to fund Medicaid administrative activities. Under Section 2 of the bill, the ACHA's ability to recover Medicaid medical costs from third parties will likely be reduced as a result the recovery amount hearings caused by the decision in *Wos v. E.M.S.* The amount of this reduction is indeterminate. However, the amount of any reduction will likely be mitigated by the bill's standard of proof for overcoming the presumption.

In addition to the fiscal impact of reduced collections, the AHCA will incur a negative fiscal impact for providing recipients with hearings on the recovery amounts under Section 2 of the bill. The TPL vendor staffed 62 hearings in circuit court contesting the ACHA's entitlement to Medicaid recovery during the last 12 months with a cost of approximately $5,000 per hearing. Due to the loss of the irrebuttable presumption, the ACHA anticipates there will be a substantial increase in the number of hearings to determine the Medicaid recovery allocation. The bill mitigates those costs by requiring the hearings to be brought in the DOAH, requiring the venue to be in Leon County, and setting a burden of proof (clear and convincing evidence), but the amount of that mitigation is indeterminate.

The ACHA and the DOAH may experience a workload increase under Section 2 of the bill. The ACHA is not requesting additional resources but plans to review the workload impacts and make a Legislative Budget Request for fiscal year 2014-2015 if the workload cannot be absorbed within existing resources.

The AHCA reports that Section 3 of the bill may result in an increase in initial background screenings of registered treating providers performed by AHCA staff, but any potential increase in workload under the bill can be absorbed within existing resources.

To the extent that a governmental entity has providers or is a provider that are not currently required to provide a completed background checks prior to Medicaid provider enrollment and not otherwise exempt, additional costs may be incurred to comply with this requirement.

[25] Agency for Health Care Administration, *supra*, note 1 at 6.

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.)

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 17, 2013:
The CS provides that the AHCA may enroll as a Medicaid provider a provider located outside the state of Florida if the provider is actively licensed in Florida and provides diagnostic services through telecommunications and information technology in order to provide clinical health care at a distance. The CS amends the Medicaid Third-party Liability Act to ensure compliance with federal law. The CS amends s. 624.351, F.S., relating to the Medicaid and Public Assistance Fraud Strike Force, to authorize members or their designees to serve on the strike force and to provide that s. 624.351, F.S., is repealed effective June 30, 2014. The CS repeals s. 624.352, F.S., relating to interagency agreements to detect and deter Medicaid and public assistance fraud, effective June 30, 2014.

CS by Health Policy on March 7, 2013
The CS deletes a separate requirement for Level 2 background checks of providers under contract with Medicaid managed care networks. All Medicaid providers participating under fee for service must still comply with this requirement. The CS removed a provision relating to the coordination of anti-fraud report reviews between the Department of Financial Services and the AHCA. The CS does not include the provision allowing the AHCA to consider information from non-Medicaid providers during an investigation. The CS also removed the 30-day provision related to records that may be presented to contest an overpayment or sanction. Interest payments to the providers that had been withheld are reinstated and the timeframe for when interest is applied is clarified.

B. Amendments:

None.

931160

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 61 - 63
and insert:
(c) Retain all medical and Medicaid-related records for ~~a period of~~ 5 years to satisfy all necessary inquiries by the agency.

Delete lines 465 - 466
and insert:
furnished to a Medicaid recipient and billed to Medicaid for ~~a period of~~ 5 years after the date of furnishing such services or

931160

13
14 ================ T I T L E A M E N D M E N T ================
15 And the title is amended as follows:
16 Delete lines 3 - 4
17 and insert:
18 F.S.; adding an additional provision relating
19
20 Delete lines 19 - 20
21 and insert:
22 amending s. 409.913, F.S.; revising

601082

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment

Delete lines 280 - 286
and insert:
outside this ~~the~~ state ~~of Florida~~ if:
1. the provider's location is no more than 50 miles from the ~~Florida~~ state line,
2. the provider is a physician actively licensed in this state and interprets diagnostic testing results through telecommunications and information technology provided from a distance, or
3. the agency determines a need for that provider type to

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ensure adequate access to care; or

105778

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment

Delete line 651
and insert:
termination for cause against the provider. The agency's termination for cause action is subject to challenge under chapter 120. The Secretary of

330380

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment

Delete line 663
and insert:
records. The agency may consider addenda or modifications to a note which were made contemporaneously with the patient care episode if the addenda or modification is germane to the note.

717986

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment

Delete line 679
and insert:
limitation does not apply to Medicaid cost report audits and does not preclude consideration by the agency of addenda or modifications to a note if the addenda or modification is made before the notification of the audit and is germane to a note that was made contemporaneously with a patient care episode.

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to Medicaid; amending s. 409.907, F.S.; increasing the number of years a provider must keep records; adding an additional provision relating to a change in principal that must be included in a Medicaid provider agreement with the Agency for Health Care Administration; adding the definitions of the terms "administrative fines" and "outstanding overpayment"; revising provisions relating to the agency's onsite inspection responsibilities; revising provisions relating to who is subject to background screening; authorizing the agency to enroll a provider who is licensed in this state and provides diagnostic services through telecommunications technology; amending s. 409.910, F.S.; revising provisions relating to responsibility for Medicaid payments in settlement proceedings; providing procedures for a recipient to contest the amount payable to the agency; amending s. 409.913, F.S.; increasing the number of years a provider must keep records; revising provisions specifying grounds for terminating a provider from the program, for seeking certain remedies for violations, and for imposing certain sanctions; providing a limitation on the information the agency may consider when making a determination of overpayment; specifying the type of records a provider must present to contest an overpayment; deleting the

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requirement that the agency place payments withheld from a provider in a suspended account and revising when a provider must reimburse overpayments; revising venue requirements; adding provisions relating to the payment of fines; amending s. 409.920, F.S.; clarifying provisions relating to immunity from liability for persons who provide information about Medicaid fraud; amending s. 624.351, F.S.; providing for the expiration of the Medicaid and Public Assistance Fraud Strike Force; amending s. 624.352, F.S.; providing for the expiration of provisions relating to "Strike Force" agreements; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 409.907, Florida Statutes, is amended, paragraph (k) is added to that subsection, and subsections (6) through (9) of that section are amended, to read:

409.907 Medicaid provider agreements.—The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, And local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the

agency.

(3) The provider agreement developed by the agency, in addition to the requirements specified in subsections (1) and (2), shall require the provider to:

(c) Retain all medical and Medicaid-related records for 6 ~~a period of 5~~ years to satisfy all necessary inquiries by the agency.

(k) Report a change in any principal of the provider, including any officer, director, agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider, to the agency in writing within 30 days after the change occurs. For a hospital licensed under chapter 395 or a nursing home licensed under part II of chapter 400, a principal of the provider is one who meets the definition of a controlling interest under s. 408.803.

(6) A Medicaid provider agreement may be revoked, at the option of the agency, due to ~~as the result of~~ a change of ownership of any facility, association, partnership, or other entity named as the provider in the provider agreement.

(a) If there is ~~In the event of~~ a change of ownership, the transferor remains liable for all outstanding overpayments, administrative fines, and any other moneys owed to the agency before the effective date of the change ~~of ownership~~. ~~In addition to the continuing liability of the transferor,~~ The transferee is also liable to the agency for all outstanding overpayments identified by the agency on or before the effective date of the change of ownership. ~~For purposes of this subsection, the term "outstanding overpayment" includes any~~

~~amount identified in a preliminary audit report issued to the transferor by the agency on or before the effective date of the change of ownership.~~ In the event of a change of ownership for a skilled nursing facility or intermediate care facility, the Medicaid provider agreement shall be assigned to the transferee if the transferee meets all other Medicaid provider qualifications. In the event of a change of ownership involving a skilled nursing facility licensed under part II of chapter 400, liability for all outstanding overpayments, administrative fines, and any moneys owed to the agency before the effective date of the change of ownership shall be determined in accordance with s. 400.179.

(b) At least 60 days before the anticipated date of the change of ownership, the transferor must ~~shall~~ notify the agency of the intended change ~~of ownership~~ and the transferee must ~~shall~~ submit to the agency a Medicaid provider enrollment application. If a change of ownership occurs without compliance with the notice requirements of this subsection, the transferor and transferee are ~~shall be~~ jointly and severally liable for all overpayments, administrative fines, and other moneys due to the agency, regardless of whether the agency identified the overpayments, administrative fines, or other moneys before or after the effective date of the change ~~of ownership~~. The agency may not approve a transferee's Medicaid provider enrollment application if the transferee or transferor has not paid or agreed in writing to a payment plan for all outstanding overpayments, administrative fines, and other moneys due to the agency. This subsection does not preclude the agency from seeking any other legal or equitable remedies available to the


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agency for the recovery of moneys owed to the Medicaid program. In the event of a change of ownership involving a skilled nursing facility licensed under part II of chapter 400, liability for all outstanding overpayments, administrative fines, and any moneys owed to the agency before the effective date of the change of ownership shall be determined in accordance with s. 400.179 if the Medicaid provider enrollment application for change of ownership is submitted before the change ~~of ownership~~.

(c) As used in this subsection, the term:

1. "Administrative fines" includes any amount identified in a notice of a monetary penalty or fine which has been issued by the agency or other regulatory or licensing agency that governs the provider.

2. "Outstanding overpayment" includes any amount identified in a preliminary audit report issued to the transferor by the agency on or before the effective date of a change of ownership.

(7) ~~The agency may require,~~ As a condition of participating in the Medicaid program and before entering into the provider agreement, the agency may require ~~that~~ the provider to submit information, in an initial and any required renewal applications, concerning the professional, business, and personal background of the provider and permit an onsite inspection of the provider's service location by agency staff or other personnel designated by the agency to perform this function. Before entering into a provider agreement, the agency may ~~shall~~ perform an ~~a random~~ onsite inspection~~, within 60 days after receipt of a fully complete new provider's application,~~ of the provider's service location ~~prior to making its first~~


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~~payment to the provider for Medicaid services~~ to determine the applicant's ability to provide the services in compliance with the Medicaid program and professional regulations ~~that the applicant is proposing to provide for Medicaid reimbursement~~. ~~The agency is not required to perform an onsite inspection of a provider or program that is licensed by the agency, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Family Services.~~ As a continuing condition of participation in the Medicaid program, a provider must ~~shall~~ immediately notify the agency of any current or pending bankruptcy filing. Before entering into the provider agreement, or as a condition of continuing participation in the Medicaid program, the agency may also require ~~that~~ Medicaid providers that are reimbursed on a fee-for-services basis or fee schedule basis that ~~which~~ is not cost-based to~~,~~ post a surety bond not to exceed $50,000 or the total amount billed by the provider to the program during the current or most recent calendar year, whichever is greater. For new providers, the amount of the surety bond shall be determined by the agency based on the provider's estimate of its first year's billing. If the provider's billing during the first year exceeds the bond amount, the agency may require the provider to acquire an additional bond equal to the actual billing level of the provider. A provider's bond need ~~shall~~ not exceed $50,000 if a physician or group of physicians licensed under chapter 458, chapter 459, or chapter 460 has a 50 percent or greater ownership interest in the provider or if the provider is an assisted living facility licensed under chapter 429. The bonds

permitted by this section are in addition to the bonds referenced in s. 400.179(2)(d). If the provider is a corporation, partnership, association, or other entity, the agency may require the provider to submit information concerning the background of that entity and of any principal of the entity, including any partner or shareholder having an ownership interest in the entity equal to 5 percent or greater, and any treating provider who participates in or intends to participate in Medicaid through the entity. The information must include:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

(b) Information concerning any prior violation, fine, suspension, termination, or other administrative action taken under the Medicaid laws or~~,~~ rules~~, or regulations~~ of this state or ~~of~~ any other state or the Federal Government; any prior violation of the laws or~~,~~ rules~~, or regulations~~ relating to the Medicare program; any prior violation of the rules ~~or regulations~~ of any other public or private insurer; and any prior violation of the laws or~~,~~ rules~~, or regulations~~ of any regulatory body of this or any other state.

(c) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(d) If a group provider, identification of all members of

the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

(8)~~(a)~~ Each provider, or each principal of the provider if the provider is a corporation, partnership, association, or other entity, seeking to participate in the Medicaid program must submit a complete set of his or her fingerprints to the agency for the purpose of conducting a criminal history record check. Principals of the provider include any officer, director, billing agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider. However, for a hospital licensed under chapter 395 or a nursing home licensed under chapter 400, principals of the provider are those who meet the definition of a controlling interest under s. 408.803. A director of a not-for-profit corporation or organization is not a principal for purposes of a background investigation ~~as~~ required by this section if the director: serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration from the not-for-profit corporation or organization for his or her service on the board of directors, has no financial interest in the not-for-profit corporation or organization, and has no family members with a financial interest in the not-for-profit corporation or organization; and if the director submits an affidavit, under penalty of perjury, to this effect to the agency and the not-for-profit corporation or organization submits an affidavit, under penalty of perjury, to this effect to the agency as part of the corporation’s or organization’s


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Medicaid provider agreement application. Notwithstanding the above, the agency may require a background check for any person reasonably suspected by the agency to have been convicted of a crime.

(a) This subsection does not apply to:

~~1. A hospital licensed under chapter 395;~~

~~2. A nursing home licensed under chapter 400;~~

~~3. A hospice licensed under chapter 400;~~

~~4. An assisted living facility licensed under chapter 429;~~

1.~~5.~~ A unit of local government, except that requirements of this subsection apply to nongovernmental providers and entities contracting with the local government to provide Medicaid services. The actual cost of the state and national criminal history record checks must be borne by the nongovernmental provider or entity; or

2.~~6.~~ Any business that derives more than 50 percent of its revenue from the sale of goods to the final consumer, and the business or its controlling parent is required to file a form 10-K or other similar statement with the Securities and Exchange Commission or has a net worth of $50 million or more.

(b) Background screening shall be conducted in accordance with chapter 435 and s. 408.809. The cost of the state and national criminal record check shall be borne by the provider.

~~(c) Proof of compliance with the requirements of level 2 screening under chapter 435 conducted within 12 months before the date the Medicaid provider application is submitted to the agency fulfills the requirements of this subsection.~~

(9) Upon receipt of a completed, signed, and dated application, and completion of any necessary background


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investigation and criminal history record check, the agency must ~~either~~:

(a) Enroll the applicant as a Medicaid provider upon approval of the provider application. The enrollment effective date is ~~shall be~~ the date the agency receives the provider application. With respect to a provider that requires a Medicare certification survey, the enrollment effective date is the date the certification is awarded. With respect to a provider that completes a change of ownership, the effective date is the date the agency received the application, the date the change of ownership was complete, or the date the applicant became eligible to provide services under Medicaid, whichever date is later. With respect to a provider of emergency medical services transportation or emergency services and care, the effective date is the date the services were rendered. Payment for any claims for services provided to Medicaid recipients between the date of receipt of the application and the date of approval is contingent on applying ~~any and~~ all applicable audits and edits contained in the agency's claims adjudication and payment processing systems. The agency may enroll a provider located outside this ~~the~~ state ~~of Florida~~ if the provider's location is no more than 50 miles from the ~~Florida~~ state line, if the provider is actively licensed in this state and provides diagnostic services through telecommunications and information technology in order to provide clinical health care at a distance, or if the agency determines a need for that provider type to ensure adequate access to care; or

(b) Deny the application if the agency finds that it is in the best interest of the Medicaid program to do so. The agency

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may consider the factors listed in subsection (10), as well as any other factor that could affect the effective and efficient administration of the program, including, but not limited to, the applicant's demonstrated ability to provide services, conduct business, and operate a financially viable concern; the current availability of medical care, services, or supplies to recipients, taking into account geographic location and reasonable travel time; the number of providers of the same type already enrolled in the same geographic area; and the credentials, experience, success, and patient outcomes of the provider for the services that it is making application to provide in the Medicaid program. The agency shall deny the application if the agency finds that a provider; any officer, director, agent, managing employee, or affiliated person; or any partner or shareholder having an ownership interest equal to 5 percent or greater in the provider if the provider is a corporation, partnership, or other business entity, has failed to pay all outstanding fines or overpayments assessed by final order of the agency or final order of the Centers for Medicare and Medicaid Services, not subject to further appeal, unless the provider agrees to a repayment plan that includes withholding Medicaid reimbursement until the amount due is paid in full.

Section 2. Subsection (17) of section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(17) A recipient or his or her legal representative or any person representing, or acting as agent for, a recipient or the recipient's legal representative, who has notice, excluding

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notice charged solely by reason of the recording of the lien pursuant to paragraph (6)(c), or who has actual knowledge of the agency's rights to third-party benefits under this section, who receives any third-party benefit or proceeds ~~therefrom~~ for a covered illness or injury, must ~~is required either to pay the agency~~, within 60 days after receipt of settlement proceeds, pay the agency the full amount of the third-party benefits, but not more than ~~in excess of~~ the total medical assistance provided by Medicaid, or ~~to~~ place the full amount of the third-party benefits in an interest-bearing ~~a~~ trust account for the benefit of the agency pending an ~~judicial or~~ administrative determination of the agency's right to the benefits ~~thereto~~. Proof that ~~any~~ such person had notice or knowledge that the recipient had received medical assistance from Medicaid, and that third-party benefits or proceeds ~~therefrom~~ were in any way related to a covered illness or injury for which Medicaid had provided medical assistance, and that ~~any~~ such person knowingly obtained possession or control of, or used, third-party benefits or proceeds and failed ~~either~~ to pay the agency the full amount required by this section or to hold the full amount of third-party benefits or proceeds in an interest-bearing trust account pending an ~~judicial or~~ administrative determination, unless adequately explained, gives rise to an inference that such person knowingly failed to credit the state or its agent for payments received from social security, insurance, or other sources, pursuant to s. 414.39(4)(b), and acted with the intent set forth in s. 812.014(1).

(a) A recipient may contest the amount designated as recovered medical expense damages payable to the agency pursuant

to the formula specified in paragraph (11)(f) by filing a petition under chapter 120 within 21 days after the date of payment of funds to the agency or after the date of placing the full amount of the third-party benefits in the trust account for the benefit of the agency. The petition shall be filed with the Division of Administrative Hearings. For purposes of chapter 120, the payment of funds to the agency or the placement of the full amount of the third-party benefits in the trust account for the benefit of the agency constitutes final agency action and notice thereof. Final order authority for the proceedings specified in this subsection rests with the Division of Administrative Hearings. This procedure is the exclusive method for challenging the amount of third-party benefits payable to the agency.

1. In order to successfully challenge the amount payable to the agency, the recipient must prove, by clear and convincing evidence, that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f) or that Medicaid provided a lesser amount of medical assistance than that asserted by the agency.

2. The agency's provider processing system reports are admissible as prima facie evidence in substantiating the agency's claim.

3. Venue for all administrative proceedings pursuant to this subsection lies in Leon County, at the discretion of the agency. Venue for all appellate proceedings arising from the administrative proceeding outlined in this subsection lie at the

First District Court of Appeal in Leon County, at the discretion of the agency.

4. Each party shall bear its own attorney fees and costs for any administrative proceeding conducted pursuant to this paragraph.

(b) ~~(a)~~ In cases of suspected criminal violations or fraudulent activity, the agency may take any civil action permitted at law or equity to recover the greatest possible amount, including, without limitation, treble damages under ss. 772.11 and 812.035(7).

1. ~~(b)~~ The agency may ~~is authorized to~~ investigate and ~~to~~ request appropriate officers or agencies of the state to investigate suspected criminal violations or fraudulent activity related to third-party benefits, including, without limitation, ss. 414.39 and 812.014. Such requests may be directed, without limitation, to the Medicaid Fraud Control Unit of the Office of the Attorney General, or to any state attorney. Pursuant to s. 409.913, the Attorney General has primary responsibility to investigate and control Medicaid fraud.

2. ~~(c)~~ In carrying out duties and responsibilities related to Medicaid fraud control, the agency may subpoena witnesses or materials within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings.

3. ~~(d)~~ All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any other person relating to an allegation of recipient fraud or theft is confidential and


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exempt from s. 119.07(1):

a.~~1.~~ Until such time as the agency takes final agency action;

b.~~2.~~ Until such time as the Department of Legal Affairs refers the case for criminal prosecution;

c.~~3.~~ Until such time as an indictment or criminal information is filed by a state attorney in a criminal case; or

d.~~4.~~ At all times if otherwise protected by law.

Section 3. Subsections (9), (13), (15), (16), (21), (22), (25), (28), (30), and (31) of section 409.913, Florida Statutes, are amended to read:

409.913 Oversight of the integrity of the Medicaid program.—The agency shall operate a program to oversee the activities of Florida Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. Beginning January 1, 2003, and each year thereafter, the agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs shall submit a joint report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year. The report must describe the number of cases opened and investigated each year; the sources of the cases opened; the disposition of the cases closed each year; the amount of overpayments alleged in preliminary and final audit letters; the number and amount of fines or penalties imposed; any reductions in overpayment amounts negotiated in settlement agreements or by other means;


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the amount of final agency determinations of overpayments; the amount deducted from federal claiming as a result of overpayments; the amount of overpayments recovered each year; the amount of cost of investigation recovered each year; the average length of time to collect from the time the case was opened until the overpayment is paid in full; the amount determined as uncollectible and the portion of the uncollectible amount subsequently reclaimed from the Federal Government; the number of providers, by type, that are terminated from participation in the Medicaid program as a result of fraud and abuse; and all costs associated with discovering and prosecuting cases of Medicaid overpayments and making recoveries in such cases. The report must also document actions taken to prevent overpayments and the number of providers prevented from enrolling in or reenrolling in the Medicaid program as a result of documented Medicaid fraud and abuse and must include policy recommendations necessary to prevent or recover overpayments and changes necessary to prevent and detect Medicaid fraud. All policy recommendations in the report must include a detailed fiscal analysis, including, but not limited to, implementation costs, estimated savings to the Medicaid program, and the return on investment. The agency must submit the policy recommendations and fiscal analyses in the report to the appropriate estimating conference, pursuant to s. 216.137, by February 15 of each year. The agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs each must include detailed unit-specific performance standards, benchmarks, and metrics in the report, including projected cost savings to the state Medicaid program during the following fiscal year.


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(9) A Medicaid provider shall retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for 6 ~~a period of 5~~ years after the date of furnishing such services or goods. The agency may investigate, review, or analyze such records, which must be made available during normal business hours. However, 24-hour notice must be provided if patient treatment would be disrupted. The provider must keep ~~is responsible for furnishing to the agency, and keeping~~ the agency informed of the location of, the provider's Medicaid-related records. The authority of the agency to obtain Medicaid-related records from a provider is neither curtailed nor limited during a period of litigation between the agency and the provider.

(13) The agency shall ~~immediately~~ terminate participation of a Medicaid provider in the Medicaid program and may seek civil remedies or impose other administrative sanctions against a Medicaid provider, if the provider or any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, has been convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession, or a criminal offense listed under s. 408.809(4), s. 409.907(10), or s. 435.04(2) ~~has been:~~

~~(a) Convicted of a criminal offense related to the delivery of any health care goods or services, including the performance of management or administrative functions relating to the delivery of health care goods or services;~~

~~(b) Convicted of a criminal offense under federal law or~~


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~~the law of any state relating to the practice of the provider's profession; or~~

~~(c) Found by a court of competent jurisdiction to have neglected or physically abused a patient in connection with the delivery of health care goods or services~~. If the agency determines that the ~~a~~ provider did not participate or acquiesce in the ~~an~~ offense ~~specified in paragraph (a), paragraph (b), or paragraph (c)~~, termination will not be imposed. If the agency effects a termination under this subsection, the agency shall take final agency action ~~issue an immediate final order pursuant to s. 120.569(2)(n)~~.

(15) The agency shall seek a remedy provided by law, including, but not limited to, any remedy provided in subsections (13) and (16) and s. 812.035, if:

(a) The provider's license has not been renewed, or has been revoked, suspended, or terminated, for cause, by the licensing agency of any state;

(b) The provider has failed to make available or has refused access to Medicaid-related records to an auditor, investigator, or other authorized employee or agent of the agency, the Attorney General, a state attorney, or the Federal Government;

(c) The provider has not furnished or has failed to make available such Medicaid-related records as the agency has found necessary to determine whether Medicaid payments are or were due and the amounts thereof;

(d) The provider has failed to maintain medical records made at the time of service, or prior to service if prior authorization is required, demonstrating the necessity and


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appropriateness of the goods or services rendered;

(e) The provider is not in compliance with provisions of Medicaid provider publications that have been adopted by reference as rules in the Florida Administrative Code; with provisions of state or federal laws, rules, or regulations; with provisions of the provider agreement between the agency and the provider; or with certifications found on claim forms or on transmittal forms for electronically submitted claims that are submitted by the provider or authorized representative, as such provisions apply to the Medicaid program;

(f) The provider or person who ordered, authorized, or prescribed the care, services, or supplies has furnished, or ordered or authorized the furnishing of, goods or services to a recipient which are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality;

(g) The provider has demonstrated a pattern of failure to provide goods or services that are medically necessary;

(h) The provider or an authorized representative of the provider, or a person who ordered, authorized, or prescribed the goods or services, has submitted or caused to be submitted false or a pattern of erroneous Medicaid claims;

(i) The provider or an authorized representative of the provider, or a person who has ordered, authorized, or prescribed the goods or services, has submitted or caused to be submitted a Medicaid provider enrollment application, a request for prior authorization for Medicaid services, a drug exception request, or a Medicaid cost report that contains materially false or incorrect information;

(j) The provider or an authorized representative of the


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provider has collected from or billed a recipient or a recipient's responsible party improperly for amounts that should not have been so collected or billed by reason of the provider's billing the Medicaid program for the same service;

(k) The provider or an authorized representative of the provider has included in a cost report costs that are not allowable under a Florida Title XIX reimbursement plan~~,~~ after the provider or authorized representative had been advised in an audit exit conference or audit report that the costs were not allowable;

(l) The provider is charged by information or indictment with fraudulent billing practices or an offense referenced in subsection (13). The sanction applied for this reason is limited to suspension of the provider's participation in the Medicaid program for the duration of the indictment unless the provider is found guilty pursuant to the information or indictment;

(m) The provider or a person who ~~has~~ ordered, authorized, or prescribed the goods or services is found liable for negligent practice resulting in death or injury to the provider's patient;

(n) The provider fails to demonstrate that it had available during a specific audit or review period sufficient quantities of goods, or sufficient time in the case of services, to support the provider's billings to the Medicaid program;

(o) The provider has failed to comply with the notice and reporting requirements of s. 409.907;

(p) The agency has received reliable information of patient abuse or neglect or of any act prohibited by s. 409.920; or

(q) The provider has failed to comply with an agreed-upon

repayment schedule.

A provider is subject to sanctions for violations of this subsection as the result of actions or inactions of the provider, or actions or inactions of any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, in which the provider participated or acquiesced.

(16) The agency shall impose any of the following sanctions or disincentives on a provider or a person for any of the acts described in subsection (15):

(a) Suspension for a specific period of time of not more than 1 year. Suspension precludes ~~shall preclude~~ participation in the Medicaid program, which includes any action that results in a claim for payment to the Medicaid program for ~~as a result of~~ furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

(b) Termination for a specific period of time ranging ~~of~~ from more than 1 year to 20 years. Termination precludes ~~shall preclude~~ participation in the Medicaid program, which includes any action that results in a claim for payment to the Medicaid program for ~~as a result of~~ furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

(c) Imposition of a fine of up to $5,000 for each violation. Each day that an ongoing violation continues, such as refusing to furnish Medicaid-related records or refusing access to records, is considered~~, for the purposes of this section, to be~~ a separate violation. Each instance of improper billing of a

Medicaid recipient; each instance of including an unallowable cost on a hospital or nursing home Medicaid cost report after the provider or authorized representative has been advised in an audit exit conference or previous audit report of the cost unallowability; each instance of furnishing a Medicaid recipient goods or professional services that are inappropriate or of inferior quality as determined by competent peer judgment; each instance of knowingly submitting a materially false or erroneous Medicaid provider enrollment application, request for prior authorization for Medicaid services, drug exception request, or cost report; each instance of inappropriate prescribing of drugs for a Medicaid recipient as determined by competent peer judgment; and each false or erroneous Medicaid claim leading to an overpayment to a provider is considered~~, for the purposes of this section, to be~~ a separate violation.

(d) Immediate suspension, if the agency has received information of patient abuse or neglect or of any act prohibited by s. 409.920. Upon suspension, the agency must issue an immediate final order under s. 120.569(2)(n).

(e) A fine, not to exceed $10,000, for a violation of paragraph (15)(i).

(f) Imposition of liens against provider assets, including, but not limited to, financial assets and real property, not to exceed the amount of fines or recoveries sought, upon entry of an order determining that such moneys are due or recoverable.

(g) Prepayment reviews of claims for a specified period of time.

(h) Comprehensive followup reviews of providers every 6 months to ensure that they are billing Medicaid correctly.


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(i) Corrective-action plans that ~~would~~ remain in effect ~~for providers~~ for up to 3 years and that are ~~would be~~ monitored by the agency every 6 months while in effect.

(j) Other remedies as permitted by law to effect the recovery of a fine or overpayment.

If a provider voluntarily relinquishes its Medicaid provider number or an associated license, or allows the associated licensure to expire after receiving written notice that the agency is conducting, or has conducted, an audit, survey, inspection, or investigation and that a sanction of suspension or termination will or would be imposed for noncompliance discovered as a result of the audit, survey, inspection, or investigation, the agency shall impose the sanction of termination for cause against the provider. The Secretary of Health Care Administration may make a determination that imposition of a sanction or disincentive is not in the best interest of the Medicaid program, in which case a sanction or disincentive may ~~shall~~ not be imposed.

(21) When making a determination that an overpayment has occurred, the agency shall prepare and issue an audit report to the provider showing the calculation of overpayments. The agency's determination must be based solely upon information available to it before issuance of the audit report and, in the case of documentation obtained to substantiate claims for Medicaid reimbursement, based solely upon contemporaneous records.

(22) The audit report, supported by agency work papers, showing an overpayment to a provider constitutes evidence of the


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overpayment. A provider may not present or elicit testimony~~,~~ ~~either~~ on direct examination or cross-examination in any court or administrative proceeding, regarding the purchase or acquisition by any means of drugs, goods, or supplies; sales or divestment by any means of drugs, goods, or supplies; or inventory of drugs, goods, or supplies, unless such acquisition, sales, divestment, or inventory is documented by written invoices, written inventory records, or other competent written documentary evidence maintained in the normal course of the provider's business. A provider may not present records to contest an overpayment or sanction unless such records are contemporaneous and, if requested during the audit process, were furnished to the agency or its agent upon request. This limitation does not apply to Medicaid cost report audits. Notwithstanding the applicable rules of discovery, all documentation to ~~that will~~ be offered as evidence at an administrative hearing on a Medicaid overpayment or an administrative sanction must be exchanged by all parties at least 14 days before the administrative hearing or ~~must~~ be excluded from consideration.

(25)(a) The agency shall withhold Medicaid payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud, willful misrepresentation, or abuse under the Medicaid program, or a crime committed while rendering goods or services to Medicaid recipients. If it is determined that fraud, willful misrepresentation, abuse, or a crime did not occur, the payments withheld must be paid to the provider within 14 days after such


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determination ~~with interest at the rate of 10 percent a year~~. Amounts not paid within 14 days accrue interest at the rate of 10 percent a year, beginning after the 14th day ~~Any money withheld in accordance with this paragraph shall be placed in a suspended account, readily accessible to the agency, so that any payment ultimately due the provider shall be made within 14 days~~.

(b) The agency shall deny payment, or require repayment, if the goods or services were furnished, supervised, or caused to be furnished by a person who has been suspended or terminated from the Medicaid program or Medicare program by the Federal Government or any state.

(c) Overpayments owed to the agency bear interest at the rate of 10 percent per year from the date of final determination of the overpayment by the agency, and payment arrangements must be made within 30 days after the date of the final order, which is not subject to further appeal ~~at the conclusion of legal proceedings~~. ~~A provider who does not enter into or adhere to an agreed-upon repayment schedule may be terminated by the agency for nonpayment or partial payment.~~

(d) The agency, upon entry of a final agency order, a judgment or order of a court of competent jurisdiction, or a stipulation or settlement, may collect the moneys owed by all means allowable by law, including, but not limited to, notifying any fiscal intermediary of Medicare benefits that the state has a superior right of payment. Upon receipt of such written notification, the Medicare fiscal intermediary shall remit to the state the sum claimed.

(e) The agency may institute amnesty programs to allow


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Medicaid providers the opportunity to voluntarily repay overpayments. The agency may adopt rules to administer such programs.

(28) Venue for all Medicaid program integrity ~~overpayment~~ cases lies ~~shall lie~~ in Leon County, at the discretion of the agency.

(30) The agency shall terminate a provider's participation in the Medicaid program if the provider fails to reimburse an overpayment or pay an agency-imposed fine that has been determined by final order, not subject to further appeal, within 30 ~~35~~ days after the date of the final order, unless the provider and the agency have entered into a repayment agreement.

(31) If a provider requests an administrative hearing pursuant to chapter 120, such hearing must be conducted within 90 days following assignment of an administrative law judge, absent exceptionally good cause shown as determined by the administrative law judge or hearing officer. Upon issuance of a final order, the outstanding balance of the amount determined to constitute the overpayment and fines is ~~shall become~~ due. If a provider fails to make payments in full, fails to enter into a satisfactory repayment plan, or fails to comply with the terms of a repayment plan or settlement agreement, the agency shall withhold ~~medical assistance~~ reimbursement payments for Medicaid services until the amount due is paid in full.

Section 4. Subsection (8) of section 409.920, Florida Statutes, is amended to read:

409.920 Medicaid provider fraud.—

(8) A person who provides the state, any state agency, any of the state's political subdivisions, or any agency of the


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state's political subdivisions with information about fraud or suspected fraudulent acts ~~fraud~~ by a Medicaid provider, including a managed care organization, is immune from civil liability for libel, slander, or any other relevant tort for providing ~~the~~ information about fraud or suspected fraudulent acts unless the person acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information. Such immunity extends to reports of fraudulent acts or suspected fraudulent acts conveyed to or from the agency in any manner, including any forum and with any audience as directed by the agency, and includes all discussions subsequent to the report and subsequent inquiries from the agency, unless the person acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information. As used in this subsection, the term "fraudulent acts" includes actual or suspected fraud and abuse, insurance fraud, licensure fraud, or public assistance fraud, including any fraud-related matters that a provider or health plan is required to report to the agency or a law enforcement agency.

Section 5. Subsection (3) of section 624.351, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

624.351 Medicaid and Public Assistance Fraud Strike Force.—

(3) MEMBERSHIP.—The strike force shall consist of the following 11 members or their designees. A designee shall serve in the same capacity as the designating member ~~who may not designate anyone to serve in their place~~:

(a) The Chief Financial Officer, who shall serve as chair.

(b) The Attorney General, who shall serve as vice chair.


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(c) The executive director of the Department of Law Enforcement.

(d) The Secretary of Health Care Administration.

(e) The Secretary of Children and Family Services.

(f) The State Surgeon General.

(g) Five members appointed by the Chief Financial Officer, consisting of two sheriffs, two chiefs of police, and one state attorney. When making these appointments, the Chief Financial Officer shall consider representation by geography, population, ethnicity, and other relevant factors in order to ensure that the membership of the strike force is representative of the state as a whole.

(8) EXPIRATION.—This section is repealed June 30, 2014.

Section 6. Subsection (3) is added to section 624.352, Florida Statutes, to read:

624.352 Interagency agreements to detect and deter Medicaid and public assistance fraud.—

(3) This section is repealed June 30, 2014.

Section 7. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 844
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Grimsley
SUBJECT:	Medicaid Fraud
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Johnson	Burgess	BI	**Favorable**
3.	Brown	Pigott	AHS	**Fav/CS**
4.	Brown	Hansen	AP	**Fav/CS**
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 844 modifies existing statutory provisions relating to fraud and abuse, provider controls, and accountability in the Medicaid program.

The bill is expected to have an indeterminate fiscal impact on the Agency for Health Care Administration (AHCA). See Section V.

The bill:

- Provides that the AHCA may enroll as a Medicaid provider a physician located outside the state of Florida if the physician is actively licensed in Florida and interprets diagnostic testing results through telecommunications and information technology provided from a distance;
- Amends the Medicaid Third-party Liability Act to ensure compliance with federal law;
- Requires Medicaid providers to report a change in any principal of the provider to the AHCA in writing no later than 30 days after the change occurs;
- Defines "administrative fines" for purposes of liability for payment of such fines in the event of a change of ownership;

- Authorizes, rather than requires, the AHCA to perform onsite inspections of the service location of a provider applying for a provider agreement to determine that provider's ability to provide services in compliance with Medicaid regulations;
- Provides a definition for principals of a provider with a controlling interest for hospitals and nursing homes, for purposes of conducting criminal background checks;
- Removes certain exceptions to background screenings requirements for Medicaid providers;
- Expands the list of offenses for which the AHCA may terminate the participation of a Medicaid provider;
- Requires the AHCA to impose the sanction of termination for cause against providers that voluntarily relinquish their Medicaid provider numbers under certain circumstances and parameters;
- Requires that when the AHCA determines that an overpayment has been made, the AHCA must base its determination solely on the information available before the issuance of an audit report and upon contemporaneous records;
- Clarifies when the interest rate accrues on provider payments paid by the AHCA that had been withheld on a suspicion of fraud or abuse, if it is determined that there was no fraud or abuse;
- Removes the 30-day provision related to records that may be presented to contest an overpayment or sanction;
- Requires overpayments or fines be paid to the AHCA within 30 days after the date of the final order;
- Clarifies the scope of immunity from civil liability for persons who report fraudulent acts or suspected fraudulent acts;
- Amends s. 624.351, F.S., relating to the Medicaid and Public Assistance Fraud Strike Force, to authorize members or their designees to serve on the strike force and to provide that s. 624.351, F.S., is repealed effective June 30, 2014; and
- Repeals s. 624.352, F.S., relating to interagency agreements to detect and deter Medicaid and public assistance fraud, effective June 30, 2014.

The bill has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 409.907, 409.913, and 409.920.

II. Present Situation:

Health Care Fraud

In 2009, the Legislature passed CS/CS/CS/SB 1986 to comprehensively address systematic health care fraud in Florida. That bill increased the Medicaid program's authority to address fraud, particularly as it relates to home health services and health care facility and health care practitioner standards to keep fraudulent actors from obtaining a health care license in Florida. The bill also created disincentives to commit Medicaid fraud and created additional criminal felonies for committing health care fraud.

With more than three years of history with the implementation of CS/CS/CS/SB 1986, some changes have been identified that would enhance Florida's efforts to prevent health care fraud

and abuse in the Medicaid program. This bill addresses some of the gaps in enforcement authority, strengthens the reporting requirements by Medicaid providers and Medicaid managed care organizations, and defines the consequences for failure to comply with the requirements.

Regulatory Authority of AHCA

The AHCA regulates hospitals and nursing homes under the authority of chapters 395 and 400, F.S., respectively, along with dozens of other health care entities such as clinical laboratories, ambulatory surgical centers, hospices, and home health agencies. General licensing provisions for these providers are found in part II of ch. 408, F.S. The Bureau for Health Facility Regulation conducts the activities that certify and license the entities under the AHCA's jurisdiction.

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled persons with costs of nursing facility care and other medical expenses. The AHCA is designated as the single state agency responsible for Medicaid. Medicaid serves approximately 3.3 million people in Florida. The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for covered goods and services and only for individuals who are eligible for Medicaid assistance from Medicaid. Section 409.907, F.S., establishes requirements for Medicaid provider agreements, which include background screening requirements, notification requirements for change of ownership of a Medicaid provider, authority for AHCA site visits of provider service locations, and surety bond requirements.

Under s. 409.913, F.S., the AHCA is responsible for overseeing the integrity of the Medicaid program, to ensure that fraudulent and abusive behavior and neglect of recipients is minimized, and to recover overpayments and impose sanctions as appropriate.

Sections 409,920, 409.9201, 409.9203, and 409.9205, F.S., contain provisions relating specifically to Medicaid fraud. A person who provides the state with information about fraud or suspected fraud by a Medicaid provider, including a managed care organization, is immune from civil liability for providing that information unless the person knew the information was false or acted with reckless disregard for the truth or falsity of the information.[1]

Part IV of ch. 409, F.S., requires all Medicaid recipients to enroll in a managed care plan unless they are specifically exempted. The Statewide Medicaid Managed Care (SMMC) program includes a long-term care managed care component and a managed medical assistance component. The law directs the AHCA to begin implementation of the long-term managed care program by July 1, 2012, with full implementation in all regions of the State by October 1, 2013. The state received federal approval of this component on February 1, 2013.[2] Although the

[1] *See* s. 409.920(8), F.S.
[2] Agency for Health Care Administration, *February 1, 2013 Waiver Approval Letter*, http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Signed_approval_FL0962_new_1915c_02-01-2013.pdf (Last visited on March 4, 2013).

AHCA has received conditional approval,[3] the AHCA is still awaiting final approval of the managed medical assistance program; full implementation is anticipated by October 1, 2014.

Background Screening

Chapter 435, F.S., establishes standards for background screening for employment. Section 435.03, F.S., sets standards for Level 1 background screening. Level 1 background screening includes, but is not limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

Level 2 background screenings includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement and national criminal history records checks through the Federal Bureau of Investigation. They may also include local criminal records checks through local law enforcement agencies. Section 435.04(2), F.S., lists the offenses that will disqualify an applicant from employment.

Section 408.809, F.S., establishes background screening requirements and procedures for entities licensed by the AHCA. The AHCA must conduct Level 2 background screening for specified individuals. Each person subject to this section is subject to Level 2 background screening every five years. This section of law also specifies additional disqualifying offenses beyond those included in s. 435.04(2), F.S.

Medicaid and Third-party Recovery in Florida

Section 409.910, F.S. is known as the Medicaid Third-Party Liability Act (Act). Pursuant to the Act, third-party benefits for medical services are primary to any medical assistance provided to a recipient by Medicaid. As such, a Medicaid recipient who receives a settlement, award, or judgment in a third-party tort action is required to reimburse the ACHA for any related Medicaid medical costs. The medical costs are calculated as the lesser of 37.5 percent of the total recovery or the total amount of medical assistance paid by Medicaid. The recipient cannot contest the amount designated by the ACHA as recovered medical expense damages.

The U.S Supreme Court, in *Wos v. E.M.A.*, recently invalidated a North Carolina statute that authorized the recovery of third-party benefits from Medicaid recipients.[4] North Carolina's Medicaid third-party liability statute provides that the state will be paid from a tort settlement or judgment the lesser of the total amount expended on the recipient's behalf by Medicaid or 33 percent of the total settlement or judgment amount.[5] The Court held that North Carolina's statute was preempted by the federal anti-lien provision due to the fact that the state statute created an irrebuttable, one-size-fits-all statutory presumption that one-third of a tort recovery is attributable to medical expenses. Such an irrebuttable presumption was found to be incompatible with the

[3] Agency for Health Care Administration, *February 20, 2013 Agreement in Principle Letter*, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Letter_from_CMS_re_Agreement_in_Principal_2013-02-20.pdf (Last visited on March 4, 2013).
[4] *Wos v. E.M.A. ex rel. Johnson*, ___ U.S. ___, 2013 WL 1131709 (U.S. March 20, 2013).
[5] N.C. Gen. Stat. Ann. s. 108A-57(a).

federal Medicaid Act's mandate that a state may not demand any portion of a beneficiary's tort recovery except the share that is attributable to medical expenses.[6]

Medicaid and Public Assistance Fraud Strike Force

In 2010 the Legislature found that there was a need to develop and implement a statewide strategy to coordinate state and local agencies, law enforcement entities, and investigative units in order to increase the effectiveness of programs and initiatives dealing with the prevention, detection, and prosecution of Medicaid and public assistance fraud.[7] Interagency agreements for the coordination of prevention, investigation, and prosecution of Medicaid and public assistance fraud were executed by various agencies.[8] Thus, the Medicaid and Public Assistance Fraud Strike Force was created within the Department of Financial Services to oversee and coordinate state and local efforts to eliminate Medicaid and public assistance fraud and to recover state and federal funds.

Telemedicine

Telemedicine utilizes various advances in communication technology to provide healthcare services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include:[9]

- **Primary Care and Specialist Referral Services** – Telemedicine in this context involves a primary care or allied health professional providing consultation with a patient or a specialist assisting the primary care physician with a diagnosis. The process may involve live interactive video or the use of store and forward transmission of diagnostic images, vital signs and/or video clips with patient data for later review.
- **Remote patient monitoring** – Telemedicine in this context includes home health services and uses devices to remotely collect and send data to home health agencies or remote diagnostic testing facilities.
- **Consumer medical and health information** – In this context, telemedicine offers consumers specialized health information and on-line discussion groups for peer-to-peer support.
- **Medical education** – In this context, telemedicine provides continuing medical education credits.

[6] The federal Medicaid Act requires states to have in effect laws pursuant to which states have the right to recover third party benefits for medical assistance provided by the state Medicaid program. *See* 42 U.S.C. § 1396a(a)(25)(H). Federal law also mandates that state Medicaid programs must require recipients to assign to the state any rights the recipient has to benefits from third parties related to medical care. *See* 42 U.S.C. § 1396k(a)(1)(A). Notwithstanding the foregoing provisions, the Medicaid Act's "anti-lien provision" prohibits states from imposing a lien on the property of a recipient prior to his death on account of medical assistance provided by the state's Medicaid program. *See* 42 U.S.C. § 1396p(a)(1).
[7] *See* s. 624.351, F.S.
[8] *See* s. 624.352, F.S.
[9] American Telemedicine Association, *What is Telemedicine*, http://www.americantelemed.org/learn/what-is-telemedicine (last visited Mar. 26, 2013).

Telemedicine Services in Florida

Since 2006, the Children's Medical Services Network (CMS Network) has provided specified telemedicine services under Florida's 1915(b) Medicaid Managed Care Waiver in compliance with federal and state regulations. Authorized CMS Network telemedicine services include certain evaluation and consultation services already covered by the Medicaid state plan.

The Child Protection Team (CPT) program under Children's Medical Services also utilizes a telemedicine network. The CPT is a medically directed multi-disciplinary program that works with local sheriffs offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.[10] The telemedicine network connects the child in one location ("remote site") where a registered nurse greets the child and assists with the examination by the health care professionals in another location ("hub site").[11] The hub site is a comprehensive medical facility with a wide range of medical and interdisciplinary staff that can assist with the exam and review. Special equipment allows for live assessments between the remote and hub sites, including professional participation from multiple locations.[12]

The use of telemedicine for the CPTs is further defined under rule at Rule 64C-8.001, F.A.C. Rule 64C-8.003, F.A.C, allows medical diagnosis and evaluation to be conducted in person or through telemedicine. However, the use of telemedicine specifically requires the presence of a CMS-approved physician or advanced registered nurse practitioner at the hub site and a registered nurse at the remote site.

In December 2010, Florida Medicaid submitted a state plan amendment to the federal Centers for Medicare and Medicaid Services to allow for the provision of specified physician, dental, mental health, and substance abuse telemedicine services. The amendment was requested because the program had been reimbursing only the physician rendering services using telemedicine, not the provider physically with the patient. The state plan amendment specifies that covered telemedicine services under Medicaid must include, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the Medicaid recipient and the health care practitioner.[13] Telephone conversations, chart review, electronic mail messages or facsimile transmissions are not considered telemedicine.[14]

Only a specific list of provider types are eligible for Medicaid reimbursement for telemedicine services and such providers or entities must be licensed under chs. 394, 397, 458, 459, 464, 466, 490, or 491, F.S.[15] The state plan amendment was approved in March 2011 and was retroactively effective to October 1, 2010. The 2012-2015 Model Contracts with Medicaid Managed Care

[10] Florida Department of Health, *Child Protection Teams*, http://www.cms-kids.com/families/child_protection_safety/child_protection_teams.html (last visited Mar. 26, 2013).
[11] Florida Department of Health, *CPT Telemedicine and Telehealth Network*, http://www.cms-kids.com/families/child_protection_safety/cpt_telemedicine.html (last visited Mar. 26, 2013).
[12] Florida Department of Health, *Child Protection Team Telemedicine Network Fact Sheet*, http://www.cms-kids.com/families/child_protection_safety/documents/cpt_telemedicine_fact_sheet.pdf (last visited Mar. 26. 2013).
[13] Florida Medicaid State Plan, Attachment 3.1-B, Page 11.
[14] Ibid.
[15] The eligible provider types are: physicians, dentists, psychiatric nurses, registered nurses, advanced registered nurse practitioners, physician's assistants, clinical social workers, mental health counselors, marriage and family therapists, masters level certified addiction professionals (CAP) and psychologists.

Organizations, however, limit telemedicine services to behavioral health care and dental services.[16,17]

The contract language specifically excludes reimbursement for telephone conversations, video cell phone interactions, electronic mail messages, facsimile transmission, telecommunications with the enrollee at a location other than a "spoke site," which is the provider office location where an approved service is being furnished.[18] Reimbursement is also excluded for "store and forward" visits and consultations that are transmitted after the Medicaid recipient is no longer available.[19] Medicaid does not reimburse for the costs or fees of any of the equipment necessary to provide the services.

Fee-for-service (FFS) Medicaid providers may provide telemedicine services within the requirements of the current Medicaid Services Coverage and Limitations Handbook.[20] Currently, the approved FFS providers are physicians, dental providers, and behavioral health care providers.[21] The managed care contracts are currently being amended to include the provision of telemedicine services by physicians.[22]

Florida law allows the Florida Board of Medicine (Board) to establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedures manuals. In 2003, the Board adopted Rule 64B8-9.014, F.A.C., "Standards for Telemedicine Prescribing Practice." The rule prohibits prescribing based solely on an electronic questionnaire. The rule permits a doctor to provide treatment recommendations, include issuing a prescription based on a documented patient evaluation, discussion between the patient and physician regarding treatment, and treatment options and maintenance of appropriate medical records.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 409.907, F.S., relating to Medicaid provider agreements, to require a Medicaid provider to report in writing any change of any principal of the provider whose ownership interest is equal to five percent or more to the AHCA no later than 30 days after the change occurs. The bill specifies who is included in the term "principal." The definition of a controlling interest is already defined by statute under s. 408.803(7), F.S., and includes:

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[16] According to the February 17, 2010 minutes of a Medicaid Medical Advisory Committee meeting, Medicaid reimburses telemedicine dental services for oral prophylaxis, topical fluoride application, oral hygiene instructions when a dental hygienists performs these services via video teleconferencing with a supervising licensed dentist.
[17] Agency for Health Care Administration, *House Bill 499/Senate Bill 898 Bill Analysis and Economic Impact Statement,* p. 2, (Mar. 27, 2013) (on file with the Senate Health Policy Committee).
[18] Ibid.
[19] Agency for Health Care Administration, 2012-2015 Health Plan Model Contract Attachment II – Core Contract Provisions, Paragraph 22, http://ahca.myflorida.com/MCHQ/Managed_Health_Care/MHMO/docs/contract/1215_Contract/2012-2015/Jan2013/2012-15_HP-ContractAtt-II_GEN-AMEND1-JAN-2013-CLEAN.pdf (last visited Mar. 26, 2013).
[20] Agency for Health Care Administration, *supra*, note 9, at 2.
[21] Ibid.
[22] Agency for Health Care Administration, *supra*, note 9, at 2.

- The applicant or licensee;
- A person or entity that serves as an officer of, is on the board or has a five percent or greater ownership interest in the applicant or licensee; or
- A person or entity that serves as an officer of, is on the board, or has a five percent or greater management interest in the management company or other entity, related or unrelated, that the applicant or licensee contracts with to manage the provider.
- The term does not include a voluntary board member.

The bill clarifies the statutory provisions relating to the liability of Medicaid providers in a change of ownership for outstanding overpayments, administrative fines, and any other moneys owed to the AHCA. The bill defines "administrative fines" to include any amount identified in any notice of a monetary penalty or fine that has been issued by the AHCA or any other regulatory or licensing agency that governs the provider.

The requirement for the AHCA to conduct random onsite inspections of Medicaid providers' service locations within 60 days after receipt of a fully complete new provider's application and prior to making the first payment to the provider for Medicaid services, is amended to authorize, rather than require, the AHCA to perform onsite inspections. The inspection would be conducted prior to the AHCA entering into a Medicaid provider agreement with the provider and would be used to determine the applicant's ability to provide services in compliance with the Medicaid program and professional regulations. The law currently only requires the AHCA to determine the applicant's ability to provide the services for which they will seek Medicaid payment.

The bill also removes an exception to the current onsite-inspection requirement for a provider or program that is licensed by the AHCA, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Families, since the selection of providers for onsite inspections is no longer a random selection, but is left up to the discretion of the AHCA under the bill.

The bill amends existing surety bond requirements for certain Medicaid providers. The bill clarifies that the additional bond required by the AHCA, if a provider's billing during the first year exceeds the bond amount, need not exceed $50,000 for certain providers. A provider could have a bond greater than $50,000, if the provider so elects.

The bill amends the requirements for a criminal history record check of each Medicaid provider, or each principal of the provider, to remove an exemption from such checks for hospitals, nursing homes, hospices, and assisted living facilities. The bill specifies that for hospitals and nursing homes, the principals of the provider are those who meet the definition of a controlling interest in s. 408.803, F.S., under the general licensing provisions for health care facilities regulated by the AHCA.

The bill removes the provision that proof of compliance with Level 2 background screening under ch. 435, F.S., conducted within 12 months before the date the Medicaid provider application is submitted to the AHCA, satisfies the requirements for a criminal history background check. This conforms to screening provisions in ch. 435, F.S., and ch. 408, F.S.

The bill provides that the AHCA may enroll as a Medicaid provider a physician located outside the state of Florida if the physician is actively licensed in Florida and interprets diagnostic testing results through telecommunications and information technology provided from a distance.

Section 2 of the bill amends s. 409.910, F.S., to address the recent U.S. Supreme Court ruling in *Wos v. E.M.A.* Section 409.910, F.S., creates an irrebuttable presumption that the amount that the ACHA is entitled to from a Medicaid recipient's judgment, award, or settlement in a tort action is the lesser of 37.5 percent of the total recovery or the total amount of medical assistance paid by Medicaid. This provision is similar to the North Carolina provision recently struck down by the Court. To ensure compliance with federal law, the bill amends this section to create a presumption of accuracy as to the ACHA's determination of the reimbursement amount but allows this determination to be rebutted by clear and convincing evidence. The bill establishes the mechanism for these challenges by providing Medicaid recipients with the right to an administrative hearing at the Division of Administrative Hearings (DOAH) to contest the amount of AHCA's recoupment. The bill establishes Leon County as venue for these hearings and the First District Court of Appeal as venue for any related appeals. The bill also provides that each party is to bear its own attorney fees and costs.

Section 3 of the bill amends s. 409.913, F.S., relating to oversight of the integrity of the Medicaid program. The bill deletes a requirement that the AHCA *immediately* terminate participation of a Medicaid provider that has been convicted of certain offenses. In order to terminate a provider immediately, the AHCA must show an immediate harm to the public health, which is not always possible. The AHCA still must terminate a Medicaid provider from participation in the Medicaid program, unless the AHCA determines that the provider did not participate or acquiesce in the offense. The change will resolve a current conflict with the Administrative Procedure Act.[23]

The AHCA may seek civil remedies or impose administrative sanctions if a provider *has been convicted* of any of the following offenses:

- A criminal offense under federal law or the law of any state relating to the practice of the provider's profession;
- An offense listed in s. 409.907(10), F.S., relating to factors the AHCA may consider when reviewing an application for a Medicaid provider agreement, which includes:
  - Making a false representation or omission of any material fact in making an application for a provider agreement;
  - Exclusion, suspension, termination, or involuntary withdrawal from participation in any Medicaid program or other governmental or private health care or health insurance program;
  - Being convicted of a criminal offense relating to the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program including the performance of management or administrative services relating to the delivery of goods or services under any such program;

[23] *See* s. 120.569(2)(n), F.S. which requires that "if any agency head finds that an immediate danger to the public health , safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date ordered."

  - Being convicted of a criminal offense under federal or state law related to the neglect or abuse of a patient in connection with the delivery of any health care goods or services;
  - Being convicted of a criminal offense under federal or state law related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;
  - Being convicted of any criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
  - Being convicted of a criminal offense under federal or state law punishable by imprisonment of one year or more which involves moral turpitude;
  - Being convicted in connection with the interference or obstruction of any investigation into any criminal offense listed above;
  - Violation of federal or state laws, rules, or regulations governing any Medicaid program, the Medicare program, or any other publicly funded federal or state health care or health insurance program, if they have been sanctioned accordingly;
  - Violation of the standards or conditions relating to professional licensure or certification or the quality of services provided; or
  - Failure to pay fines and overpayments under the Medicaid program;
- An offense listed in s. 408.809(4), F.S., relating to background screening of licensees, which includes the following offenses or any similar offense of another jurisdiction:
  - Any authorizing statutes, if the offense was a felony;
  - Chapter 408, F.S., if the offense was a felony;
  - Section 409.920, F.S., relating to Medicaid provider fraud;
  - Section 409.9201, F.S., relating to Medicaid fraud;
  - Section 741.28, F.S., relating to domestic violence;
  - Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems;
  - Section 817.234, F.S., relating to false and fraudulent insurance claims;
  - Section 817.505, F.S., relating to patient brokering;
  - Section 817.568, F.S., relating to criminal use of personal identification information;
  - Section 817.60, F.S., relating to obtaining a credit card through fraudulent means;
  - Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony;
  - Section 831.01, F.S., relating to forgery;
  - Section 831.02, F.S., relating to uttering forged instruments;
  - Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes;
  - Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes;
  - Section 831.30, F.S., relating to fraud in obtaining medicinal drugs; or
  - Section 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony;
- An offense listed in s. 435.04(2), F.S., relating to employee background screening, which includes the following offenses or any similar offense of another jurisdiction:
  - Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct;
  - Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct;
  - Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults;

- Section 782.04, F.S., relating to murder;
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child;
- Section 782.071, F.S., relating to vehicular homicide;
- Section 782.09, F.S., relating to killing of an unborn quick child by injury to the mother;
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony;
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor;
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor;
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings;
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person;
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school;
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property;
- Section 794.011, F.S., relating to sexual battery;
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority;
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
- Chapter 796, F.S., relating to prostitution;
- Section 798.02, F.S., relating to lewd and lascivious behavior;
- Chapter 800, F.S., relating to lewdness and indecent exposure;
- Section 806.01, F.S., relating to arson;
- Section 810.02, F.S., relating to burglary;
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony;
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony;
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony;
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony;
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult;
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony;
- Section 826.04, F.S., relating to incest;
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child;
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child;
- Former s. 827.05, F.S., relating to negligent treatment of children;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 843.01, F.S., relating to resisting arrest with violence;

- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication;
- Section 843.12, F.S., relating to aiding in an escape;
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions;
- Chapter 847, F.S., relating to obscene literature;
- Section 874.05(1), F.S., relating to encouraging or recruiting another to join a criminal gang;
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor;
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct;
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm;
- Section 944.40, F.S., relating to escape;
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner;
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility;
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs; or
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

The bill amends provisions relating to noncriminal actions of Medicaid providers for which the AHCA may impose sanctions, to include the act of *authorizing* certain services that are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality, or *authorizing* certain requests and reports that contain materially false or incorrect information. The bill also authorizes the AHCA to sanction a provider if the provider is charged by information or indictment with any offense listed above. The AHCA may impose sanctions if the provider or certain persons affiliated with the provider participated or acquiesced in the proscribed activity.

The bill provides that if a Medicaid provider voluntarily relinquishes its Medicaid provider number after receiving notice of an audit or investigation for which the sanction of suspension or termination will be imposed, the AHCA must impose the sanction of termination for cause against the provider, subject to challenge under ch. 120, F.S. Under current law, if a Medicaid provider receives notification that it is going to be suspended or terminated, the provider is able to voluntarily terminate its contract. By doing so, a provider has the ability to avoid sanctions of suspension or termination, which would affect the ability of the provider to reenter the program in the future. Current law gives the secretary of the AHCA authority to make a determination that imposition of a sanction is not in the best interest of the Medicaid program, in which case a sanction may not be imposed.

The bill specifies that when the AHCA is making a determination that an overpayment has occurred, the determination must be based solely upon information available before it issues the audit report and, in the case of documentation obtained to substantiate claims for Medicaid reimbursement, based solely upon contemporaneous records. The bill authorizes the AHCA to consider addenda or modifications to a note made contemporaneously with the patient care episode if the addenda or modifications are germane to the note.

In addition, the bill provides that a provider may not present records to contest an overpayment or sanction unless the records are contemporaneous and, if requested during the audit process, were provided to the AHCA or its agent. This limitation does not apply to Medicaid cost report audits and does not preclude consideration by the AHCA of audits or modifications to a note if the addenda or modifications were made before the notification of the audit and are germane to a note that was made contemporaneously with a patient care episode. Also, all documentation to be offered as evidence in an administrative hearing on an administrative sanction (in addition to Medicaid overpayments) must be exchanged by all parties at least 14 days before the administrative hearing or excluded from consideration.

The bill clarifies when interest will accrue on provider payments withheld by the AHCA based on suspected fraud or criminal activity, if it is determined later that there was no fraud or that a crime did not occur. Interest on provider payments to be paid after an investigation will accrue at 10 percent a year, beginning after the 14th day after the determination. A provision relating to the placement of funds in a suspended account held by the AHCA is deleted and a payment deadline of 14 days to the provider is removed. Payment arrangements for overpayments and fines owed to the AHCA must be made within 30 days after the date of the final order and are not subject to further appeal.

The bill requires the AHCA to terminate a provider's participation in the Medicaid program if the provider fails to pay a fine within 30 days after the date of the final order imposing the fine. The time within which a provider must reimburse an overpayment is reduced from 35 to 30 days after the date of the final order. The bill requires that fines, as well as overpayments, are due upon the issuance of a final order at the conclusion of a requested administrative hearing.

Section 4 of the bill amends s. 409.920, F.S., relating to Medicaid provider fraud, to clarify that the existing immunity from civil liability extended to persons who provide information about fraud or suspected fraudulent acts pertains to civil liability for libel, slander, or any other relevant tort. The bill defines "fraudulent acts" for purposes of immunity from civil liability to include actual or suspected fraud and abuse, insurance fraud, licensure fraud, or public insurance fraud; including any fraud-related matters that a provider or health plan is required to report to the AHCA or a law enforcement agency. The immunity from civil liability extends to reports conveyed to the AHCA in any manner, including forums, and incorporates all discussions subsequent to the report and subsequent inquiries from the AHCA, unless the person reporting acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information.

Section 5 of the bill amends s. 624.351, F.S., relating to the Medicaid and Public Assistance Fraud Strike Force, to authorize members or their designees to serve on the strike force and to provide that s. 624.351, F.S., is repealed effective June 30, 2014.

Section 6 of the bill amends s. 624.352, F.S., relating to interagency agreements to detect and deter Medicaid and public assistance fraud, to provide that the section is repealed effective June 30, 2014.

Section 7 of the bill provides an effective date of July 1, 2013.

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:

Entities and individual health care providers under Medicaid currently exempt from background checks will be required to complete the same requirements as other Medicaid providers.

The total fee for a Level 2 background screening is $64.50 ($24.00 for the state portion, $16.50 for the national portion, and $24.00 for retention). There is an additional fee of $11-to-$16 for electronic screening, depending on the provider. The cost of the screening is borne by the individual provider.[24]

C. Government Sector Impact:

To the extent that the bill deters fraud and abuse in the Medicaid program, the bill will have an indeterminate positive fiscal impact.

The bill also creates an indeterminate negative fiscal impact. From March 2012 to February 2013, the ACHA's Third Party Liability (TPL) vendor closed 302 cases and made recoveries based on the current provisions of s. 409.910, F.S. The ACHA recovered $4.9 million from these cases, approximately $2 million of which is utilized by the Legislature to fund Medicaid administrative activities. Under Section 2 of the bill, the ACHA's ability to recover Medicaid medical costs from third parties will likely be reduced as a result the recovery amount hearings caused by the decision in *Wos v. E.M.S.* The amount of this reduction is indeterminate. However, the amount of any reduction will likely be mitigated by the bill's standard of proof for overcoming the presumption.

[24] Agency for Health Care Administration, *supra*, note 1 at 6.

In addition to the fiscal impact of reduced collections, the AHCA will incur a negative fiscal impact for providing recipients with hearings on the recovery amounts under Section 2 of the bill. The TPL vendor staffed 62 hearings in circuit court contesting the ACHA's entitlement to Medicaid recovery during the last 12 months with a cost of approximately $5,000 per hearing. Due to the loss of the irrebuttable presumption, the ACHA anticipates there will be a substantial increase in the number of hearings to determine the Medicaid recovery allocation. The bill mitigates those costs by requiring the hearings to be brought in the DOAH, requiring the venue to be in Leon County, and setting a burden of proof (clear and convincing evidence), but the amount of that mitigation is indeterminate.

The ACHA and the DOAH may experience a workload increase under Section 2 of the bill. The ACHA is not requesting additional resources but plans to review the workload impacts and make a Legislative Budget Request for fiscal year 2014-2015 if the workload cannot be absorbed within existing resources.

The AHCA reports that Section 3 of the bill may result in an increase in initial background screenings of registered treating providers performed by AHCA staff, but any potential increase in workload under the bill can be absorbed within existing resources.

To the extent that a governmental entity has providers or is a provider that are not currently required to provide a completed background checks prior to Medicaid provider enrollment and not otherwise exempt, additional costs may be incurred to comply with this requirement.

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 Appropriations on April 23, 2013:
The CS removes from the bill provisions that would increase the records retention time for all medical and Medicaid-related records from five to six years for Medicaid providers. The CS provides that the AHCA may enroll as a Medicaid provider a physician located outside the state of Florida if the physician is actively licensed in Florida and interprets diagnostic testing results through telecommunications technology at a distance. The CS provides that an action by the AHCA to terminate for cause a provider that voluntarily relinquishes its Medicaid provider number is subject to challenge under ch. 120, F.S. The CS clarifies parameters relating to documentation that

the AHCA may consider during certain audits. The CS amends the Medicaid Third-party Liability Act to ensure compliance with federal law. The CS amends s. 624.351, F.S., relating to the Medicaid and Public Assistance Fraud Strike Force, to authorize members or their designees to serve on the strike force and to provide that s. 624.351, F.S., is repealed effective June 30, 2014. The CS repeals s. 624.352, F.S., relating to interagency agreements to detect and deter Medicaid and public assistance fraud, effective June 30, 2014.

CS by Health Policy on March 7, 2013
The CS deletes a separate requirement for Level 2 background checks of providers under contract with Medicaid managed care networks. All Medicaid providers participating under fee for service must still comply with this requirement. The CS removed a provision relating to the coordination of anti-fraud report reviews between the Department of Financial Services and the AHCA. The CS does not include the provision allowing the AHCA to consider information from non-Medicaid providers during an investigation. The CS also removed the 30-day provision related to records that may be presented to contest an overpayment or sanction. Interest payments to the providers that had been withheld are reinstated and the timeframe for when interest is applied is clarified.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Grimsley

588-02020-13 2013844c1

A bill to be entitled

An act relating to Medicaid fraud; amending s. 409.907, F.S.; increasing the number of years a provider must keep records; adding an additional provision relating to a change in principal that must be included in a Medicaid provider agreement with the Agency for Health Care Administration; adding definitions for "administrative fines" and "outstanding overpayment"; revising provisions relating to the agency's onsite inspection responsibilities; revising provisions relating to who is subject to background screening; amending s. 409.913, F.S.; increasing the number of years a provider must keep records; revising provisions specifying grounds for terminating a provider from the program, for seeking certain remedies for violations, and for imposing certain sanctions; providing a limitation on the information the agency may consider when making a determination of overpayment; specifying the type of records a provider must present to contest an overpayment; deleting the requirement that the agency place payments withheld from a provider in a suspended account and revising when a provider must reimburse overpayments; revising venue requirements; adding provisions relating to the payment of fines; amending s. 409.920, F.S.; clarifying provisions relating to immunity from liability for persons who provide information about Medicaid fraud; providing an effective date.

588-02020-13 2013844c1

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

Section 1. Paragraph (c) of subsection (3) of section 409.907, Florida Statutes, is amended and paragraph (k) is added to that subsection, and subsections (6), (7), and (8) of that section are amended to read:

409.907 Medicaid provider agreements.—The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the agency.

(3) The provider agreement developed by the agency, in addition to the requirements specified in subsections (1) and (2), shall require the provider to:

(c) Retain all medical and Medicaid-related records for 6 ~~a period of 5~~ years to satisfy all necessary inquiries by the agency.

(k) Report a change in any principal of the provider, including any officer, director, agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider, to the agency in writing within 30 days after the change occurs. For a hospital licensed under chapter 395 or a nursing home

licensed under part II of chapter 400, a principal of the provider is one who meets the definition of a controlling interest under s. 408.803.

(6) A Medicaid provider agreement may be revoked, at the option of the agency, due to ~~as the result of~~ a change of ownership of any facility, association, partnership, or other entity named as the provider in the provider agreement.

(a) If there is ~~In the event of~~ a change of ownership, the transferor remains liable for all outstanding overpayments, administrative fines, and any other moneys owed to the agency before the effective date of the change ~~of ownership~~. ~~In addition to the continuing liability of the transferor,~~ The transferee is also liable to the agency for all outstanding overpayments identified by the agency on or before the effective date of the change of ownership. ~~For purposes of this subsection, the term "outstanding overpayment" includes any amount identified in a preliminary audit report issued to the transferor by the agency on or before the effective date of the change of ownership.~~ In the event of a change of ownership for a skilled nursing facility or intermediate care facility, the Medicaid provider agreement shall be assigned to the transferee if the transferee meets all other Medicaid provider qualifications. In the event of a change of ownership involving a skilled nursing facility licensed under part II of chapter 400, liability for all outstanding overpayments, administrative fines, and any moneys owed to the agency before the effective date of the change of ownership shall be determined in accordance with s. 400.179.

(b) At least 60 days before the anticipated date of the

change of ownership, the transferor must ~~shall~~ notify the agency of the intended change ~~of ownership~~ and the transferee must ~~shall~~ submit to the agency a Medicaid provider enrollment application. If a change of ownership occurs without compliance with the notice requirements of this subsection, the transferor and transferee are ~~shall be~~ jointly and severally liable for all overpayments, administrative fines, and other moneys due to the agency, regardless of whether the agency identified the overpayments, administrative fines, or other moneys before or after the effective date of the change ~~of ownership~~. The agency may not approve a transferee's Medicaid provider enrollment application if the transferee or transferor has not paid or agreed in writing to a payment plan for all outstanding overpayments, administrative fines, and other moneys due to the agency. This subsection does not preclude the agency from seeking any other legal or equitable remedies available to the agency for the recovery of moneys owed to the Medicaid program. In the event of a change of ownership involving a skilled nursing facility licensed under part II of chapter 400, liability for all outstanding overpayments, administrative fines, and any moneys owed to the agency before the effective date of the change of ownership shall be determined in accordance with s. 400.179 if the Medicaid provider enrollment application for change of ownership is submitted before the change ~~of ownership~~.

(c) As used in this subsection, the term:

1. "Administrative fines" includes any amount identified in a notice of a monetary penalty or fine which has been issued by the agency or other regulatory or licensing agency that governs

the provider.

2. "Outstanding overpayment" includes any amount identified in a preliminary audit report issued to the transferor by the agency on or before the effective date of a change of ownership.

(7) ~~The agency may require,~~ As a condition of participating in the Medicaid program and before entering into the provider agreement, the agency may require ~~that~~ the provider to submit information, in an initial and any required renewal applications, concerning the professional, business, and personal background of the provider and permit an onsite inspection of the provider's service location by agency staff or other personnel designated by the agency to perform this function. Before entering into a provider agreement, the agency may ~~shall~~ perform an ~~a random~~ onsite inspection~~, within 60 days after receipt of a fully complete new provider's application,~~ of the provider's service location ~~prior to making its first payment to the provider for Medicaid services~~ to determine the applicant's ability to provide the services in compliance with the Medicaid program and professional regulations ~~that the applicant is proposing to provide for Medicaid reimbursement~~. ~~The agency is not required to perform an onsite inspection of a provider or program that is licensed by the agency, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Family Services.~~ As a continuing condition of participation in the Medicaid program, a provider must ~~shall~~ immediately notify the agency of any current or pending bankruptcy filing. Before entering into the provider agreement, or as a condition of continuing participation in the

Medicaid program, the agency may also require that Medicaid providers reimbursed on a fee-for-services basis or fee schedule basis that ~~which~~ is not cost-based, post a surety bond not to exceed $50,000 or the total amount billed by the provider to the program during the current or most recent calendar year, whichever is greater. For new providers, the amount of the surety bond shall be determined by the agency based on the provider's estimate of its first year's billing. If the provider's billing during the first year exceeds the bond amount, the agency may require the provider to acquire an additional bond equal to the actual billing level of the provider. A provider's bond need ~~shall~~ not exceed $50,000 if a physician or group of physicians licensed under chapter 458, chapter 459, or chapter 460 has a 50 percent or greater ownership interest in the provider or if the provider is an assisted living facility licensed under chapter 429. The bonds permitted by this section are in addition to the bonds referenced in s. 400.179(2)(d). If the provider is a corporation, partnership, association, or other entity, the agency may require the provider to submit information concerning the background of that entity and of any principal of the entity, including any partner or shareholder having an ownership interest in the entity equal to 5 percent or greater, and any treating provider who participates in or intends to participate in Medicaid through the entity. The information must include:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

(b) Information concerning any prior violation, fine, suspension, termination, or other administrative action taken under the Medicaid laws or~~,~~ rules~~, or regulations~~ of this state or of any other state or the Federal Government; any prior violation of the laws or~~,~~ rules~~, or regulations~~ relating to the Medicare program; any prior violation of the rules ~~or regulations~~ of any other public or private insurer; and any prior violation of the laws or~~,~~ rules~~, or regulations~~ of any regulatory body of this or any other state.

(c) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(d) If a group provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

(8)~~(a)~~ Each provider, or each principal of the provider if the provider is a corporation, partnership, association, or other entity, seeking to participate in the Medicaid program must submit a complete set of his or her fingerprints to the agency for the purpose of conducting a criminal history record check. Principals of the provider include any officer, director, billing agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider. However, for a hospital licensed under chapter 395 or a nursing home licensed under chapter 400, principals of the provider are those who meet the

definition of a controlling interest under s. 408.803. A director of a not-for-profit corporation or organization is not a principal for purposes of a background investigation ~~as~~ required by this section if the director: serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration from the not-for-profit corporation or organization for his or her service on the board of directors, has no financial interest in the not-for-profit corporation or organization, and has no family members with a financial interest in the not-for-profit corporation or organization; and if the director submits an affidavit, under penalty of perjury, to this effect to the agency and the not-for-profit corporation or organization submits an affidavit, under penalty of perjury, to this effect to the agency as part of the corporation's or organization's Medicaid provider agreement application. Notwithstanding the above, the agency may require a background check for any person reasonably suspected by the agency to have been convicted of a crime.

(a) This subsection does not apply to:

~~1. A hospital licensed under chapter 395;~~

~~2. A nursing home licensed under chapter 400;~~

~~3. A hospice licensed under chapter 400;~~

~~4. An assisted living facility licensed under chapter 429;~~

1.~~5.~~ A unit of local government, except that requirements of this subsection apply to nongovernmental providers and entities contracting with the local government to provide Medicaid services. The actual cost of the state and national

criminal history record checks must be borne by the nongovernmental provider or entity; or

2.~~6.~~ Any business that derives more than 50 percent of its revenue from the sale of goods to the final consumer, and the business or its controlling parent is required to file a form 10-K or other similar statement with the Securities and Exchange Commission or has a net worth of $50 million or more.

(b) Background screening shall be conducted in accordance with chapter 435 and s. 408.809. The cost of the state and national criminal record check shall be borne by the provider.

~~(c) Proof of compliance with the requirements of level 2 screening under chapter 435 conducted within 12 months before the date the Medicaid provider application is submitted to the agency fulfills the requirements of this subsection.~~

Section 2. Subsections (9), (13), (15), (16), (21), (22), (25), (28), (30) and (31) of section 409.913, Florida Statutes, are amended to read:

409.913 Oversight of the integrity of the Medicaid program.—The agency shall operate a program to oversee the activities of Florida Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. Beginning January 1, 2003, and each year thereafter, the agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs shall submit a joint report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year. The

report must describe the number of cases opened and investigated each year; the sources of the cases opened; the disposition of the cases closed each year; the amount of overpayments alleged in preliminary and final audit letters; the number and amount of fines or penalties imposed; any reductions in overpayment amounts negotiated in settlement agreements or by other means; the amount of final agency determinations of overpayments; the amount deducted from federal claiming as a result of overpayments; the amount of overpayments recovered each year; the amount of cost of investigation recovered each year; the average length of time to collect from the time the case was opened until the overpayment is paid in full; the amount determined as uncollectible and the portion of the uncollectible amount subsequently reclaimed from the Federal Government; the number of providers, by type, that are terminated from participation in the Medicaid program as a result of fraud and abuse; and all costs associated with discovering and prosecuting cases of Medicaid overpayments and making recoveries in such cases. The report must also document actions taken to prevent overpayments and the number of providers prevented from enrolling in or reenrolling in the Medicaid program as a result of documented Medicaid fraud and abuse and must include policy recommendations necessary to prevent or recover overpayments and changes necessary to prevent and detect Medicaid fraud. All policy recommendations in the report must include a detailed fiscal analysis, including, but not limited to, implementation costs, estimated savings to the Medicaid program, and the return on investment. The agency must submit the policy recommendations and fiscal analyses in the report to the appropriate estimating

conference, pursuant to s. 216.137, by February 15 of each year. The agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs each must include detailed unit-specific performance standards, benchmarks, and metrics in the report, including projected cost savings to the state Medicaid program during the following fiscal year.

(9) A Medicaid provider shall retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for 6 ~~a period of 5~~ years after the date of furnishing such services or goods. The agency may investigate, review, or analyze such records, which must be made available during normal business hours. However, 24-hour notice must be provided if patient treatment would be disrupted. The provider must keep ~~is responsible for furnishing to the agency, and keeping~~ the agency informed of the location of, the provider's Medicaid-related records. The authority of the agency to obtain Medicaid-related records from a provider is neither curtailed nor limited during a period of litigation between the agency and the provider.

(13) The agency shall ~~immediately~~ terminate participation of a Medicaid provider in the Medicaid program and may seek civil remedies or impose other administrative sanctions against a Medicaid provider, if the provider or any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, has been convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession, or a criminal offense listed under s. 409.907(10), s.

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

408.809(4), or s. 435.04(2) ~~has been:~~

~~(a) Convicted of a criminal offense related to the delivery of any health care goods or services, including the performance of management or administrative functions relating to the delivery of health care goods or services;~~

~~(b) Convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession; or~~

~~(c) Found by a court of competent jurisdiction to have neglected or physically abused a patient in connection with the delivery of health care goods or services~~. If the agency determines that the ~~a~~ provider did not participate or acquiesce in the ~~an~~ offense ~~specified in paragraph (a), paragraph (b), or paragraph (c),~~ termination will not be imposed. If the agency effects a termination under this subsection, the agency shall take final agency action ~~issue an immediate final order pursuant to s. 120.569(2)(n)~~.

(15) The agency shall seek a remedy provided by law, including, but not limited to, any remedy provided in subsections (13) and (16) and s. 812.035, if:

(a) The provider's license has not been renewed, or has been revoked, suspended, or terminated, for cause, by the licensing agency of any state;

(b) The provider has failed to make available or has refused access to Medicaid-related records to an auditor, investigator, or other authorized employee or agent of the agency, the Attorney General, a state attorney, or the Federal Government;

(c) The provider has not furnished or has failed to make

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

available such Medicaid-related records as the agency has found necessary to determine whether Medicaid payments are or were due and the amounts thereof;

(d) The provider has failed to maintain medical records made at the time of service, or prior to service if prior authorization is required, demonstrating the necessity and appropriateness of the goods or services rendered;

(e) The provider is not in compliance with provisions of Medicaid provider publications that have been adopted by reference as rules in the Florida Administrative Code; with provisions of state or federal laws, rules, or regulations; with provisions of the provider agreement between the agency and the provider; or with certifications found on claim forms or on transmittal forms for electronically submitted claims that are submitted by the provider or authorized representative, as such provisions apply to the Medicaid program;

(f) The provider or person who ordered, authorized, or prescribed the care, services, or supplies has furnished, or ordered or authorized the furnishing of, goods or services to a recipient which are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality;

(g) The provider has demonstrated a pattern of failure to provide goods or services that are medically necessary;

(h) The provider or an authorized representative of the provider, or a person who ordered, authorized, or prescribed the goods or services, has submitted or caused to be submitted false or a pattern of erroneous Medicaid claims;

(i) The provider or an authorized representative of the provider, or a person who has ordered, authorized, or prescribed

the goods or services, has submitted or caused to be submitted a Medicaid provider enrollment application, a request for prior authorization for Medicaid services, a drug exception request, or a Medicaid cost report that contains materially false or incorrect information;

(j) The provider or an authorized representative of the provider has collected from or billed a recipient or a recipient's responsible party improperly for amounts that should not have been so collected or billed by reason of the provider's billing the Medicaid program for the same service;

(k) The provider or an authorized representative of the provider has included in a cost report costs that are not allowable under a Florida Title XIX reimbursement plan~~,~~ after the provider or authorized representative had been advised in an audit exit conference or audit report that the costs were not allowable;

(l) The provider is charged by information or indictment with fraudulent billing practices or an offense referenced in subsection (13). The sanction applied for this reason is limited to suspension of the provider's participation in the Medicaid program for the duration of the indictment unless the provider is found guilty pursuant to the information or indictment;

(m) The provider or a person who ~~has~~ ordered, authorized, or prescribed the goods or services is found liable for negligent practice resulting in death or injury to the provider's patient;

(n) The provider fails to demonstrate that it had available during a specific audit or review period sufficient quantities of goods, or sufficient time in the case of services, to support

the provider's billings to the Medicaid program;

(o) The provider has failed to comply with the notice and reporting requirements of s. 409.907;

(p) The agency has received reliable information of patient abuse or neglect or of any act prohibited by s. 409.920; or

(q) The provider has failed to comply with an agreed-upon repayment schedule.

A provider is subject to sanctions for violations of this subsection as the result of actions or inactions of the provider, or actions or inactions of any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, in which the provider participated or acquiesced.

(16) The agency shall impose any of the following sanctions or disincentives on a provider or a person for any of the acts described in subsection (15):

(a) Suspension for a specific period of time of not more than 1 year. Suspension precludes ~~shall preclude~~ participation in the Medicaid program, which includes any action that results in a claim for payment to the Medicaid program for ~~as a result of~~ furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

(b) Termination for a specific period of time ranging ~~of~~ from more than 1 year to 20 years. Termination precludes ~~shall preclude~~ participation in the Medicaid program, which includes any action that results in a claim for payment to the Medicaid program for ~~as a result of~~ furnishing, supervising a person who

is furnishing, or causing a person to furnish goods or services.

(c) Imposition of a fine of up to $5,000 for each violation. Each day that an ongoing violation continues, such as refusing to furnish Medicaid-related records or refusing access to records, is considered~~, for the purposes of this section, to be~~ a separate violation. Each instance of improper billing of a Medicaid recipient; each instance of including an unallowable cost on a hospital or nursing home Medicaid cost report after the provider or authorized representative has been advised in an audit exit conference or previous audit report of the cost unallowability; each instance of furnishing a Medicaid recipient goods or professional services that are inappropriate or of inferior quality as determined by competent peer judgment; each instance of knowingly submitting a materially false or erroneous Medicaid provider enrollment application, request for prior authorization for Medicaid services, drug exception request, or cost report; each instance of inappropriate prescribing of drugs for a Medicaid recipient as determined by competent peer judgment; and each false or erroneous Medicaid claim leading to an overpayment to a provider is considered~~, for the purposes of this section, to be~~ a separate violation.

(d) Immediate suspension, if the agency has received information of patient abuse or neglect or of any act prohibited by s. 409.920. Upon suspension, the agency must issue an immediate final order under s. 120.569(2)(n).

(e) A fine, not to exceed $10,000, for a violation of paragraph (15)(i).

(f) Imposition of liens against provider assets, including, but not limited to, financial assets and real property, not to

exceed the amount of fines or recoveries sought, upon entry of an order determining that such moneys are due or recoverable.

(g) Prepayment reviews of claims for a specified period of time.

(h) Comprehensive followup reviews of providers every 6 months to ensure that they are billing Medicaid correctly.

(i) Corrective-action plans that ~~would~~ remain in effect ~~for providers~~ for up to 3 years and that are ~~would be~~ monitored by the agency every 6 months while in effect.

(j) Other remedies as permitted by law to effect the recovery of a fine or overpayment.

If a provider voluntarily relinquishes its Medicaid provider number or an associated license, or allows the associated licensure to expire after receiving written notice that the agency is conducting, or has conducted, an audit, survey, inspection, or investigation and that a sanction of suspension or termination will or would be imposed for noncompliance discovered as a result of the audit, survey, inspection, or investigation, the agency shall impose the sanction of termination for cause against the provider. The Secretary of Health Care Administration may make a determination that imposition of a sanction or disincentive is not in the best interest of the Medicaid program, in which case a sanction or disincentive may ~~shall~~ not be imposed.

(21) When making a determination that an overpayment has occurred, the agency shall prepare and issue an audit report to the provider showing the calculation of overpayments. The agency's determination must be based solely upon information

available to it before issuance of the audit report and, in the case of documentation obtained to substantiate claims for Medicaid reimbursement, based solely upon contemporaneous records.

(22) The audit report, supported by agency work papers, showing an overpayment to a provider constitutes evidence of the overpayment. A provider may not present or elicit testimony~~,~~ ~~either~~ on direct examination or cross-examination in any court or administrative proceeding, regarding the purchase or acquisition by any means of drugs, goods, or supplies; sales or divestment by any means of drugs, goods, or supplies; or inventory of drugs, goods, or supplies, unless such acquisition, sales, divestment, or inventory is documented by written invoices, written inventory records, or other competent written documentary evidence maintained in the normal course of the provider's business. A provider may not present records to contest an overpayment or sanction unless such records are contemporaneous and, if requested during the audit process, were furnished to the agency or its agent upon request. This limitation does not apply to Medicaid cost report audits. Notwithstanding the applicable rules of discovery, all documentation to ~~that will~~ be offered as evidence at an administrative hearing on a Medicaid overpayment or an administrative sanction must be exchanged by all parties at least 14 days before the administrative hearing or ~~must~~ be excluded from consideration.

(25)(a) The agency shall withhold Medicaid payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for a

withholding of payments involve fraud, willful misrepresentation, or abuse under the Medicaid program, or a crime committed while rendering goods or services to Medicaid recipients. If it is determined that fraud, willful misrepresentation, abuse, or a crime did not occur, the payments withheld must be paid to the provider within 14 days after such determination ~~with interest at the rate of 10 percent a year. Any money withheld in accordance with this paragraph shall be placed in a suspended account, readily accessible to the agency, so that any payment ultimately due the provider shall be made within 14 days~~. Amounts not paid within 14 days accrue interest at the rate of 10 percent a year, beginning after the 14th day.

(b) The agency shall deny payment, or require repayment, if the goods or services were furnished, supervised, or caused to be furnished by a person who has been suspended or terminated from the Medicaid program or Medicare program by the Federal Government or any state.

(c) Overpayments owed to the agency bear interest at the rate of 10 percent per year from the date of final determination of the overpayment by the agency, and payment arrangements must be made within 30 days after the date of the final order, which is not subject to further appeal ~~at the conclusion of legal proceedings~~. ~~A provider who does not enter into or adhere to an agreed upon repayment schedule may be terminated by the agency for nonpayment or partial payment.~~

(d) The agency, upon entry of a final agency order, a judgment or order of a court of competent jurisdiction, or a stipulation or settlement, may collect the moneys owed by all means allowable by law, including, but not limited to, notifying

any fiscal intermediary of Medicare benefits that the state has a superior right of payment. Upon receipt of such written notification, the Medicare fiscal intermediary shall remit to the state the sum claimed.

(e) The agency may institute amnesty programs to allow Medicaid providers the opportunity to voluntarily repay overpayments. The agency may adopt rules to administer such programs.

(28) Venue for all Medicaid program integrity ~~overpayment~~ cases lies ~~shall lie~~ in Leon County, at the discretion of the agency.

(30) The agency shall terminate a provider's participation in the Medicaid program if the provider fails to reimburse an overpayment or pay an agency-imposed fine that has been determined by final order, not subject to further appeal, within 30 ~~35~~ days after the date of the final order, unless the provider and the agency have entered into a repayment agreement.

(31) If a provider requests an administrative hearing pursuant to chapter 120, such hearing must be conducted within 90 days following assignment of an administrative law judge, absent exceptionally good cause shown as determined by the administrative law judge or hearing officer. Upon issuance of a final order, the outstanding balance of the amount determined to constitute the overpayment and fines is ~~shall become~~ due. If a provider fails to make payments in full, fails to enter into a satisfactory repayment plan, or fails to comply with the terms of a repayment plan or settlement agreement, the agency shall withhold ~~medical assistance~~ reimbursement payments for Medicaid services until the amount due is paid in full.

Section 3. Subsection (8) of section 409.920, Florida Statutes, is amended to read:

409.920 Medicaid provider fraud.—

(8) A person who provides the state, any state agency, any of the state's political subdivisions, or any agency of the state's political subdivisions with information about fraud or suspected fraudulent acts ~~fraud~~ by a Medicaid provider, including a managed care organization, is immune from civil liability for libel, slander, or any other relevant tort for providing ~~the~~ information about fraud or suspected fraudulent acts, unless the person acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information. Such immunity extends to reports of fraudulent acts or suspected fraudulent acts conveyed to or from the agency in any manner, including any forum and with any audience as directed by the agency, and includes all discussions subsequent to the report and subsequent inquiries from the agency, unless the person acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information. For purposes of this subsection, the term "fraudulent acts" includes actual or suspected fraud and abuse, insurance fraud, licensure fraud, or public assistance fraud, including any fraud-related matters that a provider or health plan is required to report to the agency or a law enforcement agency.

Section 4. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Medicaid Fraud

Bill Number PCS for 844

Name Rebecca O'Hara

Amendment Barcode support all Grimsley amendments *(if applicable)*

Job Title VP Govt Affairs

Address 113 E College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 339 6211

E-mail rohara@flmedical.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla Medical Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Medicaid Fraud

Bill Number 894 *(if applicable)*

Name David Christian

Amendment Barcode _____ *(if applicable)*

Job Title VP - Gov't Affairs

Address 136 S. Bronough
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E-mail dchristian@flchamber.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Chamber

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/2013
Meeting Date

Topic Medicaid Fraud

Bill Number CS/SB 844 *(if applicable)*

Name Michael Garner

Amendment Barcode _____ *(if applicable)*

Job Title Pres & CEO

Address 200 W. College Ave., Suite 104
Street

Phone 850-386-2904

Tallahassee FL 32301
City *State* *Zip*

E-mail michael@fahp.net

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 17, 2013

I respectfully request that **Senate Bill #844**, relating to Medicaid, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

SENATE APPROPRIATIONS
RECEIVED
13 APR 17 PM 3:02
STAFF DIR. _____ STAFF _____

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/SB 860
INTRODUCER:	Banking and Insurance Committee and Senator Galvano
SUBJECT:	Workers' Compensation System Administration
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.	McKay	McVaney	GO	**Favorable**
3.	Betta	Hansen	AP	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 860 amends provisions relating to the administration of Florida's workers' compensation system.

The elimination of the mandatory vocational evaluation under s. 440.491, F.S. will result in a reduction of $80,000 in state expenditures.

The bill:

- Provides that stop-work orders and penalties assessed against a limited liability company (LLC) continue in force against successor companies of the LLC to the same extent (and under the same conditions) that they remain in force against successor companies of corporations, partnerships, and sole proprietorships.
- Eliminates the requirement that workers' compensation health care providers be certified by the Department of Financial Services (DFS).
- Provides additional time for health care providers, carriers, and employers to file medical reimbursement disputes with the DFS, for carriers to respond to petitions, and for the DFS to issue a written determination.

- Eliminates the requirements that: (1) the DFS approve the advance payment of workers' compensation benefits in certain circumstances; (2) carriers submit reemployment status reports to the DFS for review; (3) a vocational evaluation always be conducted prior to the DFS authorizing training and education for an injured employee; and (4) the DFS serve as custodian of certain collective bargaining agreements.

This bill substantially amends the following sections of the Florida Statutes: 284.44, 440.02, 440.05, 440.102, 440.107, 440.11, 440.13, 440.15, 440.185, 440.20, 440.211, 440.385, and 440.491.

II. Present Situation:

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment.

Coverage Requirements

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.[1]
In Florida, any contractor or subcontractor who engages in construction in the state must secure and maintain workers' compensation insurance.[2] No more than three officers of a corporation or members of a limited liability company, who are engaged in the construction industry, may elect to be exempt from this requirement, if certain conditions are met.[3] Corporate officers and members of a non-construction LLC who own at least 10 percent of a LLC can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not entitled to workers compensation benefits if they suffer a workplace injury.

In 2012, the Legislature enacted changes[4] relating to the application process for the workers' compensation exemption. Electronic filing of exemption applications was required. As a result, applicants no longer needed to provide their social security number, but are required to include their date of birth, Florida driver license number, or Florida identification card number[5] on their application. An unintended consequence of the amended data reporting requirements was to preclude out-of-state corporate officers, who would otherwise have been eligible for an exemption, from filing an electronic application, as they could not possess a Florida driver

[1] Sections 440.38, F.S.
[2] Sections 440.10 and 440.38, F.S.
[3] Section 440.02, F.S.
[4] Chapter 2012-213, L.O.F.
[5] The Florida Department of Highway Safety and Motor Vehicles issues non-driver identification cards to State residents above 12 years of age who do not have a valid ID card, driver license or instruction permit from the State or any other jurisdiction. See http://www.dmv.com/fl/florida/apply-id-card.

license or Florida identification card. Current practice at the DFS is to accept paper applications from out-of-state applicants and issue exemptions when all other eligibility criteria are met.

If an employer fails to comply with coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of knowledge of the non-compliance. SWOs require the employer to cease business operations, and remain in effect until the DFS issues an Order Releasing the Stop-Work Order. Additionally, employers are assessed penalties equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater.[6] SWOs are issued for the following violations: failure to obtain workers' compensation insurance; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records in a timely manner.

To prevent a person or business from circumventing these sanctions, s. 440.107, F.S., provides that a SWO and associated penalties continue in force against a successor entity of a corporation, partnership, or sole proprietorship if certain conditions are met. The application of the sanctions would apply to the successor entity if it were engaged in the same or equivalent trade or activity as the business that was issued the SWO and has one or more of the same principals or officers as the business that was issued the SWO. The workers' compensation law is silent as to whether SWOs and associated penalties continue in force against successor entities of limited liability companies (LLCs).[7]

Certified Health Care Providers and Reimbursement Disputes

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C., by the DFS or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1) (d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS, or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

The DFS is responsible for resolving medical reimbursement disputes between health care providers and insurance carriers. Providers have 30 days from receipt of notice of disallowance or adjustment of payment from a carrier to file a dispute petition with the DFS. Carriers have 10 days from receipt of the provider's petition to submit to the DFS all documentation substantiating the carrier's disallowance or adjustment; otherwise, they waive all objections to the petition. The DFS has 60 days from receipt of all documentation to issue a written determination. The provider or the workers' compensation carrier, or either party's designated representative, may contest the DFS's determination by filing a request for an administrative hearing under ch. 120, F.S.

[6] Section 440.107, F.S.
[7] Section 440.107(7)(b), F.S.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least 8 days of work due to a covered (compensable) injury. However, indemnity benefits are payable retroactively from the first day of disability (to include compensation for the first seven days missed) to employees who miss more than 21 days of work due to a compensable injury.[8] Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage, up to the maximum weekly benefit established by law[9] ($816 per week[10] in 2013). Indemnity benefits are generally payable for a maximum of 104 weeks, with specified exceptions.[11]

For catastrophic temporary total disability,[12] the workers' compensation law provides for increased indemnity benefits (80 percent of the employee's average weekly wage) for up to six months from the date of injury. Section 440.15(2)(b), F.S., limits such increased benefit to a maximum of $700 per week. As noted in the preceding paragraph, the maximum workers' compensation rate in Florida's workers' compensation system was greater than $700 for 2013. Accordingly, employees could actually receive less compensation for a catastrophic temporary total disability than they would for a non-catastrophic injury.[13]

Section 440.20(12), F.S., permits Judges of Compensation Claims or, under certain conditions, the DFS to approve the advance payment of workers' compensation benefits to injured employees. In cases in which the carrier and employer have stipulated to an advance payment in excess of $2,000, DFS approval of the advance payment is required.

Carrier Performance Standards

Carriers are required to pay the first installment of compensation for total disability (temporary total disability or temporary partial disability) or death benefits or deny the claim within 14 days after the employer receives notification of the injury or death, when disability is immediate and continuous for eight or more days after the injury.[14]Medical, dental, pharmacy, and hospital bills properly submitted to the insurer must be paid within 45 calendar days after receipt.[15] The DFS ensures compliance through electronic databases and carrier audits, and imposes administrative penalties against carriers that do not achieve a minimum 95 percent performance standard[16] as to either the timely payment of indemnity benefits or timely payment of medical bills.[17]

[8] Section 440.12(1), F.S.
[9] Sections 440.15(1)-(4), F.S.
[10] See "Informational Bulletin DFS-04-2012" (December 10, 2012). Available at http://www.myfloridacfo.com
[11] Section 440.15, F.S.
[12] The loss of an arm, leg, hand or foot, an injury that renders the employee a paraplegic, paraparetic, quadriplegic, quadriparetic, or the loss of sight in both eyes. *See* s. 440.15(2)(b), F.S.
[13] The maximum compensation rate is set in s. 440.12(2), F.S., and is equal to 100% of the statewide average weekly wage.
[14] Section 440.20(2)(a), F.S.
[15] Section 440.20(2)(b), F.S.
[16] Increased penalties are assessed against carriers that fail to achieve a minimum 90 percent performance standard for the payment of either medical or indemnity benefits.
[17] Section 440.20, F.S.

Penalties for carrier failure to timely pay medical bills are provided for in two sections of the workers' compensation law. Section 440.185, F.S., sets forth reporting requirements for employees, employers, and carriers. Employees are required to notify their employer of an injury within 30 days after the initial date of manifestation of the injury, except as otherwise specified. Employers are required to report an injury or death to their workers' compensation carrier within seven days of having knowledge of the injury. Carriers must then report the injury to the DFS within 14 days. Section 440.593(4), F.S., relating to electronic reporting, authorizes the DFS to assess a civil penalty of up to $500 per violation. The DFS has indicated that it utilizes s. 440.185(9), F.S., to assess penalties for violations of reporting requirements, but that it has never assessed a penalty greater than $500 per violation or against an employer based upon a percentage of late filings.[18]

Reemployment Services and Evaluations

For injured employees who are unemployed 60 days after the date of injury, who are receiving certain workers' compensation benefits and have not been provided medical care coordination and reemployment services voluntarily by the carrier, the carrier must determine whether the employee is likely to return to work and report its determination to the DFS and the employee. The DFS informs that the reports it receives vary from carrier to carrier, and that the DFS review of these reports is of marginal value. The DFS further reports that it has access to medical and claims data that would allow it to identify and reach out to injured employees in need of rehabilitation services and, thus, carrier submission of reemployment status reports is unnecessary.[19]

The DFS is required to conduct training and education screenings of injured employees upon referral of the carrier or employee request. Pursuant to s. 440.491(6), F.S., an employee must submit to, and the DFS must pay for, a vocational evaluation even when the employee has decided on a suitable reemployment-training plan that has been approved by the DFS. The DFS indicates that the average cost of a vocational evaluation exceeds $1,000.[20]

Miscellaneous Provisions

The DFS is the custodian of collective bargaining agreements (CBAs) that contain mutually agreed upon workers' compensation provisions (e.g., providing an alternative dispute resolution system, an agreed-upon list of medical providers, etc.). Such collectively bargained provisions may not diminish an employee's entitlement to benefits under the workers' compensation law. The DFS informs that it simply receives CBAs, does not use them in any way, and rarely ever receives a request for such documents.[21]

The Florida Self-Insurers Guaranty Association (FSIGA) monitors the financial strength of self-insured entities for the DFS and makes recommendations as to the qualifications to self-insure. Incorrect cross references within ch. 440.F.S. [reference to s. 440.38(1)(b)1., F.S., rather than s. 440.38(1)(b), F.S., in its entirety] create uncertainty as to the extent of the FSIGA's authority.

[18] DFS correspondence, *supra*, on file with staff of the Banking and Insurance Committee.
[19] DFS correspondence, *supra*, on file with staff of the Banking and Insurance Committee.
[20] *Id.*
[21] *Id.*

The DFS is responsible for ensuring the timely payment of compensation and medical bills by workers' compensation carriers, for monitoring, auditing, and investigating carrier performance, and for assessing penalties for violations. Section 440.20, F.S., however, identifies the Office of Insurance Regulation as the regulatory body with these responsibilities.

Section 440.02(8), F.S., authorizes the DFS to establish, by rule, "standard industrial classification" (SIC) codes with respect to the construction industry. Similarly, s. 440.11, F.S., relating to exclusiveness of liability, refers to "Standard Industrial Code 7363." The SIC codes have been obsolete since 1997, and have been replaced with the North American Industrial Classification Code System (NAICS).

III. Effect of Proposed Changes:

Section 1 revises s. 440.02, F.S., relating to definitions, to eliminate outdated references to SIC codes and to update statutory language to provide for NAICS codes.

Section 2 amends s. 440.05, F.S., relating to exemptions from coverage requirements, to eliminate the requirement of a Florida-only driver's license for purposes of obtaining an exemption. The removal of this requirement will allow out-of-state officers to obtain an exemption via the electronic application process. Current practice at DFS is to accept paper applications from out-of-state applicants and issue exemptions once all other eligibility criteria are met.

Section 3 amends s. 440.102, F.S., to provide a conforming cross reference.

Section 4 amends s. 440.107, F.S., relating to enforcement of coverage requirements, to clarify that stop-work orders and penalty assessments against a LLC would be in effect for any successor entity, including a LLC.

Section 5 amends s. 440.11, F.S., to eliminate an obsolete reference to SIC codes and provide an updated reference to NAICS codes.

Section 6 amends s. 440.13, F.S., relating to medical services, to eliminate certification requirements for health care providers. Currently, certification by the DFS is a requirement for eligibility for payment under ch. 440, F.S. The bill makes conforming changes to eliminate the certification and decertification provisions.

The section allows a health care provider, carrier, or employer 45 days, rather than 30 days, to petition the DFS once a notice of disallowance or adjustment of a payment is received. Likewise, the carrier is provided 20 additional days (10 to 30) to submit documentation substantiating the disallowance or adjustment of payment. The section also provides DFS an additional 60 days (60 to 120) after receipt of all documentation to issue a written determination of a dispute.

The bill also revises provisions relating to the authority of the DFS to sanction health care providers for a pattern or practice of overutilization. As an option, the DFS may impose a fine of $5,000. Currently, the DFS may impose a fine in an amount *not to exceed* $5,000 per instance of overutilization or violation.

The bill eliminates provisions in s. 440,13(11), F.S., relating to the authority of the DFS to issue penalties against carriers for failure to pay medical bills in a timely manner. The DFS uses s. 440.20(6), F.S., as its authority to issue penalties.

Section 7 amends s. 440.15(2), F.S., relating to temporary total disability (TTD) benefits to eliminate the current maximum weekly compensation rate of $700. As a result, those injured workers with qualifying TTD injuries would receive 80 percent of their pre-injury average weekly wage subject to no maximum during the first six months of disability. Currently, injured workers' receiving TTD benefits receive 66 2/3 percent of their pre-injury average weekly wage subject to a maximum of 100 percent of the Florida state average weekly wage. The maximum workers' compensation rate for 2013 is $816. Injured workers receiving TTD benefits as a result of an injury described in s. 440.15(2)(b), F.S., are eligible to receive TTD benefits equal to 80 percent of his or her pre-injury average weekly wage. The increased TTD compensation rate of 80 percent is paid during the first 6 months of disability, subject to a maximum weekly compensation rate of $700. This increased compensation rate would only be paid if the employee is eligible for or has already started to collect permanent total disability benefits.

Section 8 amends s. 440.185, F.S., relating to reporting requirements, to revise the penalties imposed on employers and carriers for failing to file any form, report, or notice to provide that an employer or carrier would be subject to fine not to exceed $500 instead of $1,000 for each failure or refusal to file. The bill eliminates the additional penalty of $2,000 per failure if a carrier's noncompliance is more than 10 percent within a calendar year. The change in the penalty would comport the penalty with section 440.593(4), F.S., relating to electronic reporting, which authorizes the DFS to assess a civil penalty of up to $500 per violation.

Section 9 amends s. 440.20, F.S., relating to payment of compensation and medical bills, to correct references relating to the authority of the DFS. The bill makes the approval of advance payment of workers' compensation benefits the sole jurisdiction of Judges of Compensation Claims, and removes the DFS from the approval process in all circumstances. Currently, section 440.20(12), F.S., permits Judges of Compensation Claims or, under certain conditions, the DFS to approve the advance payment of workers' compensation benefits to injured employees. In cases in which the carrier and employer have stipulated to an advance payment in excess of $2,000, the DFS approval of the advance payment is required.

Section 10 amends s. 440.211, F.S., to eliminate DFS as the custodian of collective bargaining agreements.

Section 11 amends s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association, to correct a cross reference, thereby clarifying the FSIGA's authority.

Section 12 amends s. 440.491, F.S., relating to reemployment and evaluation of injured workers, to eliminate the requirement for a carrier to file reemployment status reports with DFS. Currently, a carrier must determine whether the employee is likely to return to work and report its determination to the DFS and the employee. The section is also amended to allow rather than require the DFS to provide vocational evaluations.

Section 13 provides that this act will take effect July 1, 2013.

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 National Council of Compensation Insurance (NCCI), the implementation of CS/SB 860 would likely result in negligible impact (less than 0.1 percent) on the overall workers' compensation costs of employers in Florida.[22] Due to the serious nature of the qualifying injuries, the NCCI expects that only a small number of prospective cases would be affected by the removal of the $700 cap on maximum weekly temporary total catastrophic benefits.

The elimination of the mandatory vocational evaluation prior to the provision of training, education, or other vocational services may allow injured workers to receive such benefits sooner and return to work in a more expeditious manner.

The bill eliminates some reporting requirements for employers and carriers that will result in an indeterminate reduction in regulatory costs.

C. Government Sector Impact:

The bill eliminates unnecessary, duplicative, and conflicting regulatory provisions, which should assist the DFS in administering the provisions of ch. 440, F.S., in a more efficient manner.

The bill eliminates the mandatory vocational evaluation under s. 440.491, F.S. The elimination of some of the evaluations could result in cost savings of approximately

[22] NCCI Analysis, January 28, 2013. On file with staff of the Banking and Insurance Committee.

$80,000. This estimated savings represents less than 0.1 percent of Workers' Compensation Administration Trust Fund expenditures for FY 2010-2011.

The bill provides additional time (from 60 days to 120 days) for the DFS to resolve reimbursement disputes and issue determination letters. The DFS receives 50-200 petitions per month, and for the calendar year 2012 received over 2,000 petitions per month. The average number of days to resolve a case has increased from approximately 24 days to over 81 days.

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 April 9, 2013:
The CS provides the following changes:

- Eliminates changes to the formula used to assess state agencies for purposes of funding workers' compensation claims of state employees.
- Eliminates changes relating to types of entities that may file medical reimbursement disputes with the DFS.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 697 and 698
insert:

Section 13. Section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a

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certificate as an electrical contractor, as defined in s. 489.505(12); ~~or~~

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the

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contractor license is active and the contractor is not on probation shall count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of $500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2015 ~~2004~~, to be licensed pursuant to 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 38

and insert:

employee; amending s. 489.514, F.S.; extending the date by which an applicant must make application for a license to be grandfathered; providing an effective date.

By the Committee on Banking and Insurance; and Senator Galvano

597-03992-13 2013860c1

A bill to be entitled

An act relating to workers' compensation system administration; amending s. 440.02, F.S.; revising a definition; amending s. 440.05, F.S.; revising requirements relating to submitting notice of election of exemption; amending s. 440.102, F.S.; conforming a cross-reference; amending s. 440.107, F.S.; revising effectiveness of stop-work orders and penalty assessment orders; amending s. 440.11, F.S.; revising immunity from liability standards for employers and employees using a help supply services company; amending s. 440.13, F.S.; deleting and revising definitions; revising health care provider requirements and responsibilities; deleting rulemaking authority and responsibilities of the Department of Financial Services; revising provider reimbursement dispute procedures; revising penalties for certain violations or overutilization of treatment; deleting certain Office of Insurance Regulation audit requirements; deleting provisions providing for removal of physicians from lists of those authorized to render medical care under certain conditions; amending s. 440.15, F.S.; revising limitations on compensation for temporary total disability; amending s. 440.185, F.S.; revising and deleting penalties for noncompliance relating to duty of employer upon receipt of notice of injury or death; amending s. 440.20, F.S.; transferring certain responsibilities of the office to the department; deleting certain

597-03992-13 2013860c1

responsibilities of the department; amending s. 440.211, F.S.; deleting a requirement that a provision that is mutually agreed upon in any collective bargaining agreement be filed with the department; amending s. 440.385, F.S.; conforming cross-references; amending s. 440.491, F.S.; revising certain carrier reporting requirements; revising duties of the department upon referral of an injured employee; providing an effective date.

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

Section 1. Subsection (8) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(8) "Construction industry" means for-profit activities involving any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. However, "construction" does not mean a homeowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold, resold, or leased by the owner within 1 year after the commencement of construction. The division may, by rule, establish ~~standard industrial classification~~ codes and definitions thereof that ~~which~~ meet the criteria of the term "construction industry" as set forth in this section.

Section 2. Subsection (3) of section 440.05, Florida Statutes, is amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(3) Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption~~,~~ must submit a notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt must be ~~which is~~ electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter and must list the name, federal tax identification number, date of birth, ~~Florida~~ driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, and must certify that any employees of the corporation whose officer elects an exemption

are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

Section 3. Paragraph (p) of subsection (5) of section 440.102, Florida Statutes, is amended to read:

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

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(p) All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under this section must be paid for by the carrier or self-insurer. However, the carrier or self-insurer must have given reasonable notice to all affected health care providers that payment for treatment, care, and attendance provided to the employee after a future date certain will be denied. A health care provider, as defined in s. 440.13(1)(g) ~~440.13(1)(h)~~, that refuses, without good cause, to continue treatment, care, and attendance before the provider receives notice of benefit denial commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Paragraph (b) of subsection (7) of section 440.107, Florida Statutes, is amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)

(b) Stop-work orders and penalty assessment orders issued under this section against a corporation, limited liability company, partnership, or sole proprietorship shall be in effect against any successor corporation or business entity that has one or more of the same principals or officers as the corporation, limited liability company, or partnership against which the stop-work order was issued and are engaged in the same or equivalent trade or activity.

Section 5. Subsection (2) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.—

(2) The immunity from liability described in subsection (1) shall extend to an employer and to each employee of the employer which uses ~~utilizes~~ the services of the employees of a help supply services company, as set forth in North American Industrial Classification System Codes 561320 and 561330 ~~Standard Industry Code Industry Number 7363~~, when such employees, whether management or staff, are acting in furtherance of the employer's business. An employee so engaged by the employer shall be considered a borrowed employee of the employer~~,~~ and, for the purposes of this section, shall be treated as any other employee of the employer. The employer shall be liable for and shall secure the payment of compensation to all such borrowed employees as required in s. 440.10, except when such payment has been secured by the help supply services company.

Section 6. Paragraphs (e) through (t) of subsection (1) of section 440.13, Florida Statutes, are redesignated as paragraphs (d) through (s), respectively, subsections (14) through (17) are renumbered as subsections (13) through (16), respectively, and present paragraphs (h) and (q) of subsection (1), paragraphs (a), (c), (e), and (i) of subsection (3), subsection (7), paragraph (b) of subsection (8), paragraph (b) of subsection (11), paragraph (e) of subsection (12), and present subsections (13) and (14) of that section are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

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

~~(d) "Certified health care provider" means a health care provider who has been certified by the department or who has entered an agreement with a licensed managed care organization to provide treatment to injured workers under this section. Certification of such health care provider must include documentation that the health care provider has read and is familiar with the portions of the statute, impairment guides, practice parameters, protocols of treatment, and rules which govern the provision of remedial treatment, care, and attendance.~~

(g) ~~(h)~~ "Health care provider" means a physician or any recognized practitioner licensed to provide ~~who provides~~ skilled services pursuant to a prescription or under the supervision or direction of a physician ~~and who has been certified by the department as a health care provider~~. The term "health care provider" includes a health care facility.

(p) ~~(q)~~ "Physician" or "doctor" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an optometrist licensed under chapter 463, or a dentist licensed under chapter 466~~, each of whom must be certified by the department as a health care provider~~.

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

(a) As a condition to eligibility for payment under this chapter, a health care provider who renders services ~~must be a certified health care provider and~~ must receive authorization from the carrier before providing treatment. This paragraph does

not apply to emergency care. ~~The department shall adopt rules to implement the certification of health care providers.~~

(c) A health care provider may not refer the employee to another health care provider, diagnostic facility, therapy center, or other facility without prior authorization from the carrier, except when emergency care is rendered. Any referral must be to a health care provider ~~that has been certified by the department~~, unless the referral is for emergency treatment, and ~~the referral~~ must be made in accordance with practice parameters and protocols of treatment as provided for in this chapter.

(e) Carriers shall adopt procedures for receiving, reviewing, documenting, and responding to requests for authorization. ~~Such procedures shall be for a health care provider certified under this section.~~

(i) Notwithstanding paragraph (d), a claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, X-ray examinations, or special diagnostic laboratory tests that cost more than $1,000 and other specialty services that the department identifies by rule is not valid and reimbursable unless the services have been expressly authorized by the carrier, ~~or~~ unless the carrier has failed to respond within 10 days to a written request for authorization, or unless emergency care is required. The insurer shall authorize such consultation or procedure unless the health care provider or facility is not authorized ~~or certified~~, unless such treatment is not in accordance with practice parameters and protocols of treatment established in this chapter, or unless a judge of compensation claims has determined that the consultation or procedure is not medically necessary, not in

accordance with the practice parameters and protocols of treatment established in this chapter, or otherwise not compensable under this chapter. Authorization of a treatment plan does not constitute express authorization for purposes of this section, except to the extent the carrier provides otherwise in its authorization procedures. This paragraph does not limit the carrier's obligation to identify and disallow overutilization or billing errors.

(7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

(a) Any health care provider, carrier, or employer who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 45 ~~30~~ days after receipt of notice of disallowance or adjustment of payment, petition the department to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the department results in dismissal of the petition.

(b) The carrier must submit to the department within 30 ~~10~~ days after receipt of the petition all documentation substantiating the carrier's disallowance or adjustment. Failure of the carrier to timely submit such ~~the requested~~ documentation to the department within 30 ~~10~~ days constitutes a waiver of all objections to the petition.

(c) Within 120 ~~60~~ days after receipt of all documentation, the department must provide to the petitioner, the carrier, and the affected parties a written determination of whether the

carrier properly adjusted or disallowed payment. The department must be guided by standards and policies set forth in this chapter, including all applicable reimbursement schedules, practice parameters, and protocols of treatment, in rendering its determination.

(d) If the department finds an improper disallowance or improper adjustment of payment by an insurer, the insurer shall reimburse the health care provider, facility, insurer, or employer within 30 days, subject to the penalties provided in this subsection.

(e) The department shall adopt rules to carry out this subsection. The rules may include provisions for consolidating petitions filed by a petitioner and expanding the timetable for rendering a determination upon a consolidated petition.

(f) Any carrier that engages in a pattern or practice of arbitrarily or unreasonably disallowing or reducing payments to health care providers may be subject to one or more of the following penalties imposed by the department:

1. Repayment of the appropriate amount to the health care provider.

2. An administrative fine assessed by the department in an amount not to exceed $5,000 per instance of improperly disallowing or reducing payments.

3. Award of the health care provider's costs, including a reasonable attorney ~~attorney's~~ fee, for prosecuting the petition.

(8) PATTERN OR PRACTICE OF OVERUTILIZATION.—

(b) If the department determines that a health care provider has engaged in a pattern or practice of overutilization

or a violation of this chapter or rules adopted by the department, including a pattern or practice of providing treatment in excess of the practice parameters or protocols of treatment, it may impose one or more of the following penalties:

1. An order ~~of the department~~ barring the provider from payment under this chapter;

2. Deauthorization of care under review;

3. Denial of payment for care rendered in the future;

~~4. Decertification of a health care provider certified as an expert medical advisor under subsection (9) or of a rehabilitation provider certified under s. 440.49;~~

4.~~5.~~ An administrative fine of ~~assessed by the department in an amount not to exceed~~ $5,000 ~~per instance of overutilization or violation~~; and

5.~~6.~~ Notification of and review by the appropriate licensing authority pursuant to s. 440.106(3).

(11) AUDITS.—

(b) The department shall monitor carriers as provided in this chapter ~~and the Office of Insurance Regulation shall audit insurers and group self insurance funds as provided in s. 624.3161, to determine if medical bills are paid in accordance with this section and rules of the department and Financial Services Commission, respectively. Any employer, if self-insured, or carrier found by the department or Office of Insurance Regulation not to be within 90 percent compliance as to the payment of medical bills after July 1, 1994, must be assessed a fine not to exceed 1 percent of the prior year's assessment levied against such entity under s. 440.51 for every quarter in which the entity fails to attain 90-percent~~

~~compliance. The department shall fine or otherwise discipline an employer or carrier, pursuant to this chapter or rules adopted by the department, and the Office of Insurance Regulation shall fine or otherwise discipline an insurer or group self-insurance fund pursuant to the insurance code or rules adopted by the Financial Services Commission, for each late payment of compensation that is below the minimum 95-percent performance standard. Any carrier that is found to be not in compliance in subsequent consecutive quarters must implement a medical bill review program approved by the department or office, and an insurer or group self insurance fund is subject to disciplinary action by the Office of Insurance Regulation~~.

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to ~~certified~~ health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey ~~certified~~ health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 1, 2003, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel.

~~(13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED TO RENDER MEDICAL CARE.—The department shall remove from the list of physicians or facilities authorized to provide remedial treatment, care, and attendance under this chapter the name of any physician or facility found after reasonable investigation to have:~~

~~(a) Engaged in professional or other misconduct or incompetency in connection with medical services rendered under this chapter;~~

~~(b) Exceeded the limits of his or her or its professional competence in rendering medical care under this chapter, or to have made materially false statements regarding his or her or its qualifications in his or her application;~~

~~(c) Failed to transmit copies of medical reports to the employer or carrier, or failed to submit full and truthful medical reports of all his or her or its findings to the~~

~~employer or carrier as required under this chapter;~~

~~(d) Solicited, or employed another to solicit for himself or herself or itself or for another, professional treatment, examination, or care of an injured employee in connection with any claim under this chapter;~~

~~(e) Refused to appear before, or to answer upon request of, the department or any duly authorized officer of the state, any legal question, or to produce any relevant book or paper concerning his or her conduct under any authorization granted to him or her under this chapter;~~

~~(f) Self-referred in violation of this chapter or other laws of this state; or~~

~~(g) Engaged in a pattern of practice of overutilization or a violation of this chapter or rules adopted by the department, including failure to adhere to practice parameters and protocols established in accordance with this chapter.~~

(13)~~(14)~~ PAYMENT OF MEDICAL FEES.—

(a) Except for emergency care treatment, fees for medical services are payable only to a health care provider ~~certified and~~ authorized to render remedial treatment, care, or attendance under this chapter. Carriers shall pay, disallow, or deny payment to health care providers in the manner and at times set forth in this chapter. A health care provider may not collect or receive a fee from an injured employee within this state, except as otherwise provided by this chapter. Such providers have recourse against the employer or carrier for payment for services rendered in accordance with this chapter. Payment to health care providers or physicians shall be subject to the medical fee schedule and applicable practice parameters and

protocols, regardless of whether the health care provider or claimant is asserting that the payment should be made.

(b) Fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under this chapter and department rule. Notwithstanding any other provision in this chapter, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules shall be permitted. Written agreements warranting deviations may include, but are not limited to, the timely scheduling of appointments for injured workers, participating in return-to-work programs with injured workers' employers, expediting the reporting of treatments provided to injured workers, and agreeing to continuing education, utilization review, quality assurance, precertification, and case management systems that are designed to provide needed treatment for injured workers.

(c) Notwithstanding any other provision of this chapter, following overall maximum medical improvement from an injury compensable under this chapter, the employee is obligated to pay a copayment of $10 per visit for medical services. The copayment shall not apply to emergency care provided to the employee.

Section 7. Paragraph (b) of subsection (2) of section 440.15, Florida Statutes, is amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(2) TEMPORARY TOTAL DISABILITY.—

(b) Notwithstanding ~~the provisions of~~ paragraph (a), an employee who has sustained the loss of an arm, leg, hand, or foot, has been rendered a paraplegic, paraparetic, quadriplegic, or quadriparetic, or has lost the sight of both eyes shall be paid temporary total disability of 80 percent of her or his average weekly wage. The increased temporary total disability compensation provided for in this paragraph must not extend beyond 6 months from the date of the accident; however, such benefits shall not be due or payable if the employee is eligible for, entitled to, or collecting permanent total disability benefits. The compensation provided by this paragraph is not subject to the limits provided in s. 440.12(2)~~, but instead is subject to a maximum weekly compensation rate of $700~~. If, at the conclusion of this period of increased temporary total disability compensation, the employee is still temporarily totally disabled, the employee shall continue to receive temporary total disability compensation as set forth in paragraphs (a) and (c). The period of time the employee has received this increased compensation will be counted as part of, and not in addition to, the maximum periods of time for which the employee is entitled to compensation under paragraph (a) but not paragraph (c).

Section 8. Subsection (9) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(9) Any employer or carrier who fails or refuses to timely send any form, report, or notice required by this section shall

be subject to an administrative fine by the department not to exceed $500 ~~$1,000~~ for each such failure or refusal. ~~If, within 1 calendar year, an employer fails to timely submit to the carrier more than 10 percent of its notices of injury or death, the employer shall be subject to an administrative fine by the department not to exceed $2,000 for each such failure or refusal.~~ However, any employer who fails to notify the carrier of an ~~the~~ injury on the prescribed form or by letter within the 7 days required in subsection (2) shall be liable for the administrative fine, which shall be paid by the employer and not the carrier. Failure by the employer to meet its obligations under subsection (2) shall not relieve the carrier from liability for the administrative fine if it fails to comply with subsections (4) and (5).

Section 9. Paragraph (b) of subsection (8) and paragraphs (a), (b), and (c) of subsection (12) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(8)

(b) In order to ensure carrier compliance under this chapter, the department ~~office~~ shall monitor, audit, and investigate the performance of carriers. The department ~~office~~ shall require that all compensation benefits be ~~are~~ timely paid in accordance with this section. The department ~~office~~ shall impose penalties for late payments of compensation that are below a minimum 95-percent ~~95 percent~~ timely payment performance standard. The carrier shall pay to the Workers' Compensation Administration Trust Fund a penalty of:

1. Fifty dollars per number of installments of compensation below the 95-percent ~~95 percent~~ timely payment performance standard and equal to or greater than a 90-percent ~~90 percent~~ timely payment performance standard.

2. One hundred dollars per number of installments of compensation below a 90-percent ~~90 percent~~ timely payment performance standard.

This section does not affect the imposition of any penalties or interest due to the claimant. If a carrier contracts with a servicing agent to fulfill its administrative responsibilities under this chapter, the payment practices of the servicing agent are deemed the payment practices of the carrier for the purpose of assessing penalties against the carrier.

(12)

(a) Liability of an employer for future payments of compensation may not be discharged by advance payment unless prior approval of a judge of compensation claims ~~or the department~~ has been obtained as hereinafter provided. The approval shall not constitute an adjudication of the claimant's percentage of disability.

(b) When the claimant has reached maximum recovery and returned to her or his former or equivalent employment with no substantial reduction in wages, such approval of a reasonable advance payment of a part of the compensation payable to the claimant may be given informally by letter by a judge of compensation claims ~~or by the department~~.

(c) In the event the claimant has not returned to the same or equivalent employment with no substantial reduction in wages

or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent:

1. An advance payment of compensation not in excess of $2,000 may be approved informally by letter, without hearing, by any judge of compensation claims or the Chief Judge.

2. An advance payment of compensation not in excess of $2,000 may be ordered by any judge of compensation claims after giving the interested parties an opportunity for a hearing thereon pursuant to not less than 10 days' notice by mail, unless such notice is waived, and after giving due consideration to the interests of the person entitled thereto. When the parties have stipulated to an advance payment of compensation not in excess of $2,000, such advance may be approved by an order of a judge of compensation claims, with or without hearing, or informally by letter by any such judge of compensation claims~~, or by the department~~, if such advance is found to be for the best interests of the person entitled thereto.

3. When the parties have stipulated to an advance payment in excess of $2,000, ~~subject to the approval of the department,~~ such payment may be approved by a judge of compensation claims by order if the judge finds that such advance payment is for the best interests of the person entitled thereto and is reasonable under the circumstances of the particular case. The judge of compensation claims shall make or cause to be made such investigations as she or he considers necessary concerning the stipulation and, in her or his discretion, may have an investigation of the matter made. The stipulation and the report of any investigation shall be deemed a part of the record of the

proceedings.

Section 10. Subsection (1) of section 440.211, Florida Statutes, is amended to read:

440.211 Authorization of collective bargaining agreement.—

(1) Subject to the limitation stated in subsection (2), a provision that is mutually agreed upon in any collective bargaining agreement ~~filed with the department~~ between an individually self-insured employer or other employer upon consent of the employer's carrier and a recognized or certified exclusive bargaining representative establishing any of the following shall be valid and binding:

(a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter which may include, but is not limited to, conciliation, mediation, and arbitration. Arbitration held pursuant to this section shall be binding on the parties.

(b) The use of an agreed-upon list of ~~certified~~ health care providers of medical treatment which may be the exclusive source of all medical treatment under this chapter.

(c) The use of a limited list of physicians to conduct independent medical examinations which the parties may agree shall be the exclusive source of independent medical examiners pursuant to this chapter.

(d) A light-duty, modified-job, or return-to-work program.

(e) A vocational rehabilitation or retraining program.

Section 11. Paragraph (b) of subsection (1) of section 440.385, Florida Statutes, is amended to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(1) CREATION OF ASSOCIATION.—

(b) A member may voluntarily withdraw from the association when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of such termination. However, the withdrawing member shall continue to be bound by the provisions of this section relating to the period of his or her membership and any claims charged pursuant thereto. The withdrawing member who is a member on or after January 1, 1991, shall also be required to provide to the association upon withdrawal, and at 12-month intervals thereafter, satisfactory proof, including, if requested by the association, a report of known and potential claims certified by a member of the American Academy of Actuaries, that it continues to meet the standards of s. 440.38(1)(b) ~~440.38(1)(b)1.~~ in relation to claims incurred while the withdrawing member exercised the privilege of self-insurance. Such reporting shall continue until the withdrawing member demonstrates to the association that there is no remaining value to claims incurred while the withdrawing member was self-insured. If a withdrawing member fails or refuses to timely provide an actuarial report to the association, the association may obtain an order from a circuit court requiring the member to produce such a report and ordering any other relief that the court determines appropriate. The association is entitled to recover all reasonable costs and attorney ~~attorney's~~ fees expended in such proceedings. If during this reporting period the withdrawing member fails to meet the standards of s. 440.38(1)(b) ~~440.38(1)(b)1.~~, the withdrawing member who is a member on or after January 1, 1991, shall thereupon, and at 6-month intervals thereafter, provide to the

association the certified opinion of an independent actuary who is a member of the American Academy of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the member for claims incurred while the member was a self-insurer, using a discount rate of 4 percent. With each such opinion, the withdrawing member shall deposit with the association security in an amount equal to the value certified by the actuary and of a type that is acceptable for qualifying security deposits under s. 440.38(1)(b). The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The association has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the association. The association shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney ~~attorney's~~ fees. The association is also entitled to recover reasonable attorney ~~attorney's~~ fees in any action to compel production of any actuarial report required by this section. For purposes of this section, the successor of a withdrawing member means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

Section 12. Paragraph (a) of subsection (3) and paragraph (a) of subsection (6) of section 440.491, Florida Statutes, are amended to read:

440.491 Reemployment of injured workers; rehabilitation.—

(3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

(a) When an employee who has suffered an injury compensable under this chapter is unemployed 60 days after the date of injury and is receiving benefits for temporary total disability, temporary partial disability, or wage loss~~,~~ and has not yet been provided medical care coordination and reemployment services voluntarily by the carrier, the carrier must determine whether the employee is likely to return to work and must report its determination to ~~the department and~~ the employee. The report shall include the identification of both the carrier and the employee, ~~and~~ the carrier claim number, and any case number assigned by the Office of the Judges of Compensation Claims. The carrier must thereafter determine the reemployment status of the employee at 90-day intervals as long as the employee remains unemployed, is not receiving medical care coordination or reemployment services, and is receiving the benefits specified in this subsection.

(6) TRAINING AND EDUCATION.—

(a) Upon referral of an injured employee by the carrier, or upon the request of an injured employee, the department shall conduct a training and education screening to determine whether it should refer the employee for a vocational evaluation ~~and, if appropriate~~, approve training and education, or approve other vocational services for the employee. At the time of such referral, the carrier shall provide the department a copy of any

reemployment assessment or reemployment plan provided to the carrier by a rehabilitation provider. The department may not approve formal training and education programs unless it determines, after consideration of the reemployment assessment, that the reemployment plan is likely to result in return to suitable gainful employment. The department may ~~is authorized to~~ expend moneys from the Workers' Compensation Administration Trust Fund, established by s. 440.50, to secure appropriate training and education at a Florida public college or at a career center established under s. 1001.44, or to secure other vocational services when necessary to satisfy the recommendation of a vocational evaluator. As used in this paragraph, "appropriate training and education" includes securing a general education diploma (GED), if necessary. The department shall by rule establish training and education standards pertaining to employee eligibility, course curricula and duration, and associated costs. For purposes of this subsection, training and education services may be secured from additional providers if:

1. The injured employee currently holds an associate degree and requests to earn a bachelor's degree not offered by a Florida public college located within 50 miles from his or her customary residence;

2. The injured employee's enrollment in an education or training program in a Florida public college or career center would be significantly delayed; or

3. The most appropriate training and education program is available only through a provider other than a Florida public college or career center or at a Florida public college or career center located more than 50 miles from the injured

employee's customary residence.

Section 13. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Worker's Comp

Bill Number 860 *(if applicable)*

Name Monte Stevens

Amendment Barcode *(if applicable)*

Job Title

Address Po Box 10269
Street
Tally FL 32302
City *State* *Zip*

Phone 224-6496

E-mail msteven5@flmedical.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

Topic SB 860 Bill Number SB 860 *(if applicable)*

Name Ashley Mayer Amendment Barcode *(if applicable)*

Job Title Director, Legislative, Cabinet & Policy

Address 400 S Monroe Phone 850-488-2823
Street
Tallahassee FL 32399 E-mail ashley.mayer@myfloridacfo.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Dept. of Financial Services

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 16, 2013

Senator Joe Negron
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 860, Workers' Compensation System Administration, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Mike Hansen
Ann Roberts
Alicia Weiss

REPLY TO:
☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 862 (740566)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education) and Senator Stargel
SUBJECT:	Parent Empowerment in Education
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Favorable**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**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:

PCS/SB 862 provides a petition process for parents to participate in the district school board's determination of a turnaround option, when a school is subject to intervention on the basis of poor academic performance. Before a district school board selects a turnaround option, it must notify parents that they may select and submit to the school board a school turnaround option. If a district school board fails to adopt a petition option submitted by parents, the school board must provide a report that explains in detail both the reason for not adopting the parent-selected option and for adopting the district's preferred option. The option selected by the district is final.

The State Board of Education would be required to adopt rules regarding the petition process, including making available a model petition format and addressing petition signature-gathering, verification, and submission of petitions to the district school board.

This bill has no fiscal impact on state appropriations.

Under the bill, school districts are required to notify parents if the classroom teachers assigned to their children have received poor performance ratings or if they are receiving classroom

instruction from an out-of-field teacher. Upon request, parents would also receive performance evaluations of any classroom teacher involved in their child's education.

Districts must also inform parents that virtual instruction is available from an "effective" or "highly effective" rated teacher when their students are assigned to classrooms with teachers who:

- Are teaching out-of-field; or
- Have received two consecutive annual performance evaluation ratings of "unsatisfactory", two annual performance evaluation ratings of "unsatisfactory" within a 3-year period, or three consecutive annual performance evaluation ratings of "needs improvement" or a combination of "needs improvement" and "unsatisfactory".

The provisions relating to parental notification with respect to out-of-field classroom teachers and performance evaluations apply to charter schools.

The bill prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement". Similarly, the bill prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement". A parent may choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches extracurricular courses, if the parent provides written consent.

The effective date of the bill is July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 1001.10, 1002.20, 1002.32, 1008.33, and 1012.2315.

The bill creates section 1003.07, Florida Statutes.

The bill repeals section 1012.42, Florida Statutes.

II. Present Situation:

School Improvement and Intervention

In 2012, the Legislature revised Florida's school accountability system to comply with the federal Elementary and Secondary Education Act (ESEA),[1] its implementing regulations, and the ESEA flexibility waiver approved for Florida by the U.S. Secretary of Education.[2]

Current state law requires the State Board of Education (SBE) to hold all school districts and public schools accountable for student performance.[3] Additionally, the SBE is responsible for a

[1] 20 U.S.C. ss. 6301 et seq.

[2] Florida requested and was granted a waiver from the U.S. Department of Education of 11 specific federal school accountability provisions. See *Florida's Approved Flexibility Request,* January 31, 2012, *See* http://www2.ed.gov/policy/eseaflex/approved-requests/fl.pdf.

state system of school improvement and education accountability that assesses student performance by school, identifies schools in which students are not making adequate progress toward state standards, and institutes appropriate measures for enforcing improvement. The SBE must also equitably enforce the accountability requirements of the state school system and may impose state requirements on school districts in order to improve the academic performance of all districts, schools, and students based upon the provisions of the Florida K-20 Education Code.[4]

Schools earning a school grade of "D" or "F" are schools in need of intervention and support.[5] The state board must apply the most intense intervention and support strategies to schools earning an "F".[6] In the first full school year after a school initially earns a grade of "F", the school district must meet three requirements: implement intervention and support strategies; select a turn-around option; and submit an implementation plan to the Department of Education (DOE) for State Board approval.[7]

A school district may select one of five turnaround options:[8]

1. Convert the school to a district-managed turnaround school;
2. Reassign students to another school and monitor the progress of each reassigned student;
3. Close the school and reopen it as one or more charter schools, each with a governing board with a demonstrated record of effectiveness;
4. Contract with an outside entity that has a demonstrated record of effectiveness to operate the school; or
5. Implement a hybrid of turnaround options or other models that have a demonstrated record of excellence.

A school earning a grade of "F" has one planning year followed by two full school years to implement the approved turnaround option.[9] Implementation of the turnaround option is no longer required if the school improves by at least one letter grade.[10] However, the school must continue to implement the strategies identified in its school improvement plan and the DOE must annually review the school's implementation of the plan for three years.[11]

Assignment of Classroom Teachers and Performance Evaluations

In 2009, the Florida Legislature enacted legislation to address the quality of teachers assigned to the lowest performing schools.[12] School districts may not assign a higher percentage than the

[3] s. 1008.33(2)(a), F.S.
[4] s. 1008.33(3)(a), F.S.
[5] s. 1008.33(3)(b), F.S. Pursuant to s. 1008.33(3)(b), F.S., the DOE must annually identify each public school in need of intervention and support.
[6] s.1008.33(4)(a), F.S.
[7] *Id.*
[8] s. 1008.33(4)(b), F.S. Section 1008.33(5), F.S., specifies the options that may be used by other schools that meet statutory criteria.
[9] s. 1008.33(4)(c), F.S.
[10] s. 1008.33(4)(d), F.S.
[11] *Id*.
[12] Chapter 2009-144, L.O.F., codified in section 1012.2315, F.S.

school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to these schools.[13] The law requires each district school board to notify the parents of students who are assigned to an out-of-field teacher.[14]

Each district school board must adopt a plan to assist teachers who are teaching out-of-field.[15] These teachers must be afforded priority consideration in professional development activities. Additionally, districts must require the teachers to participate in a certification or a staff development program that improves their performance.[16]

Florida's current educator evaluation system differentiates among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment who need improvement, developing;[17] and unsatisfactory.[18] Current law requires the DOE to annually publish online performance rating data that provides the percentage of classroom teachers, instructional personnel and school administrators receiving each performance rating aggregated by district and school.[19]

Each district must annually report to the parent of a student who is assigned to a classroom teacher or school administrator with two consecutive "unsatisfactory" evaluations, two "unsatisfactory" evaluations within a 3-year period, or three consecutive "needs improvement" evaluations, or a combination of "unsatisfactory" and "needs improvement" evaluations.[20]

III. Effect of Proposed Changes:

Petitions

The bill enables parents, by petition, to request that the school district implement a parent-selected turnaround option when a school is subject to intervention on the basis of poor academic performance. The turnaround option requested by parents must be considered for implementation by the district school board at a publicly noticed meeting if the petition is signed and dated by a majority of the parents of eligible students (indicating greater than one-half of eligible parents approve the plan). An eligible student is a student who actually enrolled in the school or a student who will be assigned to the school in the following year.

A school district would be required to notify, in writing, parents of eligible students when a school has earned a school grade of "F" , and that the parents have the option, through a petition, to submit a turnaround choice. The written notice must inform parents, before the district school board selects a turnaround option, that the parents may petition for implementation of a

[13] *Id.*
[14] Section 1012.42(1) and (2), F.S. This reporting requirement applies to teachers who are teaching subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise.
[15] s. 1012.42(1), F.S.
[16] *Id.*
[17] s. 1012.34(3)(a), F.S., requires newly hired teachers to be evaluated at least twice in the first year of teaching.
[18] s. 1012.34(2)(e), F.S.
[19] s. 1012.2315(5)(a), F.S.
[20] s. 1012.2315(5)(b), F.S.

particular turnaround option set forth in Section 1008.33 (4) (d), Florida Statutes . The notification must include:

- Identification of each school turnaround option;
- A description of the process for implementing school turnaround options;
- The date and location for submission of the petition;
- The date and location of the required public school board meeting to consider the parents selected option; and
- School district contact information.

Only one parent per eligible student may sign the petition. If a child's other parent submits a written objection to the petition, the signing parent's signature counts as one-half.

Under the bill, signature solicitors would be prohibited from offering monetary compensation or other reward to a parent. Solicitors would also be prohibited from being paid by the signature and would have to reveal any affiliated organizations upon request. For-profit corporations and businesses would be prohibited from either gathering signatures or paying others to do so.

A petition may propose one turnaround option; however, multiple petitions each proposing different options may be circulated. If valid petitions for more than one option are submitted, the petition having the most signatures is the official turnaround option selected by parents.

The school board must verify at least a majority of signatures on the petition using existing student enrollment documentation or other records containing parent signatures.

District School Board Review

The bill requires the school board to consider and implement one of the turnaround options in current law. The district school board may adopt the parent-selected turnaround option or a different option selected by the school board. If the district school board does not adopt the option selected by parents, the school board must provide a report that explains in detail both the reason for not adopting the parent-selected option and for adopting the district's preferred option. The option selected by the district school board is final.

Turnaround Schools

A school that improves by a letter grade is no longer subject to implementing the turnaround option, in accordance with s. 1008.33(4)(d), F.S.

Classroom Teachers

The notification provided to a parent of a student who is assigned to an out-of-field teacher would also inform him or her of the availability of a virtual teacher who received an annual performance evaluation rating of "effective" or "highly effective". Additionally, school districts would be permitted to reimburse a classroom teacher for certification fees incurred when he or she is assigned to teach out-of-field.

The bill prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who receives an evaluation of "unsatisfactory" or "needs improvement". Similarly, the bill prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement". A parent would be allowed to choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement", if the student and parent are informed about the impact of teacher effectiveness on student learning and written parental consent is provided. This would only apply to teachers who teach extracurricular courses (e.g., physical education, fine arts, performing fine arts, career education, and courses that may result in college credit).

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 Department of Education and school districts are assigned the responsibility of administering the requirements of this bill as part of normal operations. The administrative costs should 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.)

Recommended CS by Appropriations Subcommittee on Education on April 11, 2013:

- Removes the requirement for school districts to provide parents, upon request, with personnel evaluations of classroom teachers and administrators;
- Clarifies that parents of students who are assigned to an "F" school that is subject to selecting a turnaround option may participate in the determination of a school turnaround option;
- Removes the requirement that a school board must submit to the State Board of Education for final determination, the parent-selected option, along with a school board option, if the school board fails to adopt a parent-selected option;
- Removes the requirement that a school board must submit to the State Board of Education a plan to implement the parent-selected option, if the State Board determines that the parent-selected option is more likely to improve the academic performance of the students at the school;
- Requires the school board to provide a report that explains in detail both the reason for not adopting the parent-selected option and for adopting the district's preferred option, if the school board fails to adopt a parent-selected option;
- Provides that the turnaround option selected by the school board is final;
- Provides that a school that improves by one letter grade is no longer subject to implementing the turnaround option;
    - An elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement"; or
    - A middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement"; and
- Allows a parent to choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches an extracurricular course, if the parent provides written consent.

B. Amendments:

None.

437198

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
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The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 149 and 150
insert:

(18) FACILITIES.—

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school that occupies the property of a public school must pay for an appraisal of the public school property to compute the local commercial per

437198

square foot rental rate for the public school property. The charter school shall pay the per square foot amount as monthly rent to the district school board to reduce the bonds that are owed by the school district. A charter school receiving property from the school district may not sell or dispose of such property without written permission of the school district. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

====== 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 128 - 129

and insert:

Section 4. Paragraph (b) of subsection (16) and paragraph (e) of subsection (18) of section 1002.33, 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 15


437198

and insert:

the assignment of teachers; requiring a charter school using public school property to pay for a property appraisal and to pay rent to the district school board; creating s. 1003.07, F.S.;

499026

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment

Delete lines 160 - 162
and insert:
student who is graduating or being promoted out of the current school that is eligible for turnaround and who will not be enrolled in the school the following school year is not considered an eligible

495786

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
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The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment

Delete line 199
and insert:
may not be paid per signature and must disclose the

805192

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment

Delete line 202
and insert:
paying others to solicit signatures. A petition is invalid if any form of compensation was given in exchange for a signature on the petition.

447176

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment

Delete line 222
and insert:
implemented at the school. A parent may not sign more than one

637634

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 230 - 244
and insert:
(f) The school district shall verify at least 60 percent of the signatures on the petition using existing student enrollment documentation or other records containing parent signatures. A school district may not reject a parent's signature on a petition based on a lack of conformity to signatures in school records if the parent's identity and signature can be easily validated with a photographic identification or a notarized signature verifying the identity of the signer, or by the

637634

personal knowledge of a school employee. The school district is not required to verify notarized signatures, and signatures verified outside an established verification period are valid.

(g) For a petition to be valid, it must bear the dated signatures of at least 60 percent of the parents of eligible students. Only one

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

And the title is amended as follows:

Delete line 32

and insert:

signed and dated by at least 60 percent of the parents of

193922

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment

Between lines 249 and 250
insert:
(i) A parent may petition for a turnaround option under 1008.33(4)(b)3. or 4. only if he or she agrees in writing, as indicated on the petition, to complete the average number of volunteer hours for parents of students in charter schools located in the district.

184132

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 255 - 263
and insert:
board. Pursuant to s. 1008.33, an implementation plan for the adopted turnaround option must be submitted to the state board.

(a) If the district school board adopts a turnaround option that is different from the turnaround option selected by parents, it shall identify with its submission the turnaround option selected by parents.

(b) If the state board determines that the turnaround option selected by parents is more likely to improve the

184132

academic performance of students at the school, the district school board shall submit to the state board an implementation plan for the turnaround option selected by parents.

(c) If the school improves by at

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

And the title is amended as follows:

Delete lines 37 - 44

and insert:

requiring the school district to submit an implementation plan to the state board; amending s.

740566

576-04159-13

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to parent empowerment in education; amending s. 1001.10, F.S.; conforming a cross-reference; amending s. 1002.20, F.S.; providing that parents who have a student in a public school that is implementing a turnaround option may petition to have a particular turnaround option implemented; requiring the school district to notify parents of a public school student being taught by an out-of-field teacher or by a teacher with an unsatisfactory performance rating; specifying requirements for the notice; amending s. 1002.32, F.S.; conforming a cross-reference; amending s. 1002.33, F.S.; requiring a charter school to comply with certain procedures for the assignment of teachers; creating s. 1003.07, F.S.; creating the Parent Empowerment Act; specifying what constitutes an eligible student and a parental vote; requiring that a school district send a written notice to parents of public school students regarding the parents' options to petition the school for a particular turnaround option; requiring the notice to include certain information; authorizing up to one parental vote per eligible student; establishing the process to solicit signatures for a petition; prohibiting a person from being paid for signatures; prohibiting a for-profit corporation, business, or entity from soliciting signatures or paying a person

740566

576-04159-13

to solicit signatures; establishing criteria to verify the signatures on a petition; requiring the State Board of Education to adopt rules for filing a petition; specifying that a petition is valid if it is signed and dated by a majority of the parents of eligible students and those signatures are verified; requiring the school district to consider the turnaround option on the valid petition with the most signatures at a publicly noticed school board meeting; requiring the district school board to implement a turnaround option; requiring the district school board to complete a report under certain circumstances; providing report requirements; providing that the turnaround option selected by the district school board is final and conclusive; providing that the turnaround option is no longer required if the school improves by at least one letter grade; amending s. 1008.33, F.S.; authorizing a parent to petition the school district to implement a turnaround option selected by the parent; amending s. 1012.2315, F.S.; providing for assistance to teachers teaching out-of-field; requiring the school district to notify parents and inform them of their options if a student is being taught by an out-of-field teacher; providing that a student may not be assigned to a teacher with a performance evaluation rating of less than effective for a specified number of consecutive school years; authorizing the parent of a student to consent to the assignment of that student to a teacher with a

740566

576-04159-13

performance evaluation rating of less than effective under certain circumstances; repealing s. 1012.42, F.S., relating to teachers who are teaching out-of-field; providing an effective date.

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

Section 1. Subsection (3) of section 1001.10, Florida Statutes, is amended to read:

1001.10 Commissioner of Education; general powers and duties.—

(3) To facilitate innovative practices and ~~to allow~~ local selection of educational methods, the State Board of Education may authorize the commissioner to waive, upon the request of a district school board, rules of the State Board of Education relating ~~rules that relate~~ to ~~district~~ school instruction and ~~school~~ operations, except those rules pertaining to civil rights, and student health, safety, and welfare. The commissioner ~~of Education~~ is not authorized to grant waivers for any provisions in rule pertaining to the allocation and appropriation of state and local funds for public education; the election, compensation, and organization of school board members and superintendents; graduation and state accountability standards; financial reporting requirements; reporting of out-of-field teaching assignments under s. 1012.2315 ~~s. 1012.42~~; public meetings; public records; or due process hearings governed by chapter 120. No later than January 1 of each year, the commissioner shall report to the Legislature and the State Board of Education all approved waiver requests in the preceding

740566

576-04159-13

year.

Section 2. Paragraph (d) is added to subsection (21) of section 1002.20, Florida Statutes, and subsection (25) is added to that section, 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:

(21) PARENTAL INPUT AND MEETINGS.—

(d) Parent empowerment.—Parents of students who are assigned to a public school that is required to implement a turnaround option pursuant to s. 1008.33 may submit a petition to the school district requesting implementation of a turnaround option pursuant to s. 1003.07.

(25) ASSIGNMENT TO TEACHERS.—

(a) Out-of-field classroom teachers.—Each school district shall annually notify the parent of a public school student who is assigned to a classroom teacher teaching out-of-field. The notice must inform the parent that virtual instruction from a certified in-field teacher having an annual performance evaluation rating of "effective" or "highly effective" is available pursuant to s. 1012.2315(5).

(b) Underperforming classroom teachers.—Each school district shall annually notify the parent of a public school student assigned to a classroom teacher or school administrator who, under s. 1012.34, has two consecutive annual performance evaluation ratings of "unsatisfactory," two annual performance

evaluation ratings of "unsatisfactory within a 3-year period," or three consecutive annual performance evaluation ratings of "needs improvement" or a combination of "needs improvement" and "unsatisfactory." The notice must inform the parent that virtual instruction from a teacher who has an annual performance evaluation rating of "effective" or "highly effective" is available pursuant to s. 1012.2315(7).

Section 3. Paragraph (c) of subsection (7) of section 1002.32, Florida Statutes, is amended to read:

1002.32 Developmental research (laboratory) schools.—

(7) PERSONNEL.—

(c) Lab school faculty members shall meet the certification requirements of s. 1012.32 ~~ss. 1012.32 and 1012.42~~.

Section 4. Paragraph (b) of subsection (16) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall comply ~~be in compliance~~ with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 must ~~shall~~ be the average at the school level.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with

instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

8. Section 1012.2315(5) and (7), relating to the assignment of teachers and notification to parents.

Section 5. Section 1003.07, Florida Statutes, is created to read:

1003.07 Parent empowerment.—

(1) This section may be cited as the "Parent Empowerment Act."

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

(a) "Eligible student" means a student enrolled in a school in which a turnaround option will be implemented or a student who, under the school district's enrollment policy, is scheduled for assignment to that school the following school year. A student who is graduating or being promoted out of a school that is eligible for a turnaround option and who will not be enrolled in that school the following school year is not an eligible student.

(b) "Parental vote" means the signature of one parent of an eligible student.

1. If the other parent objects in writing to the parental vote before the date the petition is scheduled to be submitted, and if the parents have equal parental rights, the parental vote counts for one-half of a vote.

2. If one parent has sole parental responsibility or holds the right to make educational decisions for the student pursuant to s. 61.13, only that parent can vote regarding the eligible

student.

(3) Each school district shall notify, in writing, the parents of eligible students and the school advisory council when a public school has earned a school grade of "F" and is required to select a turnaround option pursuant to s. 1008.33. The written notice must inform parents that, before the district school board selects a turnaround option, parents may petition for implementation of a particular turnaround option pursuant to s. 1008.33. The notice must be provided to parents within 30 calendar days after the school district receives notice from the department that the school is required to select a turnaround option. The notice must include:

(a) A description of each turnaround option available for selection under s. 1008.33;

(b) A description of the process for implementing a turnaround option, including the date by which the school district must submit its implementation plan to the State Board of Education;

(c) The date and location for submission of the petition;

(d) The date and location of the publicly noticed district school board meeting required in this section at which the school board will consider the available turnaround options; and

(e) The contact information of the district school board.

(4) A person who solicits signatures may not offer monetary compensation, a promise of employment, or any other reward to a parent for signing a petition. A person who solicits signatures may not be paid per signature and, if asked, must disclose the organization he or she represents. A for-profit corporation, business, or entity is prohibited from gathering signatures or

paying others to solicit signatures.

(5) The State Board of Education shall adopt rules to establish a petition format, the petition submission process, standards for verifying signatures, and timeframes for the verification and consideration of a petition at a publicly noticed meeting. Petition forms must be easily accessible to parents. Each petition form must clearly identify only one turnaround option on the front page of the petition and on each page thereafter. The school district shall provide clear instructions and a sample petition form for each turnaround option available for selection under s. 1008.33.

(6) The petition process must provide that:

(a) Parents of eligible students have at least 30 days after initial notification to gather petition signatures.

(b) The school district shall verify signatures no more than 30 days after the date the petition is submitted.

(c) The district school board may not meet sooner than 30 days after the petition is submitted.

(d) A submitted petition may list only one turnaround option identified in s. 1008.33 which is not currently being implemented at the school. A parent may sign more than one petition for a turnaround option.

(e) A parent signature constitutes a certification that the parent has a present intention to enroll his or her child, who must be identified on the petition, if the turnaround option identified on the petition is selected. A school district may not reject a parent's signature on a petition on the basis that the parent signed the petition before the initial notice.

(f) The school district shall verify at least a majority of

the signatures on the petition using existing student enrollment documentation or other records containing parent signatures. A school district may not reject a parent's signature on a petition based on a lack of conformity to signatures in school records if the parent's identity and signature can be easily validated with a photographic identification or a notarized signature verifying the identity of the signer, or by the personal knowledge of a school employee. The school district is not required to verify notarized signatures, and signatures verified outside an established verification period are valid.

(g) For a petition to be valid, it must bear the dated signatures of a majority of the parents of eligible students. For purposes of this section, a majority is more than one-half of the parents who are eligible to sign the petition. Only one parental vote per eligible student may be counted with respect to each petition.

(h) If valid petitions for more than one turnaround option are submitted, the petition having the most signatures is the official turnaround option selected by parents.

(7) The turnaround option selected by parents must be considered for implementation by the school district at a publicly noticed district school board meeting. The district school board may adopt the turnaround option selected by parents or a different turnaround option selected by the district school board. The district school board shall consider and implement one of the turnaround options set forth in s. 1008.33(4)(b). If the district school board adopts a turnaround option that is different from the turnaround option selected by parents, it shall set forth in a report a detailed explanation of the

reasons it has not adopted the parents' suggested turnaround option and set forth the reasons for the plan it has adopted. The turnaround option selected by the district school board shall be final and conclusive. If the school improves by at least one letter grade, implementation of a turnaround option is no longer required in accordance with s. 1008.33(4)(d).

Section 6. Subsection (4) of section 1008.33, Florida Statutes, is amended to read:

1008.33 Authority to enforce public school improvement.—

(4)(a) The state board shall apply the most intense intervention and support strategies to schools earning a grade of "F." In the first full school year after a school initially earns a grade of "F," the school district must implement intervention and support strategies prescribed in rule under paragraph (3)(c), select a turnaround option from those provided in subparagraphs (b)1.-5., and submit a plan for implementing the turnaround option to the department for approval by the state board. Upon approval by the state board, the turnaround option must be implemented in the following school year.

(b) Except as provided in subsection (5), the turnaround options available to a school district to address a school that earns a grade of "F" are:

1. Convert the school to a district-managed turnaround school;

2. Reassign students to another school and monitor the progress of each reassigned student;

3. Close the school and reopen the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness;

4. Contract with an outside entity that has a demonstrated record of effectiveness to operate the school; or

5. Implement a hybrid of turnaround options set forth in subparagraphs 1.-4. or other turnaround models that have a demonstrated record of effectiveness.

(c) Parents of students who are assigned to a public school that is required by the State Board of Education to implement a turnaround option may petition the school district to implement one of the turnaround options in paragraph (b) selected by the parents pursuant to s. 1003.07.

(d) ~~(c)~~ Except for schools required to implement a turnaround option pursuant to subsection (5), a school earning a grade of "F" shall have a planning year followed by 2 full school years to implement the initial turnaround option selected by the school district and approved by the state board. Implementation of the turnaround option is no longer required if the school improves by at least one letter grade.

(e) ~~(d)~~ A school earning a grade of "F" that improves its letter grade must continue to implement strategies identified in its school improvement plan pursuant to s. 1001.42(18)(a). The department must annually review implementation of the school improvement plan for 3 years to monitor the school's continued improvement.

(f) ~~(e)~~ If a school earning a grade of "F" does not improve by at least one letter grade after 2 full school years of implementing the turnaround option selected by the school district under paragraph (b), the school district must select a different option and submit another implementation plan to the department for approval by the state board. Implementation of

the approved plan must begin the school year following the implementation period of the existing turnaround option, unless the state board determines that the school is likely to improve a letter grade if additional time is provided to implement the existing turnaround option.

Section 7. Section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds disparities between teachers assigned to teach in a majority of schools that do not need improvement and schools that do need improvement pursuant to s. 1008.33. The disparities may be found in the assignment of temporarily certified teachers, teachers in need of improvement, and out-of-field teachers and in the performance of the students. It is the intent of the Legislature that district school boards have flexibility through the collective bargaining process to assign teachers more equitably across the schools in the district.

(2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F".—School districts may not assign a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools graded "D" or "F" pursuant to s. 1008.34. Each school district shall annually certify to the commissioner ~~of Education~~ that this requirement has been met. If the commissioner determines that a school district is not in compliance with this subsection, the State Board of Education must ~~shall~~ be notified and shall take action pursuant to s. 1008.32 in the next regularly scheduled meeting to require compliance.

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(3) SALARY INCENTIVES.—District school boards may ~~are authorized to~~ provide salary incentives to meet the requirement of subsection (2). A district school board may not sign a collective bargaining agreement that precludes the school district from providing sufficient incentives to meet this requirement.

(4) COLLECTIVE BARGAINING.—Notwithstanding provisions of chapter 447 relating to district school board collective bargaining, collective bargaining provisions may not preclude a school district from providing incentives to high-quality teachers and assigning such teachers to low-performing schools.

(5) ASSISTANCE TO OUT-OF-FIELD TEACHERS.—

(a) Each district school board shall adopt rules for administering an assistance plan for each classroom teacher who is teaching out-of-field. The assistance plan must provide teachers who are teaching out-of-field with priority consideration in professional development activities and require such teachers to participate in a certification or staff development program that provides the competencies required for the assigned duties. A school district may reimburse a teacher who is teaching out-of-field for a certification fee. The assistance plan must also include duties of administrative personnel and other instructional personnel for assisting a teacher who is teaching out-of-field.

(b) The school district shall annually notify the parent of a student who is assigned to a classroom teacher teaching a subject matter that is:

1. Outside the field in which the teacher is certified;

2. Outside the field that was the teacher's minor field of

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study; or

3. Outside the field in which the teacher has demonstrated sufficient subject area expertise, as determined by district school board policy, in the subject area to be taught.

The notice must inform the parent that virtual instruction from a certified in-field teacher who has an annual performance evaluation rating of "effective" or "highly effective" under s. 1012.34 is available to his or her child through the virtual instruction options specified in s. 1002.321(4).

(6) ~~(5)~~ REPORT.—

~~(a)~~ By July 1, 2012, the department ~~of Education~~ shall annually report on its website, in a manner that is accessible to the public, the performance rating data reported by district school boards under s. 1012.34. The report must include the percentage of classroom teachers, instructional personnel, and school administrators receiving each performance rating aggregated by school district and by school.

(7) ASSIGNMENT OF TEACHERS BASED UPON PERFORMANCE EVALUATIONS.—

(a) ~~(b)~~ Notwithstanding ~~the provisions of~~ s. 1012.31(3)(a)2., each school district shall annually notify ~~report to~~ the parent of a ~~any~~ student who is assigned to a classroom teacher or school administrator having two consecutive annual performance evaluation ratings of "unsatisfactory" under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, or three consecutive annual performance evaluation ratings of "needs improvement" or a combination of "needs improvement" and

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"unsatisfactory" under s. 1012.34. The notice must inform the parent that virtual instruction from a teacher having a performance evaluation rating of "highly effective" or "effective" under s. 1012.34 is available to his or her child through the virtual instruction options specified in s. 1002.321(4).

(b) If a high school or middle school student is currently taught by a classroom teacher who, during that school year, receives a performance evaluation rating of "needs improvement" or "unsatisfactory" under s. 1012.34, the student may not be assigned the following school year to a classroom teacher in the same subject area who received a performance evaluation rating of "needs improvement" or "unsatisfactory" in the preceding school year.

(c) If an elementary school student is currently taught by a classroom teacher who, during that school year, receives a performance evaluation rating of "needs improvement" or "unsatisfactory" under s. 1012.34, the student may not be assigned the following school year to a classroom teacher who received a performance evaluation rating of "needs improvement" or "unsatisfactory" in the preceding school year.

(d) For a student enrolling in an extracurricular course as defined in s. 1003.01(15), a parent may choose to have the student taught by a teacher who received a performance evaluation of "needs improvement" or "unsatisfactory" in the preceding school year if the student and the student's parent receive an explanation of the impact of teacher effectiveness on student learning and the principal receives written consent from the parent.

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Section 8. Section 1012.42, Florida Statutes, is repealed.

Section 9. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/SB 862
INTRODUCER:	Appropriations Committee; (Recommended by Appropriations Subcommittee on Education), and Senator Stargel
SUBJECT:	Parent Empowerment in Education
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Favorable**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 862 provides a petition process for parents to participate in the district school board's determination of a turnaround option, when a school is subject to intervention on the basis of poor academic performance. Before a district school board selects a turnaround option, it must notify parents that they may select and submit to the school board a school turnaround option. If a district school board fails to adopt a petition option submitted by parents, the school board must provide a report that explains in detail both the reason for not adopting the parent-selected option and for adopting the district's preferred option. The option selected by the district is final.

The State Board of Education would be required to adopt rules regarding the petition process, including making available a model petition format and addressing petition signature-gathering, verification, and submission of petitions to the district school board.

This bill has no fiscal impact on state appropriations.

Under the bill, school districts are required to notify parents if the classroom teachers assigned to their children have received poor performance ratings or if they are receiving classroom

instruction from an out-of-field teacher. Upon request, parents would also receive performance evaluations of any classroom teacher involved in their child's education.

Districts must also inform parents that virtual instruction is available from an "effective" or "highly effective" rated teacher when their students are assigned to classrooms with teachers who:

- Are teaching out-of-field; or
- Have received two consecutive annual performance evaluation ratings of "unsatisfactory", two annual performance evaluation ratings of "unsatisfactory" within a 3-year period, or three consecutive annual performance evaluation ratings of "needs improvement" or a combination of "needs improvement" and "unsatisfactory".

The provisions relating to parental notification with respect to out-of-field classroom teachers and performance evaluations apply to charter schools.

The bill prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement". Similarly, the bill prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement". A parent may choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches extracurricular courses, if the parent provides written consent.

The effective date of the bill is July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 1001.10, 1002.20, 1002.32, 1008.33, and 1012.2315.

The bill creates section 1003.07, Florida Statutes.

The bill repeals section 1012.42, Florida Statutes.

II. Present Situation:

School Improvement and Intervention

In 2012, the Legislature revised Florida's school accountability system to comply with the federal Elementary and Secondary Education Act (ESEA),[1] its implementing regulations, and the ESEA flexibility waiver approved for Florida by the U.S. Secretary of Education.[2]

Current state law requires the State Board of Education (SBE) to hold all school districts and public schools accountable for student performance.[3] Additionally, the SBE is responsible for a

[1] 20 U.S.C. ss. 6301 et seq.
[2] Florida requested and was granted a waiver from the U.S. Department of Education of 11 specific federal school accountability provisions. See *Florida's Approved Flexibility Request,* January 31, 2012, *See* http://www2.ed.gov/policy/eseaflex/approved-requests/fl.pdf.

state system of school improvement and education accountability that assesses student performance by school, identifies schools in which students are not making adequate progress toward state standards, and institutes appropriate measures for enforcing improvement. The SBE must also equitably enforce the accountability requirements of the state school system and may impose state requirements on school districts in order to improve the academic performance of all districts, schools, and students based upon the provisions of the Florida K-20 Education Code.[4]

Schools earning a school grade of "D" or "F" are schools in need of intervention and support.[5] The state board must apply the most intense intervention and support strategies to schools earning an "F".[6] In the first full school year after a school initially earns a grade of "F", the school district must meet three requirements: implement intervention and support strategies; select a turn-around option; and submit an implementation plan to the Department of Education (DOE) for State Board approval.[7]

A school district may select one of five turnaround options:[8]

1. Convert the school to a district-managed turnaround school;
2. Reassign students to another school and monitor the progress of each reassigned student;
3. Close the school and reopen it as one or more charter schools, each with a governing board with a demonstrated record of effectiveness;
4. Contract with an outside entity that has a demonstrated record of effectiveness to operate the school; or
5. Implement a hybrid of turnaround options or other models that have a demonstrated record of excellence.

A school earning a grade of "F" has one planning year followed by two full school years to implement the approved turnaround option.[9] Implementation of the turnaround option is no longer required if the school improves by at least one letter grade.[10] However, the school must continue to implement the strategies identified in its school improvement plan and the DOE must annually review the school's implementation of the plan for three years.[11]

Assignment of Classroom Teachers and Performance Evaluations

In 2009, the Florida Legislature enacted legislation to address the quality of teachers assigned to the lowest performing schools.[12] School districts may not assign a higher percentage than the

[3] s. 1008.33(2)(a), F.S.
[4] s. 1008.33(3)(a), F.S.
[5] s. 1008.33(3)(b), F.S. Pursuant to s. 1008.33(3)(b), F.S., the DOE must annually identify each public school in need of intervention and support.
[6] s.1008.33(4)(a), F.S.
[7] *Id.*
[8] s. 1008.33(4)(b), F.S. Section 1008.33(5), F.S., specifies the options that may be used by other schools that meet statutory criteria.
[9] s. 1008.33(4)(c), F.S.
[10] s. 1008.33(4)(d), F.S.
[11] *Id*.
[12] Chapter 2009-144, L.O.F., codified in section 1012.2315, F.S.

school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to these schools.[13] The law requires each district school board to notify the parents of students who are assigned to an out-of-field teacher.[14]

Each district school board must adopt a plan to assist teachers who are teaching out-of-field.[15] These teachers must be afforded priority consideration in professional development activities. Additionally, districts must require the teachers to participate in a certification or a staff development program that improves their performance.[16]

Florida's current educator evaluation system differentiates among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment who need improvement, developing;[17] and unsatisfactory.[18] Current law requires the DOE to annually publish online performance rating data that provides the percentage of classroom teachers, instructional personnel and school administrators receiving each performance rating aggregated by district and school.[19]

Each district must annually report to the parent of a student who is assigned to a classroom teacher or school administrator with two consecutive "unsatisfactory" evaluations, two "unsatisfactory" evaluations within a 3-year period, or three consecutive "needs improvement" evaluations, or a combination of "unsatisfactory" and "needs improvement" evaluations.[20]

III. Effect of Proposed Changes:

Petitions

The bill enables parents, by petition, to request that the school district implement a parent-selected turnaround option when a school is subject to intervention on the basis of poor academic performance. The turnaround option requested by parents must be considered for implementation by the district school board at a publicly noticed meeting if the petition is signed and dated by a majority of the parents of eligible students (indicating greater than one-half of eligible parents approve the plan). An eligible student is a student who actually enrolled in the school or a student who will be assigned to the school in the following year.

A school district would be required to notify, in writing, parents of eligible students when a school has earned a school grade of "F" , and that the parents have the option, through a petition, to submit a turnaround choice. The written notice must inform parents, before the district school board selects a turnaround option, that the parents may petition for implementation of a

[13] *Id.*
[14] Section 1012.42(1) and (2), F.S. This reporting requirement applies to teachers who are teaching subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise.
[15] s. 1012.42(1), F.S.
[16] *Id.*
[17] s. 1012.34(3)(a), F.S., requires newly hired teachers to be evaluated at least twice in the first year of teaching.
[18] s. 1012.34(2)(e), F.S.
[19] s. 1012.2315(5)(a), F.S.
[20] s. 1012.2315(5)(b), F.S.

particular turnaround option set forth in Section 1008.33 (4) (d), Florida Statutes . The notification must include:

- Identification of each school turnaround option;
- A description of the process for implementing school turnaround options;
- The date and location for submission of the petition;
- The date and location of the required public school board meeting to consider the parents selected option; and
- School district contact information.

Only one parent per eligible student may sign the petition. If a child's other parent submits a written objection to the petition, the signing parent's signature counts as one-half.

Under the bill, signature solicitors would be prohibited from offering monetary compensation or other reward to a parent. Solicitors would also be prohibited from being paid by the signature and would have to reveal any affiliated organizations upon request. For-profit corporations and businesses would be prohibited from either gathering signatures or paying others to do so.

A petition may propose one turnaround option; however, multiple petitions each proposing different options may be circulated. If valid petitions for more than one option are submitted, the petition having the most signatures is the official turnaround option selected by parents.

The school board must verify at least a majority of signatures on the petition using existing student enrollment documentation or other records containing parent signatures.

District School Board Review

The bill requires the school board to consider and implement one of the turnaround options in current law. The district school board may adopt the parent-selected turnaround option or a different option selected by the school board. If the district school board does not adopt the option selected by parents, the school board must provide a report that explains in detail both the reason for not adopting the parent-selected option and for adopting the district's preferred option. The option selected by the district school board is final.

Turnaround Schools

A school that improves by a letter grade is no longer subject to implementing the turnaround option, in accordance with s. 1008.33(4)(d), F.S.

Classroom Teachers

The notification provided to a parent of a student who is assigned to an out-of-field teacher would also inform him or her of the availability of a virtual teacher who received an annual performance evaluation rating of "effective" or "highly effective". Additionally, school districts would be permitted to reimburse a classroom teacher for certification fees incurred when he or she is assigned to teach out-of-field.

The bill prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who receives an evaluation of "unsatisfactory" or "needs improvement". Similarly, the bill prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement". A parent would be allowed to choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement", if the student and parent are informed about the impact of teacher effectiveness on student learning and written parental consent is provided. This would only apply to teachers who teach extracurricular courses (e.g., physical education, fine arts, performing fine arts, career education, and courses that may result in college credit).

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 Department of Education and school districts are assigned the responsibility of administering the requirements of this bill as part of normal operations. The administrative costs should 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 by Appropriations Committee on April 23, 2013:

- Removes the requirement for school districts to provide parents, upon request, with personnel evaluations of classroom teachers and administrators;
- Clarifies that parents of students who are assigned to an "F" school that is subject to selecting a turnaround option may participate in the determination of a school turnaround option;
- Removes the requirement that a school board must submit to the State Board of Education for final determination, the parent-selected option, along with a school board option, if the school board fails to adopt a parent-selected option;
- Removes the requirement that a school board must submit to the State Board of Education a plan to implement the parent-selected option, if the State Board determines that the parent-selected option is more likely to improve the academic performance of the students at the school;
- Requires the school board to provide a report that explains in detail both the reason for not adopting the parent-selected option and for adopting the district's preferred option, if the school board fails to adopt a parent-selected option;
- Provides that the turnaround option selected by the school board is final;
- Provides that a school that improves by one letter grade is no longer subject to implementing the turnaround option;
    - An elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement"; or
    - A middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement"; and
- Allows a parent to choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches an extracurricular course, if the parent provides written consent.

B. Amendments:

None.

By Senator Stargel

15-00412A-13 2013862__

A bill to be entitled

An act relating to parent empowerment in education; amending s. 1001.10, F.S.; conforming a cross-reference; amending s. 1002.20, F.S.; providing that parents who have a student in a public school that is implementing a turnaround option may petition to have a particular turnaround option implemented; requiring the school district to give parents of public school students, upon request, a performance evaluation for each classroom teacher assigned to their child; requiring the school district to notify parents of a public school student being taught by an out-of-field teacher or by a teacher with an unsatisfactory performance rating; specifying requirements for the notice; amending s. 1002.32, F.S.; conforming a cross-reference; amending s. 1002.33, F.S.; requiring a charter school to comply with certain procedures for the assignment of teachers; creating s. 1003.07, F.S.; creating the Parent Empowerment Act; specifying what constitutes an eligible student and a parental vote; requiring that a school district send a written notice to parents of public school students regarding the parents' options to petition the school for a particular turnaround option; requiring the notice to include certain information; authorizing up to one parental vote per eligible student; establishing the process to solicit signatures for a petition; prohibiting a person from being paid for signatures; prohibiting a for-profit corporation, business, or

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entity from soliciting signatures or paying a person to solicit signatures; establishing criteria to verify the signatures on a petition; requiring the State Board of Education to adopt rules for filing a petition; specifying that a petition is valid if it is signed and dated by a majority of the parents of eligible students and those signatures are verified; requiring the school district to consider the turnaround option on the valid petition with the most signatures at a publicly noticed school board meeting; requiring the school district to submit an implementation plan to the state board; amending s. 1008.33, F.S.; authorizing a parent to petition the school district to implement a turnaround option selected by the parent; amending s. 1012.2315, F.S.; providing for assistance to teachers teaching out-of-field; requiring the school district to notify parents and inform them of their options if a student is being taught by an out-of-field teacher; requiring the school district to give to a parent a teacher's performance evaluation upon request; providing that a student may not be assigned to an unsatisfactory teacher in a single subject for two consecutive school years; repealing s. 1012.42, F.S., relating to teachers who are teaching out-of-field; providing an effective date.

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

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

Section 1. Subsection (3) of section 1001.10, Florida Statutes, is amended to read:

1001.10 Commissioner of Education; general powers and duties.—

(3) To facilitate innovative practices and ~~to allow~~ local selection of educational methods, the State Board of Education may authorize the commissioner to waive, upon the request of a district school board, rules of the State Board of Education relating ~~rules that relate~~ to ~~district~~ school instruction and ~~school~~ operations, except those rules pertaining to civil rights, and student health, safety, and welfare. The commissioner ~~of Education~~ is not authorized to grant waivers for any provisions in rule pertaining to the allocation and appropriation of state and local funds for public education; the election, compensation, and organization of school board members and superintendents; graduation and state accountability standards; financial reporting requirements; reporting of out-of-field teaching assignments under s. 1012.2315 ~~s. 1012.42~~; public meetings; public records; or due process hearings governed by chapter 120. No later than January 1 of each year, the commissioner shall report to the Legislature and the State Board of Education all approved waiver requests in the preceding year.

Section 2. Paragraph (d) is added to subsection (21) of section 1002.20, Florida Statutes, and subsections (25) and (26) are added to that section, 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:

(21) PARENTAL INPUT AND MEETINGS.—

(d) *Parent empowerment.*—Parents of students who are assigned to a public school that is required to implement a turnaround option pursuant to s. 1008.33 may submit a petition to the school district requesting implementation of a turnaround option pursuant to s. 1003.07.

(25) PERSONNEL EVALUATION REPORTS.—Upon request by the parent of a public school student, the school district shall provide the parent with a performance evaluation for each classroom teacher assigned to his or her child.

(26) ASSIGNMENT TO TEACHERS.—

(a) *Out-of-field classroom teachers.*—Each school district shall annually notify the parent of a public school student who is assigned to a classroom teacher teaching out-of-field. The notice must inform the parent that virtual instruction from a certified in-field teacher having an annual performance evaluation rating of "effective" or "highly effective" is available pursuant to s. 1012.2315(5).

(b) *Underperforming classroom teachers.*—Each school district shall annually notify the parent of a public school student assigned to a classroom teacher or school administrator who, under s. 1012.34, has two consecutive annual performance evaluation ratings of "unsatisfactory," two annual performance evaluation ratings of "unsatisfactory within a 3-year period," or three consecutive annual performance evaluation ratings of "needs improvement" or a combination of "needs improvement" and

"unsatisfactory." The notice must inform the parent that virtual instruction from a teacher who has an annual performance evaluation rating of "effective" or "highly effective" is available pursuant to s. 1012.2315(7).

Section 3. Paragraph (c) of subsection (7) of section 1002.32, Florida Statutes, is amended to read:

1002.32 Developmental research (laboratory) schools.—

(7) PERSONNEL.—

(c) Lab school faculty members shall meet the certification requirements of s. 1012.32 ~~ss. 1012.32 and 1012.42~~.

Section 4. Paragraph (b) of subsection (16) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall comply ~~be in compliance~~ with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 must ~~shall~~ be the average at the school level.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional

personnel and school administrators.

8. Section 1012.2315(5) and (7), relating to the assignment of teachers and notification to parents.

Section 5. Section 1003.07, Florida Statutes, is created to read:

1003.07 Parent empowerment.—

(1) This section may be cited as the "Parent Empowerment Act."

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

(a) "Eligible student" means a student enrolled in a school in which a turnaround option will be implemented or a student who, under the school district's enrollment policy, is scheduled for assignment to that school the following school year. A student who is graduating or being promoted out of a school that is eligible for a turnaround option and who will not be enrolled in that school the following school year is not an eligible student.

(b) "Parental vote" means the signature of one parent of an eligible student.

1. If the other parent objects in writing to the parental vote before the date the petition is scheduled to be submitted, and if the parents have equal parental rights, the parental vote counts for one-half of a vote.

2. If one parent has sole parental responsibility or holds the right to make educational decisions for the student pursuant to s. 61.13, only that parent can vote regarding the eligible student.

(3) Each school district shall notify, in writing, the parents of eligible students and the school advisory council

when a public school has been unable to improve performance and is required to implement a turnaround option pursuant to s. 1008.33. The written notice must inform parents that, before the district school board selects a turnaround option, parents may petition for implementation of a particular turnaround option by the school the following school year. The notice must be provided to parents within 30 calendar days after the school district receives notice from the department that the school is required to implement a turnaround option. The notice must include:

(a) A description of each turnaround option available for selection under s. 1008.33;

(b) A description of the process for implementing a turnaround option, including the date by which the school district must submit its implementation plan to the State Board of Education;

(c) The date and location for submission of the petition;

(d) The date and location of the publicly noticed district school board meeting required in this section at which the school board will consider the available turnaround options; and

(e) The contact information of the district school board.

(4) A person who solicits signatures may not offer monetary compensation, a promise of employment, or any other reward to a parent for signing a petition. A person who solicits signatures may not be paid per signature and, if asked, must disclose the organization he or she represents. A for-profit corporation, business, or entity is prohibited from gathering signatures or paying others to solicit signatures.

(5) The State Board of Education shall adopt rules to

establish a petition format, the petition submission process, standards for verifying signatures, and timeframes for the verification and consideration of a petition at a publicly noticed meeting. Petition forms must be easily accessible to parents. Each petition form must clearly identify only one turnaround option on the front page of the petition and on each page thereafter. The school district shall provide clear instructions and a sample petition form for each turnaround option available for selection under s. 1008.33.

(6) The petition process must provide that:

(a) Parents of eligible students have at least 30 days after initial notification to gather petition signatures.

(b) The school district shall verify signatures no more than 30 days after the date the petition is submitted.

(c) The district school board may not meet sooner than 30 days after the petition is submitted.

(d) A submitted petition may list only one turnaround option identified in s. 1008.33 which is not currently being implemented at the school. A parent may sign more than one petition for a turnaround option.

(e) A parent signature constitutes a certification that the parent has a present intention to enroll his or her child, who must be identified on the petition, if the turnaround option identified on the petition is selected. A school district may not reject a parent’s signature on a petition on the basis that the parent signed the petition before the initial notice.

(f) The school district shall verify at least a majority of the signatures on the petition using existing student enrollment documentation or other records containing parent signatures. A

school district may not reject a parent's signature on a petition based on a lack of conformity to signatures in school records if the parent's identity and signature can be easily validated with a photographic identification or a notarized signature verifying the identity of the signer, or by the personal knowledge of a school employee. The school district is not required to verify notarized signatures, and signatures verified outside an established verification period are valid.

(g) For a petition to be valid, it must bear the dated signatures of a majority of the parents of eligible students. For purposes of this section, a majority is more than one-half of the parents who are eligible to sign the petition. Only one parental vote per eligible student may be counted with respect to each petition.

(h) If valid petitions for more than one turnaround option are submitted, the petition having the most signatures is the official turnaround option selected by parents.

(7) The turnaround option selected by parents must be considered for implementation by the school district at a publicly noticed district school board meeting. The district school board may adopt the turnaround option selected by parents or a different turnaround option selected by the district school board. Pursuant to s. 1008.33, an implementation plan for the adopted turnaround option must be submitted to the state board.

(a) If the district school board adopts a turnaround option that is different from the turnaround option selected by parents, it shall identify with its submission the turnaround option selected by parents.

(b) If the state board determines that the turnaround

option selected by parents is more likely to improve the academic performance of students at the school, the district school board shall submit to the state board an implementation plan for the turnaround option selected by parents.

Section 6. Subsection (4) of section 1008.33, Florida Statutes, is amended to read:

1008.33 Authority to enforce public school improvement.—

(4)(a) The state board shall apply the most intense intervention and support strategies to schools earning a grade of "F." In the first full school year after a school initially earns a grade of "F," the school district must implement intervention and support strategies prescribed in rule under paragraph (3)(c), select a turnaround option from those provided in subparagraphs (b)1.-5., and submit a plan for implementing the turnaround option to the department for approval by the state board. Upon approval by the state board, the turnaround option must be implemented in the following school year.

(b) Except as provided in subsection (5), the turnaround options available to a school district to address a school that earns a grade of "F" are:

1. Convert the school to a district-managed turnaround school;

2. Reassign students to another school and monitor the progress of each reassigned student;

3. Close the school and reopen the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness;

4. Contract with an outside entity that has a demonstrated record of effectiveness to operate the school; or

5. Implement a hybrid of turnaround options set forth in subparagraphs 1.-4. or other turnaround models that have a demonstrated record of effectiveness.

(c) Parents of students who are assigned to a public school that is required by the State Board of Education to implement a turnaround option may petition the school district to implement one of the turnaround options in paragraph (b) selected by the parents pursuant to s. 1003.07.

(d) ~~(c)~~ Except for schools required to implement a turnaround option pursuant to subsection (5), a school earning a grade of "F" shall have a planning year followed by 2 full school years to implement the initial turnaround option selected by the school district and approved by the state board. Implementation of the turnaround option is no longer required if the school improves by at least one letter grade.

(e) ~~(d)~~ A school earning a grade of "F" that improves its letter grade must continue to implement strategies identified in its school improvement plan pursuant to s. 1001.42(18)(a). The department must annually review implementation of the school improvement plan for 3 years to monitor the school's continued improvement.

(f) ~~(c)~~ If a school earning a grade of "F" does not improve by at least one letter grade after 2 full school years of implementing the turnaround option selected by the school district under paragraph (b), the school district must select a different option and submit another implementation plan to the department for approval by the state board. Implementation of the approved plan must begin the school year following the implementation period of the existing turnaround option, unless

the state board determines that the school is likely to improve a letter grade if additional time is provided to implement the existing turnaround option.

Section 7. Section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds disparities between teachers assigned to teach in a majority of schools that do not need improvement and schools that do need improvement pursuant to s. 1008.33. The disparities may be found in the assignment of temporarily certified teachers, teachers in need of improvement, and out-of-field teachers and in the performance of the students. It is the intent of the Legislature that district school boards have flexibility through the collective bargaining process to assign teachers more equitably across the schools in the district.

(2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F".—School districts may not assign a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools graded "D" or "F" pursuant to s. 1008.34. Each school district shall annually certify to the commissioner ~~of Education~~ that this requirement has been met. If the commissioner determines that a school district is not in compliance with this subsection, the State Board of Education must ~~shall~~ be notified and shall take action pursuant to s. 1008.32 in the next regularly scheduled meeting to require compliance.

(3) SALARY INCENTIVES.—District school boards may ~~are authorized to~~ provide salary incentives to meet the requirement

of subsection (2). A district school board may not sign a collective bargaining agreement that precludes the school district from providing sufficient incentives to meet this requirement.

(4) COLLECTIVE BARGAINING.—Notwithstanding provisions of chapter 447 relating to district school board collective bargaining, collective bargaining provisions may not preclude a school district from providing incentives to high-quality teachers and assigning such teachers to low-performing schools.

(5) ASSISTANCE TO OUT-OF-FIELD TEACHERS.—

(a) Each district school board shall adopt rules for administering an assistance plan for each classroom teacher who is teaching out-of-field. The assistance plan must provide teachers who are teaching out-of-field with priority consideration in professional development activities and require such teachers to participate in a certification or staff development program that provides the competencies required for the assigned duties. A school district may reimburse a teacher who is teaching out-of-field for a certification fee. The assistance plan must also include duties of administrative personnel and other instructional personnel for assisting a teacher who is teaching out-of-field.

(b) The school district shall annually notify the parent of a student who is assigned to a classroom teacher teaching a subject matter that is:

1. Outside the field in which the teacher is certified;

2. Outside the field that was the teacher's minor field of study; or

3. Outside the field in which the teacher has demonstrated

sufficient subject area expertise, as determined by district school board policy, in the subject area to be taught.

The notice must inform the parent that virtual instruction from a certified in-field teacher who has an annual performance evaluation rating of "effective" or "highly effective" under s. 1012.34 is available to his or her child through the virtual instruction options specified in s. 1002.321(4).

(6) ~~(5)~~ REPORT.—

~~(a)~~ By July 1, 2012, the department ~~of Education~~ shall annually report on its website, in a manner that is accessible to the public, the performance rating data reported by district school boards under s. 1012.34. The report must include the percentage of classroom teachers, instructional personnel, and school administrators receiving each performance rating aggregated by school district and by school.

(7) ASSIGNMENT OF TEACHERS BASED UPON PERFORMANCE EVALUATIONS.—

(a) ~~(b)~~ Notwithstanding ~~the provisions of~~ s. 1012.31(3)(a)2., each school district shall annually notify ~~report to~~ the parent of a ~~any~~ student who is assigned to a classroom teacher or school administrator having two consecutive annual performance evaluation ratings of "unsatisfactory" under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, or three consecutive annual performance evaluation ratings of "needs improvement" or a combination of "needs improvement" and "unsatisfactory" under s. 1012.34. The notice must inform the parent that virtual instruction from a teacher having a

performance evaluation rating of "highly effective" or "effective" under s. 1012.34 is available to his or her child through the virtual instruction options specified in s. 1002.321(4).

(b) Upon request by the parent of a public school student, the school district shall provide the parent with a performance evaluation for each classroom teacher assigned to his or her child, pursuant to s. 1012.31.

(c) If a student is currently taught by a classroom teacher who, during that school year, receives a performance evaluation rating of "needs improvement" or "unsatisfactory" under s. 1012.34, the student may not be assigned the following school year to a classroom teacher in the same subject area who received a performance evaluation rating of "needs improvement" or "unsatisfactory" in the preceding school year.

Section 8. Section 1012.42, Florida Statutes, is repealed.

Section 9. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Parent Empowerment Bill Bill Number SB0862 *(if applicable)*

Name Jean Hovey Amendment Barcode *(if applicable)*

Job Title Exec. Director

Address 549 Brookside Dr. Phone 407 462 0350

Street

Winter Sp FL 32708 E-mail jean@floridapta.org

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA PTA

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Trigger

Bill Number 862 *(if applicable)*

Name Jason Flom

Amendment Barcode _____ *(if applicable)*

Job Title Possibilities Architect at QED Foundation

Address 1510 Colonial Dr. *Street*

Phone 850.443.7610

Tallahassee FL 32303
City *State* *Zip*

E-mail JasonQED@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.23.13
Meeting Date

Topic Parent Trigger

Bill Number 862 *(if applicable)*

Name Jeff Wright

Amendment Barcode *(if applicable)*

Job Title Director FEA Public Policy

Address 213 S. Adams St
Street

Phone 850.224.2078

Tallahassee FL 32301
City *State* *Zip*

E-mail jeff.wright@floridaea.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Education Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent empowerment

Bill Number SB 862 *(if applicable)*

Name Dustin Williams

Amendment Barcode _____ *(if applicable)*

Job Title Student

Address 4540 White Feather Trail
Street
Boynton Beach FL 33436
City *State* *Zip*

Phone 561-853-4073

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment

Bill Number SB 862 *(if applicable)*

Name Roger Williams

Amendment Barcode *(if applicable)*

Job Title Parent

Address 4540 White Feather Tr.
Street
Boynton Beach Fla. 33436
City *State* *Zip*

Phone 561-541-0593

E-mail landtech11e yahoo.com

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

Representing

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment

Bill Number SB 862 *(if applicable)*

Name Nikki Lowrey

Amendment Barcode _____ *(if applicable)*

Job Title State Director, StudentsFirst

Address 1705 Choctaw Trl
Street

Phone 850.251.0009

Maitland, FL 32751
City *State* *Zip*

E-mail nlowrey@studentsfirst.org

Speaking: ☒ For ☐ Against ☐ Information

Representing StudentsFirst

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment

Bill Number SB 862 *(if applicable)*

Name Wendy Howard

Amendment Barcode *(if applicable)*

Job Title

Address 1753 Loch Haven Ct. *Street*

Phone 727-375-9578

Trinity, FL 34655 *City* *State* *Zip*

E-mail parent4education options@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Parent in Support of Parent Empowerment

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment

Bill Number SB 862 *(if applicable)*

Name Karen Francis Winston

Amendment Barcode *(if applicable)*

Job Title Parent

Address 13706 SW 40th Cir
Street
Ocala FL 34473
City *State* *Zip*

Phone 352-307-9778

E-mail Karenwinston01@live.com

Speaking: ☑ For ☐ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment in Education Bill Number 0862 *(if applicable)*

Name Amy Datz Amendment Barcode *(if applicable)*

Job Title Parent

Address 1130 Crestview Ave. Phone (850) 322-7599
Street

Tallahassee, FL 32303 E-mail amaliedatz@mac.com.
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Parent of School Children.

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic EDUCATION EMPOWERMENT

Bill Number 862 *(if applicable)*

Name GAIL MARIE PERRY

Amendment Barcode *(if applicable)*

Job Title CHAIR, CWA COUNCIL OF FLORIDA

Address PO BOX 1766 *Street*

Phone 954 850 4055

POMPANO BCH FLA 33061 *City State Zip*

E-mail workingfolk@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic PARENT TRIGGER

Bill Number SB 862 *(if applicable)*

Name GLENDA ABICHT

Amendment Barcode _____ *(if applicable)*

Job Title SERVICES TECHNICIAN

Address 4305 SW 98 AV
Street

Phone 786-376-1181

MIAMI, FL 33165
City *State* *Zip*

E-mail GABICHT@CWA3122.ORG

Speaking: ☐ For ☑ Against ☐ Information

Representing —

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2013
Meeting Date

Topic Parent "Trigger" Bill

Bill Number SB 862 *(if applicable)*

Name WAYNE BLANTON

Amendment Barcode *(if applicable)*

Job Title Exec Director

Address 203 S. Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 414-2578

E-mail blanton@fsba.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Fla. School Boards Assc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent trigger

Bill Number 862 *(if applicable)*

Name Aurelio Hernandez Jr.

Amendment Barcode *(if applicable)*

Job Title maintenance supervisor

Address 1141 SW 26 TERR
Street

Phone 954-980-8550

FT. laud FL 33312
City *State* *Zip*

E-mail scorpion322@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/13
Meeting Date

Topic Parent Trigger

Bill Number 862 *(if applicable)*

Name CARL Tomestic

Amendment Barcode *(if applicable)*

Job Title Site repair person

Address 8210 S.W. 4th Court
Street
North Lauderdale, Fl. 33068
City *State* *Zip*

Phone 954-290-1136

E-mail bASStoWARD@AOL.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic Parent Trigger Bill Number SB862 / HB867 *(if applicable)*

Name Ellena Little Amendment Barcode _____ *(if applicable)*

Job Title Executive Director Non-profit Organization

Address 3099 Edgewood Dr. NE Phone 321-953-6908
Street

Palm Bay, FL 32905 E-mail boldbelievers@bellsouth.net
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Self

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Parent Trigger — Bill Number SB862 *(if applicable)*

Name Rocky Little — Amendment Barcode *(if applicable)*

Job Title Business Manger LIUNA

Address 3099 Edgewood Drive NE — Phone 321-953-6908
Street

Palm Bay FL 32905 — E-mail boldbelievers@bellsouth.net
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Self

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Trigger

Bill Number SB 862 *(if applicable)*

Name Carol Horton

Amendment Barcode *(if applicable)*

Job Title Educator

Address 5954 Triphammer Road
Street
Lake Worth FL 33463
City *State* *Zip*

Phone 561-762-7635

E-mail hsch10@bellsouth.net

Speaking: ☐ For ☑ Against ☐ Information

Representing myself as parent

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

Topic _____ Bill Number 862 *(if applicable)*

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23
Meeting Date

Topic Parent Empowerment

Bill Number 862 *(if applicable)*

Name Jorge Lugo

Amendment Barcode _____ *(if applicable)*

Job Title Teacher

Address 5004 Citrus Manor SW
Street

Phone (772) 584-2777

Vero Beach FL 32968
City *State* *Zip*

E-mail j_lugo21@hotmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

Topic Parental Empowerment Bill Number 862 *(if applicable)*

Name Adam Giery (Gear-ee) Amendment Barcode *(if applicable)*

Job Title Dir of Policy

Address 136 South Bronough Phone
Street

Tallahassee FL E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing The Florida Chamber of Commerce

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-2013
Meeting Date

Topic Parent Empowerment in Education Bill Number SB 0862 *(if applicable)*

Name Fred Bevis Amendment Barcode *(if applicable)*

Job Title

Address 1115 A1 Fred Dr Phone 321 277 3486
Street

Orlando FL 32810 E-mail fredbevis@gmail.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-2013
Meeting Date

Topic Parent Empowerment in Education Bill Number SB 0862 *(if applicable)*

Name Archibald Amory Amendment Barcode *(if applicable)*

Job Title ~~Bus~~ Amalgamated Transit Union 1596

Address 1422 South Conway Rd Phone 754-201-9896
Street

Orl FL 32812 E-mail GudDriver@Gmail.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing myself

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment in Ed. Bill Number 862 *(if applicable)*

Name EVELYN NAZARIO Amendment Barcode *(if applicable)*

Job Title Bus operator

Address 1935 S. Conway Rd R-5 Phone (321) 946-9490
Street

Orlando Fl 32812 E-mail EVELE NAZARIO@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Myself

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Parent Empowerment in Education

Bill Number SB0862 *(if applicable)*

Name Ismael Rivera

Amendment Barcode _____ *(if applicable)*

Job Title Bus Operator

Address 12504 Hyanis ct.
Street
orlando FL 32828
City *State* *Zip*

Phone 407 2446629

E-mail IRivera@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

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4-23-13
Meeting Date

Topic Parent empower meth education Bill Number SB 0862 *(if applicable)*

Name Ismael Blanco Amendment Barcode _____ *(if applicable)*

Job Title Driver

Address 616 McKay St St cloud FL 34769
Street *City* *State* *Zip*

Phone 917-414 3924

E-mail NEWYORK5@HotMail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Myself

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/13
Meeting Date

Topic Parent Trigger

Bill Number 862 *(if applicable)*

Name Theo Parsons

Amendment Barcode *(if applicable)*

Job Title Retired

Address 221 Maplecrest Cir
Street

Jupiter FL 33458
City *State* *Zip*

Phone 561-346-5241

E-mail ted@cybercoast.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

Topic Parent trigger Bill

Bill Number SB 0862 *(if applicable)*

Name Norm Audet

Amendment Barcode *(if applicable)*

Job Title Grandparent

Address 1506 Pearl St.
Street
DeLand FL 32720
City *State* *Zip*

Phone 407-748-3364

E-mail Naudet@CFRR.com

Speaking: ☐ For ☒ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/13
Meeting Date

Topic PARENT TRIGGER

Bill Number SB 0862 *(if applicable)*

Name GUY T. MASTERS

Amendment Barcode *(if applicable)*

Job Title PRESIDENT

Address 602 SE. DEANTER
Street
PORT ST. LUCIE, FL. 34984
City *State* *Zip*

Phone 954-648-0399

E-mail guy.masters@federationmembers.org

Speaking: ☐ For ☑ Against ☐ Information

Representing SCEA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-23-13
Meeting Date

Topic PARENT TRIGGER — Bill Number SB 362 *(if applicable)*

Name Floyd R. Carrow — Amendment Barcode _____ *(if applicable)*

Job Title Digital Tech.

Address 612 Seabrook Cove Rd — Phone _____
Street

Jacksonville FL 32211 — E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing ME

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Parent Empowerment

Bill Number 862 *(if applicable)*

Name Darvin Boothe

Amendment Barcode 184132 *(if applicable)*

Job Title Consultant

Address 1606 N Westmoreland Dr
Street

Phone 407-592-5263

Orlando FL 32804
City *State* *Zip*

E-mail darvinboothe@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Seminole Association of School Administrators

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/13
Meeting Date

Topic Parent Empowerment

Bill Number 862 *(if applicable)*

Name Mike O'Farrell

Amendment Barcode 184132 *(if applicable)*

Job Title Legislative Consultant

Address 3020 Godfrey Place
Street

Phone 850 509 6372

Tallahassee FL 32309
City *State* *Zip*

E-mail mjofarrell034@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Duval County Public Schools

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/13
Meeting Date

Topic Parent Empowerment Act

Bill Number SB 62 *(if applicable)*

Name Vern Pickup - Crawford

Amendment Barcode 184132 *(if applicable)*

Job Title Legislative Liaison

Address 571 Kingsbury Terrace
Street

Phone 561-644-2439

Wellington FL 33414
City *State* *Zip*

E-mail VaCrawford@msn.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Palm Beach School District

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Parent Empowerment

Bill Number SB 2 *(if applicable)*

Name Joy Frank

Amendment Barcode 184132 *(if applicable)*

Job Title General Counsel

Address 208 S. Monroe St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-577-5987

E-mail JFRANK@FADSS.ORG

Speaking: ☐ For ☒ Against ☐ Information

Representing FLA Association of District School Superintendents

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic SB862

Bill Number 862

Name Iraida Mendez-Cartaya

Amendment Barcode 184132 *(if applicable)*

Job Title ~~Asst.~~ Superintendent

Address 1450 NE 2nd Ave #931
Street

Phone (3)995-1497

Miami FL 33132
City *State* *Zip*

E-mail imendez@dadeschools.net

Speaking: ☐ For ☒ Against ☐ Information

Representing Miami Dade County Public Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-2013
Meeting Date

Topic Amendment to Parent Empowerment — Bill Number 862 *(if applicable)*

Name Georgia Slack — Amendment Barcode 184132 *(if applicable)*

Job Title Leg. Consultant

Address 9693 Ridgecrest Ct. — Phone 305-608-5110
Street

Davie, FL. 33328 — E-mail Slackcomcast.net
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Broward County Public Schools

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Amendment removing local Control

Bill Number SB 862 *(if applicable)*

Name Connie Milito

Amendment Barcode 184132 *(if applicable)*

Job Title Chief Gov. Relations Officer

Address 901 E. Kennedy Blvd
Street
Tampa FL 33601
City *State* *Zip*

Phone 813 272-4519

E-mail cmilito@sdhc.us

Speaking: ☐ For ☒ Against ☐ Information

Waive in opposition of the ~~bill~~ amendment.

Representing Hillsborough County Public Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Parent Trigger Bill Number 862

Name Wendy Dodge Amendment Barcode 184132 *(if applicable)*

Job Title Director of Govt Affairs

Address PO Box 391 Phone 863-534-0658

Street

Bartow FL 33831 E-mail wendy.dodge@polk-fl.ne

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Polk County Schools

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

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S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 12, 2013

The Honorable Joe Negron
Senate Appropriations Committee, Chair
412 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 862, related to *Parent Empowerment in Education,* be placed on the committee agenda at your earliest convenience. It has passed the first and second committee stops and the House of Representatives.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:
☐ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 896 (856836)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senators Garcia and Flores
SUBJECT:	Prepaid Dental Plans
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Fav/CS**
3.	Brown	Hansen	AP	**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:

PCS/CS/SB 896 postpones the scheduled repeal of a provision that requires the Agency for Health Care Administration (AHCA) to contract separately with prepaid dental health plans on a prepaid or fixed-sum basis for Medicaid recipients. The bill requires the AHCA to contract with such prepaid dental health plans notwithstanding certain other statutory provisions. The bill also authorizes the AHCA to provide a Medicaid prepaid dental program in Miami-Dade County on a permanent basis. Provisions requiring the AHCA to allow other qualified dental providers to participate in the Medicaid dental program on a fee-for-service basis are deleted.

The bill also requires the AHCA to provide an annual report to the governor and Legislature that compares utilization, benefit, and cost data from Medicaid dental contractors, as well as reports on compliance and access to care for the state's overall Medicaid dental population.

The bill has an indeterminate fiscal impact.

The bill has an effective date of June 30, 2013.

This bill substantially amends section 409.912, Florida Statutes.

II. Present Situation:

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.3 million Floridians are currently enrolled in Medicaid and the program is expected to have more than $22 billion in expenditures for Fiscal Year 2012-2013.[1] The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Federal law establishes the minimum benefit levels to be covered in order to receive federal matching funds. Benefit requirements can vary by eligibility category. For example, more benefits are required for children than for the adult population. Florida's mandatory and optional benefits are prescribed in state law under ss. 409.905, and 409.906 F.S., respectively.

Florida Medicaid recipients receive their benefits through a number of different delivery systems. Florida has at least 15 different managed care models,[2] including the model being used for the delivery of dental services, licensed, prepaid dental health plans (PDHP). The PDHPs are classified as prepaid ambulatory health plans by 42 CFR Part 438.[3]

Prepaid Dental Health Plans and Florida Medicaid

Proviso language in the 2001-2002 General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.[4] The 2003 Legislature authorized the AHCA to contract on prepaid or fixed sum basis for dental services for Medicaid-eligible recipients using PDHPs.[5] Through a competitive process, the AHCA executed its first PDHP contract in 2004 to serve children under age 21 in Miami-Dade County.[6] Comprehensive dental benefit coverage is a mandatory Medicaid service only for children in Florida. The PDHPs are paid on a capitated basis for all covered dental services, meaning that the plans receive a single rate per individual member for all dental costs associated with that member. Currently, two PDHPs serve Medicaid members in Miami-Dade County.[7]

The Legislature included proviso in the 2010-2011 GAA authorizing the AHCA to contract by competitive procurement with one or more prepaid dental plans on a regional or statewide basis for a period not to exceed two years, in all counties except Miami-Dade, under a fee-for-service

---

[1] Agency for Health Care Administration, *Statewide Medicaid Managed Care Overview, Presentation to House Health Care Subcommittee*, (Jan. 15, 2013), http://ahca.myflorida.com/Medicaid/recent_presentations/SMMC_Overview_House_HHS_Approps.pdf (last visited Mar. 8, 2013).

[2] Comm. on Health Regulation, Fla. Senate, *Overview of Medicaid Managed Care Programs in Florida,* p.1, (Issue Brief 2011-221) (November 2010).

[3] *See* Agency for Health Care Administration, *Model Statewide Prepaid Dental Health Plan (SPDHP) Contract, Attachment II-Core Contract Provisions*, p. 17, http://ahca.myflorida.com/medicaid/pdhp/docs/120120_Attachment_II_Core.pdf (last visited Mar. 8, 2013).

[4] *See* Specific Proviso 135A, General Appropriations Act 2001-2002 (Conference Report on CS/SB 2C).

[5] Chapter 2003-405, L.O.F.

[6] Agency for Health Care Administration, *Senate Bill 896 Bill Analysis and Economic Impact Statement*,(Mar. 11, 2013) (on file with the Senate Health Policy Committee).

[7] Ibid.

or managed care delivery system.[8] The AHCA did not procure contracts under the 2010-2011 proviso. In the 2011-2012 GAA, similar proviso language was included to require such a competitive procurement.

The Legislature passed proviso in the 2012-2013 GAA requiring that, for all counties other than Miami-Dade, the AHCA could not limit Medicaid dental services to prepaid plans and must allow qualified dental providers to provide dental services on a fee-for-service basis. Language to that effect was also passed in the 2012-2013 appropriations implementing bill, which included additional language directing the AHCA to terminate existing contracts as needed. The implementing bill provisions have a sunset date of July 1, 2013.

According to the AHCA website, two vendors were selected for the statewide program and it has been implemented statewide[9] as of December 1, 2012. Under the statewide program, Medicaid recipients may select one of the two PDHPs in their county or opt-out and receive their dental care through Medicaid fee-for-service providers.[10]

Statewide Medicaid Managed Care

In 2011, the Legislature also passed HB 7107[11] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care, including dental.[12] Instead of being delivered as a separate benefit under a separate contract, dental services are to be incorporated by and be the responsibility of a managed care organization. Medicaid recipients who are enrolled in the SMMC program will receive their dental services through the fully integrated managed care plans as the program is implemented.[13]

The AHCA began implementing the SMMC in January 2012 and recently released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis. Plans can supplement the minimum benefits in their bids and offer enhanced options.[14] Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however on February 20, 2013, the AHCA and the federal Centers for Medicare and Medicaid Services reached an "Agreement in Principle" on the proposed plan.[15] The integrated Medicaid plans

[8] *See* Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).
[9] Six counties were excluded from the statewide roll-out. Miami-Dade was excluded because of the prepaid dental program that has been in place there since 2004. Baker, Broward, Clay, Duval, and Nassau counties were excluded because the Medicaid Reform Pilot Project has been implemented in those counties since 2006, which requires most Medicaid recipients to enroll in managed care plans that provide dental care as a covered service.
[10] Agency for Health Care Administration, *Statewide Prepaid Dental Program*, http://ahca.myflorida.com/Medicaid/index.shtml#mc (last visited: Mar. 7, 2013).
[11] *See* ch. 2011-134, L.O.F.
[12] Health and Human Services Committee, Fla. House of Representatives, *PCB HHSC 11-01 Staff Analysis*, p.25, (Mar. 25, 2011).
[13] AHCA, *supra* note 6, at 2.
[14] Ibid.
[15] *See* Correspondence between Agency for Health Care Administration and the Centers for Medicare and Medicaid Services, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Letter_from_CMS_re_Agreement_in_Principal_2013-02-20.pdf (last visited Mar. 11, 2013).

would cover both children and adults. The current dental plan contracts held by the AHCA cover only Medicaid recipients under age 21.

III. Effect of Proposed Changes:

Section 1 amends s. 409.912, F.S., relating to the cost effective purchasing of health care under the Medicaid program. The bill postpones the scheduled repeal of the provision that currently requires the AHCA to contract on a fixed-sum or prepaid basis with licensed prepaid dental health plans to provide dental services to Medicaid recipients. The modification extends the repeal date from October 1, 2014, to October 1, 2017.

The bill provides that the AHCA is required to contract with such prepaid dental health plans notwithstanding the provisions of s. 409.961, F.S. The referenced statute requires that provisions of part IV of ch. 409, F.S., shall control if a conflict exists between part IV and the other parts of ch. 409. Part IV creates the SMMC program, which requires the AHCA to contract with managed care plans for comprehensive health care services, including dental services.

The bill also deletes the current-law provision authorizing the AHCA to provide a Medicaid prepaid dental program in Miami-Dade County only during the 2012-2013 fiscal year, meaning that the AHCA will be authorized to provide the current program in Miami-Dade County in perpetuity.

The provision requiring a fee-for-service option for dental benefits – scheduled to sunset on July 1, 2013 – is deleted.

The AHCA is directed to provide the governor, president of the Senate, and speaker of the House of Representatives with a report that compares benefits, utilization, and costs of the contracted dental plans and the extent to which the prepaid plans are in compliance with their contract terms, including statistical trends with indicators of good oral health, in comparison to the overall Medicaid dental population. The report is due by January 15 each year.

Section 2 provides an effective date of June 30, 2013.

Other Potential Implications:

The AHCA analysis of the bill indicates that if the sunset provision is removed or postponed and results in changes to dental service delivery under SMMC, there is the possibility of a protest under the Managed Medical Assistance ITN procurement that is currently underway. Dental services are currently incorporated in that ITN.

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 has limited private sector impact. The bill deletes a provision that will sunset July 1, 2013, relating to the fee-for-service reimbursement and extends the authorization of separate PDHP contracts to from October 1, 2014, to October 1, 2017. These contracts cover the same benefits that will be incorporated through those being procured now under the SMMC program. The proposed contract extension period overlaps with those SMMC contracts.

C. Government Sector Impact:

The bill's fiscal impact is indeterminate because it is impossible to know whether directing the AHCA to continue with the statewide prepaid dental program until October 1, 2017, and authorizing the continuation of prepaid dental in Miami-Dade County in perpetuity, might result in more or less cost to the state than the costs that will be incurred for dental services under the SMMC program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA has released an ITN covering all Medicaid services as part of the SMMC. This ITN includes dental services as part of those comprehensive medical services and requires the managed care organizations to cover all benefits. Extending the time frame for the existing prepaid dental health plan contracts for Medicaid enrollees under the age of 21 would overlap with the dental services proposed under that procurement document.

VIII. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 17, 2013:
The committee substitute provides that the AHCA is required to contract on a fixed-sum or prepaid basis with licensed prepaid dental health plans to provide dental services to Medicaid recipients notwithstanding the provisions of s. 409.961, F.S.

CS by Health Policy on March 14, 2013:
CS for SB 896 adds a requirement directing AHCA to provide the Governor, President of the Senate and Speaker of the House of Representatives with a report that compares benefits, utilization and costs of the contracted dental plans and the extent to which the prepaid plans are in compliance with their contract terms, including statistical trends with indicators of good oral health, in comparison to the overall Medicaid dental population. The report is due by January 15, each year. (WITH TITLE AMENDMENT)

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 104 and 105
insert:

Section 2. Section 627.6474, Florida Statutes, is amended to read:

627.6474 Provider contracts.—

(1) A health insurer may ~~shall~~ not require a contracted health care practitioner as defined in s. 456.001(4) to accept the terms of other health care practitioner contracts with the insurer or any other insurer, or health maintenance organization, under common management and control with the

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insurer, including Medicare and Medicaid practitioner contracts and those authorized by s. 627.6471, s. 627.6472, s. 636.035, or s. 641.315, except for a practitioner in a group practice as defined in s. 456.053 who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Any contract provision that violates this section is void. A violation of this subsection ~~section~~ is not subject to the criminal penalty specified in s. 624.15.

(2)(a) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not contain any provision that requires the dentist to provide services to the insured under such contract at a fee set by the health insurer unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the insured is entitled to receive under the contract. An insurer may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A health insurer may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of chapter 636.

Section 3. Subsection (13) is added to section 636.035, Florida Statutes, to read:

636.035 Provider arrangements.—

(13)(a) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the

provision of services to a subscriber of the prepaid limited health service organization may not contain any provision that requires the dentist to provide services to the subscriber of the prepaid limited health service organization at a fee set by the prepaid limited health service organization unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the subscriber is entitled to receive under the contract. A prepaid limited health service organization may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A prepaid limited health service organization may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of this chapter.

Section 4. Subsection (11) is added to section 641.315, Florida Statutes, to read:

641.315 Provider contracts.—

(11)(a) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not contain any provision that requires the dentist to provide services to the subscriber of the health maintenance organization at a fee set by the health maintenance organization unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the subscriber is entitled to receive under the

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contract. A health maintenance organization may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A health maintenance organization may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of chapter 636.

Section 5. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (h) is added to subsection (4) of that section, to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for ~~any~~ services provided under the contract and must not bill or accept compensation from the recipient, or a ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of

the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(h) As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is deemed in compliance with this section.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

Section 6. The amendments to ss. 627.6474, 636.035, and 641.315, Florida Statutes, apply to contracts entered into or renewed on or after July 1, 2013.

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

And the title is amended as follows:

Delete line 10

and insert:

Legislature; amending s. 627.6474, F.S.; prohibiting a contract between a health insurer and a dentist from requiring the dentist to provide services at a fee set by the insurer under certain circumstances; providing that covered services are those services listed as a benefit that the insured is entitled to receive under a contract; prohibiting an insurer from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting a health insurer from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 636.035, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a prepaid limited health service organization is entitled to receive under a contract; prohibiting a prepaid limited health service organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the prepaid limited health service organization from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 641.315, F.S.; prohibiting a contract between a health maintenance

organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a health maintenance organization is entitled to receive under a contract; prohibiting a health maintenance organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the health maintenance organization from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing for applicability; providing an effective date.


856836

576-04560-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to prepaid dental plans; amending s. 409.912, F.S.; postponing the scheduled repeal of a provision requiring the Agency for Health Care Administration to contract with dental plans for dental services on a prepaid or fixed-sum basis; authorizing the agency to provide a prepaid dental health program in Miami-Dade County on a permanent basis; requiring an annual report to the Governor and Legislature; providing an effective date.

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

Section 1. Subsection (41) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid


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576-04560-13

aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services


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results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(41)(a) Notwithstanding s. 409.961, the agency shall contract on a prepaid or fixed-sum basis with appropriately licensed prepaid dental health plans to provide dental services. This paragraph expires October 1, 2017 ~~2014~~.

(b) Notwithstanding paragraph (a) ~~and for the 2012-2013 fiscal year only~~, the agency is authorized to provide a Medicaid prepaid dental health program in Miami-Dade County. The agency shall provide an annual report by January 15 to the Governor,


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the President of the Senate, and the Speaker of the House of Representatives which compares the combined reported annual benefits utilization and encounter data from all contractors, along with the agency's findings as to projected and budgeted annual program costs, the extent to which each contracting entity is complying with all contract terms and conditions, the effect that each entity's operation is having on access to care for Medicaid recipients in the contractor's service area, and the statistical trends associated with indicators of good oral health among all recipients served in comparison with the state's population as a whole. ~~For all other counties, the agency may not limit dental services to prepaid plans and must allow qualified dental providers to provide dental services under Medicaid on a fee-for-service reimbursement methodology. The agency may seek any necessary revisions or amendments to the state plan or federal waivers in order to implement this paragraph. The agency shall terminate existing contracts as needed to implement this paragraph. This paragraph expires July 1, 2013.~~

Section 2. This act shall take effect June 30, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 896
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senators Garcia and Flores
SUBJECT:	Prepaid Dental Plans
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Fav/CS**
3.	Brown	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 896 postpones the scheduled repeal of a provision that requires the Agency for Health Care Administration (AHCA) to contract separately with prepaid dental health plans on a prepaid or fixed-sum basis for Medicaid recipients. The bill requires the AHCA to contract with such prepaid dental health plans notwithstanding certain other statutory provisions. The bill also authorizes the AHCA to provide a Medicaid prepaid dental program in Miami-Dade County on a permanent basis. Provisions requiring the AHCA to allow other qualified dental providers to participate in the Medicaid dental program on a fee-for-service basis are deleted.

The bill also requires the AHCA to provide an annual report to the governor and Legislature that compares utilization, benefit, and cost data from Medicaid dental contractors, as well as reports on compliance and access to care for the state's overall Medicaid dental population.

The bill has an indeterminate fiscal impact.

The bill has an effective date of June 30, 2013.

This bill substantially amends section 409.912, Florida Statutes.

II. Present Situation:

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.3 million Floridians are currently enrolled in Medicaid and the program is expected to have more than $22 billion in expenditures for Fiscal Year 2012-2013.[1] The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Federal law establishes the minimum benefit levels to be covered in order to receive federal matching funds. Benefit requirements can vary by eligibility category. For example, more benefits are required for children than for the adult population. Florida's mandatory and optional benefits are prescribed in state law under ss. 409.905, and 409.906 F.S., respectively.

Florida Medicaid recipients receive their benefits through a number of different delivery systems. Florida has at least 15 different managed care models,[2] including the model being used for the delivery of dental services, licensed, prepaid dental health plans (PDHP). The PDHPs are classified as prepaid ambulatory health plans by 42 CFR Part 438.[3]

Prepaid Dental Health Plans and Florida Medicaid

Proviso language in the 2001-2002 General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.[4] The 2003 Legislature authorized the AHCA to contract on prepaid or fixed sum basis for dental services for Medicaid-eligible recipients using PDHPs.[5] Through a competitive process, the AHCA executed its first PDHP contract in 2004 to serve children under age 21 in Miami-Dade County.[6] Comprehensive dental benefit coverage is a mandatory Medicaid service only for children in Florida. The PDHPs are paid on a capitated basis for all covered dental services, meaning that the plans receive a single rate per individual member for all dental costs associated with that member. Currently, two PDHPs serve Medicaid members in Miami-Dade County.[7]

The Legislature included proviso in the 2010-2011 GAA authorizing the AHCA to contract by competitive procurement with one or more prepaid dental plans on a regional or statewide basis for a period not to exceed two years, in all counties except Miami-Dade, under a fee-for-service

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[1] Agency for Health Care Administration, *Statewide Medicaid Managed Care Overview, Presentation to House Health Care Subcommittee*, (Jan. 15, 2013), http://ahca.myflorida.com/Medicaid/recent_presentations/SMMC_Overview_House_HHS_Approps.pdf (last visited Mar. 8, 2013).

[2] Comm. on Health Regulation, Fla. Senate, *Overview of Medicaid Managed Care Programs in Florida,* p.1, (Issue Brief 2011-221) (November 2010).

[3] *See* Agency for Health Care Administration, *Model Statewide Prepaid Dental Health Plan (SPDHP) Contract, Attachment II-Core Contract Provisions*, p. 17, http://ahca.myflorida.com/medicaid/pdhp/docs/120120_Attachment_II_Core.pdf (last visited Mar. 8, 2013).

[4] *See* Specific Proviso 135A, General Appropriations Act 2001-2002 (Conference Report on CS/SB 2C).

[5] Chapter 2003-405, L.O.F.

[6] Agency for Health Care Administration, *Senate Bill 896 Bill Analysis and Economic Impact Statement*,(Mar. 11, 2013) (on file with the Senate Health Policy Committee).

[7] Ibid.

or managed care delivery system.[8] The AHCA did not procure contracts under the 2010-2011 proviso. In the 2011-2012 GAA, similar proviso language was included to require such a competitive procurement.

The Legislature passed proviso in the 2012-2013 GAA requiring that, for all counties other than Miami-Dade, the AHCA could not limit Medicaid dental services to prepaid plans and must allow qualified dental providers to provide dental services on a fee-for-service basis. Language to that effect was also passed in the 2012-2013 appropriations implementing bill, which included additional language directing the AHCA to terminate existing contracts as needed. The implementing bill provisions have a sunset date of July 1, 2013.

According to the AHCA website, two vendors were selected for the statewide program and it has been implemented statewide[9] as of December 1, 2012. Under the statewide program, Medicaid recipients may select one of the two PDHPs in their county or opt-out and receive their dental care through Medicaid fee-for-service providers.[10]

Statewide Medicaid Managed Care

In 2011, the Legislature also passed HB 7107[11] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care, including dental.[12] Instead of being delivered as a separate benefit under a separate contract, dental services are to be incorporated by and be the responsibility of a managed care organization. Medicaid recipients who are enrolled in the SMMC program will receive their dental services through the fully integrated managed care plans as the program is implemented.[13]

The AHCA began implementing the SMMC in January 2012 and recently released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis. Plans can supplement the minimum benefits in their bids and offer enhanced options.[14] Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however on February 20, 2013, the AHCA and the federal Centers for Medicare and Medicaid Services reached an "Agreement in Principle" on the proposed plan.[15] The integrated Medicaid plans

[8] *See* Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).
[9] Six counties were excluded from the statewide roll-out. Miami-Dade was excluded because of the prepaid dental program that has been in place there since 2004. Baker, Broward, Clay, Duval, and Nassau counties were excluded because the Medicaid Reform Pilot Project has been implemented in those counties since 2006, which requires most Medicaid recipients to enroll in managed care plans that provide dental care as a covered service.
[10] Agency for Health Care Administration, *Statewide Prepaid Dental Program*, http://ahca.myflorida.com/Medicaid/index.shtml#mc (last visited: Mar. 7, 2013).
[11] *See* ch. 2011-134, L.O.F.
[12] Health and Human Services Committee, Fla. House of Representatives, *PCB HHSC 11-01 Staff Analysis*, p.25, (Mar. 25, 2011).
[13] AHCA, *supra* note 6, at 2.
[14] Ibid.
[15] *See* Correspondence between Agency for Health Care Administration and the Centers for Medicare and Medicaid Services, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Letter_from_CMS_re_Agreement_in_Principal_2013-02-20.pdf (last visited Mar. 11, 2013).

would cover both children and adults. The current dental plan contracts held by the AHCA cover only Medicaid recipients under age 21.

III. Effect of Proposed Changes:

Section 1 amends s. 409.912, F.S., relating to the cost effective purchasing of health care under the Medicaid program. The bill postpones the scheduled repeal of the provision that currently requires the AHCA to contract on a fixed-sum or prepaid basis with licensed prepaid dental health plans to provide dental services to Medicaid recipients. The modification extends the repeal date from October 1, 2014, to October 1, 2017.

The bill provides that the AHCA is required to contract with such prepaid dental health plans notwithstanding the provisions of s. 409.961, F.S. The referenced statute requires that provisions of part IV of ch. 409, F.S., shall control if a conflict exists between part IV and the other parts of ch. 409. Part IV creates the SMMC program, which requires the AHCA to contract with managed care plans for comprehensive health care services, including dental services.

The bill also deletes the current-law provision authorizing the AHCA to provide a Medicaid prepaid dental program in Miami-Dade County only during the 2012-2013 fiscal year, meaning that the AHCA will be authorized to provide the current program in Miami-Dade County in perpetuity.

The provision requiring a fee-for-service option for dental benefits – scheduled to sunset on July 1, 2013 – is deleted.

The AHCA is directed to provide the governor, president of the Senate, and speaker of the House of Representatives with a report that compares benefits, utilization, and costs of the contracted dental plans and the extent to which the prepaid plans are in compliance with their contract terms, including statistical trends with indicators of good oral health, in comparison to the overall Medicaid dental population. The report is due by January 15 each year.

Section 2 provides an effective date of June 30, 2013.

Other Potential Implications:

The AHCA analysis of the bill indicates that if the sunset provision is removed or postponed and results in changes to dental service delivery under SMMC, there is the possibility of a protest under the Managed Medical Assistance ITN procurement that is currently underway. Dental services are currently incorporated in that ITN.

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 has limited private sector impact. The bill deletes a provision that will sunset July 1, 2013, relating to the fee-for-service reimbursement and extends the authorization of separate PDHP contracts to from October 1, 2014, to October 1, 2017. These contracts cover the same benefits that will be incorporated through those being procured now under the SMMC program. The proposed contract extension period overlaps with those SMMC contracts.

C. Government Sector Impact:

The bill's fiscal impact is indeterminate because it is impossible to know whether directing the AHCA to continue with the statewide prepaid dental program until October 1, 2017, and authorizing the continuation of prepaid dental in Miami-Dade County in perpetuity, might result in more or less cost to the state than the costs that will be incurred for dental services under the SMMC program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA has released an ITN covering all Medicaid services as part of the SMMC. This ITN includes dental services as part of those comprehensive medical services and requires the managed care organizations to cover all benefits. Extending the time frame for the existing prepaid dental health plan contracts for Medicaid enrollees under the age of 21 would overlap with the dental services proposed under that procurement document.

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 Appropriations on April 23, 2013:
The committee substitute provides that the AHCA is required to contract on a fixed-sum or prepaid basis with licensed prepaid dental health plans to provide dental services to Medicaid recipients notwithstanding the provisions of s. 409.961, F.S.

CS by Health Policy on March 14, 2013:
CS for SB 896 adds a requirement directing AHCA to provide the Governor, President of the Senate and Speaker of the House of Representatives with a report that compares benefits, utilization and costs of the contracted dental plans and the extent to which the prepaid plans are in compliance with their contract terms, including statistical trends with indicators of good oral health, in comparison to the overall Medicaid dental population. The report is due by January 15, each year. (WITH TITLE AMENDMENT)

B. Amendments:

None.

By the Committee on Health Policy; and Senators Garcia and Flores

588-02413-13 2013896c1

A bill to be entitled

An act relating to prepaid dental plans; amending s. 409.912, F.S.; postponing the scheduled repeal of a provision requiring the Agency for Health Care Administration to contract with dental plans for dental services on a prepaid or fixed-sum basis; authorizing the agency to provide a prepaid dental health program in Miami-Dade County on a permanent basis; requiring an annual report to the Governor and Legislature; providing an effective date.

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

Section 1. Subsection (41) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies,

588-02413-13 2013896c1

including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based

on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(41)(a) The agency shall contract on a prepaid or fixed-sum basis with appropriately licensed prepaid dental health plans to provide dental services. This paragraph expires October 1, 2017 ~~2014~~.

(b) Notwithstanding paragraph (a) ~~and for the 2012-2013 fiscal year only~~, the agency may ~~is authorized to~~ provide a Medicaid prepaid dental health program in Miami-Dade County. The agency shall provide an annual report by January 15 to the Governor, the President of the Senate, and the Speaker of the House of Representatives which compares the combined reported

annual benefits utilization and encounter data from all contractors, along with the agency's findings as to projected and budgeted annual program costs, the extent to which each contracting entity is complying with all contract terms and conditions, the effect that each entity's operation is having on access to care for Medicaid recipients in the contractor's service area, and the statistical trends associated with indicators of good oral health among all recipients served in comparison with the state's population as a whole. ~~For all other counties, the agency may not limit dental services to prepaid plans and must allow qualified dental providers to provide dental services under Medicaid on a fee-for-service reimbursement methodology. The agency may seek any necessary revisions or amendments to the state plan or federal waivers in order to implement this paragraph. The agency shall terminate existing contracts as needed to implement this paragraph. This paragraph expires July 1, 2013.~~

Section 2. This act shall take effect June 30, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Prepaid Dental Plans

Bill Number 896 *(if applicable)*

Name Casey Stoutamire

Amendment Barcode *(if applicable)*

Job Title Lobbyist

Address 118 E. Jefferson St.
Street

Phone 850-224-1089

Tallahassee FL 32301
City *State* *Zip*

E-mail Cstoutamire@floridadental.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

SENATOR RENE GARCIA
40th District

March 17, 2013

The Honorable Joe Negron
Chair, Appropriations Committee
201 Capitol Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This letter should serve as a request to have my bill *SB 896 Prepaid Dental Plans* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38

RG:dm

CC: Mike Hansen, Staff Director

SENATE APPROPRIATIONS
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REPLY TO:
☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
☐ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 916 (116326)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Flores
SUBJECT:	Sales and Use Tax
DATE:	April 21, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Klebacha	ED	**Favorable**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Hansen	AP	**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:

PCS/SB 916 provides an exemption from state and local sales tax during the 3-day period beginning at 12:01 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, on purchases of clothing costing $75 or less per item, school supplies costing $15 or less per item, and computers costing $750 or less per item.

The Revenue Estimating Conference estimates that the bill will have a nonrecurring, negative impact of $28.3 million to General Revenue for Fiscal Year 2013-2014 and a nonrecurring, negative impact of $6.4 million to local governments.

The bill provides an appropriation of $235,695 in Fiscal Year 2012-2013 for the Department of Revenue to implement the law and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

The bill takes effect upon becoming law.

The bill creates an unnumbered section of law.

II. Present Situation:

Chapter 212, F.S., imposes a 6 percent[1] sales tax on the retail sale of tangible personal property, including books, clothing, footwear, wallets, bags, school supplies, and computers. In addition, county governments may impose discretionary sales surtaxes.[2]

The Legislature has approved sales tax holidays for a number of years, notably from 2004 through 2007, and then again from 2010 through 2012. The length of the exemption period has varied from 3 to 10 days. The type and value of exempt items has also varied. The holiday is made available for the benefit of families making back-to-school purchases, and is typically offered just prior to the start of a new school year.

III. Effect of Proposed Changes:

The bill provides an exemption from state and local sales tax during the 3-day period beginning at 12:01 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, for the following:

- Sales of clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $75 or less per item. "Clothing" is defined to mean:
  - Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs.
  - All footwear, excluding skis, swim fins, roller blades, and skates.
- Sales of school supplies having a sales price of $15 or less per item. "School supplies" is defined to mean pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue, paste, rulers, computer disks, protractors, compasses, and calculators.
- Sales of personal computers and related accessories having a sales price of $750 or less. Qualifying items must be purchased for noncommercial home or personal use. The exemption includes electronic book readers, laptops, desktops, tablets, monitors, other peripheral devices, modems for Internet and network access, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The exemption does not include cell phones, video game consoles, digital media receivers or other devices that are not primarily designed to process data. Computer and computer related accessories do not include furniture or any systems, devices, software, or peripherals designed or intended primarily for recreational use.

The exemptions of the above items from sales tax do not apply to sales within a public lodging establishment, theme park, entertainment complex or airport.

The Department of Revenue is authorized to adopt rules to administer the exemption. The bill provides an appropriation of $235,695 in Fiscal Year 2012-2013 for the Department of Revenue to implement the law and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

[1] s. 212.05, F.S..
[2] s. 212.054, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The bill provides a sales tax exemption that will reduce the municipalities' and counties' local option sales tax collections over a three-day period, thereby reducing their revenue-raising authority. However, an exemption may apply because the reduction in local governments' revenue-raising authority may be below the $1.9 million threshold for an insignificant impact on local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill will have a nonrecurring, negative impact of $28.3 million to General Revenue for Fiscal Year 2013-2014 and a nonrecurring, negative impact of $6.4 million to local governments.

B. Private Sector Impact:

During the specified period, clothing, wallets, and bags selling for $75 or less; school supplies selling for $15 or less; and computers selling for $750 or less can be purchased tax-free. Given the timing of the tax-free period, families will be able to save money on clothing and school supplies prior to the beginning of the school year.

C. Government Sector Impact:

The Department of Revenue (DOR) will need to print and mail Tax Information Publications (TIPs) to notify dealers. DOR anticipates that it will need to print and mail TIPs to 565,000 sales and use tax dealers prior to the beginning of the sales tax holiday, with an additional print of 5,000 TIPs for mail to retail associations and others upon request.[3]

[3] DOR Bill Analysis (February 20, 2013), on file with the Appropriations Subcommittee on Finance and Tax.

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.)

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 17, 2013:
The CS clarifies the items that qualify as personal computers and related accessories. The CS also provides an appropriation of $235,695 in Fiscal Year 2012-2013 for the Department of Revenue to implement the law and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

B. Amendments:

None.

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576-04552-13

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

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

Section 1. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $75 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

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576-04552-13

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(c) Personal computers and related accessories that have a sales price of $750 or less and are purchased for noncommercial home or personal use. As used in this paragraph, the term:

1. "Personal computer" means an electronic device that accepts information in digital or similar form and manipulates such information for a result based on a sequence of instructions. The term includes an electronic book reader and laptop, desktop, handheld, tablet, or tower computer but does not include cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.

2. "Related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software regardless of whether the accessories are used in association with a personal computer base unit, but does not include furniture or systems, devices, software, or peripherals that are designed or intended primarily for recreational use.

3. "Monitor" does not include a device that includes a television tuner.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as

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defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 2. For the 2012-2013 fiscal year, the sum of $235,695 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering this act. Funds from the appropriation that remain unexpended or unencumbered as of June 30, 2013, shall revert and be reappropriated for the same purpose in the 2013-2014 fiscal year.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 916
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Flores
SUBJECT:	Sales and Use Tax
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Klebacha	ED	**Favorable**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 916 provides an exemption from state and local sales tax during the 3-day period beginning at 12:01 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, on purchases of clothing costing $75 or less per item, school supplies costing $15 or less per item, and computers costing $750 or less per item.

The Revenue Estimating Conference estimates that the bill will have a nonrecurring, negative impact of $28.3 million to General Revenue for Fiscal Year 2013-2014 and a nonrecurring, negative impact of $6.4 million to local governments.

The bill provides an appropriation of $235,695 in Fiscal Year 2012-2013 for the Department of Revenue to implement the law and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

The bill takes effect upon becoming law.

The bill creates an unnumbered section of law.

II. Present Situation:

Chapter 212, F.S., imposes a 6 percent[1] sales tax on the retail sale of tangible personal property, including books, clothing, footwear, wallets, bags, school supplies, and computers. In addition, county governments may impose discretionary sales surtaxes.[2]

The Legislature has approved sales tax holidays for a number of years, notably from 2004 through 2007, and then again from 2010 through 2012. The length of the exemption period has varied from 3 to 10 days. The type and value of exempt items has also varied. The holiday is made available for the benefit of families making back-to-school purchases, and is typically offered just prior to the start of a new school year.

III. Effect of Proposed Changes:

The bill provides an exemption from state and local sales tax during the 3-day period beginning at 12:01 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, for the following:

- Sales of clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $75 or less per item. "Clothing" is defined to mean:
  - Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs.
  - All footwear, excluding skis, swim fins, roller blades, and skates.
- Sales of school supplies having a sales price of $15 or less per item. "School supplies" is defined to mean pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue, paste, rulers, computer disks, protractors, compasses, and calculators.
- Sales of personal computers and related accessories having a sales price of $750 or less. Qualifying items must be purchased for noncommercial home or personal use. The exemption includes electronic book readers, laptops, desktops, tablets, monitors, other peripheral devices, modems for Internet and network access, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The exemption does not include cell phones, video game consoles, digital media receivers or other devices that are not primarily designed to process data. Computer and computer related accessories do not include furniture or any systems, devices, software, or peripherals designed or intended primarily for recreational use.

The exemptions of the above items from sales tax do not apply to sales within a public lodging establishment, theme park, entertainment complex or airport.

The Department of Revenue is authorized to adopt rules to administer the exemption. The bill provides an appropriation of $235,695 in Fiscal Year 2012-2013 for the Department of Revenue to implement the law and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

[1] s. 212.05, F.S..
[2] s. 212.054, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The bill provides a sales tax exemption that will reduce the municipalities' and counties' local option sales tax collections over a three-day period, thereby reducing their revenue-raising authority. However, an exemption may apply because the reduction in local governments' revenue-raising authority may be below the $1.9 million threshold for an insignificant impact on local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill will have a nonrecurring, negative impact of $28.3 million to General Revenue for Fiscal Year 2013-2014 and a nonrecurring, negative impact of $6.4 million to local governments.

B. Private Sector Impact:

During the specified period, clothing, wallets, and bags selling for $75 or less; school supplies selling for $15 or less; and computers selling for $750 or less can be purchased tax-free. Given the timing of the tax-free period, families will be able to save money on clothing and school supplies prior to the beginning of the school year.

C. Government Sector Impact:

The Department of Revenue (DOR) will need to print and mail Tax Information Publications (TIPs) to notify dealers. DOR anticipates that it will need to print and mail TIPs to 565,000 sales and use tax dealers prior to the beginning of the sales tax holiday, with an additional print of 5,000 TIPs for mail to retail associations and others upon request.[3]

[3] DOR Bill Analysis (February 20, 2013), on file with the Appropriations Subcommittee on Finance and Tax.

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 Appropriations on April 23, 2013:
The committee substitute clarifies the items that qualify as personal computers and related accessories. The CS also provides an appropriation of $235,695 in Fiscal Year 2012-2013 for the Department of Revenue to implement the law and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

B. Amendments:

None.

By Senator Flores

37-00480A-13 2013916__

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an effective date.

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

Section 1. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $75 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook

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filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(c) Personal computers and related accessories with a sales price of $750 or less, purchased for noncommercial home or personal use, including personal computer base units and keyboards, personal digital assistants, handheld computers, monitors, other peripheral devices, modems for Internet and network access, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. Computers and computer-related accessories do not include furniture or any systems, devices, software, or peripherals designed or intended primarily for recreational use.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Sales Tax Holiday

Bill Number 916 *(if applicable)*

Name Melissa Joiner

Amendment Barcode *(if applicable)*

Job Title Director of Gov't Affairs

Address 228 Adams St.
Street
Tallahassee, FL
City *State* *Zip*

Phone 850.570.0269

E-mail Melissa@frf.org

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

Representing Florida Retail Federation

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

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

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

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

S-001 (10/20/11)

The Florida Senate

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 Committee on Appropriations

BILL:	CS/CS/CS/SB 958
INTRODUCER:	Appropriations Committee; Communications, Energy, and Public Utilities Committee; Environmental Preservation and Conservation Committee; and Senator Richter
SUBJECT:	Underground Natural Gas Storage
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Fav/CS**
2.	Wiehle	Caldwell	CU	**Fav/CS**
3.	Howard	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 958 creates the Underground Natural Gas Storage Act to create a process for regulating in-ground storage of natural gas.

The DEP is authorized to establish permit fees by rule for natural gas facilities to support the cost of the program. The DEP does not anticipate the need for additional resources during the rulemaking process; however, additional resources will be needed to effectively implement and administer the natural gas storage program. See Section V.

Specifically, the bill:

- Authorizes the Division of Resource Management (division) of the Department of Environmental Protection (DEP) to regulate natural gas storage reservoirs.
- Authorizes the DEP to issue orders or permits and to adopt rules.
- Creates permitting requirements and procedures.
- Protects water supplies.
- Protects natural gas storage facilities.

- Provides for property rights in injected natural gas.
- Requires the DEP to adopt rules before issuing a natural gas storage facility permit.
- Includes the storage of natural gas in existing prohibitions on pollution.
- Authorizes the DEP to take actions against those involved in natural gas storage.
- Provides for expedited permitting of natural gas storage facilities and interstate natural gas pipelines.

The bill provides an effective date of July 1, 2013.

The bill substantially amends the following sections of the Florida Statutes: 211.02, 211.025, 376.301, 377.06, 377.18, 377.19, 377.21, 377.22, 377.24, 377.241, 377.242, 377.25, 377.28, 377.30, 377.34, 377.37, 377.371, and 403.973.

The bill creates the following sections of the Florida Statutes: 377.2407, 377.2431, 377.2432, 377.2433, and 377.2434. The bill also creates an unnumbered section of law.

II. Present Situation:

Natural Gas Storage

Natural gas storage is critical to maintaining the reliability and supply needed to meet the demand of consumers. Underground natural gas storage was first introduced in 1909 by the United States Geological Survey and was carried out in 1916 in a depleted reservoir located in Concord, New York.[1]

The most common type of underground natural gas storage facility is depleted natural gas wells where all of the recoverable natural gas has been extracted, leaving underground formations geologically capable of storing natural gas.[2] There are 326 depleted reservoir storage sites in the United States.[3] These sites are favorable over other types of underground storage because the infrastructure from the extraction network is already in place and the geological characteristics of the reservoir are well known.[4]

For a depleted reservoir to be a viable option for underground storage, it must be located in a consuming region and close to transportation infrastructure. The porosity and permeability of the formation are also critical factors as porosity determines the amount of natural gas that may be held, and the permeability determines the rate at which the natural gas flows through the formation.[5]

Salt caverns and aquifers are also used as underground storage facilities. Salt cavern storage facilities are formed out of existing salt deposits that are impermeable and self-sealing, creating a

[1] Arthur J. Kidnay and William R. Parrish, FUNDAMENTALS OF NATURAL GAS PROCESSING, 256 (2006).
[2] NaturalGas.org, *Storage of Natural Gas*, http://www.naturalgas.org/naturalgas/storage.asp (last visited Apr. 7, 2013).
[3] U.S. Energy Information Administration, *Underground Natural Gas Storage*, http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/undrgrnd_storage.html (last visited Apr. 7, 2013).
[4] *Supra* note 2.
[5] *Id*.

strong and environmentally sound storage system. Aquifer storage systems are underground porous, permeable rock formations that act as natural water reservoirs and are used to store natural gas in areas where there are no depleted reservoirs. Aquifers are the most expensive type of underground storage facility because of the extensive geologic testing that must be done prior to use.[6] There are 31 salt cavern storage sites and 43 aquifer storage sites in the United States.[7]

To store natural gas in an underground storage facility, the facility is first reconditioned then natural gas is injected into the formation, which builds up pressure. As natural gas is added, the voids in the geologic formation are filled and become pressurized, similar to a natural gas container. Steady pressure in the reservoir allows gas to be extracted at a predictable rate. Once the pressure drops below the wellhead, there is no pressure left to push the natural gas out of the reservoir. A reservoir contains three categories of gas: "physically unrecoverable gas," which cannot be extracted and is permanently embedded in the formation; "base gas," which is used to maintain the pressure in the reservoir for extraction of the remaining gas and which can only be extracted with specialized compression equipment; and "working gas," which is the natural gas that is injected, stored, and withdrawn.[8]

Currently in the United States, the majority of natural gas storage facilities are depleted reservoirs located in 22 states, primarily in the north east.[9] The Weekly Natural Gas Storage Report states that 1,724 billion cubic feet of natural gas has been stored over the last five years.[10]

Federal Regulation of Natural Gas

The Federal Energy Regulatory Commission (FERC) regulates interstate pipeline operations, storage, permitting and construction of new pipeline facilities, and the transmission rates that pipelines are permitted to charge. The FERC coordinates with other federal and state agencies to permit new pipelines and the conditions under which the pipelines may be constructed. The FERC also regulates the abandonment of facilities.[11]

Regulation of Oil and Gas Resources in Florida

The DEP's Mining and Minerals Regulation Program (program) regulates oil and gas exploration and production in Florida under part I of ch. 377, F.S., and Rules 62C-25 through 30, Florida Administrative Code. Companies that explore for, or produce oil and gas in Florida, are permitted through the program, which ensures compliance and safety of the activities. In order to drill for oil or gas, the applicant must first provide notice to the DEP and pay the required permit fee. The permit may be granted subject to specific statutory criteria. The local government or municipality in which the land is located must also approve the application for the permit by a resolution.[12]

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[6] *Id*.
[7] *Supra* note 3.
[8] NaturalGas.org, *Storage of Natural Gas*, http://www.naturalgas.org/naturalgas/storage.asp (last visited Apr. 11, 2013).
[9] *Id*.
[10] U.S. Energy Information Administration, *Weekly Natural Gas Storage Report*, http://ir.eia.gov/ngs/ngs.html (last visited Apr. 7, 2013).
[11] 15 U.S.C. ss. 717 et seq.
[12] *See* ss. 377.242-377.24, F.S.

Florida is not a large producer of natural gas as approximately 700 billion cubic feet of natural gas has been produced in northwest Florida; the amount recovered in south Florida is considered to be insignificant.[13]

There are no existing underground natural gas storage facilities in Florida and there are no regulatory provisions or rules for the storage of underground natural gas. All of the natural gas demand in Florida is served by two interstate pipelines delivering up to 4.5 billion cubic feet per day of natural gas. The existing pipelines are capable of providing enough natural gas to fuel approximately 26,000 megawatts of electric generation, which serves 5.5 to 6 million customers. The only natural gas reserves available in Florida are in the "line pack," which is the actual amount of gas in the pipeline or distribution system. The line pack allows for operational flexibility for pipeline customers, but is not considered a method of storage.[14]

III. Effect of Proposed Changes:

The bill creates a process for regulating in-ground storage of natural gas.

Section 5 amends s. 377.06, F.S., to declare that underground storage of natural gas is in the public interest because it:

- Promotes conservation of natural gas;
- Makes gas more readily available for domestic, commercial, and industrial users; and
- Allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand.

Section 7 amends s. 377.19, F.S., to add and revise definitions. The term:

- "Well site" is amended to include "inject gas into and recover gas from a natural gas storage facility.
- "Operator" is amended to include "as part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir."
- "Department" means the Department of Environmental Protection.
- "Lateral storage reservoir boundary" means the projections up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.
- "Native gas" means gas that occurs naturally within Florida and does not included gas produced outside or transported to Florida and injected into a permitted natural gas storage facility.
- "Natural gas storage facility" means an underground reservoir from which oil or gas has been previously produced and which is used or to be used for the underground storage of natural gas, and any surface or subsurface structure, infrastructure, right, or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of

[13] DEP, *Senate Bill 958/984 Agency Analysis* (Mar. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).
[14] Email from Timothy Riley, Attorney, Hopping Green and Sams (Mar. 6, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof. The term does not mean a transmission, distribution, or gathering pipeline or system that is not used primarily as integral piping for a natural gas storage facility.

- "Natural gas storage reservoir" means a pool or field from which oil or gas has previously been produced and which is suitable for or capable of being made suitable for the injection, storage, and recovery of gas.
- "Oil and gas" has the same meaning as the term "oil or gas."
- "Reservoir protective area" means the area extending up to and including 2,000 feet surrounding a natural gas lateral storage reservoir boundary.
- "Shut-in bottom hole pressure" means the pressure at the casing head or wellhead when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

Section 8 amends s 377.21, F.S., to specify that the Division of Resource Management (division) within the Department of Environmental Protection (DEP) has authority to administer and enforce laws relating to the storage of gas in and recovery of gas from natural gas storage reservoirs.

Section 13 amends s. 377.242, F.S., to provide that the DEP is vested with the power and authority to issue permits for natural gas storage facilities.

Section 9 amends s. 377.22, F.S., to authorize DEP to issue orders or adopt rules to:

- Ensure that all precautions are taken to prevent the spillage of any pollutant during the injection of gas into and recovery of gas from a natural gas reservoir;
- Protect the integrity of natural gas storage reservoirs;
- Require and carry out a reasonable program of monitoring or inspection of "injecting wells" to prevent wells from being drilled in such as fashion as to injure neighboring natural gas storage reservoirs; and
- Regulate the storage and recovery of gas injected into natural gas storage facilities.

Section 25 creates an unnumbered section of law to require the DEP to adopt rules relating to natural gas storage before issuing a natural gas storage facility permit.

Section 10 amends s. 377.24, F.S., to require permits from the DEP prior to storing gas in, or recovering gas from, a natural gas storage reservoir, and requiring applications for such permits to include the name and address of the applicant.

Section 11 creates s. 377.2407, F.S., to establish the permit-application process. Any person who desires to drill a well to inject gas into and recover gas from a natural gas storage reservoir must apply to DEP to obtain a natural gas storage facility permit. DEP must require an applicant to pay a reasonable permit application fee and the fee must be the amount necessary to cover the costs associated with permitting, processing, issuing, and recertifying the permit application, and inspecting activities for compliance. Each application must contain:

- A detailed, three-dimensional description of the natural gas storage reservoir;
- A geographic description of the lateral reservoir boundary;

- A general description and location of all injection, recovery, withdrawal-only, and observation wells;
- A description of the reservoir protective area;
- Information demonstrating that the proposed natural gas storage reservoir is suitable for the storage and recovery of gas;
- Information identifying all known abandoned or active wells within the natural gas storage facility;
- A field-monitoring plan that requires, at a minimum monthly field inspections of all wells that are part of the natural gas storage facility;
- A monitoring and testing plan to ensure well integrity;
- A well inspection plan that requires, at a minimum, the inspection of all wells that are part of the natural gas storage facility and plugged wells within the natural gas storage facility boundary;
- A spill prevention and response plan;
- A well spacing plan;
- An operating plan for the natural gas storage reservoir, which must include gas capacities, anticipated operating conditions, and maximum storage pressure;
- A gas migration response plan; and
- A location plat and general facility map surveyed and prepared by a registered land surveyor licensed under ch. 472, F.S.

The DEP may require additional necessary information from the applicant for completion of the permit application. Each well must be permitted individually and well construction and operation must be subject to the criteria outlined in ch. 377, F.S.

Section 12 adds s. 377.241, F.S., to provide that in determining whether to issue a permit, the division must consider if the storage facility, the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without causing adverse effects to public health, safety, and the environment.

Section 14 creates s. 377.2431, F.S., to provide conditions under which a natural gas storage facility permit can be issued and requires that the permit be issued for the life of the facility, subject to recertification every ten years. Before issuing or recertifying a permit, the division must require satisfactory evidence that the applicant has:

- Implemented or is in the process of implementing programs for the control and mitigation of pollution;
- Acquired the lawful right to develop the natural gas storage facility from at least 75 percent of the property interests or the applicant has obtained a certificate of public convenience and necessity from the Federal Energy Regulatory Commission pursuant to 15 U.S.C. ss. 717 et seq.
- Identified the known wells that have been drilled into or through the reservoir to the best of their ability and determined if the wells are inactive or abandoned and properly plugged. The applicant is required to plug or recondition any well that has not been properly plugged before conducting injection operations.
- Tested the quality of water from all water supply wells within the lateral boundary of the facility and complied with all of the requirements of s. 377.2432, F.S.

- Determined whether native gas or oil will be produced in the process of recovering injected gas. If native gas or oil will be produced, the applicant or operator must acquire the rights to develop the gas or oil before injecting gas into the natural gas storage reservoir.

DEP may not issue a permit for a natural gas storage reservoir that is located under a source of drinking water unless the applicant can demonstrate the injection, storage or recovery of natural gas will not cause or allow gas to migrate into the source of drinking water or that is in any offshore location or within a salt formation.

The applicant must maintain records of all inspections and reports to be made available to the DEP for inspection at any reasonable time.

The natural gas storage facility operator must request approval of a maximum storage pressure in accordance with the following:

- The maximum storage pressure is the highest shut-in bottom hole pressure found to exist during production history, unless the DEP has established a higher pressure based on testing of caprock and pool containment. Methods for determining the higher pressure must be approved by the DEP.
- If the shut-in bottom hole pressure of the original discovery or highest production is not known, or the DEP has not established a higher pressure, then the maximum storage reservoir pressure must be limited to a freshwater hydrostatic gradient.
- A natural gas storage facility permit issued by the department must contain a condition that requires the permittee to obtain the lawful right to develop a natural gas storage reservoir from the owners of 100 percent of the storage rights within the natural gas storage reservoir.

Section 15 creates s. 377.2432, F.S., to protect water supplies. An operator of a natural gas storage facility that affects a water supply must restore and replace the affected supply and provide an alternate source. DEP shall ensure that the quality of restored or replaced water is comparable to the quality of the water before it was affected by the operator.

Unless rebutted by a statutory defense, the facility operator is presumed responsible for pollution of water supplies within the lateral boundary of the facility if the pollution occurs within six months of completion of drilling or after initial injection, whichever is later. If the water supply is contaminated in the rebuttable presumption area, the facility operator must provide a temporary alternative water supply at no cost to the owner or user. The temporary water supply must be adequate in quantity and quality for the purposes served by the affected supply.

The facility operator presumed responsible for contaminating a water supply may rebut the claim by proving any of the following:

- The pollution existed before the drilling or alteration as determined by a predrilling or prealteration survey;
- The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey;
- The water supply is not within the lateral boundary of the natural gas storage facility;
- The pollution occurred more than six months after completion of drilling or alteration of any well associated with the natural gas storage facility; or

- The pollution occurred as the result of a cause other than activities authorized under the natural gas storage permit.

To preserve a defense, the facility operator must use an independent certified laboratory to conduct the predrilling and prealteration water quality surveys. The surveys are to be submitted to the DEP and the landowner or water supplier. The operator must provide written notice to the landowner or water supplier that the presumption that the facility operator is at fault for the water contamination may be void if the landowner or water supplier prohibits the facility operator access to conduct predrilling and prealteration water quality surveys.

This section does not prevent the landowner or water supplier who claims the water source has been contaminated from seeking any other remedy at law or in equity.

Section 16 creates s. 377.2433, F.S., to provide for the protection of natural gas storage facilities, as follows:

- The DEP may not permit wells to be drilled into or through the reservoir except under conditions that prevent loss or migration of gas from the reservoir;
- The operator must have reasonable right of entry to observe the drilling of any such well within the permitted natural gas storage facility boundary or reservoir protective area;
- The DEP shall require by permit condition that any well drilled into a permitted natural gas storage reservoir or reservoir protective area is properly cased and cemented.

Section 17 creates s. 377.2434, F.S., to provide for property rights to the injected gas. The injected gas is the property of the injector or the injector's heirs, successors, or assigns, whether owned by the injector or stored under contract.

The owner of the surface land or of any mineral rights has no right to the gas and no person has any right to waste or exercise control over the gas; however, the ownership of hydrocarbons that occur naturally within the state or the right of a surface owner or mineral interest are not subject to these restrictions and the owner may drill or bore through a natural gas storage facility as long as the integrity of the natural gas storage facility is protected.

With regard to gas that has migrated to adjoining properties or strata, the injector, injector's heirs, or assigns, do not lose title to or possession as long as they can prove the migrated gas is the same gas originally injected into the underground storage facility. Additionally, they have the right to conduct tests, at their own expense, on the existing wells on the adjoining property to determine ownership of the gas.

Property owners may be entitled to compensation in the event gas has migrated to their property.

Section 21 amends s. 377.34, F.S., to provide that the division may enforce laws, rules, and orders against those engaged in storage or recovering of natural gas.

Section 22 amends s. 377.37, F.S., to clarify that existing penalties may be applied to any person who violates the law or the provisions of a permit for a natural gas storage facility.

Section 23 amends s. 377.371, F.S., to clarify that the storage of natural gas is included in the prohibition on pollution when drilling for or producing oil, gas, or other petroleum products. Additionally, the cost to clean-up state waters from pollution that was the result of a natural gas storage facility is the responsibility of the facility operator.

Section 24 amends s. 403.973, F.S., to provide that projects for natural gas storage facilities permitted under ch. 377, F.S., and interstate natural gas pipelines that are subject to certification by the FERC are eligible for the expedited permitting process created in s. 403.973, F.S.

The remainder of the bill is technical or conforming to fully incorporate the new provisions into the existing regulatory structure and other statutes.

Section 1 creates an unnumbered section of law to establish the "Florida Underground Natural gas Storage Act."

Section 2 amends s. 211.02, F.S., to exempt gas-phase hydrocarbons that are transported into Florida, injected into an underground natural gas storage facility, and later recovered as liquid hydrocarbons, from the severance tax on oil production.

Section 3 amends s. 211.025, F.S., to provide that the severance tax on natural gas applies only to native gas as defined in s. 377.19, F.S.

Section 4 amends s. 376.301, F.S., to correct a cross-reference.

Section 6 amends s. 377.18, F.S., to clarify that the existing provision relating to the control and regulation of all common sources of oil or gas apply only to native gas.

Section 18 amends s. 377.25, to provide that well spacing requirements do not apply to injection wells associated with a natural gas storage facility.

Section 19 amends s. 377.28, F.S., to specify the additional recovery of oil or gas must not interfere with the storage or recovery of natural gas within a natural gas reservoir.

Section 20 amends s. 377.30, F.S., to provide that the limitations on the amount of oil and gas taken do not apply to nonnative gas recovered from a permitted natural gas storage facility.

Section 26 provides an effective date of July 1, 2013.

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:

There may be some benefit to the private sector to have stored natural gas during a time when supply may have otherwise been interrupted (e.g. hurricane season). In addition, companies that specialize in the types of natural gas storage facilities allowed by the bill will be able to apply for permits and begin operations if granted permits by the DEP.

C. Government Sector Impact:

The bill directs the DEP to expand rulemaking, hold public workshops, train staff, review applicants, and issue permits for underground natural gas storage facilities; these duties will result in costs to the department. These costs will be supported by permit fee revenues once they are established.

The DEP estimates it will take all of Fiscal Year 2013-2014 to do the rulemaking for this program and the costs for this can be handled with existing staff and resources. The DEP plans to request budget authority for this program in Fiscal Year 2014-2015.

The DEP does not currently have the expertise to regulate natural gas storage facilities and anticipates the need for specialized field and engineering consultants in order to implement the program. The agency contacted the states of Alabama and Texas that have implemented natural gas storage programs; the costs at implementation ranged from $200,000 to $1 million.

Since the extent to which natural gas storage will be used is unknown, the amount of regulatory oversight, tracking and inspection costs cannot be determined at this time.

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/CS by Appropriations on April 23, 2013:

- Clarifies that a natural gas storage facility permit may not be issued unless the applicant demonstrates the injection, storage, or recovery of natural gas will not migrate into an underground source of drinking water.
- Requires the DEP to include a special condition in a natural gas storage facility permit that requires the permittee to obtain 100 percent of the storage rights to use the natural gas storage reservoir.
- Clarifies that if a water supply is contaminated that the natural gas facility operator will provide a temporary source of water at no cost to both the water supply system owner and water users.
- Requires the DEP to include as a permit condition in any well drilled through a permitted natural gas storage reservoir or reservoir protective area to case and cement the well in a manner to protect the reservoir's integrity.

CS/CS by Communications, Energy, and Public Utilities on April 15, 2013:

- Removes the prohibition against a county or municipality attempting to regulate or enforce any matter concerning natural gas storage facilities, allowing local governments, subject to state and federal law, to participate in the permitting of storage facilities to account for public safety, such as fire prevention, law enforcement, and emergency management.

CS by Environmental Preservation and Conservation on April 9, 2013:

- Revises definitions;
- Removes the provision that the act is "self-executing" and requires rulemaking before a permit may be issued;
- Removes the provision that prohibits the DEP from declaring a permit application invalid or prohibits the issuance of a permit solely because the DEP has not adopted rules for the underground storage of natural gas;
- Requires the DEP to develop a reasonable application fee to cover programmatic costs;
- Specifies that a general description and location of all injection, recovery, withdrawal-only, and observations wells is required in a permit application;
- Requires an individual permit for each well related to natural gas storage;
- Extends the permit recertification requirement from five years to ten years;
- Clarifies requirements with respect to property ownership above the lateral extent of a natural gas storage reservoir;
- Removes all references to the power of eminent domain;
- Specifies requirements if native gas or oil is recovered during extraction of stored gas;

- Specifies that the well pressure records be made available for inspection by the DEP and clarifies the default maximum reservoir operating conditions that will be established in the facility permit;
- Specifies additional protections for storage facilities located beneath an underground source of drinking water;
- Specifies that storage facilities cannot be established in any offshore location or in salt formations;
- Removes the provision that allows a natural gas storage facility operator to petition the DEP to stop activities that may interfere with the reservoir;
- Clarifies unitization orders issued by the DEP with regard to natural gas storage;
- Removes the reference to the use of conservation agreements for common ownership; and
- Authorizes expedited permitting for interstate pipelines.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Florida Underground Natural Gas Storage Act."

Section 2. Subsection (7) is added to section 211.02, Florida Statutes, to read:

211.02 Oil production tax; basis and rate of tax; tertiary oil and mature field recovery oil.—An excise tax is hereby levied upon every person who severs oil in the state for sale, transport, storage, profit, or commercial use. Except as

otherwise provided in this part, the tax is levied on the basis of the entire production of oil in this state, including any royalty interest. Such tax shall accrue at the time the oil is severed and shall be a lien on production regardless of the place of sale, to whom sold, or by whom used, and regardless of the fact that delivery of the oil may be made outside the state.

(7) As used in this section, the term "oil" does not include gas-phase hydrocarbons that are transported into the state, injected in the gaseous phase into a natural gas storage facility permitted under part I of chapter 377, and later recovered as a liquid hydrocarbon.

Section 3. Subsection (6) is added to section 211.025, Florida Statutes, to read:

211.025 Gas production tax; basis and rate of tax.—An excise tax is hereby levied upon every person who severs gas in the state for sale, transport, profit, or commercial use. Except as otherwise provided in this part, the tax shall be levied on the basis of the entire production of gas in this state, including any royalty interest. Such tax shall accrue at the time the gas is severed and shall be a lien on production regardless of the place of sale, to whom sold, or by whom used and regardless of the fact that delivery of the gas may be made outside the state.

(6) This section applies only to native gas as defined in s. 377.19.

Section 4. Subsection (36) of section 376.301, Florida Statutes, is amended to read:

376.301 Definitions of terms used in ss. 376.30-376.317, 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and


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376.75, unless the context clearly requires otherwise, the term:

(36) "Pollutants" includes any "product" as defined in s. 377.19~~(11)~~, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

Section 5. Section 377.06, Florida Statutes, is amended to read:

377.06 Public policy of state concerning natural resources of oil and gas.—It is hereby declared ~~to be~~ the public policy of this ~~the~~ state to conserve and control the natural resources of oil and gas in this ~~said~~ state, and the products made from oil and gas in this state ~~therefrom~~; to prevent waste of ~~said~~ natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land in which the ~~wherein said~~ natural resources lie, of ~~and~~ the owners and producers of oil and gas resources and the products made from oil and gas ~~therefrom~~, and of others interested in these resources and products ~~therein~~; to safeguard the health, property, and public welfare of the residents ~~citizens~~ of this ~~said~~ state and other interested persons and for all purposes indicated by the provisions in this section ~~herein~~. Further, it is declared that underground storage of natural gas is in the public interest because underground storage promotes conservation of natural gas; makes gas more readily available to the domestic, commercial, and industrial consumers of this state; and allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand. It is not the intention of this section to limit, ~~or~~ restrict, or modify in any way the provisions of this law.

Section 6. Section 377.18, Florida Statutes, is amended to

read:

377.18 Common sources of oil and gas.—All common sources of supply of oil or native ~~and~~ gas ~~or either of them~~ shall have the production ~~therefrom~~ controlled or regulated in accordance with the provisions of this law.

Section 7. Section 377.19, Florida Statutes, is reordered and amended to read:

377.19 Definitions.—As used ~~Unless the context otherwise requires, the words defined in this section shall have the following meanings when found~~ in ss. 377.06, 377.07, and 377.10-377.40, the term:

(3) ~~(1)~~ "Division" means the Division of Resource Management of the Department of Environmental Protection.

(28) ~~(2)~~ "State" means the State of Florida.

(20) ~~(3)~~ "Person" means a ~~any~~ natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(15) ~~(4)~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(5) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (4).

(21) ~~(6)~~ "Pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(4) ~~(7)~~ "Field" means the general area that ~~which~~ is underlaid, or appears to be underlaid, by at least one pool. The term~~; and "field"~~ includes the underground reservoir, or reservoirs, containing oil or gas, or both. The terms ~~words~~ "field" and "pool" mean the same thing if ~~when~~ only one underground reservoir is involved; however, the term "field," unlike the term "pool," may relate to two or more pools.

(19) ~~(8)~~ "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production ~~either~~ for the person or for the person and another, or others.

(22) ~~(9)~~ "Producer" means the owner or operator of a well or wells capable of producing oil or gas, or both.

(31) ~~(10)~~ "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. The term "waste" includes:

(a) The inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that ~~which~~ results, or tends to result, in reducing the quantity of oil or gas ultimately to be stored or recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes, or tends ~~causing, or tending~~ to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) The producing of oil or gas in ~~such~~ a manner that causes ~~as to cause~~ unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(f) The underground waste, however caused and whether or not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount that ~~which~~ is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) The abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals, causing undue drainage between tracts of land.

(23) ~~(11)~~ "Product" means a ~~any~~ commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(8) ~~(12)~~ "Illegal oil" means oil that ~~which~~ has been

produced within the state from any well or wells in excess of the amount allowed by rule, regulation, or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(7) ~~(13)~~ "Illegal gas" means gas that ~~which~~ has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the division, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(9) ~~(14)~~ "Illegal product" means a ~~any~~ product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(24) ~~(15)~~ "Reasonable market demand" means the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(30) ~~(16)~~ "Tender" means a permit or certificate of clearance for the transportation or the delivery of oil, gas, or products, approved and issued or registered under the authority of the division.

~~(17) The use of the word "and" includes the word "or" and the use of "or" includes "and," unless the context clearly requires a different meaning, especially with respect to such expressions as "oil and gas" or "oil or gas."~~

(32) ~~(18)~~ "Well site" means the general area around a well,


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which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and recover gas from a natural gas storage facility.

(17) ~~(19)~~ "Oil and gas administrator" means the State Geologist.

(18) ~~(20)~~ "Operator" means the entity who:

(a) Has the right to drill and to produce a well; or

(b) As part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir.

(1) ~~(21)~~ "Completion date" means the day, month, and year that a new productive well, a previously shut-in well, or a temporarily abandoned well is completed, repaired, or recompleted and the operator begins producing oil or gas in commercial quantities.

(26) ~~(22)~~ "Shut-in well" means an oil or gas well that has been taken out of service for economic reasons or mechanical repairs.

(29) ~~(23)~~ "Temporarily abandoned well" means a permitted well or wellbore that has been abandoned by plugging in a manner that allows reentry and redevelopment in accordance with oil or gas rules of the Department of Environmental Protection.

(14) ~~(24)~~ "New field well" means an oil or gas well completed after July 1, 1997, in a new field as designated by the Department of Environmental Protection.

(6) ~~(25)~~ "Horizontal well" means a well completed with the

wellbore in a horizontal or nearly horizontal orientation within 10 degrees of horizontal within the producing formation.

(2) "Department" means the Department of Environmental Protection.

(10) "Lateral storage reservoir boundary" means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.

(11) "Native gas" means gas that occurs naturally within this state and does not include gas produced outside the state, transported to this state, and injected into a permitted natural gas storage facility.

(12) "Natural gas storage facility" means an underground reservoir from which oil or gas has previously been produced and which is used or to be used for the underground storage of natural gas, and any surface or subsurface structure, or infrastructure, except wells. The term also includes a right or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof. The term does not mean a transmission, distribution, or gathering pipeline or system that is not used primarily as integral piping for a natural gas storage facility.

(13) "Natural gas storage reservoir" means a pool or field from which gas or oil has previously been produced and which is

suitable for or capable of being made suitable for the injection, storage, and recovery of gas, as identified in a permit application submitted to the department under s. 377.2407.

(16) "Oil and gas" has the same meaning as the term "oil or gas."

(25) "Reservoir protective area" means the area extending up to and including 2,000 feet surrounding a natural gas storage reservoir.

(27) "Shut-in bottom hole pressure" means the pressure at the bottom of a well when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

Section 8. Subsection (1) of section 377.21, Florida Statutes, is amended to read:

377.21 Jurisdiction of division.—

(1) The division shall have jurisdiction and authority over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas or to the storage of gas in and recovery of gas from natural gas storage reservoirs.

Section 9. Subsection (2) of section 377.22, Florida Statutes, is amended to read:

377.22 Rules and orders.—

(2) The department shall issue orders and adopt rules pursuant to ss. 120.536~~(1)~~ and 120.54 to implement and enforce the provisions of this chapter. Such rules and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or

during the injection of gas into and recovery of gas from a natural gas storage reservoir. The department shall revise such rules from time to time as necessary for the proper administration and enforcement of this chapter. Rules adopted and orders issued in accordance with this section are ~~shall be~~ for, but ~~shall~~ not ~~be~~ limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, or other form of security acceptable to the department, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is

conducted to the similar contour and general condition in existence prior to such operation.

(g) To require and carry out a reasonable program of monitoring or inspection of all drilling operations, ~~or~~ producing wells, or injecting wells, including regular inspections by division personnel.

(h) To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records. However, such information, or any part thereof, at the request of the operator, shall be exempt from the provisions of s. 119.07(1) and held confidential by the division for a period of 1 year after the completion of a well.

(i) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, ~~or~~ property, or natural gas storage reservoirs.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally

understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating and chemical treatment of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) To regulate the storage and recovery of gas injected into natural gas storage facilities.

(s) ~~(r)~~ If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(t) ~~(s)~~ To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(u) ~~(t)~~ To regulate the spacing of wells and to establish drilling units.

(v) ~~(u)~~ To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(w) ~~(v)~~ To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.

(x) ~~(w)~~ To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state.

(y) ~~(x)~~ To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.

Section 10. Subsections (1) and (2) of section 377.24, Florida Statutes, are amended to read:

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before drilling a ~~any~~ well in search of oil or gas, or before storing gas in or recovering gas from a natural gas storage reservoir ~~shall be drilled~~, the person who desires ~~desiring~~ to drill for, store, or recover gas, or drill for oil or gas, ~~the same~~ shall notify the division upon such form as it may prescribe and shall pay a reasonable fee set by rule of the department not to exceed the actual cost of processing and inspecting for each well or reservoir. The drilling of any well and the storing and recovering of gas are ~~is hereby~~ prohibited until such notice is given, the ~~and such~~ fee is ~~has been~~ paid, and the permit is granted.

(2) An ~~Each~~ application for the drilling of a well in search of oil or gas, or for the storing of gas in and recovering of gas from a natural gas storage reservoir, in this state must ~~shall~~ include the address of the residence of the applicant, or applicants ~~each applicant~~, which must ~~address shall~~ be the address of each person involved in accordance with the records of the Division of Resource Management until such address is changed on the records of the division after written request.


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Section 11. Section 377.2407, Florida Statutes, is created to read:

377.2407 Natural gas storage facility permit application to inject gas into and recover gas from a natural gas storage reservoir.—

(1) Before drilling a well to inject gas into and recover gas from a natural gas storage reservoir, the person who desires to conduct such operation shall apply to the department in the manner described in this section using such form as the department may prescribe to obtain a natural gas storage facility permit. The department shall also require any applicant seeking to obtain such permit to pay a reasonable permit application fee. Such fee must be in an amount necessary to cover the costs associated with receiving, processing, issuing, and recertifying the permit application, and inspecting for compliance with the permit.

(2) Each application must contain:

(a) A detailed, three-dimensional description of the natural gas storage reservoir, including geologic-based descriptions of the reservoir boundaries, and the horizontal and vertical dimensions.

(b) A geographic description of the lateral storage reservoir boundary.

(c) A general description and location of all injection, recovery, withdrawal-only, and observation wells.

(d) A description of the reservoir protective area.

(e) Information demonstrating that the proposed natural gas storage reservoir is suitable for the storage and recovery of gas.

(f) Information identifying all reasonably known abandoned or active wells within the natural gas storage facility.

(g) A field-monitoring plan that requires, at a minimum, monthly field inspections of all wells that are part of the natural gas storage facility.

(h) A monitoring and testing plan for the well integrity.

(i) A well inspection plan that requires, at a minimum, the inspection of all wells that are part of the natural gas storage facility and plugged wells within the natural gas storage facility boundary.

(j) A spill prevention and response plan.

(k) A well spacing plan.

(l) An operating plan for the natural gas storage reservoir, which must include gas capacities, anticipated operating conditions, and maximum storage pressure.

(m) A gas migration response plan.

(n) A location plat and general facility map surveyed and prepared by a registered land surveyor licensed under chapter 472.

(3) The department may require the applicant to provide additional information that is deemed necessary to permit the development of the natural gas storage facility. Each well related to the natural gas storage facility shall be authorized and permitted individually upon the applicant’s satisfying applicable well construction and operation criteria under this part; however, notwithstanding any other provision of this chapter, well spacing requirements do not apply.

Section 12. Subsection (4) is added to section 377.241, Florida Statutes, to read:


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377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(4) For activities and operations concerning a natural gas storage facility, the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment.

Section 13. Subsection (3) of section 377.242, Florida Statutes, is amended to read:

377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested with the power and authority:

(3) To issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for ~~temporary~~ storage in natural gas storage ~~subsurface~~ reservoirs.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time. The provisions of this section prohibiting permits for drilling or exploring for oil in coastal waters do not apply to any leases entered into before June 7, 1991.

Section 14. Section 377.2431, Florida Statutes, is created to read:

377.2431 Conditions for granting permits for natural gas storage facilities.—


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(1) A natural gas storage facility permit shall authorize the construction and operation of a natural gas storage facility and must be issued for the life of the facility, subject to recertification every 10 years.

(2) Before issuing or recertifying a permit, the department shall require satisfactory evidence of the following:

(a) The applicant has implemented, or is in the process of implementing, programs for the control and mitigation of pollution related to oil, petroleum products or their byproducts, and other pollutants.

(b) The applicant or operator has acquired a lawful right to drill, explore, or develop a natural gas storage reservoir from owners of at least 75 percent of the storage rights within the natural gas storage reservoir, or the applicant or operator has obtained a certificate of public convenience and necessity for the natural gas storage reservoir from the Federal Energy Regulatory Commission pursuant to the Natural Gas Act, 15 U.S.C. ss. 717 et seq.

(c) The applicant has used all reasonable means to identify known wells that have been drilled into or through the natural gas storage reservoir or the reservoir protective area to determine the status of the wells and whether inactive or abandoned wells have been properly plugged. For any well that has not been properly plugged, before conducting injection operations and after issuance of the permit, the applicant must plug or recondition the well to ensure the integrity of the storage reservoir or the reservoir protective area.

(d) The applicant has tested the quality of water produced by all water supply wells within the lateral boundary of the

natural gas storage facility and complied with all requirements under s. 377.2432. The applicant shall provide to the department and the owner of the water supply well a written copy of the water quality data collected under this paragraph.

(e) A determination has been made whether native gas or oil will be severed from below the soil or water of this state in the recovery of injected gas. If native gas or oil will be severed, the applicant or operator must acquire a lawful right to develop the native gas or oil before injecting gas into the natural gas storage reservoir.

(3) The applicant shall maintain records of well pressures recorded monthly, and monthly volumes of gas injected into and withdrawn from the reservoir. These records shall be maintained at the natural gas storage facility and shall be made available for inspection by the department at any reasonable time.

(4)(a) The maximum storage pressure for a natural gas storage reservoir shall be the highest shut-in bottom hole pressure found to exist during the production history of the reservoir, unless a higher pressure is established by the department based on testing of caprock and pool containment. The methods used for determining the higher pressure must be approved by the department.

(b) If the shut-in bottom hole pressure of the original discovery or of the highest production is not known, or a higher pressure has not been established through a method approved by the department pursuant to paragraph (a), the maximum storage reservoir pressure must be limited to a freshwater hydrostatic gradient.

(5) A permit may not be issued for a natural gas storage

facility that includes a natural gas storage reservoir located beneath an underground source of drinking water unless the applicant demonstrates that the injection, storage, or recovery of natural gas will not cause or allow natural gas to migrate into the underground source of drinking water; in any offshore location in the Gulf of Mexico, the Straits of Florida, or the Atlantic Ocean; or in any solution-mined cavern within a salt formation.

(6) A natural gas storage facility permit issued by the department must contain a condition that requires the permittee to obtain the lawful right to develop a natural gas storage reservoir from the owners of 100 percent of the storage rights within the natural gas storage reservoir.

Section 15. Section 377.2432, Florida Statutes, is created to read:

377.2432 Natural gas storage facilities; protection of water supplies.—

(1) An operator of a natural gas storage facility who affects a public or private underground water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. The department shall ensure that the quality of restored or replaced water is comparable to the quality of the water before it was affected by the operator.

(2) Unless rebutted by a defense established in subsection (4), a natural gas storage facility operator is presumed responsible for pollution of an underground water supply if:

(a) The water supply is within the lateral boundary of the

natural gas storage facility; and

(b) The pollution occurred within 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit or the initial injection of gas into the natural gas storage reservoir, whichever is later.

(3) If the affected underground water supply is within the rebuttable presumption area as provided in subsection (2) and the rebuttable presumption applies, the natural gas storage facility operator shall provide a temporary water supply if the water user is without a readily available alternative source of water at no cost to the owner or user of the affected water supply. The temporary water supply provided under this subsection must be adequate in quantity and quality for the purposes served by the affected supply.

(4) A natural gas storage facility operator rebuts the presumption in subsection (2) by affirmatively proving any of the following:

(a) The pollution existed before the drilling or alteration activity as determined by a predrilling or prealteration survey.

(b) The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.

(c) The water supply well is not within the lateral boundary of the natural gas storage facility.

(d) The pollution occurred more than 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit.

(e) The pollution occurred as the result of a cause other

than activities authorized under the natural gas storage facility permit.

(5) A natural gas storage facility operator electing to preserve a defense under subsection (4) must retain an independent certified laboratory to conduct a predrilling or prealteration survey of the water supply. A copy of survey results must be submitted to the department and the landowner or water purveyor in the manner prescribed by the department.

(6) A natural gas storage facility operator must provide written notice to the landowner or water purveyor indicating that the presumption established under subsection (2) may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey. Proof of written notice to the landowner or water purveyor must be provided to the department in order for the operator to retain the protections under subsection (4).

(7) This section does not prevent a landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy at law or in equity.

Section 16. Section 377.2433, Florida Statutes, is created to read:

377.2433 Protection of natural gas storage facilities; remedies.—

(1) The department may not authorize the drilling of any well into or through a permitted natural gas storage reservoir or reservoir protective area, except upon conditions deemed by the department to be sufficient to prevent the loss, migration, or escape of gas from the natural gas storage reservoir. The department shall provide written notice to the natural gas

storage facility operator of any application filed with the department and any agency action taken related to drilling a well into or through a permitted natural gas storage facility boundary or reservoir protective area.

(2) As a condition for the issuance of a permit by the department, an applicant seeking to drill a well into or through a permitted natural gas storage facility boundary or reservoir protective area must provide the affected natural gas storage facility operator a reasonable right of entry to observe and monitor all drilling activities.

(3) The department shall require by permit condition that any well drilled into or through a permitted natural gas storage reservoir or reservoir protective area is cased and cemented in a manner sufficient to protect the integrity of the natural gas storage reservoir.

Section 17. Section 377.2434, Florida Statutes, is created to read:

377.2434 Property rights to injected natural gas.—

(1) All natural gas that has previously been reduced to possession and that is subsequently injected into a natural gas storage facility is at all times the property of the injector or the injector’s heirs, successors, or assigns, whether owned by the injector or stored under contract.

(2) Such gas may not be subject to the right of the owner of the surface of the lands or of any mineral interest therein, under which the natural gas storage facilities lie, or to the right of any person, other than the injector or the injector’s heirs, successors, or assigns, to waste or otherwise interfere with or exercise control over such gas, to produce, to take, or

to reduce to possession, by means of the law of capture or otherwise. This subsection does not affect the ownership of hydrocarbons occurring naturally within this state or the right of the owner of the surface of the lands or of any mineral interest therein to drill or bore through the natural gas storage facilities in a manner that will protect the facilities against pollution or the escape of stored natural gas.

(3) With regard to natural gas that has migrated to adjoining property or to a stratum, or portion thereof, which has not been condemned or otherwise purchased:

(a) The injector or the injector's heirs, successors, or assigns:

1. May not lose title to or possession of the gas if the injector or the injector's heirs, successors, or assigns can prove by a preponderance of the evidence that the gas was originally injected into the underground storage; and

2. Have the right to conduct tests on any existing wells on adjoining property as may be reasonable to determine ownership of the gas, but the tests are solely at the injector's risk and expense.

(b) The owner of the stratum and the owner of the surface are entitled to compensation, including compensation for use of or damage to the surface or substratum, as provided by law.

Section 18. Subsection (3) of section 377.25, Florida Statutes, is amended to read:

377.25 Production pools; drilling units.—

(3) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may be reasonably necessary where the division

finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome or where the operator proposes to complete the well with a horizontal or nearly horizontal well in the producing zone. Whenever an exception is granted, the division shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract, with respect to which the exception is granted, will be prevented or minimized, and the producer of the well drilled, as an exception, will be allowed to produce no more than his or her just and equitable share of the oil and gas in the pool, as such share is set forth in this section. This subsection does not apply to wells associated with a natural gas storage facility.

Section 19. Subsection (2) of section 377.28, Florida Statutes, is amended to read:

377.28 Cycling, pooling, and unitization of oil and gas.—

(2) The department shall issue an order requiring unit operation if it finds that:

(a) Unit operation of the field, or of any pool or pools, portion or portions, or combinations thereof within the field, is reasonably necessary to prevent waste, to avoid the drilling of unnecessary wells, or to increase the ultimate recovery of oil or gas by additional recovery methods; ~~and~~

(b) The estimated additional cost incident to the conduct of such operation will not exceed the value of the estimated

additional recovery of oil or gas; and

(c) The additional recovery of oil or gas does not adversely interfere with the storage or recovery of natural gas within a natural gas storage reservoir.

The phrase "additional recovery methods" as used herein includes, but is not limited to, the maintenance or partial maintenance of reservoir pressures; recycling; flooding a pool or pools, or parts thereof, with air, gas, water, liquid hydrocarbons, any other substance, or any combination thereof; or any other method of producing additional hydrocarbons approved by the department.

Section 20. Subsection (4) is added to section 377.30, Florida Statutes, to read:

377.30 Limitation on amount of oil or gas taken.—

(4) This section does not apply to nonnative gas recovered from a permitted natural gas storage facility.

Section 21. Subsection (1) of section 377.34, Florida Statutes, is amended to read:

377.34 Actions and injunctions by division.—

(1) Whenever it appears ~~shall appear~~ that a ~~any~~ person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made ~~thereunder~~ by any act done in the operation of a ~~any~~ well producing oil or gas, or storing or recovering natural gas, or by omitting an ~~any~~ act required to be done ~~thereunder~~, the division, through its counsel, or the Department of Legal Affairs on its own initiative, may bring suit against such

person in the Circuit Court in the County of Leon, state, or in the circuit court in the county in which the well in question is located, at the option of the division, or the Department of Legal Affairs, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit, the division, or the Department of Legal Affairs, may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of a receiver appointed by the court if, in the judgment of the court, such action is advisable.

Section 22. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) Any person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1)~~,~~ or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for

reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than $10,000 for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

Section 23. Subsections (1) and (3) of section 377.371, Florida Statutes, are amended to read:

377.371 Pollution prohibited; reporting, liability.—

(1) A ~~No~~ person drilling for or producing oil, gas, or other petroleum products, or storing gas in a natural gas storage facility, may not ~~shall~~ pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow any extraneous matter to enter or damage any mineral or freshwater-bearing formation.

(3) Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages resulting from pollution in violation of this chapter, if the waters of the state are polluted by the drilling, storage of natural gas, or production operations of any person or persons and such pollution damages or threatens to damage human, animal, or plant life, public or private property, or any mineral or water-bearing formation, said person shall be liable to the state for all costs of cleanup or other damage incurred by the


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state. In any suit to enforce claims of the state under this chapter, it is ~~shall~~ not ~~be~~ necessary for the state to plead or prove negligence in any form or manner on the part of the person or persons conducting the drilling or production operations; the state need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred at the facilities of the person or persons conducting the drilling or production operation. A ~~No~~ person or persons conducting the drilling, storage, or production operation may not ~~shall~~ be held liable if said person or persons prove that the prohibited discharge or other polluting condition was the result of any of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

Section 24. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraphs (g) and (h) are added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects for natural gas storage facilities that are permitted under chapter 377 are eligible for the expedited

permitting process.

(h) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission are eligible for the expedited permitting process.

(14)

(b) Projects identified in paragraphs ~~paragraph~~ (3)(f)-(h) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 25. The Department of Environmental Protection

shall adopt rules relating to natural gas storage before issuing a natural gas storage facility permit.

Section 26. This act shall take effect July 1, 2013.

========== 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 underground natural gas storage; providing a short title; amending s. 211.02, F.S.; narrowing the use of the term "oil"; amending s. 211.025, F.S.; narrowing the scope of the gas production tax to apply only to native gas; amending s. 376.301, F.S.; conforming a cross-reference; amending s. 377.06, F.S.; declaring underground natural gas storage to be in the public interest; amending s. 377.18, F.S.; clarifying common sources of oil and gas; amending s. 377.19, F.S.; modifying and providing definitions; amending s. 377.21, F.S.; extending the jurisdiction of the Division of Resource Management of the Department of Environmental Protection; amending s. 377.22, F.S.; expanding the scope of the department's rules and orders; amending s. 377.24, F.S.; providing for the notice and permitting of storage in and recovery from natural gas storage reservoirs; creating s. 377.2407, F.S.; establishing a natural gas storage facility permit application process; specifying requirements for an

application, including fees; amending s. 377.241, F.S.; providing criteria that the division must consider in issuing permits; amending s. 377.242, F.S.; granting authority to the department to issue permits to establish natural gas storage facilities; creating s. 377.2431, F.S.; establishing conditions and procedures for granting natural gas storage facility permits; prohibiting the issuance of permits for facilities located in specified areas; creating s. 377.2432, F.S.; providing for the protection of water supplies at natural gas storage facilities; providing that an operator is presumed responsible for pollution of an underground water supply under certain circumstances; creating s. 377.2433, F.S.; providing for the protection of natural gas storage facilities through requirement of notice, compliance with certain standards, and a right of entry to monitor activities; creating s. 377.2434, F.S.; providing that property rights to injected natural gas are with the injector or the injector’s heirs, successors, or assigns; providing for compensation to the owner of the stratum and the owner of the surface for use of or damage to the surface or substratum; amending s. 377.25, F.S.; limiting the scope of certain drilling unit requirements; amending s. 377.28, F.S.; modifying situations in which the department is required to issue an order requiring unit operation; amending s. 377.30, F.S.; providing that limitations on the amount of oil or gas taken do not apply to nonnative gas

recovered from a permitted natural gas storage facility; amending s. 377.34, F.S.; providing for legal action against a person who appears to be violating a rule that relates to the storage or recovery of natural gas; amending s. 377.37, F.S.; expanding penalties to reach persons who violate the terms of a permit relating to storage of gas in a natural gas storage facility; amending s. 377.371, F.S.; providing that a person storing gas in a natural gas storage facility may not pollute or otherwise damage certain areas and that a person who pollutes water by storing natural gas is liable for cleanup or other costs incurred by the state; amending s. 403.973, F.S.; allowing expedited permitting for natural gas storage facilities permitted under ch. 377, F.S., and certain projects to construct interstate natural gas pipelines; providing that natural gas storage facilities are subject to certain requirements; directing the department to adopt certain rules before issuing permits for natural gas storage facilities; providing an effective date.

By the Committees on Communications, Energy, and Public Utilities; and Environmental Preservation and Conservation; and Senators Richter and Smith

579-04330-13 2013958c2

A bill to be entitled

An act relating to underground natural gas storage; providing a short title; amending s. 211.02, F.S.; narrowing the use of the term "oil"; amending s. 211.025, F.S.; narrowing the scope of the gas production tax to apply only to native gas; amending s. 376.301, F.S.; conforming a cross-reference; amending s. 377.06, F.S.; making grammatical changes; declaring underground natural gas storage to be in the public interest; amending s. 377.18, F.S.; clarifying common sources of oil and gas; amending s. 377.19, F.S.; modifying and providing definitions; amending s. 377.21, F.S.; extending the jurisdiction of the Division of Resource Management of the Department of Environmental Protection; amending s. 377.22, F.S.; expanding the scope of the department's rules and orders; amending s. 377.24, F.S.; providing for the notice and permitting of storage in and recovery from natural gas storage reservoirs; creating s. 377.2407, F.S.; establishing a natural gas storage facility permit application process; specifying requirements for an application, including fees; amending s. 377.241, F.S.; providing criteria that the division must consider in issuing permits; amending s. 377.242, F.S.; granting authority to the department to issue permits to establish natural gas storage facilities; creating s. 377.2431, F.S.; establishing conditions and procedures for granting natural gas storage facility permits; prohibiting a permit for certain

Florida Senate - 2013 CS for CS for SB 958

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natural gas storage facilities; creating s. 377.2432, F.S.; providing for the protection of water supplies at natural gas storage facilities; providing that a natural gas storage facility operator is presumed responsible for pollution of an underground water supply under certain circumstances; creating s. 377.2433, F.S.; providing for the protection of natural gas storage facilities through a requirement of notice, compliance with certain standards, and a right of entry to monitor activities; creating s. 377.2434, F.S.; providing that property rights to injected natural gas are with the injector or the injector's heirs, successors, or assigns; providing for compensation to the owner of the stratum and the owner of the surface for use of or damage to the surface or substratum; amending s. 377.25, F.S.; limiting the scope of certain drilling unit requirements; amending s. 377.28, F.S.; modifying situations in which the department is required to issue an order requiring unit operation; amending s. 377.30, F.S.; providing that limitations on the amount of oil or gas taken do not apply to nonnative gas recovered from a permitted natural gas storage facility; amending s. 377.34, F.S.; providing for legal action against a person who appears to be violating a rule that relates to the storage or recovery of natural gas; amending s. 377.37, F.S.; expanding penalties to reach persons who violate the terms of a permit relating to storage of gas in a

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

natural gas storage facility; amending s. 377.371, F.S.; providing that a person storing gas in a natural gas storage facility may not pollute or otherwise damage certain areas and that a person who pollutes water by storing natural gas is liable for cleanup or other costs incurred by the state; amending s. 403.973, F.S.; allowing expedited permitting for natural gas storage facilities permitted under ch. 377, F.S., and for certain projects to construct interstate natural gas pipelines; providing that natural gas storage facilities are subject to certain requirements; requiring the Department of Environmental Protection to adopt rules; providing an effective date.

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

Section 1. This act may be cited as the "Florida Underground Natural Gas Storage Act."

Section 2. Subsection (7) is added to section 211.02, Florida Statutes, to read:

211.02 Oil production tax; basis and rate of tax; tertiary oil and mature field recovery oil.—An excise tax is hereby levied upon every person who severs oil in the state for sale, transport, storage, profit, or commercial use. Except as otherwise provided in this part, the tax is levied on the basis of the entire production of oil in this state, including any royalty interest. Such tax shall accrue at the time the oil is severed and shall be a lien on production regardless of the

place of sale, to whom sold, or by whom used, and regardless of the fact that delivery of the oil may be made outside the state.

(7) As used in this section, the term "oil" does not include gas-phase hydrocarbons that are transported into the state, injected in the gaseous phase into a natural gas storage facility permitted under part I of chapter 377, and later recovered as a liquid hydrocarbon.

Section 3. Subsection (6) is added to section 211.025, Florida Statutes, to read:

211.025 Gas production tax; basis and rate of tax.—An excise tax is hereby levied upon every person who severs gas in the state for sale, transport, profit, or commercial use. Except as otherwise provided in this part, the tax shall be levied on the basis of the entire production of gas in this state, including any royalty interest. Such tax shall accrue at the time the gas is severed and shall be a lien on production regardless of the place of sale, to whom sold, or by whom used and regardless of the fact that delivery of the gas may be made outside the state.

(6) This section applies only to native gas as defined in s. 377.19.

Section 4. Subsection (36) of section 376.301, Florida Statutes, is amended to read:

376.301 Definitions of terms used in ss. 376.30-376.317, 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

(36) "Pollutants" includes any "product" as defined in s. 377.19~~(11)~~, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

Section 5. Section 377.06, Florida Statutes, is amended to read:

377.06 Public policy of state concerning natural resources of oil and gas.—It is hereby declared ~~to be~~ the public policy of this ~~the~~ state to conserve and control the natural resources of oil and gas in this ~~said~~ state, and the products made from oil and gas in this state ~~therefrom~~; to prevent waste of ~~said~~ natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land in which the ~~wherein said~~ natural resources lie, of ~~and~~ the owners and producers of oil and gas resources and the products made from oil and gas ~~therefrom~~, and of others interested in these resources and products ~~therein~~; to safeguard the health, property, and public welfare of the residents ~~citizens~~ of this ~~said~~ state and other interested persons and for all purposes indicated by the provisions in this section ~~herein~~. Further, it is declared that underground storage of natural gas is in the public interest because underground storage promotes conservation of natural gas; makes gas more readily available to the domestic, commercial, and industrial consumers of this state; and allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand. It is not the intention of this section to limit, ~~or~~ restrict, or modify in any way the provisions of this law.

Section 6. Section 377.18, Florida Statutes, is amended to read:

377.18 Common sources of oil and gas.—All common sources of supply of oil or native ~~and~~ gas ~~or either of them~~ shall have the production ~~therefrom~~ controlled or regulated in accordance with

the provisions of this law.

Section 7. Section 377.19, Florida Statutes, is reordered and amended to read:

377.19 Definitions.—As used ~~Unless the context otherwise requires, the words defined in this section shall have the following meanings when found~~ in ss. 377.06, 377.07, and 377.10-377.40, the term:

(3) ~~(1)~~ "Division" means the Division of Resource Management of the Department of Environmental Protection.

(28) ~~(2)~~ "State" means the State of Florida.

(20) ~~(3)~~ "Person" means a ~~any~~ natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(15) ~~(4)~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(5) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (4).

(21) ~~(6)~~ "Pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(4) ~~(7)~~ "Field" means the general area that ~~which~~ is underlaid, or appears to be underlaid, by at least one pool. The term~~; and "field"~~ includes the underground reservoir, or reservoirs, containing oil or gas, or both. The terms ~~words~~

"field" and "pool" mean the same thing if ~~when~~ only one underground reservoir is involved; however, the term "field," unlike the term "pool," may relate to two or more pools.

(19)~~(8)~~ "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production ~~either~~ for the person or for the person and another, or others.

(22)~~(9)~~ "Producer" means the owner or operator of a well or wells capable of producing oil or gas, or both.

(31)~~(10)~~ "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. The term "waste" includes:

(a) The inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that ~~which~~ results, or tends to result, in reducing the quantity of oil or gas ultimately to be stored or recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes, or tends ~~causing, or tending~~ to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) The producing of oil or gas in ~~such~~ a manner that causes ~~as to cause~~ unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(f) The underground waste, however caused and whether or not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount that ~~which~~ is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) The abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals, causing undue drainage between tracts of land.

(23)~~(11)~~ "Product" means a ~~any~~ commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(8)~~(12)~~ "Illegal oil" means oil that ~~which~~ has been produced within the state from any well or wells in excess of the amount allowed by rule, regulation, or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed,

which is "legal oil."

(7)~~(13)~~ "Illegal gas" means gas that ~~which~~ has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the division, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(9)~~(14)~~ "Illegal product" means a ~~any~~ product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(24)~~(15)~~ "Reasonable market demand" means the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(30)~~(16)~~ "Tender" means a permit or certificate of clearance for the transportation or the delivery of oil, gas, or products, approved and issued or registered under the authority of the division.

~~(17) The use of the word "and" includes the word "or" and the use of "or" includes "and," unless the context clearly requires a different meaning, especially with respect to such expressions as "oil and gas" or "oil or gas."~~

(32)~~(18)~~ "Well site" means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and

recover gas from a natural gas storage facility.

(17)~~(19)~~ "Oil and gas administrator" means the State Geologist.

(18)~~(20)~~ "Operator" means the entity who:

(a) Has the right to drill and to produce a well; or

(b) As part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir.

(1)~~(21)~~ "Completion date" means the day, month, and year that a new productive well, a previously shut-in well, or a temporarily abandoned well is completed, repaired, or recompleted and the operator begins producing oil or gas in commercial quantities.

(26)~~(22)~~ "Shut-in well" means an oil or gas well that has been taken out of service for economic reasons or mechanical repairs.

(29)~~(23)~~ "Temporarily abandoned well" means a permitted well or wellbore that has been abandoned by plugging in a manner that allows reentry and redevelopment in accordance with oil or gas rules of the Department of Environmental Protection.

(14)~~(24)~~ "New field well" means an oil or gas well completed after July 1, 1997, in a new field as designated by the Department of Environmental Protection.

(6)~~(25)~~ "Horizontal well" means a well completed with the wellbore in a horizontal or nearly horizontal orientation within 10 degrees of horizontal within the producing formation.

(2) "Department" means the Department of Environmental Protection.

(10) "Lateral storage reservoir boundary" means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.

(11) "Native gas" means gas that occurs naturally within this state and does not include gas produced outside the state, transported to this state, and injected into a permitted natural gas storage facility.

(12) "Natural gas storage facility" means an underground reservoir from which oil or gas has previously been produced and which is used or intended to be used for the underground storage of natural gas, and any surface or subsurface structure, or infrastructure, except wells. The term also includes a right or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof. The term does not mean a transmission, distribution, or gathering pipeline or system that is not used primarily as integral piping for a natural gas storage facility.

(13) "Natural gas storage reservoir" means a pool or field from which oil or gas has previously been produced and which is suitable for or capable of being made suitable for the injection, storage, and recovery of gas, as identified in a permit application submitted to the department under s. 377.2407.

(16) "Oil and gas" has the same meaning as the term "oil or gas."

(25) "Reservoir protective area" means the area extending up to and including 2,000 feet surrounding a natural gas storage reservoir.

(27) "Shut-in bottom hole pressure" means the pressure at the bottom of a well when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

Section 8. Subsection (1) of section 377.21, Florida Statutes, is amended to read:

377.21 Jurisdiction of division.—

(1) The division shall have jurisdiction and authority over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas or to the storage of gas in and recovery of gas from natural gas storage reservoirs.

Section 9. Subsection (2) of section 377.22, Florida Statutes, is amended to read:

377.22 Rules and orders.—

(2) The department shall issue orders and adopt rules pursuant to ss. 120.536~~(1)~~ and 120.54 to implement and enforce the provisions of this chapter. Such rules and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir. The department shall revise such rules from time to time as necessary for the proper administration and enforcement of this chapter. Rules adopted

and orders issued in accordance with this section are ~~shall be~~ for, but ~~shall~~ not ~~be~~ limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, or other form of security acceptable to the department, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence prior to such operation.

(g) To require and carry out a reasonable program of monitoring or inspection of all drilling operations, ~~or~~

producing wells, or injecting wells, including regular inspections by division personnel.

(h) To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records. However, such information, or any part thereof, at the request of the operator, shall be exempt from the provisions of s. 119.07(1) and held confidential by the division for a period of 1 year after the completion of a well.

(i) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, ~~or~~ property, or natural gas storage reservoirs.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and

storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating and chemical treatment of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) To regulate the storage and recovery of gas injected into natural gas storage facilities.

(s) ~~(r)~~ If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(t) ~~(s)~~ To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(u) ~~(t)~~ To regulate the spacing of wells and to establish drilling units.

(v) ~~(u)~~ To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(w) ~~(v)~~ To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.

(x) ~~(w)~~ To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state.

(y) ~~(x)~~ To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated

and to administratively designate the operator as the lessee.

Section 10. Subsections (1) and (2) of section 377.24, Florida Statutes, are amended to read:

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before drilling a ~~any~~ well in search of oil or gas, or before storing gas in or recovering gas from a natural gas storage reservoir ~~shall be drilled~~, the person who desires ~~desiring~~ to drill for, store, or recover gas, or drill for oil, ~~the same~~ shall notify the division upon such form as it may prescribe and shall pay a reasonable fee set by rule of the department not to exceed the actual cost of processing and inspecting for each well or reservoir. The drilling of any well and the storing and recovering of gas are ~~is hereby~~ prohibited until such notice is given, the ~~and such~~ fee is ~~has been~~ paid, and the permit is granted.

(2) An ~~Each~~ application for the drilling of a well in search of oil or gas, or for the storing of gas in and recovering of gas from a natural gas storage reservoir, in this state must ~~shall~~ include the address of the residence of the applicant, or applicants ~~each applicant~~, which must ~~address shall~~ be the address of each person involved in accordance with the records of the Division of Resource Management until such address is changed on the records of the division after written request.

Section 11. Section 377.2407, Florida Statutes, is created to read:

377.2407 Natural gas storage facility permit application to inject gas into and recover gas from a natural gas storage

reservoir.—

(1) Before drilling a well to inject gas into and recover gas from a natural gas storage reservoir, the person who desires to conduct such operation shall apply to the department in the manner described in this section using such form as the department may prescribe to obtain a natural gas storage facility permit. The Department of Environmental Protection shall also require any applicant seeking to obtain such permit to pay a reasonable permit application fee. Such fee must be in an amount necessary to cover the costs associated with permitting, processing, issuing, and recertifying the permit application, and inspecting for compliance with the permit.

(2) Each application must contain:

(a) A detailed, three-dimensional description of the natural gas storage reservoir, including geologic-based descriptions of the reservoir boundaries, and the horizontal and vertical dimensions.

(b) A geographic description of the lateral reservoir boundary.

(c) A general description and location of all injection, recovery, withdrawal-only, and observation wells.

(d) A description of the reservoir protective area.

(e) Information demonstrating that the proposed natural gas storage reservoir is suitable for the storage and recovery of gas.

(f) Information identifying all known abandoned or active wells within the natural gas storage facility.

(g) A field-monitoring plan that requires, at a minimum, monthly field inspections of all wells that are part of the

natural gas storage facility.

(h) A monitoring and testing plan for the well integrity.

(i) A well inspection plan that requires, at a minimum, the inspection of all wells that are part of the natural gas storage facility and plugged wells within the natural gas storage facility boundary.

(j) A spill prevention and response plan.

(k) A well spacing plan.

(l) An operating plan for the natural gas storage reservoir, which must include gas capacities, anticipated operating conditions, and maximum storage pressure.

(m) A gas migration response plan.

(n) A location plat and general facility map surveyed and prepared by a registered land surveyor licensed under chapter 472.

(3) The department may require additional information that is deemed necessary to permit the development of the natural gas storage facility. Each well related to the natural gas storage facility shall be authorized and permitted individually upon the applicant satisfying applicable well construction and operation criteria under this part; however, notwithstanding any other provision under this chapter, well spacing requirements do not apply.

Section 12. Subsection (4) is added to section 377.241, Florida Statutes, to read:

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(4) For activities and operations concerning a natural gas storage facility, the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment.

Section 13. Subsection (3) of section 377.242, Florida Statutes, is amended to read:

377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested with the power and authority:

(3) To issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for ~~temporary~~ storage in natural gas storage ~~subsurface~~ reservoirs.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time. The provisions of this section prohibiting permits for drilling or exploring for oil in coastal waters do not apply to any leases entered into before June 7, 1991.

Section 14. Section 377.2431, Florida Statutes, is created to read:

377.2431 Conditions for granting permits for natural gas storage facilities.—

(1) A natural gas storage facility permit shall authorize the construction and operation of a natural gas storage facility and must be issued for the life of the facility, subject to recertification every 10 years.

(2) Before issuing or recertifying a permit, the department shall require satisfactory evidence of the following:

(a) The applicant has implemented, or is in the process of implementing, programs for the control and mitigation of pollution related to oil, petroleum products or their byproducts, and other pollutants.

(b) The applicant or operator has acquired a lawful right to drill, explore, or develop a natural gas storage reservoir from owners of at least 75 percent of the storage rights within the natural gas storage reservoir, or the applicant or operator has obtained a certificate of public convenience and necessity for the natural gas storage reservoir from the Federal Energy Regulatory Commission pursuant to the Natural Gas Act, 15 U.S.C. ss. 717 et seq.

(c) The applicant has used all reasonable means to identify known wells that have been drilled into or through the natural gas storage reservoir or reservoir protective area to determine the status of the wells and whether inactive or abandoned wells have been properly plugged. For any well that has not been properly plugged, before conducting injection operations and after issuance of the permit, the applicant must plug or recondition the well to ensure the integrity of the storage reservoir or reservoir protective area.

(d) The applicant has tested the quality of water produced by all water supply wells within the lateral boundary of the natural gas storage facility and complied with all requirements under s. 377.2432. The applicant shall provide to the department and the owner of the water supply well a written copy of the water quality data collected under this paragraph.

(e) A determination has been made regarding whether native gas or oil will be severed from below the soil or water of this state in the recovery of injected gas. If native gas or oil will be severed, the applicant or operator must acquire a lawful right to develop the native gas or oil before injecting gas into the natural gas storage reservoir.

(3) The applicant shall maintain records of well pressures recorded monthly, and monthly volumes of gas injected into and withdrawn from the reservoir. These records shall be maintained at the natural gas storage facility and shall be made available for inspection by the department at any reasonable time.

(4)(a) The maximum storage pressure for a natural gas storage reservoir shall be the highest shut-in bottom hole pressure found to exist during the production history of the reservoir, unless a higher pressure is established by the department based on testing of caprock and pool containment. The methods used for determining the higher pressure must be approved by the department.

(b) If the shut-in bottom hole pressure of the original discovery or of the highest production is not known, or a higher pressure has not been established through a method approved by the department pursuant to paragraph (a), the maximum storage reservoir pressure must be limited to a freshwater hydrostatic gradient.

(5) A permit may not be issued for a natural gas storage facility that includes a natural gas storage reservoir located beneath an underground source of drinking water unless the applicant demonstrates that the injection or recovery of natural gas will not cause or allow natural gas to migrate into the

underground source of drinking water; or in any offshore location in the Gulf of Mexico, the Straits of Florida, or the Atlantic Ocean; or in any solution-mined cavern within a salt formation.

Section 15. Section 377.2432, Florida Statutes, is created to read:

377.2432 Natural gas storage facilities; protection of water supplies.—

(1) An operator of a natural gas storage facility who affects a public or private underground water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. The department shall ensure that the quality of restored or replaced water is comparable to the quality of the water before it was affected by the operator.

(2) Unless rebutted by a defense established in subsection (4), a natural gas storage facility operator is presumed responsible for pollution of an underground water supply if:

(a) The water supply is within the lateral boundary of the natural gas storage facility; and

(b) The pollution occurred within 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit or after the initial injection of gas into the natural gas storage reservoir, whichever is later.

(3) If the affected underground water supply is within the rebuttable presumption area as provided in subsection (2) and the rebuttable presumption applies, the natural gas storage

facility operator shall provide a temporary water supply if the water user is without a readily available alternative source of water at no cost to the owner of the affected water supply. The temporary water supply provided under this subsection must be adequate in quantity and quality for the purposes served by the affected supply.

(4) A natural gas storage facility operator rebuts the presumption in subsection (2) by affirmatively proving any of the following:

(a) The pollution existed before the drilling or alteration activity as determined by a predrilling or prealteration survey.

(b) The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.

(c) The water supply well is not within the lateral boundary of the natural gas storage facility.

(d) The pollution occurred more than 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit.

(e) The pollution occurred as the result of a cause other than activities authorized under the natural gas storage facility permit.

(5) A natural gas storage facility operator electing to preserve a defense under subsection (4) must retain an independent certified laboratory to conduct a predrilling or prealteration survey of the water supply. A copy of survey results must be submitted to the department and the landowner or water purveyor in the manner prescribed by the department.

(6) A natural gas storage facility operator must provide

written notice to the landowner or water purveyor indicating that the presumption established under subsection (2) may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey. Proof of written notice to the landowner or water purveyor must be provided to the department in order for the operator to retain the protections under subsection (4).

(7) This section does not prevent a landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy at law or in equity.

Section 16. Section 377.2433, Florida Statutes, is created to read:

377.2433 Protection of natural gas storage facilities.—

(1) The department may not authorize the drilling of any well into or through a permitted natural gas storage reservoir or reservoir protective area, except upon conditions deemed by the department to be sufficient to prevent the loss, migration, or escape of gas from the natural gas storage reservoir. The department shall provide written notice to the natural gas storage facility operator of any application filed with the department and any agency action taken related to drilling a well into or through a permitted natural gas storage facility boundary or reservoir protective area.

(2) As a condition for the issuance of a permit by the department, an applicant seeking to drill a well into or through a permitted natural gas storage facility boundary or reservoir protective area must provide the affected natural gas storage facility operator a reasonable right of entry to observe and monitor all drilling activities.

(3) The department shall ensure that any well drilled into or through a permitted natural gas storage reservoir or reservoir protective area is cased and cemented in a manner sufficient to protect the integrity of the natural gas storage reservoir.

Section 17. Section 377.2434, Florida Statutes, is created to read:

377.2434 Property rights to injected natural gas.—

(1) All natural gas that has previously been reduced to possession and that is subsequently injected into a natural gas storage facility is at all times the property of the injector or the injector's heirs, successors, or assigns, whether owned by the injector or stored under contract.

(2) Such gas may not be subject to the right of the owner of the surface of the lands or of any mineral interest therein, under which the natural gas storage facilities lie, or to the right of any person, other than the injector or the injector's heirs, successors, or assigns, to waste or otherwise interfere with or exercise control over such gas, to produce, to take, or to reduce to possession, by means of the law of capture or otherwise. This subsection does not affect the ownership of hydrocarbons occurring naturally within this state or the right of the owner of the surface of the lands or of any mineral interest therein to drill or bore through the natural gas storage facilities in a manner that will protect the facilities against pollution or the escape of stored natural gas.

(3) With regard to natural gas that has migrated to adjoining property or to a stratum, or portion thereof, which has not been condemned or otherwise purchased:

(a) The injector or the injector's heirs, successors, or assigns:

1. May not lose title to or possession of the gas if the injector or the injector's heirs, successors, or assigns can prove by a preponderance of the evidence that the gas was originally injected into the underground storage; and

2. Have the right to conduct tests on any existing wells on adjoining property as may be reasonable to determine ownership of the gas, but the tests are solely at the injector's risk and expense.

(b) The owner of the stratum and the owner of the surface are entitled to compensation, including compensation for use of or damage to the surface or substratum, as provided by law.

Section 18. Subsection (3) of section 377.25, Florida Statutes, is amended to read:

377.25 Production pools; drilling units.—

(3) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may be reasonably necessary where the division finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome or where the operator proposes to complete the well with a horizontal or nearly horizontal well in the producing zone. Whenever an exception is granted, the division shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception,

and so that drainage from developed units to the tract, with respect to which the exception is granted, will be prevented or minimized, and the producer of the well drilled, as an exception, will be allowed to produce no more than his or her just and equitable share of the oil and gas in the pool, as such share is set forth in this section. This subsection does not apply to wells associated with a natural gas storage facility.

Section 19. Subsection (2) of section 377.28, Florida Statutes, is amended to read:

377.28 Cycling, pooling, and unitization of oil and gas.—

(2) The department shall issue an order requiring unit operation if it finds that:

(a) Unit operation of the field, or of any pool or pools, portion or portions, or combinations thereof within the field, is reasonably necessary to prevent waste, to avoid the drilling of unnecessary wells, or to increase the ultimate recovery of oil or gas by additional recovery methods; ~~and~~

(b) The estimated additional cost incident to the conduct of such operation will not exceed the value of the estimated additional recovery of oil or gas; and

(c) The additional recovery of oil or gas does not adversely interfere with the storage or recovery of natural gas within a natural gas storage reservoir.

The phrase "additional recovery methods" as used herein includes, but is not limited to, the maintenance or partial maintenance of reservoir pressures; recycling; flooding a pool or pools, or parts thereof, with air, gas, water, liquid hydrocarbons, any other substance, or any combination thereof;

or any other method of producing additional hydrocarbons approved by the department.

Section 20. Subsection (4) is added to section 377.30, Florida Statutes, to read:

377.30 Limitation on amount of oil or gas taken.—

(4) This section does not apply to nonnative gas recovered from a permitted natural gas storage facility.

Section 21. Subsection (1) of section 377.34, Florida Statutes, is amended to read:

377.34 Actions and injunctions by division.—

(1) Whenever it appears ~~shall appear~~ that a ~~any~~ person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made ~~thereunder~~ by any act done in the operation of a ~~any~~ well producing oil or gas, or storing or recovering natural gas, or by omitting an ~~any~~ act required to be done ~~thereunder~~, the division, through its counsel, or the Department of Legal Affairs on its own initiative, may bring suit against such person in the Circuit Court in the County of Leon, state, or in the circuit court in the county in which the well in question is located, at the option of the division, or the Department of Legal Affairs, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit, the division, or the Department of Legal Affairs, may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or

disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of a receiver appointed by the court if, in the judgment of the court, such action is advisable.

Section 22. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) Any person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1)~~,~~ or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than $10,000 for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to

bring an action on behalf of any private person.

Section 23. Subsections (1) and (3) of section 377.371, Florida Statutes, are amended to read:

377.371 Pollution prohibited; reporting, liability.—

(1) A ~~No~~ person drilling for or producing oil, gas, or other petroleum products, or storing gas in a natural gas storage facility, may not ~~shall~~ pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow any extraneous matter to enter or damage any mineral or freshwater-bearing formation.

(3) Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages resulting from pollution in violation of this chapter, if the waters of the state are polluted by the drilling, storage of natural gas, or production operations of any person or persons and such pollution damages or threatens to damage human, animal, or plant life, public or private property, or any mineral or water-bearing formation, said person shall be liable to the state for all costs of cleanup or other damage incurred by the state. In any suit to enforce claims of the state under this chapter, it is ~~shall~~ not ~~be~~ necessary for the state to plead or prove negligence in any form or manner on the part of the person or persons conducting the drilling or production operations; the state need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred at the facilities of the person or persons conducting the drilling or production operation. A ~~No~~ person or persons conducting the drilling, storage, or production operation may not ~~shall~~ be held liable if said person or persons prove that the prohibited

discharge or other polluting condition was the result of any of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

Section 24. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraphs (g) and (h) are added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects for natural gas storage facilities that are permitted under chapter 377 are eligible for the expedited permitting process.

(h) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission are eligible for the expedited permitting process.

(14)

(b) Projects identified in paragraph (3)(f), (3)(g), or (3)(h) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as

challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 25. The Department of Environmental Protection shall adopt rules relating to natural gas storage before issuing a natural gas storage facility permit.

Section 26. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

April 17, 2013

The Honorable Joe Negron, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Mr. Chairman:

CS/CS/SB 958, Florida Underground Natural Gas Storage Act, has been reported favorably out of Committee on Communications, Energy and Public Utilities. It is had been referred to the Committee on Appropriations.

I would appreciate the placing of this bill on the committee's next agenda.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Mike Hansen, Staff Director

REPLY TO:
☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

243574

576-04171-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending ss. 212.05 and 212.08, F.S.; providing a sales tax exemption for dyed diesel fuel used in commercial shrimping; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(k) At the rate of 6 percent of the sales price of each gallon of diesel fuel not taxed under chapter 206 purchased for use in a vessel, except dyed diesel fuel that is exempt pursuant to s. 212.08(4)(a)(4).

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Section 2. Paragraph (a) of subsection (4) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

(a) Also exempt are:

1. Water delivered to the purchaser through pipes or conduits or delivered for irrigation purposes. The sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the Department of Health, is exempt. This exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation or flavorings, except those added at a water treatment facility, have been added. Water that has been enhanced by the addition of minerals and that does not contain any added carbonation or flavorings is also exempt.

2. All fuels used by a public or private utility, including a ~~any~~ municipal corporation or rural electric cooperative association, in the generation of electric power or energy for sale. Fuel other than motor fuel and diesel fuel is taxable as provided in this chapter with the exception of fuel expressly exempt herein. Motor fuels and diesel fuels are taxable as provided in chapter 206, with the exception of those motor fuels


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and diesel fuels used by railroad locomotives or vessels to transport persons or property in interstate or foreign commerce, which are taxable under this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's railroad locomotives or vessels that were used in interstate or foreign commerce and that had at least some ~~Florida~~ mileage in this state during the previous fiscal year of the carrier, such ratio to be determined at the close of the fiscal year of the carrier. However, during the fiscal year in which the carrier begins its initial operations in this state, the carrier's mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated miles in this state to anticipated total miles for that year, and subsequently, additional tax shall be paid on the motor fuel and diesel fuels, or a refund may be applied for, on the basis of the actual ratio of the carrier's railroad locomotives' or vessels' miles in this state to its total miles for that year. This ratio shall be applied each month to the total ~~Florida~~ purchases made in this state of motor and diesel fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. The basis for imposition of any discretionary surtax shall be set forth in s. 212.054. Fuels used exclusively in intrastate commerce do not qualify for the proration of tax.

3. The transmission or wheeling of electricity.

4. Dyed diesel fuel placed into the storage tank of a vessel designed, constructed, and used exclusively for the taking of shrimp from salt and fresh waters for sale. The


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exemption does not apply unless the purchaser of the dyed diesel fuel provides the seller with a written statement, signed by the purchaser, verifying that the dyed diesel fuel is to be used by the vessel exclusively for the taking of shrimp from salt and fresh waters for sale. Any dyed diesel fuel that is not used exclusively as verified in such statement is subject to the tax levied under s. 212.05(1)(k), and is due and payable by the purchaser.

Section 3. This act shall take effect July 1, 2013.

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 Appropriations Subcommittee on Finance and Tax

BILL:	CS/CS/SB 960
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Bean
SUBJECT:	Tax on Sales, Use, and Other Transactions
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Fav/CS**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 960 provides a sales tax exemption for dyed diesel fuel used by vessels designed, constructed, and used exclusively for the taking of shrimp from salt and fresh water.

The Revenue Estimating Conference determined that this bill will decrease revenue deposited in the State Transportation Trust Fund by $0.3 million in Fiscal Year 2013-2014, with a negative $0.3 million recurring impact to the trust fund.

This bill substantially amends sections 212.05 and 212.08, Florida Statutes.

II. Present Situation:

Currently, under chs. 206 and 212, F.S., a number of taxes are levied on diesel fuel in Florida.[1] Dyed diesel fuel, however, is exempt from the taxes in ch. 206, F.S.[2] Dyed diesel can only be

[1] *See* ss. 206.87, 212.05(1)(k), 212.0501, F.S. One purpose of these taxes is to provide revenue to defray the cost of constructing and maintaining public highways in Florida. *See* s. 206.85, F.S.

[2] Section 206.874(1) and (3), F.S.

purchased and used for specific purposes that do not involve commercial use on public highways, such as, on a farm for farm processing, in school buses, and in commercial fishing vessels.[3] Because it is exempt from the taxes in ch. 206, F.S., dyed diesel is less expensive than non-dyed diesel fuel. Consequently, dyed diesel allows the Department of Revenue (DOR) to ensure vehicles and equipment are using the dyed diesel fuel only for exempt purposes.

Although dyed diesel fuel is exempt from the taxes in ch. 206, F.S., it is generally not exempt from the sales tax in ch. 212, F.S.[4] Under s. 212.05, F.S., a 6 percent sales tax is levied on the sale price of each gallon of diesel fuel not taxed under ch. 206, F.S., used in a vessel.[5] Because dyed diesel fuel used in commercial fishing vessels is exempt from taxes under ch. 206, F.S., it is subject to the 6 percent sales tax in s. 212.05, F.S.

Section 212.08, F.S., provides a partial exemption from the 6 percent sales tax for dyed diesel fuel used by vessels to transport persons or property in interstate or foreign commerce, including commercial fishing vessels.[6] This partial exemption is calculated based on the ratio of intrastate mileage to interstate or foreign mileage traveled by vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year.[7] This ratio, known as the mileage apportionment factor, is generally determined at the close of the carrier's fiscal year.[8]

Dyed diesel fuel used exclusively in intrastate commerce does not qualify for the prorated exemption.[9] Consequently, dyed diesel fuel used for inshore commercial fishing or fishing that occurs within the territorial waters of Florida is not exempt from the 6 percent sales tax.[10]

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 212.05 and 212.08, F.S., to provide a sales tax exemption for dyed diesel fuel that is placed in the storage tanks of vessels designed, constructed, and used exclusively for the taking of shrimp from salt and fresh waters for sale. The exemption only applies when the purchaser of the fuel provides the seller with a written statement, signed by the purchaser, verifying that the fuel is to be used by the vessel exclusively for the taking of shrimp

[3] Section 206.874(3), F.S. Similarly, motor fuel used for aquacultural and commercial fishing purposes are exempt from the local option tax, state comprehensive enhanced transportation system tax, municipal fuel tax, and fuel sales taxes paid under s. 206.41, F.S. Section 206.41(4)(c), F.S.

[4] Section 212.0501(3), F.S., exempts diesel fuel used "on account of residential purposes; or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state; or the purchase or storage of diesel fuel held for resale."

[5] Section 212.05(1)(k), F.S.

[6] *See* Rule 12A-1.0641, F.A.C. "Commercial fishing vessels" are defined by DOR as "vessels designed, constructed, and used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters for sale. Vessels used for sports or pleasure fishing, such as pleasure fishing boats, charter boats, or party boats, are not commercial fishing vessels."

[7] Section 212.08(4)(a)2., F.S.; Rule 12A-1.0641, F.A.C.

[8] *Supra* note 7. The calculation for the first year's ratio is based on an estimated ratio of anticipated miles in the state to the anticipated total miles for that year, and either an additional tax will be paid or a refund may be applied for based on the actual ratio of miles in the state to total miles for the year. Section 212.08(4)(a)2., F.S.

[9] *Supra* note 7.

[10] *See* Rule 12A-1.0641, F.A.C.

from salt and fresh waters for sale. Any fuel not used exclusively for this purpose is subject to the 6 percent sales tax levied under s. 212.05(1)(k), F.S.

Section 3 provides that the bill takes effect July 1, 2013.

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 determined that this bill will decrease revenue deposited in the State Transportation Trust Fund by $0.3 million in Fiscal Year 2013-2014, with a negative $0.3 million recurring impact to the trust fund.

B. Private Sector Impact:

Commercial shrimpers who operate in state waters may benefit from the reduced tax assessment on dyed diesel fuel used to operate their vessels.

C. Government Sector Impact:

According to the DOR, the bill will have an insignificant operational impact on the agency.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[11] Department of Revenue, *Agency Bill Analysis: CS/HB 423* (March 6, 2013) (on file with the Senate Commerce and Tourism 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/CS by Appropriations on April 23, 2013:
The committee substitute:

- Limits the sales tax exemption on dyed diesel fuel to vessels designed, constructed and used exclusively for the taking of shrimp from salt and fresh waters for sale.
- Provides that the exemption only applies when the purchaser of the fuel provides the seller with a written statement, signed by the purchaser, verifying that the fuel is to be used by the vessel exclusively for the taking of shrimp from salt and fresh waters for sale.

CS by Commerce and Tourism on March 18, 2013:
The committee substitute:

- Extends the sales tax exemption on dyed diesel fuel to vessels used for commercial fishing and aquaculture purposes, which includes commercial shrimping.
- Removes the requirement that the purchaser provide the seller with a written statement, signed by the purchaser, verifying that the fuel is to be used by the vessel exclusively for the taking of shrimp from salt and fresh waters for sale.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Bean

577-02587-13 2013960c1

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.05, F.S.; providing an exception to sales tax for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; amending s. 212.0501, F.S.; providing an exception from sales tax collected by a licensed sales tax dealer for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; amending s. 212.08, F.S.; providing a sales tax exemption for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and

577-02587-13 2013960c1

payable as follows:

(k) At the rate of 6 percent of the sales price of each gallon of diesel fuel not taxed under chapter 206 purchased for use in a vessel, except dyed diesel fuel that is exempt pursuant to s. 212.08(4)(a)4.

Section 2. Subsection (4) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(4) Except as otherwise provided in s. 212.05(1)(k), a licensed sales tax dealer may elect to collect such tax pursuant to this chapter on all sales to each person who purchases diesel fuel, except dyed diesel fuel used for commercial fishing and aquacultural purposes listed in s. 206.41(4)(c)3., for consumption, use, or storage by a trade or business. When the licensed sales tax dealer has not elected to collect such tax on all such sales, the purchaser or ultimate consumer shall be liable for the payment of tax directly to the state.

Section 3. Paragraph (a) of subsection (4) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

(a) Also exempt are:

1. Water delivered to the purchaser through pipes or

conduits or delivered for irrigation purposes. The sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the Department of Health, is exempt. This exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation or flavorings, except those added at a water treatment facility, have been added. Water that has been enhanced by the addition of minerals and that does not contain any added carbonation or flavorings is also exempt.

2. All fuels used by a public or private utility, including any municipal corporation or rural electric cooperative association, in the generation of electric power or energy for sale. Fuel other than motor fuel and diesel fuel is taxable as provided in this chapter with the exception of fuel expressly exempt herein. Motor fuels and diesel fuels are taxable as provided in chapter 206, with the exception of those motor fuels and diesel fuels used by railroad locomotives or vessels to transport persons or property in interstate or foreign commerce, which are taxable under this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's railroad locomotives or vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year of the carrier, such ratio to be determined at the close of the fiscal year of the carrier. However, during the fiscal year in which the carrier begins its initial operations in this state, the

carrier's mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated miles in this state to anticipated total miles for that year, and subsequently, additional tax shall be paid on the motor fuel and diesel fuels, or a refund may be applied for, on the basis of the actual ratio of the carrier's railroad locomotives' or vessels' miles in this state to its total miles for that year. This ratio shall be applied each month to the total Florida purchases made in this state of motor and diesel fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. The basis for imposition of any discretionary surtax shall be set forth in s. 212.054. Fuels used exclusively in intrastate commerce do not qualify for the proration of tax.

3. The transmission or wheeling of electricity.

4. Dyed diesel fuel placed into the storage tank of a vessel used exclusively for the commercial fishing and aquacultural purposes listed in s. 206.41(4)(c)3.

Section 4. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic SALES TAX

Bill Number SB 960 *(if applicable)*

Name JERRY SANSON

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 780 *Street*

Phone 321-773-0212

COCOA *City* FL *State* 32923 *Zip*

E-mail FISHAWK@A1A2.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing ORGANIZED FISHERMEN of FLA.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

I respectfully request that **Senate Bill # 960**, relating to Tax on Sales, Use, and other Transactions, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

SENATE APPROPRIATIONS
RECEIVED
13 APR 12 AM 8:2[illegible]
SENT TO CHAIR/VC
STAFF DIR STAFF

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	PCS/CS/SB 980 (577432)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Flores
SUBJECT:	Educational Personnel Evaluations
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**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:

PCS/CS/SB 980 revises the criteria for the performance evaluation of classroom teachers and nonclassroom instructional personnel. The student learning growth portion of a classroom teacher's evaluation must only be based on the performance of students assigned to the teacher in the subjects taught by him or her. For nonclassroom instructional personnel, the student learning growth portion of the evaluation is based on performance data that reflects their actual contributions to the performance of students actually assigned to their areas of responsibility.

The bill requires a school district to approve and publish any district-mandated testing administration schedules on its website and report the schedules to the Department of Education by October 1, annually.

The bill has no fiscal impact on state appropriations.

The bill is effective July 1, 2013.

This bill creates an undesignated section of law.

II. Present Situation:

Florida's educator evaluation system differentiates among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment who need improvement, developing;[1] and unsatisfactory.[2]

Evaluation Criteria

The Department of Education must approve each school district's instructional personnel and school administrator performance evaluation system.[3] Components of the performance evaluation system are divided into three parts: performance of students, instructional practice or leadership, (for instructional or administrative personnel, respectively), and professional responsibilities.[4] The Commissioner of Education is required to consult with instructional personnel, school administrators, education stakeholders, and experts in developing the performance levels for the evaluation system.[5]

At least fifty percent of the evaluation for classroom teachers[6] and other instructional personnel are based on student performance for students assigned to them over a 3-year period.[7] For other instructional personnel,[8] a school district may include specific job-performance expectations related to student support and use student learning growth data and other measurable student outcomes specific to the individual's assignment, as long as the student learning growth accounts for at least 30 percent of the evaluation.[9] The remainder of the evaluation must be based on the Florida Educator Accomplished Practices and professional responsibilities.[10]

At least fifty percent of a school administrator's evaluation is based on student performance over a 3-year period.[11] The remainder of the evaluation is based on indicators that include the recruitment and retention of effective or highly effective teachers, improvement in the percentage of classroom teachers evaluated at the effective or highly effective level, other leadership practices that result in improved student outcomes, and professional responsibilities.[12]

If less than 3 years of student learning growth data is available for an evaluation, the district must include the years for which data is available and may reduce the percentage of the evaluation based on student learning growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel.[13]

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[1] Section 1012.34(3)(a), F.S., requires newly hired teachers to be evaluated at least twice in the first year of teaching.
[2] s. 1012.34(2), F.S.
[3] s. 1012.34(1)(b), F.S.
[4] s. 1012.34(3)(a), F.S.
[5] s. 1012.34(2)(e), F.S.
[6] *See* s. 1012.01(2)(a), F.S., excluding substitute teachers.
[7] s. 1012.34(3)(a), F.S.
[8] *See* s. 1012.01(2)(b)-(e), F.S., which includes student personnel services, librarians and media specialists, other instructional staff, such as learning resource specialists, instructional trainers, and adjunct educators, and education paraprofessionals.
[9] s. 1012.34(3)(a)1.b., F.S.
[10] s. 1012.34(3)(a)2. and 4., F.S.
[11] s. 1012.34(3)(a)1.c., F.S.
[12] s. 1012.34(3)(a)3. and 4., F.S.
[13] s. 1012.34(3)(a)1., F.S.

Assessments

School districts are required to use the state's learning growth model for FCAT-related courses beginning in the 2011-2012 school year.[14] School districts must use comparable measures of student growth for other grades and subjects with the department's assistance, if needed.[15] Additionally, districts are permitted to request alternatives to the growth measure, if justified, through the evaluation approval process.[16]

The law requires school districts, beginning with the 2014-2015 school year, to administer local assessments that measure student mastery of the content.[17] The school district can use statewide assessments, other standardized assessments, including nationally recognized standardized assessments, industry certification examinations, or district-developed or selected end-of-course assessments.[18]

A district that has not implemented an assessment for a course or has not adopted a comparable measure of student learning growth has the discretion to use two alternative growth measures for a classroom teacher who teaches the course: student learning growth on statewide assessments or student learning growth based on measurable learning targets in the school improvement plan.[19] Additionally, a district school superintendent may assign to an instructional team, the student learning growth of the team's students on statewide assessments.[20]

Pay

Current law provides for a new performance pay salary schedule that requires a base salary schedule with salary increases for a highly effective or effective teacher or school administrator, as determined by his or her evaluation.[21] The law also requires a district school board to adopt a grandfathered salary schedule or salary schedules for use as the basis for paying all school employees hired before July 1, 2014.[22]

III. Effect of Proposed Changes:

Performance Evaluations

CS/CS/SB 980 revises the criteria for evaluating classroom teachers and instructional personnel for purposes of the performance pay schedule in s. 1012.22, F.S. The Department of Education, through the performance evaluation system approval process would ensure that the provisions of the bill are implemented.

[14] s. 1012.34(7)(b), F.S.
[15] *Id.*
[16] s. 1012.34(7)(c) and (d), F.S. The DOE approves each school district's instructional personnel and school administrator performance evaluation system
[17] s. 1008.22(8), F.S.
[18] s. 1008.22(8)(b), F.S.
[19] s. 1012.34(7)(d) and (e), F.S.
[20] s. 1012.34(7)(e), F.S.
[21] s. 1012.22(1)(c)4. and 5., F.S
[22] *Id.*

The student learning growth portion of a classroom teacher's evaluation must only be based on the performance of students assigned to the teacher in the subjects taught by him or her. For courses associated with a statewide assessment, a student achievement measure may be used rather than student learning growth, if there is no approved statewide growth formula for the assessment. For courses associated with a school district assessment, a student achievement measure may be used rather than student learning growth, if student achievement is a more appropriate measure of performance. The remaining portion of the evaluation would be based on instructional practice and job responsibilities that are determined by the district and are part of the state approved evaluation system.

For nonclassroom instructional personnel, the student learning growth portion of the evaluation is based on performance data that reflects their actual contributions to the performance of students assigned to their areas of responsibility, as defined in the district-developed or district-selected assessments that are a part of the state approved evaluation system. The remaining portion of their evaluation is based on instructional practice and professional and job responsibilities that are determined by the district and part of the state approved evaluation system.

In addition, the bill requires a school district to approve and publish any district-mandated testing administration schedules on its website and report the schedules to the Department of Education by October 1, annually.

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.)

Recommended CS/CS by Appropriations Subcommittee on Education on April 4, 2013:
The committee substitute:
- Clarifies the use of student achievement measures rather than student learning growth for state versus district assessments for teacher evaluations, and
- Requires a school district to approve and publish any district-mandated testing administration schedules on its website and report the schedules to the Department of Education by October 1, annually.

CS by Committee on Education on March 18, 2013:
The committee substitute:
- Removes the provision that allows a school district to reduce the percentage of the performance evaluation of classroom teachers and other instructional personnel which is based on student performance, if the school district uses multiple measures of instructional practice.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 54 and 55
insert:

Section 3. Subsection (6) is added to section 1012.2315, Florida Statutes, to read:

1012.2315 Assignment of teachers.—

(6) ASSIGNMENT OF TEACHERS BASED UPON PERFORMANCE EVALUATIONS.—

(a) If a high school or middle school student is currently taught by a classroom teacher who, during the current school year, receives a performance evaluation rating of "needs

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improvement" or "unsatisfactory" under s. 1012.34, the student may not be assigned in the next school year to a classroom teacher in the same subject area who received a performance evaluation rating of "needs improvement" or "unsatisfactory" in the preceding school year.

(b) If an elementary school student is currently taught by a classroom teacher who, during the current school year, receives a performance evaluation rating of "needs improvement" or "unsatisfactory" under s. 1012.34, the student may not be assigned in the next school year to a classroom teacher who received a performance evaluation rating of "needs improvement" or "unsatisfactory" in the preceding school year.

(c) For a student enrolling in an extracurricular course as defined in s. 1003.01, a parent may choose to have the student taught by a teacher who received a performance evaluation of "needs improvement" or "unsatisfactory" in the preceding school year if the student and the student's parent receive an explanation of the impact of teacher effectiveness on student learning and the principal receives written consent from the parent.

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

And the title is amended as follows:

Delete line 12

and insert:

of Education; amending s. 1012.2315, F.S.; prohibiting a student from being assigned in a classroom in the following school year to a teacher who received a performance evaluation rating of "needs improvement"

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or "unsatisfactory" in the preceding school year under certain circumstances; authorizing a parent to choose to have a student who is enrolling in an extracurricular course that is taught by a teacher who received a performance evaluation of "needs improvement" or "unsatisfactory" in the preceding school year under certain circumstances; providing an effective date.

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576-03643-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to education; providing requirements for measuring student performance in instructional personnel and school administrator performance evaluations; providing requirements for the performance evaluation of personnel for purposes of the performance salary schedule; amending s. 1008.22, F.S.; requiring each school district to establish and approve testing schedules for district-mandated assessments and publish the schedules on its website; requiring reporting of the schedules to the Department of Education; providing an effective date.

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

Section 1. Notwithstanding any provision to the contrary in ss. 1012.22 and 1012.34, Florida Statutes, regarding the performance salary schedule and personnel evaluation procedures and criteria:

(1) At least 50 percent of a classroom teacher's or school administrator's performance evaluation, or 40 percent if less than 3 years of student performance data are available, shall be based upon learning growth or achievement of the teacher's students or, for a school administrator, the students attending that school; the remaining portion shall be based upon factors identified in district-determined, state-approved evaluation system plans. Student achievement measures for courses

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576-03643-13

associated with statewide assessments may be used only if a statewide growth formula has not been approved for that assessment or, for courses associated with school district assessments, if achievement is demonstrated to be a more appropriate measure of teacher performance.

(2) The student performance data used in the performance evaluation of nonclassroom instructional personnel shall be based on student outcome data that reflects the actual contribution of such personnel to the performance of the students assigned to the individual in the individual's areas of responsibility.

(3) For purposes of the performance salary schedule in s. 1012.22, Florida Statutes, the student assessment data in the performance evaluation must be from statewide assessments or district-determined assessments as required in s. 1008.22(8), Florida Statutes, in the subject areas taught.

Section 2. Paragraph (d) is added to subsection (8) of section 1008.22, Florida Statutes, to read:

1008.22 Student assessment program for public schools.—

(8) LOCAL ASSESSMENTS.—

(d) Each school district shall establish schedules for the administration of any district-mandated assessment and approve the schedules as an agenda item at a district school board meeting. The school district shall publish the testing schedules on its website, clearly specifying the district-mandated assessments, and report the schedules to the Department of Education by October 1 of each year.

Section 3. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 980
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Flores
SUBJECT:	Educational Personnel Evaluations
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 980 revises the criteria for the performance evaluation of classroom teachers and nonclassroom instructional personnel. The student learning growth portion of a classroom teacher's evaluation must only be based on the performance of students assigned to the teacher in the subjects taught by him or her. For nonclassroom instructional personnel, the student learning growth portion of the evaluation is based on performance data that reflects their actual contributions to the performance of students actually assigned to their areas of responsibility.

The bill prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement". Similarly, the bill prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement". A parent may choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches extracurricular courses, if the parent provides written consent.

The bill requires a school district to approve and publish any district-mandated testing administration schedules on its website and report the schedules to the Department of Education by October 1, annually.

The bill has no fiscal impact on state appropriations.

The bill is effective July 1, 2013.

This bill amends ss. 1008.22 and 1012.2315 of the Florida Statutes and creates an undesignated section of law.

II. Present Situation:

Florida's educator evaluation system differentiates among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment who need improvement, developing;[1] and unsatisfactory.[2]

Evaluation Criteria

The Department of Education must approve each school district's instructional personnel and school administrator performance evaluation system.[3] Components of the performance evaluation system are divided into three parts: performance of students, instructional practice or leadership, (for instructional or administrative personnel, respectively), and professional responsibilities.[4] The Commissioner of Education is required to consult with instructional personnel, school administrators, education stakeholders, and experts in developing the performance levels for the evaluation system.[5]

At least fifty percent of the evaluation for classroom teachers[6] and other instructional personnel are based on student performance for students assigned to them over a 3-year period.[7] For other instructional personnel,[8] a school district may include specific job-performance expectations related to student support and use student learning growth data and other measurable student outcomes specific to the individual's assignment, as long as the student learning growth accounts for at least 30 percent of the evaluation.[9] The remainder of the evaluation must be based on the Florida Educator Accomplished Practices and professional responsibilities.[10]

[1] Section 1012.34(3)(a), F.S., requires newly hired teachers to be evaluated at least twice in the first year of teaching.
[2] s. 1012.34(2), F.S.
[3] s. 1012.34(1)(b), F.S.
[4] s. 1012.34(3)(a), F.S.
[5] s. 1012.34(2)(e), F.S.
[6] *See* s. 1012.01(2)(a), F.S., excluding substitute teachers.
[7] s. 1012.34(3)(a), F.S.
[8] *See* s. 1012.01(2)(b)-(e), F.S., which includes student personnel services, librarians and media specialists, other instructional staff, such as learning resource specialists, instructional trainers, and adjunct educators, and education paraprofessionals.
[9] s. 1012.34(3)(a)1.b., F.S.
[10] s. 1012.34(3)(a)2. and 4., F.S.

At least fifty percent of a school administrator's evaluation is based on student performance over a 3-year period.[11] The remainder of the evaluation is based on indicators that include the recruitment and retention of effective or highly effective teachers, improvement in the percentage of classroom teachers evaluated at the effective or highly effective level, other leadership practices that result in improved student outcomes, and professional responsibilities.[12]

If less than 3 years of student learning growth data is available for an evaluation, the district must include the years for which data is available and may reduce the percentage of the evaluation based on student learning growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel.[13]

Assessments

School districts are required to use the state's learning growth model for FCAT-related courses beginning in the 2011-2012 school year.[14] School districts must use comparable measures of student growth for other grades and subjects with the department's assistance, if needed.[15] Additionally, districts are permitted to request alternatives to the growth measure, if justified, through the evaluation approval process.[16]

The law requires school districts, beginning with the 2014-2015 school year, to administer local assessments that measure student mastery of the content.[17] The school district can use statewide assessments, other standardized assessments, including nationally recognized standardized assessments, industry certification examinations, or district-developed or selected end-of-course assessments.[18]

A district that has not implemented an assessment for a course or has not adopted a comparable measure of student learning growth has the discretion to use two alternative growth measures for a classroom teacher who teaches the course: student learning growth on statewide assessments or student learning growth based on measurable learning targets in the school improvement plan.[19] Additionally, a district school superintendent may assign to an instructional team, the student learning growth of the team's students on statewide assessments.[20]

Pay

Current law provides for a new performance pay salary schedule that requires a base salary schedule with salary increases for a highly effective or effective teacher or school administrator,

[11] s. 1012.34(3)(a)1.c., F.S.
[12] s. 1012.34(3)(a)3. and 4., F.S.
[13] s. 1012.34(3)(a)1., F.S.
[14] s. 1012.34(7)(b), F.S.
[15] *Id.*
[16] s. 1012.34(7)(c) and (d), F.S. The DOE approves each school district's instructional personnel and school administrator performance evaluation system
[17] s. 1008.22(8), F.S.
[18] s. 1008.22(8)(b), F.S.
[19] s. 1012.34(7)(d) and (e), F.S.
[20] s. 1012.34(7)(e), F.S.

as determined by his or her evaluation.[21] The law also requires a district school board to adopt a grandfathered salary schedule or salary schedules for use as the basis for paying all school employees hired before July 1, 2014.[22]

Assignment of Classroom Teachers

In 2009, the Florida Legislature enacted legislation to address the quality of teachers assigned to the lowest performing schools.[23] School districts may not assign a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to these schools.[24] The law requires each district school board to notify the parents of students who are assigned to an out-of-field teacher.[25]

Each district school board must adopt a plan to assist teachers who are teaching out-of-field.[26] These teachers must be afforded priority consideration in professional development activities. Additionally, districts must require the teachers to participate in a certification or a staff development program that improves their performance.[27]

III. Effect of Proposed Changes:

Performance Evaluations

CS/CS/SB 980 revises the criteria for evaluating classroom teachers and instructional personnel for purposes of the performance pay schedule in s. 1012.22, F.S. The Department of Education, through the performance evaluation system approval process would ensure that the provisions of the bill are implemented.

The student learning growth portion of a classroom teacher's evaluation must only be based on the performance of students assigned to the teacher in the subjects taught by him or her. For courses associated with a statewide assessment, a student achievement measure may be used rather than student learning growth, if there is no approved statewide growth formula for the assessment. For courses associated with a school district assessment, a student achievement measure may be used rather than student learning growth, if student achievement is a more appropriate measure of performance. The remaining portion of the evaluation would be based on instructional practice and job responsibilities that are determined by the district and are part of the state approved evaluation system.

For nonclassroom instructional personnel, the student learning growth portion of the evaluation is based on performance data that reflects their actual contributions to the performance of students assigned to their areas of responsibility, as defined in the district-developed or district-

[21] s. 1012.22(1)(c)4. and 5., F.S
[22] *Id.*
[23] Chapter 2009-144, L.O.F., codified in section 1012.2315, F.S.
[24] *Id.*
[25] Section 1012.42(1) and (2), F.S. This reporting requirement applies to teachers who are teaching subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise.
[26] s. 1012.42(1), F.S.
[27] *Id.*

selected assessments that are a part of the state approved evaluation system. The remaining portion of their evaluation is based on instructional practice and professional and job responsibilities that are determined by the district and part of the state approved evaluation system.

In addition, the bill requires a school district to approve and publish any district-mandated testing administration schedules on its website and report the schedules to the Department of Education by October 1, annually.

Assignment of Classroom Teachers

The bill prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement". Similarly, the bill prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement". A parent may choose to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches extracurricular courses, if the parent provides written consent.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Appropriations Committee on April 23, 2013:
The committee substitute:

- Prohibits the assignment of a student in consecutive school years to an elementary school classroom teacher who received an evaluation of "unsatisfactory" or "needs improvement";
- Prohibits the assignment of a student in consecutive school years to a middle or high school classroom teacher of the same subject who received an evaluation of "unsatisfactory" or "needs improvement";
- Permits a parent to have a student taught by a teacher who received an evaluation of "unsatisfactory" or "needs improvement" and who teaches extracurricular courses, if the parent provides written consent;
- Clarifies the use of student achievement measures rather than student learning growth for state versus district assessments for teacher evaluations; and
- Requires a school district to approve and publish any district-mandated testing administration schedules on its website and report the schedules to the Department of Education by October 1, annually.

CS by Committee on Education on March 18, 2013:
The committee substitute:

- Removes the provision that allows a school district to reduce the percentage of the performance evaluation of classroom teachers and other instructional personnel which is based on student performance, if the school district uses multiple measures of instructional practice.

B. Amendments:

None.

By the Committee on Education; and Senator Flores

581-02607-13 2013980c1

A bill to be entitled

An act relating to public school personnel; providing requirements for the performance evaluation of personnel for purposes of the performance salary schedule; providing an effective date.

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

Section 1. Notwithstanding any provision of law to the contrary, for purposes of the performance salary schedule in s. 1012.22, Florida Statutes, and personnel evaluation procedures and criteria in s. 1012.34, Florida Statutes:

(1) At least 50 percent of a classroom teacher's performance evaluation shall be based on the student learning growth, or student achievement if student learning growth cannot be measured, that solely reflects such growth or achievement of the students assigned to that teacher, and the remaining portion shall be based on factors identified in district-determined, state-approved evaluation system plans.

(2) The student performance data used in the performance evaluation of nonclassroom instructional personnel shall be based on student outcome data that reflects the actual contribution of such personnel to the performance of the students assigned to the individual in the individual's areas of responsibility.

(3) For purposes of the performance salary schedule in s. 1012.22, Florida Statutes, the student assessment data in the performance evaluation must be from statewide assessments or district-determined assessments as required in s. 1008.22(8),

Florida Senate - 2013 **CS for SB 980**

581-02607-13 2013980c1

Florida Statutes, in the subject areas taught.

Section 2. This act shall take effect July 1, 2013.

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

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 9, 2013

I respectfully request that **Senate Bill #980**, relating to Educational Personnel Evaluations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

SENATE APPROPRIATIONS
RECEIVED
13 APR -9 PM 2:25
SENT TO COMM. ____ STAFF DIR. ____ STAFF ____

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations	
BILL:	PCS/CS/SB 1024 (398672)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommitteeon Transportation, Tourism, and Economic Development); Community Affairs Committee; and Commerce and Tourism Committee
SUBJECT:	Department of Economic Opportunity
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka		**CM SPB as introduced**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	Pingree	Martin	ATD	**Fav/CS**
4.	Pingree	Hansen	AP	**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:

PCS/CS/SB 1024 modifies several activities under the jurisdiction of the Department of Economic Opportunity (DEO or department).

The bill has a fiscal impact on both state revenues and expenditures. In Fiscal Year 2013-2014, the bill is projected to have a fiscal impact of $515,887 to the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA). Of the $515,887 projected expenditures, $336,724 would need to be appropriated in the General Appropriations Act for EDR and $178,163 can be absorbed by the OPPAGA within existing resources. It is anticipated that the expenditures required of the DEO can be absorbed within the DEO's existing state and federal resources. See Section V.

Highlights of the bill include:

Reporting and Evaluations of Economic Development Programs

- Streamlines the process by which all incentive program applicants are evaluated by requiring that all applicants be evaluated for the "economic benefits" of the proposed project.
- Creates a rotating, 3-year review schedule for specified incentives and programs to be evaluated by the EDR and the OPPAGA.
- Consolidates required reports and reporting dates for various economic development program reports by the DEO, Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.

Florida Small Business Development Center Network

- Aligns the network's statewide policies with the statewide strategic economic development plan and statewide goals of the university system.
- Specifies the composition of the network's statewide advisory board.
- Specifies the support services offered by the network.
- Requires the network to provide a match to any direct state appropriation.
- Requires the network to set up incentives for the regional centers to create jobs, institute best practices, and serve new areas of the state or underserved areas.
- Requires regular reporting by the network on programs, services, and outcomes, including information on the network's economic benefits to the state.

Economic Development Incentives

- Requires the DEO to evaluate each application for economic incentives for the economic benefits of the proposed award to the state, and EDR is to review and report on the methodology used to calculate the economic benefit.
- Requires recipients of incentives under the Quick Action Closing Fund and the Innovation Incentive Programs to secure the award with a surety bond, letter of credit, or other security before any state funds can be disbursed.
- Provides that the DEO may waive the securitization requirements upon certifying specific information, in writing, to the Governor and the Legislature. The Legislative Budget Commission must approve any waiver granted by the DEO for a project exceeding $5 million.

Reemployment Assistance Program

- Requires that an appeals referee employed by the DEO be an attorney in good standing with the Florida Bar within a specified timeframe depending upon whether the referee is a current employee (must be an attorney by September 30, 2014) or a new employee hired on or after January 1, 2014 (must be an attorney within 8 months of his or her employment date). Effective January 1, 2014, an appeals referee currently employed by the DEO that does not have a degree from a law school accredited by the American Bar Association would no longer meet the qualifications for the appeals referee position.

- Prohibits a claimant from counting the same prospective employer at the same location more than once during his or her claim as proof of work search efforts, unless the employer indicates that it is hiring after the initial contact by the claimant.
- Provides that any excess assessments previously collected to pay interest on federal advances taken to cover unemployment compensation benefit claims be applied to federal interest payments due before additional assessments are made. The bill prohibits the collection of assessments if the amount on deposit is at least 80 percent of the estimated amount of interest.
- Assesses a 15 percent penalty on individuals who fraudulently collect unemployment compensation benefits, in order to comply with the requirements of federal law.
- Reenacts a provision that provides a penalty for disclosing confidential information that was inadvertently repealed in 2012 and required by federal law.
- Extends the deployment date of the Reemployment Assistance Claims and Benefits Information System to June 30, 2014.

Florida Small Cities Community Development Block Grant (CDBG) Program

- Significantly revises the Florida Small Cities CDBG Act to remove requirements that are more restrictive than required by federal regulations.
- Grants rulemaking authority to the department and streamlines public hearing requirements.

Florida Tourism Marketing Corporation (Visit Florida)

- Provides that the Governor will serve as an ex officio, nonvoting member of the board of directors of the Florida Tourism Industry Marketing Corporation (Visit Florida), which enables the Governor to act as a spokesperson for Florida tourism.

This bill is effective upon becoming law, except as otherwise provided in the bill.

This bill substantially amends the following sections of the Florida Statutes: 20.60, 201.15, 213.053, 220.194, 288.001, 288.005, 288.012, 288.061, 288.0656, 288.106, 288.1081, 288.1082, 288.1088, 288.1089, 288.1226, 288.1253, 288.1254, 288.1258, 288.714, 288.7771, 288.903, 288.906, 288.907, 288.92, 288.95155, 290.0056, 290.014, 290.0411, 290.042, 290.044, 290.0455, 290.046, 290.047, 290.0475, 290.048, 331.3051, 331.310, 443.036, 443.091, 443.101, 443.1113, 443.131, 443.151, 443.1715, 443.191, and 446.50.

This bill repeals sections 288.095(3)(c) and 288.904(6), Florida Statutes.

This bill creates two undesignated sections of the Florida Statutes.

II. Present Situation:

The Department of Economic Opportunity (DEO or department) is charged with supporting the economic and community development of Florida and facilitating the workforce development of

Floridians. The department accomplishes these functions under three main divisions: Community Development, Strategic Business Development, and Workforce Services.[1]

The Division of Community Development manages the state's land use planning and community development. Under its responsibilities, the division provides technical assistance to local governments on a variety of land use planning topics, provides economic development assistance to rural and urban small businesses, and administers state and federal grant programs for community development, including grants to local governments for infrastructure and revitalization.[2]

The Division of Strategic Business Development is charged with attracting out-of-state businesses, as well as promoting the creation and expansion of Florida businesses. This division is also responsible for facilitating economic development partnerships.[3] Among other things, the division provides oversight and evaluation of the state's economic development incentive programs and coordinates with public and private entities, including Enterprise Florida, Inc. (EFI), to strategically plan for Florida's short-term and long-term economic development needs. The department contracts with Enterprise Florida, Inc. (EFI) to attract businesses to locate, expand, or remain in Florida.

Under Florida's current economic development framework, Enterprise Florida, Inc. (EFI) serves as the state's economic development organization, operating under a contract with the DEO. EFI is a public-private partnership that serves as the state's primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities.[4] EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business. EFI performs an evaluation of each potential project to determine its prospective economic impact. After EFI has offered an incentive proposal to a business, EFI submits the incentive application to the DEO and the department evaluates the application based on the statutorily defined requirements for the incentive(s). The DEO makes the final determination of incentive eligibility, executes incentive contracts, and is responsible for contract monitoring and compliance.[5]

The Division of Workforce Services administers the reemployment assistance program and partners with Workforce Florida, Inc. (WFI) and the state's 24 Regional Workforce Boards (RWBs) to administer a number of federally funded workforce development programs. The division also provides technical assistance to One-Stop Career Centers that directly provide employment and training services.[6]

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed

[1] Section 20.60, F.S.
[2] See Department of Economic Opportunity brochure, available at http://www.floridajobs.org/pdg/Factsheets/DEO_brochure.pdf (last visited Mar. 26, 2013).
[3] *Id.*
[4] Section 288.901, F.S.
[5] Section 288.061, F.S.
[6] See Department of Economic Opportunity, About Workforce Services, available at http://www.floridajobs.org/office-directory/division-of-workforce-services (last visited Mar. 26, 2013).

through no fault of their own (as determined under state law) and who meet the requirements of state law.[7] Individual states collect 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).[8] FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. In addition, the FUTA pays one-half 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.[9]

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 the FUTA or the Social Security Act requirements. Florida's unemployment insurance program was created by the Legislature in 1937.[10] The program was rebranded as the "reemployment assistance program" in 2012.[11] The Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division for Workforce Services. The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.[12]

In Florida, Reemployment Assistance (RA) benefits are financed solely through contributions by employers – employers pay taxes on the first $8,000 of each employee's wages.[13] The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience" (as former employees collect RA benefits, these benefits are charged to the employer), the balance of the Unemployment Compensation Trust Fund, and other factors.

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.0 percent of employees' annual wages.[14] 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 tax rate 0.6 percent. Employers file an annual return with the Internal Revenue Service each January for taxes on the first $7,000 of employee's annual wages during the previous year.

The USDOL provides the DEO with administrative resource grants from the taxes collected from employers pursuant to the FUTA. These grants are used to fund the operations of the state's

[7] USDOL, Employment and Training Administration, State Unemployment Insurance Benefits, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited February 6, 2013).
[8] FUTA is codified at 26 U.S.C.
[9] USDOL, Employment and Training Administration, Unemployment Insurance Tax Topic, available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited February 6, 2013).
[10] Chapter 18402, L.O.F.
[11] Chapter 2012-30, L.O.F.
[12] Section 443.1316, F.S.
[13] 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. State and local governments are reimbursing employers. Most employers are contributory employers. In January 2015, the "wage base" will be reduced to $7,000. See s. 443.1217(2)(a), F.S.
[14] 26 U.S.C. s. 3301.

program, including the processing of claims for benefits by DEO, state unemployment tax collections performed by the DOR, appeals conducted by the DEO and the Reemployment Assistance Appeals Commission, and related administrative functions.

Unfortunately, due to the past few years of high unemployment in Florida, more funds have been paid out of the Unemployment Compensation Trust Fund than have been collected. The trust fund fell into deficit in August 2009, and since that time, the state has requested over $2 billion in federal advances in order to continue to fund unemployment compensation claims. Through voluntary repayment and partial loss of the federal tax credit, Florida has substantially paid down its debt.[15] It is estimated that all federal advances should be repaid by mid-2013.[16]

Federal advances accrue interest on a federal fiscal year basis (October to September), and such interest is due no later than September 30 each year. The interest rate for 2013 is 2.5765 percent.[17] The Revenue Estimating Conference estimated on January 15, 2013, that the interest due for 2013 would be $9.6 million.[18]

The interest due on advances cannot be paid from funds from the Unemployment Compensation Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose an assessment on employers.[19] In 2010, the Legislature imposed an additional assessment on employers to pay interest on federal advances.[20]

Section 443.131(5)(b), F.S., sets forth the calculations for the assessment. 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 amount, the formula multiplies an employer's taxable wages by the additional rate. DOR is required to calculate and bill the assessment prior to February 1 of the year, based upon the interest estimated by the Revenue Estimating Conference. An employer has 5 months, until June 30th, to pay the assessment. The assessments are paid into the DOR's Audit and Warrant Clearing Trust Fund and may earn interest. Any interest earned is part of the balance available to pay the interest due to the federal government.

[15] As of February 4, 2013, Florida had an outstanding advance balance of slightly less than $685 million. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited February 6, 2013).
[16] The most recent forecast by the Revenue Estimating Conference shows repayment of all federal advances by June 2013. On file with the Senate Commerce and Tourism Committee.
[17] 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. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Unemployment Trust Fund Quarterly Yields at http://treasurydirect.gov/govt/rates/rates_tfr.htm (last visited on February 6, 2013).
[18] Revenue Estimating Conference forecast, available at http://edr.state.fl.us/content/revenues/reports/unemployment-compensation-trust-fund/UnemploymentCompensationTax2013InterestDueonFederalAdvancesRevised.pdf (last visited February 6, 2013).
[19] The option of issuing bonds to repay the interest may be unavailable to Florida, See Art. VII, s. 11, Fla. Const.
[20] Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.

III. Effect of Proposed Changes:

Evaluation of Economic Development Programs

The bill creates the Economic Development Programs Evaluation (evaluation). (**Section 1 – undesignated section of the Florida Statutes.**) EDR and OPPAGA are required to jointly present the evaluation to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees. The offices are required to evaluate specified economic development programs according to a 3-year review schedule. Programs are grouped together based on general program type. The evaluation schedule is as follows:

YEAR 1 (January 1, 2014) and every 3rd year	
Programs	**Florida Statute(s)**
Quick Action Closing Fund	s. 288.1088
Brownfield Redevelopment Bonus Tax Refund	s. 288.107
High Impact Sector Performance Grants	s. 288.108
Capital Investment Tax Credit	s. 220.191
Qualified Target Industry Tax Refund	s. 288.106
Innovation Incentive Program	s. 288.1089
Enterprise Zone Programs	ss. 220.181-182, 212.08(5), 212.096, 212.08(15)

YEAR 2 (January 1, 2015) and every 3rd year	
Programs	**Florida Statute(s)**
Entertainment Industry Financial Incentive Program	s. 288.1254
Entertainment Industry Sales Tax Exemption Program	s. 288.1258
The Florida Commission on Tourism/Visit Florida	ss. 288.122-124
Florida Sports Foundation	ss. 288.1162-1171

YEAR 3 (January 1, 2016) and every 3rd year	
Programs	**Florida Statute(s)**
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045
Semiconductor, Defense, or Space Technology Sales Tax Exemption	s. 212.08(5)(j)
Military Base Protection	s. 288.980
Manufacturing & Spaceport Investment Incentive Program	s. 288.1083

Quick Response Training	s. 288.047
Incumbent Worker Training	s. 445.003
International Trade & Business Development	s. 288.826

EDR and OPPAGA are required to coordinate and submit a work plan for the evaluation to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

The bill requires EDR to use specialized modeling techniques to evaluate the economic development programs listed above. EDR is required to evaluate each program for "economic benefits," as well as jobs created, the increase or decrease in personal income, and the impact on state GDP of each program using data from the previous 3 years. The data used to evaluate any tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs is specified as being data from projects that are either fully complete, partially complete with future fund disbursal possible pending performance measures, or partially completed with no future fund disbursal possible as a result of a business's inability to meet performance measures. EDR is required to provide an explanation of the model used in its analysis, and the model's key assumptions. EDR is permitted to use another model if it explains why another model is more appropriate.

The OPPAGA is required to evaluate each program for effectiveness and value to Florida taxpayers, and to provide recommendations to the Legislature based on its evaluation of each program. OPPAGA's analysis is required to include information from interviews, reviews of relevant reports, or other data.

The bill gives EDR and the OPPAGA access to all data necessary to complete the Economic Development Programs Evaluation, including confidential data. The offices may coordinate data collection and analysis. (**Section 4, amends s. 213.053, F.S.**)

The bill updates requirements for the Annual Incentives Report currently produced by EFI (**Section 26, amends s. 288.907, F.S.**) and requires the report to be a joint report by the DEO and EFI. The agencies will no longer be required to report on the "economic benefit" of each project or program in the Annual Incentives Report. The evaluation of "economic benefits" will now be conducted as part of the Economic Development Programs Evaluation, conducted jointly by EDR and the OPPAGA. See above.

"Jobs" is defined to ensure that all jobs data is reported and evaluated in the same manner across programs. The term means only full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project. (**Section 7, amends s. 288.005, F.S.**)

The bill repeals a required OPPAGA report on the Innovation Incentive Program. (**Section 16, amends s. 288.1089, F.S.**) This report is duplicative as a result of the evaluation of the Innovation Incentive Program required as part of the Economic Development Programs Evaluation created in Section 1 of the bill.

A duplicative analysis of EFI's return on the public's investment is repealed. (**Section 24, repeals s. 288.904(6), F.S.**) Current law requires the analysis to be included as part of the EFI annual report. Currently, section 20.601(3), F.S., requires the OPPAGA to conduct a similar analysis in 2016.

Agency Reporting Consolidation

Presently, there are multiple reporting requirements for the state's various economic development programs and activities. Some entities are required to submit reports to the Governor, Legislature, and/or the department and the report due dates lack uniformity. The bill consolidates several independent program reports and reporting dates.

Department of Economic Opportunity's Annual Report

The bill makes several changes to the department's annual report. (**Section 2, amends s. 20.60, F.S.**) The report's due date is changed from January 1st to November 1st. The department is directed to include supplements to its annual report on several programs. As a result, the independent due dates for each of the reports are deleted. The programs to be included in the department's annual report are:

- Displaced Homemaker program. (Section 51, amends s. 446.50, F.S.)
- Enterprise Zone program. (Sections 29 and 30).
  - Changes the due date of each enterprise zone development agency's report to the department from December 1st to October 1st. (**Section 29, amends s. 290.0056, F.S.**)
  - Changes the due date of the Department of Revenue's report on the usage and revenue impacts, by county, of state incentives relating to enterprise zones from February 1st to October 1st. (**Section 30, amends s. 290.014, F.S.**)
- Economic Gardening Business Loan Pilot Program. (Section 13, amends s. 288.1081, F.S.)
- Economic Gardening Technical Assistance Pilot Program. (Section 14, amends s. 288.1082, F.S.)
- Black Business Loan Program. (Section 21, amends s. 288.714, F.S.)
- Rural Economic Development Initiative. (Section 10, amends s. 288.0656, F.S.)

EFI's Annual Report

The bill requires EFI to include, as a supplement in its annual report, information on: (**Section 25, amends s. 288.906, F.S.**)

- State of Florida International Offices. (**Section 8, amends s. 288.012, F.S.**)
- Florida Export Finance Corporation annual report. (**Section 22, amends s. 288.7771, F.S.**)

Additionally, under current law EFI division reports are due independently on October 1st, for inclusion in EFI's annual report. The bill repeals this independent due date. (**Section 27, amends s. 288.92, F.S.**)

Annual Incentives Report

The bill revises the duties of EFI to require the Annual Incentives Report to be a joint report by EFI and the DEO. (**Section 23, amends s. 288.903, F.S.**) The report is currently produced independently by EFI using data supplied by the department.

Information on the Economic Development Trust Fund is required to be included in the Annual Incentives Report. The information is currently required under s. 288.095(3)(c), F.S. The bill repeals this paragraph (**Section 11**) and incorporates the information into the Annual Incentives Report. (**Section 26, amends s. 288.907, F.S.**) The information includes:

- The types of projects supported;
- Tax refunds or other payments made out of the Economic Development Incentives Account for each project supported;
- A separate analysis of the impact of tax refunds on Enterprise Zones, rural communities, brownfield areas, and distressed urban communities; and
- The name and tax refund amounts for each business receiving a qualified target industry or qualified defense space contractor and space flight business tax refund.

Several other stand-alone program reports are incorporated as supplements to the Annual Incentives Report. As a result, the independent due dates for the reports are deleted. The reports required to be included as supplements to the Annual Incentives Report include:

- Florida Space Business Incentives Act annual report (**Section 5, amends s. 220.194, F.S.**), beginning in 2014.
- Information on the causes of a business's failure to complete its qualified target industry incentive agreement. (**Section 12, amends s. 288.106, F.S.**)
- Information relating to Innovation Incentive Program recipients, including the evaluation as to whether the recipients were catalysts for additional economic development. (**Section 16, amends s. 288.1089, F.S.**)
- Florida Small Business Technology Growth Program annual report. (**Section 28, amends s. 288.95155, F.S.**)

Validation of contractor performance for all incentive programs is currently required as part of the Annual Incentives Report. The bill adds a cross-reference to s. 288.061, F.S., clarifying that validation of contractor performance is to be included in the Annual Incentives Report. (**Section 26, amends s. 288.907, F.S.)**

The bill clarifies that the DEO, rather than EFI, is responsible for validating contractor performance for the Quick Action Closing Fund incentives and that such information is to be included in the Annual Incentives Report. Current law requires the contractor performance validation to be reported within 6 months of completion. This requirement is deleted by the bill. (**Section 15, amends s. 288.1088, F.S.**)

Validation of contractor performance for the Innovation Incentive Program recipients is required to be included in the Annual Incentives Report. The current law requirement that a report on

contractor performance be submitted within 90 days of an agreement's conclusion is repealed. (**Section 16, amends s. 288.1089, F.S.**)

Office of Film and Entertainment's Annual Report

The bill changes the due date of the Office of Film and Entertainment's (OFE) Annual Report on the entertainment industry financial incentive program from October 1st to November 1st. (**Section 19, amends s. 288.1254, F.S.**) The OFE's Annual Report is also required to include the OFE expenditures report (**Section 18, amends s. 288.1253, F.S.**) and the report detailing the relationship between tax exemptions and incentives to industry growth. (**Section 20, amends s. 288.1258, F.S.**)

Space Florida's Annual Report

The bill changes the due date for the Space Florida annual performance report from September 1st to November 30th (**Section 39, amends s. 331.3051, F.S.**), and requires Space Florida's annual operations report to be included in the performance report. (**Section 40, amends s. 331.310, F.S.**)

Community Planning – Use of Documentary Stamp Tax Distribution

Section 3 amends s. 201.15(1)(c), F.S., to delete obsolete language and clarify that the share of the documentary stamp distribution that DEO receives in the Grants and Donations Trust Fund must be used by the Community Planning Program to provide technical assistance to local governments.

Florida Small Business Development Center Network

Section 6 significantly amends s. 288.001, F.S., relating to the Florida Small Business Development Center Network (network). The bill provides that the purpose of the network is to serve emerging and established private, for-profit businesses that maintain a place of business in Florida. Florida's network is a consortium of regional small business development centers throughout the state that offer consulting services, training opportunities, and access to other resources and information to current and prospective small businesses.

The national Small Business Development Center program is administered by the U.S. Small Business Administration (SBA) and federal laws and regulations require that various state-level programs be located at higher education institutions. Regional centers are based at several of Florida's colleges and universities, with a total of 39 locations in the state. The network's state headquarters are located at the University of West Florida (UWF).[21]

Statewide Director

The bill requires the statewide director to:

[21] See History of the Florida SBDC Network, available at http://floridasbdc.org/history.php (last visited March 26, 2013).

- Operate the network in compliance with federal law and Board of Governors Regulation 10.015;
- Consult with the Board of Governors, the DEO, and the network's statewide advisory board to ensure that the network's policies and programs align with the statewide economic development plan and the statewide goals of the State University System;
- Develop support services, in consultation with the advisory board, to be delivered through regional small business development centers;
- Develop a pay-per-performance incentive for regional small business development centers, in coordination with the center's host institution;
- Develop annual programs that support small business assistance best practices, enhance network participation among state universities and colleges, and ensure that network services are offered statewide, especially in rural and underserved areas;
- Update the Board of Governors, the DEO, and the advisory board quarterly on the network's performance, including aggregate information on businesses assisted by the network; and
- Present an annual report on June 30th to the President of the Senate and the Speaker of the House of Representatives on the network's progress and outcomes for the previous fiscal year, including the network's economic benefit to the state.

Statewide Advisory Board

Federal requirements do not specify how members of the network's statewide advisory board are selected or the size of the board, but the board must have members who are small business owners and representative of the program's entire Service Area (in Florida, the Service Area is the entire state). The bill codifies the current membership of the statewide advisory board, with the exception of two additional members to be appointed by the network's statewide director. The bill requires the statewide advisory board to consist of 19 members from across the state, with at least twelve members being representatives of the private sector who are knowledgeable of the needs and challenges of small businesses, as follows:

- Three members from the private sector appointed by the Governor - two of whom initially serve 2-year terms.
- Three members from the private sector appointed by the President of the Senate - one of whom initially serves a 2-year term.
- Three members from the private sector appointed by the Speaker of the House of Representatives - one of whom initially serves a 2-year term.
- Three members appointed by the statewide director - one of whom initially serves a 2-year term.
- One member appointed by the host institution (the University of West Florida).
- The President of Enterprise Florida, Inc., or his or her designee.
- The Chief Financial Officer or his or her designee.
- The President of the Florida Chamber of Commerce or his or her designee.
- The Small Business Development Center Project Officer from the U.S. Small Business Administration's South Florida District Office or his or her designee.
- The Executive Director of the National Federation of Independent Businesses, Florida or his or her designee.
- The Executive Director of the Florida United Business Association or his or her designee.

The bill requires that minority and gender representation be considered when making appointments to the statewide advisory board.

The bill sets a member's term on the board at 4 years, except for five members who initially serve 2 year terms (as specified above). Statewide advisory board members may be reappointed to a subsequent term. Board members cannot receive compensation for serving on the board but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

Small Business Support Services

The bill specifies that the statewide director and the statewide advisory board must develop support services that are delivered by regional small business development centers. Support services must target the needs of businesses that employ fewer than 100 persons and demonstrate an assessed capacity to grow in employment or revenue. Businesses receiving support services must agree to participate in assessments of services received. Information requested of participating businesses includes demographic information, changes in employment and sales, debt and equity capital attained, government contracts obtained, and other information as required by the host institution (UWF).

The bill requires regional small business development centers to provide businesses with support services that include, but are not limited to providing information or research, consulting, educating, or otherwise assisting businesses in specific activities. These activities largely codify the support services already offered by the network and include:

- Planning related to starting-up, operating, or expanding a small business.
- Developing and implementing strategic or business plans.
- Developing the financial literacy of existing businesses.
- Developing and implementing plans for existing businesses to access or expand to new or existing markets.
- Supporting access to capital for business investment and expansion, including providing technical assistance related to obtaining surety bonds.
- Assisting existing business with natural or man-made disaster planning.

Additional State Funds

The bill requires the network to provide a match equal to the amount of any direct legislative appropriation. The match provided by the network must consist of 50 percent cash, with the remaining 50 percent coming from any allowable combination of additional cash, in-kind contributions or indirect costs. The 50 percent cash requirement may include funds from federal or other non-state funding sources designated for the network.

If the host institution (UWF) receives additional state funding specifically designated for the network, half of the funds must be used to establish a pay-per-performance incentive for regional small business development centers. The statewide director, in coordination with the host institution (UWF), will develop the pay-per-performance incentive. The incentive must be

distributed based data collected from businesses as provided in the bill. The distribution formula must include recognition of the gross number of jobs created annually by each regional center and the number of jobs created per support service hour. Pay-per-performance incentive funds received by regional centers must be used to supplement operations and services provided by regional centers. Regional centers may not reduce matching funds dedicated to the small business development center program if they receive any incentive funds under the pay-per-performance program.

The remaining half of any additional state funds received by the host institution (UWF) for the network must be distributed by the statewide director, in coordination with the advisory board, for the purposes of:

- Ensuring support services are available statewide, especially in underserved and rural areas of the state;
- Encouraging colleges and universities to participate in the program; and
- Encouraging the adoption of small business assistance best practices by regional centers.

The network must announce the annual amount of available funds for each program, as well as any performance expectations or other requirements. The statewide director must present applications and recommendations to the statewide advisory board. The advisory board must approve applications and publicly post approved applications. At a minimum, programs must include new regional small business development centers and awards for the top six regional centers that adopt best practices, as determined by the advisory board. Detailed information about best practices must be made available to regional centers for voluntary implementation. A regional center cannot receive an award from this allocation of additional state funds if the statewide director has found that the regional center has:

- Performed poorly,
- Engaged in improper activity affecting the operation and integrity of the network, or
- Failed to follow the rules and procedures set forth in the laws, regulations and policies governing the network.

Reporting Requirements

The bill requires that the statewide director update the Board of Governors, the Department of Economic Opportunity, and the advisory board each quarter on the network's progress and outcomes, including aggregate information on businesses assisted by the network. In addition to quarterly updates, the statewide director and the advisory board must produce an annual report, due by June 30th, to the President of the Senate and the Speaker of the House of Representatives. The report must include the information provided quarterly, information regarding network services and programs, the use of funds specifically dedicated to the network, and the network's economic benefit to the state. The report must include specific information on performance-based metrics used by the network and the methodology used to calculate the network's economic benefit to the state.

Evaluation of Incentive Program Applicants

The bill requires that the department evaluate each economic development incentive application for the "economic benefits" of the proposed award of state incentives for the project. The bill provides that "economic benefits" has the same meaning as in s. 288.005, Florida Statutes. Section 288.05(1), Florida Statutes, provides:

> Economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.

EDR must review and evaluate the methodology and model used by the DEO to calculate the economic benefits. The department and EDR are authorized to develop an amended definition of "economic benefits" to evaluate applications. EDR must submit a report on the methodology and model by September 1, 2013, and every third year thereafter, to the President of the Senate and the Speaker of the House of Representatives. (**Section 9, amends s. 288.061, F.S.**)

The bill deletes similar language requiring an up-front analysis of "economic benefits" for a qualified target industry (QTI) tax refund application. The bill requires that applications for a QTI incentive be evaluated to determine if an applicant has previously received economic development incentives in other states, and if applicable, the outcome of those agreements.

Current law requires that QTI tax refund applications be evaluated for their *effect* on the *unemployment rate* in the county where a project will be located. The bill revises this requirement to require that applications be evaluated for the *expected effect* on the *unemployed and underemployed* in the county where a project will be located. The bill deletes the existing requirement that a QTI tax refund application be evaluated for the expected long-term commitment to economic growth and employment in Florida. (**Section 12, amends s. 288.106, F.S.**)

Current law requires that a project qualifying for the Innovation Incentive Program as a research and development program or as an alternative and renewable energy project demonstrate that the project will provide a *break-even "return on investment"* to the state over a 20-year period. The term "return on investment" as it relates to the Innovation Incentive Program is not defined under current law.

The bill changes this requirement to a demonstration that the project will provide a *cumulative break-even "economic benefit"* within a 20-year period. This change creates consistent terminology and ensures applicants for the Innovation Incentive Program will be evaluated similarly to other incentive programs. (**Section 16, amends s. 288.1089, F.S.**)

Securitization of Economic Development Incentives

The Quick Action Closing Fund and the Innovation Incentive Program provide financial incentives that can be used in highly competitive negotiations or to attract high-value research and development, innovation business, and alternative and renewal energy projects. The funds

are generally distributed prior to the project's completion. Currently, the department uses payment schedules and sanctions, including clawbacks, to address a business's failure to comply with performance conditions.

Section 9 amends s. 288.061, F.S., to require that applicants for Quick Action Closing Fund and Innovation Incentive Program economic development incentives obtain a surety bond for the entire amount of the award before any state funds can be disbursed. Up to half of the premium payment on the surety bond may be paid from the award amount, not to exceed 3 percent of the award.

The DEO is authorized to waive the surety bond requirement by certifying specific information, in writing, to the Governor, President of the Senate, and Speaker of the House of Representatives. If the DEO waives the surety bond requirement, the applicant must secure the award through an irrevocable letter of credit, cash or securities held in trust, or a secured transaction in collateral. The DEO may waive the surety bond or alternate security requirement if the DEO certifies to the Governor and the chair and vice-chair of the Legislative Budget Commission that the applicant has the financial ability to fulfill the requirements of the contract; has previously demonstrated timely compliance with any clawback provisions, if the applicant has received any incentives; and that the waiver is in the best interest of the state.

Florida Tourism and Industry Marketing Corporation

The Florida Tourism Industry Marketing Corporation, d/b/a Visit Florida, is the not for profit corporation that is responsible for providing tourism promotion and marketing services, functions, and programs for the state.

The Visit Florida board of directors consists of 31 tourist industry-related members, appointed by EFI, in conjunction with the DEO. Sixteen of its members are appointed to represent all geographic areas of the state in an equitable manner, with at least two members from each region. An additional 15 members are prescribed as follows: one from the statewide rental car industry, seven from tourist-related statewide associations, three from county destination marketing organizations, one from the cruise industry, one from an automobile and travel services membership organization that has at least 2.8 million members in Florida, one representative from the airline industry, and one representative from the space tourism industry, who will each serve for a term of 2 years.

Section 17 amends s. 288.1226, F.S., to provide that the Governor will serve as an ex-officio, non-voting member of the Board of Directors of the Florida Tourism and Industry Marketing Corporation (Visit Florida). According to information provided by the DEO to staff of the Senate Commerce and Tourism Committee on February 17, 2013: "This board designation removes any barriers to the Governor acting as a spokesperson for Florida tourism".

Florida Small Cities Community Development Block Grant (CDBG) Programs

Currently, the department administers the Community Development Block Grant program, a federally funded housing and community development program that targets assistance to low and moderate income populations. Rural or smaller area governments receive grants from the

department through a competitive rural distribution mechanism known as the Florida Small Cities Community Development Block Grant (Small Cities CDBG) program. Local governments in urban areas apply and receive funds directly from the U.S. Department of Housing and Urban Development (HUD).

Section 31 amends the legislative intent and purpose of the Small Cities Community Development Block Grant Program Act to include economic need as one of the factors to make a Florida community eligible to participate in the program and includes economic development programs as an activity for such communities to undertake. (**Amends s. 290.0411, F.S.**)

Section 32 amends s. 290.042, F.S., to clarify the definitions of "administrative closeout" and "person of low or moderate income" by including a reference to the definition used in the Code of Federal Regulations.

Program Funding and Distribution of Funds **(Section 33)**

Currently, the statute outlines several grant categories for which grants may be distributed under the Small Cities CDBG. These categories include commercial revitalization, economic development, housing, neighborhood revitalization, and project planning and design. The bill **amends s. 290.044, F.S.**, to provide the department rule-making authority to establish guidelines to distribute the Small Cities CDBG program funds through a competitive selection process. The department is directed to define broad community development objectives for the distribution of CDBG funds that are consistent with the national objectives, as established by federal law. Current provisions requiring applicants to compete against each other in grant program categories and the categories themselves are repealed. The bill provides that emergency set-aside funds are only to be used when no other federal, state, or local disaster funds are available.

Section 108 Loan Guarantee Program **(Section 34)**

The bill focuses on reducing risks associated with the Section 108 loan guarantee program by **amending s. 290.0455, F.S.**, to require an applicant approved by HUD to receive a Section 108 loan to enter into an agreement with the department that requires the applicant to pledge half the amount necessary to guarantee the loan in the event of default. The department must review all Section 108 loan applications in the order received, provided the applications meet all eligibility requirements and have been deemed financially feasible by a loan underwriter approved by the department. If the statewide maximum available for loan guarantees has not been met, the department may submit the application to HUD with a recommendation that the loan be approved, with or without conditions, or denied.

The bill reduces the maximum amount of an individual loan guarantee commitment from $7 million to $5 million and decreases the maximum statewide amount of loan guarantees from five times to two times the amount of the most recent grant received by the department under the Florida Small Cities CDBG Program. The $5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, so that they may be refinanced.

If a local government defaults on a Section 108 loan requiring the department to reduce its annual grant award to pay the annual debt service on the loan, any future CDBG program funds

that the local government receives must be reduced in the amount equal to the amount of the state's grant award used in payment of debt service on the loan.

If a local government, that has received a Section 108 loan through the Florida Small Cities CDBG Program, is granted entitlement community status by HUD, then the local government must pledge its entitlement allocation as a guarantee of its previous loan and request HUD to release the department as guarantor of the loan.

Grant Application Procedures and Requirements **(Section 35)**

Section 290.046, F.S., currently provides the application procedures that the department must employ. The bill **substantially amends s. 290.046, F.S.**, to grant the department rule-making authority to establish application procedures for the Florida Small Cities CDBG Program. Eligible local governments may only submit one application for a noneconomic development project during an application cycle. An eligible local government may apply for an economic development grant up to three times each funding cycle and is permitted to have more than one open economic development grant.

The department is directed to establish minimum criteria pertaining to the number of jobs created for low or moderate-income persons, the degree of private sector financial commitment, the economic feasibility of the proposed project, and any other criteria it deems appropriate. A grant may not be awarded until the department has completed a site visit to verify the information contained in the award application.

The department must rank each application received based on criteria established by rule. The rule must allow the department to consider factors such as community need, unemployment, poverty levels, low and moderate-income populations, health and safety, and the condition of physical structures. The rankings must incorporate a procedure intended to reduce or eliminate any existing population-related bias that places exceptionally small communities at a competitive disadvantage.

Project funding must be determined by the rankings established in each application cycle. If, at the conclusion of a funding cycle, economic development funding remains, those funds will be awarded to eligible projects on a first-come, first-served basis until funding for this category is fully obligated.

The bill repeals the requirement that a local government establish a citizen advisory board to provide input relative to all phases of the project process. However, citizen participation provisions required by HUD are retained. Those provisions include conducting an initial public hearing to inform the public of the available funding opportunities and eliciting input on community needs; publishing a summary of the proposed application so that the public can examine the contents of the application and submit comments; and conducting a second public hearing to obtain public comment about the proposed application and make appropriate modifications.

Establishment of Grant Ceilings **(Section 36)**

The bill maintains the department's current rule-making authority for establishing grant ceilings, the maximum percentage of block grants funds that may be spent on administrative costs, and the grant administration procurement procedures for eligible local governments.

However, the bill **substantially amends s. 290.047, F.S.**, to prohibit an eligible local government from contracting with the same individual or business entity for more than one service to be performed in connection with a Small Cities CDBG, unless it can demonstrate that the individual or business entity is the sole source of the service or is the responsive proposer whose proposal is determined, in writing from a competitive process, to be the most advantageous to the local government. The department must adopt a rule that provides a methodology to determine the maximum amount of block grant funds that an eligible local government may spend on architectural and engineering costs.

Rejection of Applications **(Section 37)**

The bill **amends s. 290.0475, F.S.**, to update references to statutes and department rule. It repeals a provision that an application is deemed ineligible if it is found to contain a misrepresentation of information that is not attributable to a mathematical error that may be readily corrected by computation of numbers or formulas provided in the application.

General Powers of the Department **(Section 38)**

The bill **repeals ss. 290.048(5) and (7), F.S.**, which grants the department the power to adopt and enforce requirements concerning an applicant's written description of a service area, and to establish an advisory committee to solicit participation in the design, administration, and evaluation of the program, respectively.

Reemployment Assistance Program

The bill **amends s. 443.131, F.S.**, to provide that no assessment will be levied against contributing employers if the amount of assessments on deposit, plus any earned interest, is at least 80 percent of the estimated amount of interest. The bill further provides that any assessments that remain on deposit, including associated interest, 4 months after all federal advances and associated interest have been repaid are to be transferred to the Unemployment Compensation Trust Fund. The provisions relating to interest assessments on federal advances will expire on July 1, 2014. (**Section 45**)

Reemployment Assistance Claims and Benefits Information System

In 2009, the Legislature authorized the Department of Economic Opportunity to upgrade and enhance its Unemployment Compensation Claims and Benefits Information System.[22] The statute provides a project completion date of no later than June 30, 2013.

[22] Chapter 2009-73, L.O.F. At the time, the Unemployment Compensation program was housed in the Agency for Workforce Innovation, whose functions were transferred to the Department of Economic Opportunity in 2011.

In early 2012, the vendor indicated that an extension of the timeline would be required. The vendor paid $1,965,000 in liquidated damages and provided a credit of $2,500,000 to cover the costs incurred by the DEO caused by the delay. After negotiations and a corrective action plan, the revised project schedule calls for an October 28, 2013, implementation date.[23]

The bill **amends s. 443.1113, F.S.**, to extend the operational deadline for the Reemployment Assistance Claims and Benefits Information System to June 30, 2014. (**Section 44**)

Fraudulent Claims

A fraudulent claim is one that knowingly contains a false or fraudulent statement or fails to disclose a material fact for the purpose of obtaining or increasing reemployment benefits.[24] A claimant found to be collecting benefits fraudulently is disqualified from received benefits beginning the week that the fraudulent claim was made. The disqualification will continue for a period not to exceed 1 year after the DEO discovered the fraud and until any resulting overpayment of benefits has been repaid. Reemployment Assistance fraud can also be prosecuted as a third degree felony.

Federal law requires states to assess a penalty, of at least 15 percent of the amount of the erroneous payment, on any claimant who fraudulently obtained benefits.[25] Florida does not currently assess a penalty for fraudulent overpayments.

The bill **amends s. 443.151, F.S.**, to impose a penalty equal to 15 percent of the amount overpaid, on any claimant who fraudulently receives reemployment benefits. (**Section 46**) This provision will bring Florida into compliance with federal law. Any amounts collected for penalties are to be deposited into the Unemployment Compensation Trust Fund. (**Section 50, amends s. 443.191, F.S.**)

Confidentiality

Information received from an employing unit or individual that reveals an employing unit's or individual's identity under the administration of the RA program is confidential and exempt from disclosure.[26]

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[23] See Project Connect, Executive Steering Committee Meeting Minutes for August 8, 2012, http://sitefinity.floridajobs.org/Unemployment/UC_ModernizationProject/documents/MinutesAgendas/20120808%20RA%20ESC%20Meeting%20Minutes%20%20FINAL.pdf (last visited February 7, 2013).

[24] Sections 443.071 and 443.101(6), F.S., discuss fraud and associated penalties.

[25] 42 U.S.C. s. 503(a)(11).

[26] Section 443.1715, F.S. This subsection authorizes a number of exceptions for disclosure. Information may be released to the extent necessary for presentation of a claim or upon written authorization of a claimant who has a workers' compensation claim pending or is receiving compensation benefits. Public employees may receive this information in the performance of their public duties but must maintain the confidentiality of the information. A claimant or his or her legal representative is entitled to this information, to the extent necessary, to present a claim at a hearing before an appeals referee or the commission. DEO or DOR may provide a copy of any report submitted by an employer to the employer or a copy of any report submitted by the claimant to the claimant, upon request. Confidential information may also be released pursuant to 20 C.F.R. part 603.

In 2012, the statute was amended and the language that made disclosure of such confidential information a second-degree misdemeanor was inadvertently repealed.[27] Federal regulations require Florida to provide penalties for the unlawful disclosure of confidential information related to reemployment assistance.[28]

Section 443.1715, F.S., is amended to restore penalties for the disclosure of confidential information that were inadvertently repealed in 2012. This provision will bring Florida into compliance with federal law. (**Section 49**)

Disqualification for Reemployment Assistance Benefits

Under current law, an individual may be disqualified from receiving reemployment assistance benefits for any week in which the department finds that he or she was discharged by his or her employer for misconduct. The bill adds specific examples of "misconduct" to be included in the definition, but the examples are not intended to limit the definition. (**Section 41, amends s. 443.036(30), F.S.**)

Current law also provides additional grounds for which an individual may be disqualified from obtaining reemployment benefits, such as voluntarily leaving employment. The bill adds loss of employment due to failure without good cause to maintain a license, registration, or certification, required by law for the employee to perform her or his assigned duties. "Good cause" is defined as failure of the employer to submit required information for the license, registration, or certification; short term physical injury that prevents the employee from completing a required test; and inability to complete a required test that is outside the employee's control. (**Section 43, creates subsection (13) of s. 443.101, F.S.)**

Work Registration Requirements

The bill **amends s. 443.091, F.S.**, to require unemployed individuals to complete the department's online work registration. Individuals unable to complete the online work registration or initial skills review due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment are exempt from the online work registration and initial skills review. **(Section 42)**

Section 443.1715, F.S., is amended to restore penalties for the disclosure of confidential information that were inadvertently repealed in 2012. This provision will bring Florida into compliance with federal law. (**Section 49**)

Reemployment Assistance Benefits- Determinations, Redeterminations and Appeals

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements[29] for reemployment assistance benefits. Determinations and redeterminations are statements by the department regarding the application of law to an

[27] Chapter 2012-30, L.O.F.
[28] 20 C.F.R. part 603.
[29] Section 443.151(3), F.S.

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 date the determination was mailed. The DEO 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 the DEO'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.[30] Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests. Generally, an appeal must be filed within 20 days of the determination date.

> Upon receiving an appeal, the Office of Appeals will schedule a hearing involving all interested parties to address the issues. The parties will be mailed a *Notice of Hearing* telling them when the hearing will be held and whether they are expected to participate in-person or by telephone… The parties are expected to present all of their evidence and testimony to the appeals referee, who will then make a decision based only upon the evidence and testimony presented during the hearing. An audio recording of the hearing will be made by the referee. When the hearing is completed, the referee will issue a written decision.[31]

In the 2012 calendar year, there were a total of 116,534 appeals filed, and the Office of Appeals issued 128,968 decisions. Most appeals were filed by applicants (about 74 percent of the filed appeals), but the outcomes of the decisions were evenly split between decisions to pay or deny benefits to the applicants.[32] A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission.

Currently, appeals referees are not required to be licensed attorneys. The DEO currently employs 79 appeals referees, of which approximately 12% are attorneys in good standing with the Florida Bar. The bill **amends s. 443.151, F.S.**, to require that an appeals referee employed by the DEO be an attorney in good standing with the Florida Bar within a specified timeframe depending upon whether the referee is a current employee (must be an attorney by September 30, 2014) or a new employee hired on or after January 1, 2014 (must be an attorney within 8 months of his or her employment date). Effective January 1, 2014, an appeals referee currently employed by the DEO that does not have a degree from a law school accredited by the American Bar Association would no longer meet the qualifications for the appeals referee position. (**Sections 47 and 48**)

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[30] Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Information about the Office of Appeals and the appeals process may be found on the DEO website at http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-an-appeal (last visited 1/13/2013).

[31] The DEO, "Reemployment Assistance Appeals Process, Reemployment Assistance Appeals Commission," available at http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/reemployment-assistance-appeals-commission/reemployment-assistance-appeals-process (last visited 1/13/2013).

[32] Data from the DEO, "Reemployment Assistance Data, 1st Quarter 2007 through 4th Quarter 2012," January 7, 2013, on file with the Senate Commerce and Tourism Committee. Note, that not all outcomes that award benefits impact an employer's taxes, as some cases find that the former employee separated from work due to reasons not attributable to the employer.

The bill takes effective upon becoming law, except as otherwise expressly provided in the act. (**Section 51**).

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 transfer of any remaining funds to the Unemployment Compensation Trust Fund after the final federal interest payment is made may have a positive impact on employer contribution rates.

Revenues generated by the imposition and collection of the penalty created in the bill for fraudulently obtaining unemployment compensation benefits could have a positive impact on employer contribution rates.

B. Private Sector Impact:

To the extent that more small businesses are assisted through increased performance by the network and regional centers, the bill may have a positive impact on the private sector.

The bill may impose costs on prospective economic development incentive applicants due to the requirement to secure or guarantee the award amount. The costs imposed may be in the form of premiums or other professional fees related to creating the secured transaction.

To the extent that more eligible local governments apply for and receive funding for eligible activities under the Florida Small Cities CDBG Program, the private sector will benefit.

If the amount of assessments collected in previous years to pay the interest due on federal advances is at least 80 percent of the estimated interest payment, the Department of

Revenue may not make an assessment against employers, which would have a positive fiscal impact to the private sector.

Also, see Tax/Fee Issues.

C. Government Sector Impact:

This bill is projected to have a fiscal impact to the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability, as follows:

- Office of Economic and Demographic Research (EDR)
  - Economic Development Program Evaluation Workload - three positions and $302,324 to cover salaries, benefits and expenses associated with the new positions ($37,002 of the expenses are nonrecurring).
  - Modifications to Statewide Model - $34,400 to design and develop an employment module for the statewide model.

Funding for EDR would need to be appropriated in the General Appropriation Bill.

- Office of Program Policy Analysis and Government Accountability (OPPAGA)
  - Economic Development Program Evaluation Workload - two positions and a part-time intern - $178,163 for salaries and benefits. OPPAGA has indicated that they can absorb the additional workload within existing resources.

These estimates assume that EDR and OPPAGA will obtain access to all information related to economic development programs that is needed to complete the Economic Development Program Evaluations without cost to EDR or OPPAGA.

Failure to provide a penalty for individuals who fraudulently collect unemployment benefits or restore the penalty for disclosing confidential information puts Florida at risk of being deemed out of conformity with federal law. If the United States Department of Labor made such a finding, it may not certify the state's reemployment assistance program and could withhold all administrative funding (approximately $77 million for Federal FY 2013) or cause the employer federal tax rates to increase to the total of 6.0 percent because of loss of the entire Federal Unemployment Tax Act tax credit.

Imposing the 15 percent penalty upon individuals who fraudulently receive unemployment compensation benefits could have a positive impact to the Unemployment Compensation Trust Fund. According to the department, during FY 2011-12, the department made 25,294 fraud determinations totaling $33.2 million in benefit overpayments. If these benefit overpayments had been subject to the 15 percent penalty, approximately $4.9 million could have been deposited in the Unemployment Compensation Trust Fund. Revenues generated by the imposition and collection of the penalty created in the bill could have a positive impact on employer contribution rates.

The provisions of the bill that streamline reporting requirements, delete duplicative reports, and consolidate reporting due dates may improve efficiencies and are not expected to have a fiscal impact to the Department of Economic Opportunity, Enterprise Florida, Inc., the Office of Film and Entertainment, or Space Florida.

The provisions of the bill related to the Small Business Development Center Network are expected to have a minimal, but indeterminate, impact on the operating budgets of the Board of Governors and the department. The Senate proposed General Appropriations Bill, SPB 7040, includes $7 million of recurring general revenue funds for Small Business Development Centers in Specific Appropriation 142 (Grants and Aids – Education and General Activities appropriation category).

The bill requires the department to establish a process for determining compliance with, or waiving, the securitization requirements created in the bill. The department may promulgate rules to implement the bill. The costs associated with establishing and maintaining processes and rulemaking that the department may incur are indeterminate, but anticipated to be insignificant.

The provisions of the bill that authorize the department to adopt rules to implement the revisions to the Florida Small Cities CDBG Program will have an indeterminate fiscal impact to the department. It is anticipated that this impact could be absorbed by the department within existing resources.

The Department of Economic Opportunity projects that the provisions of the bill that require the DEO's appeals referees to be attorneys in good standing with the Florida Bar will have a fiscal impact of approximately $1.6 million in Fiscal Year 2013-2014, of which approximately $1.2 million is recurring. The impact is based on the following assumptions:

- Average annual Salaries and Benefits paid to 79 appeals referees will increase from $58,870 to $73,688 ($1,170,622)
- New Employee Training Costs - $45,000
- 50 current employees will not obtain law degrees and become attorneys in good standing with the Florida Bar and will lose their jobs, making them eligible for reemployment assistance benefits (for an average of 10 weeks, the employer's cost is $137,500) and leave payouts (average of 250 hours per employee - $250,000).

The department indicates that federal funding received to administer the state's reemployment assistance program could be redirected to cover the increased salaries and benefits and training costs. Indirect cost assessments would be used to cover the costs associated with current employees losing their jobs because they do not meet the new job qualifications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the department to adopt rules relating to the guidelines for the distribution of Small Cities CDBG Program grants; application procedures; grant ceilings; the maximum percentage of funds which can be spent on administrative costs by a local government; and the methodology used to determine the maximum amount of funding that may be spent on architectural and engineering costs by an eligible local government.

VIII. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 27, 2013:
The committee substitute:

- Creates a rotating, 3-year review schedule for all incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Provides EDR and OPPAGA access to all data necessary to complete its evaluations of the economic development programs.
- Defines "jobs" as full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project.
- Repeals duplicative evaluations of economic development programs.
- Aligns the Small Business Development Center Network's (network) statewide policies with the statewide strategic economic development plan and statewide goals of the university system.
- Specifies the composition of the network's statewide advisory board.
- Specifies the support services offered by the network.
- Requires the network to provide a match to any direct state appropriation.
- Requires the network to set up incentives for the regional centers to create jobs, institute best practices, and serve new areas of the state or underserved areas.
- Requires regular reporting by the network on programs, services, and outcomes, including information on the network's economic benefits to the state.
- Requires the department to evaluate each application for economic incentives for the economic benefits of the proposed award to the state, and EDR is to review and report on the methodology used to calculate the economic benefit.
- Requires recipients of incentives under the Quick Action Closing Fund and the Innovation Incentive Programs to secure the award with a surety bond, letter of credit, or other security; provides procedures for the department to waive securitization requirements.
- Eliminates school boards as entities for which funds from the Grants and Donations Trust Fund in the Department of Economic Opportunity may be used to provide community planning technical assistance.
- Creates specific examples of misconduct for which an individual may be disqualified for benefits.

- Prohibits a claimant from counting the same prospective employer at the same location more than once during his or her claim as proof of work search efforts, unless the employer indicates that it is hiring after the initial contact by the claimant.
- Provides that an individual is disqualified from receiving benefits if his or her unemployment is due to a discharge from employment for failure, without good cause, to maintain a license, registration, or certification required by law for the performance of his or her assigned duties and provides examples of good cause.
- Requires an appeals referee to be a member in good standing with the Florida Bar or be successfully admitted to the Florida Bar within 8 months of his or her employment date, effective January 1, 2014, and current appeals referees who have law degrees but are not members in good standing in the Florida Bar must be successfully admitted by September 30, 2014.

CS by Community Affairs on March 7, 2013:
The CS provides the $5 million loan guarantee limit for the Florida Small Cities Community Development Block Grant Program does not apply to loans guaranteed prior to July 1, 2013, that may be refinanced. The CS creates an exemption for people who are unable to complete the online work registration due to various stated reasons from having to complete the department's online work registration.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(1) The Office of Economic and Demographic Research and

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OPPAGA shall coordinate the development of a work plan for completing the Economic Development Programs Evaluation and shall submit the work plan to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(a) By January 1, 2014, and every 3 years thereafter, an analysis of the following:

1. The capital investment tax credit established under s. 220.191, Florida Statutes.

2. The qualified target industry tax refund established under s. 288.106, Florida Statutes.

3. The brownfield redevelopment bonus refund established under s. 288.107, Florida Statutes.

4. High-impact business performance grants established under s. 288.108, Florida Statutes.

5. The Quick Action Closing Fund established under s. 288.1088, Florida Statutes.

6. The Innovation Incentive Program established under s. 288.1089, Florida Statutes.

7. Enterprise Zone Program incentives established under ss. 212.08(5), 212.08(15), 212.096, 220.181, and 220.182, Florida Statutes.

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254, Florida Statutes.

2. The entertainment industry sales tax exemption program

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established under s. 288.1258, Florida Statutes.

3. VISIT Florida and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124, Florida Statutes.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, Florida Statutes.

(c) By January 1, 2016, and every 3 years thereafter, an analysis of the following:

1. The qualified defense contractor and space flight business tax refund program established under s. 288.1045, Florida Statutes.

2. The tax exemption for semiconductor, defense, or space technology sales established under s. 212.08(5)(j), Florida Statutes.

3. The Military Base Protection Program established under s. 288.980, Florida Statutes.

4. The Manufacturing and Spaceport Investment Incentive Program established under s. 288.1083, Florida Statutes.

5. The Quick Response Training Program established under s. 288.047, Florida Statutes.

6. The Incumbent Worker Training Program established under s. 445.003, Florida Statutes.

7. International trade and business development programs established or funded under s. 288.826, Florida Statutes.

(3) Pursuant to the schedule established in subsection (2), the Office of Economic and Demographic Research shall evaluate and determine the economic benefits, as defined in s. 288.005, Florida Statutes, of each program over the previous 3 years. The

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analysis must also evaluate the number of jobs created, the increase or decrease in personal income, and the impact on state gross domestic product from the direct, indirect, and induced effects of the state's investment in each program over the previous 3 years.

(a) For the purpose of evaluating tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs, the Office of Economic and Demographic Research shall evaluate data only from those projects in which businesses received state funds during the evaluation period. Such projects may be fully completed, partially completed with future fund disbursal possible pending performance measures, or partially completed with no future fund disbursal possible as a result of a business's inability to meet performance measures.

(b) The analysis must use the model developed by the Office of Economic and Demographic Research, as required in s. 216.138, Florida Statutes, to evaluate each program. The office shall provide a written explanation of the key assumptions of the model and how it is used. If the office finds that another evaluation model is more appropriate to evaluate a program, it may use another model, but it must provide an explanation as to why the selected model was more appropriate.

(4) Pursuant to the schedule established in subsection (2), OPPAGA shall evaluate each program over the previous 3 years for its effectiveness and value to the taxpayers of this state and include recommendations on each program for consideration by the Legislature. The analysis may include relevant economic development reports or analyses prepared by the Department of Economic Opportunity, Enterprise Florida, Inc., or local or

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regional economic development organizations; interviews with the parties involved; or any other relevant data.

(5) The Office of Economic and Demographic Research and OPPAGA must be given access to all data necessary to complete the Economic Development Programs Evaluation, including any confidential data. The offices may collaborate on data collection and analysis.

Section 2. Subsection (10) of section 20.60, Florida Statutes, is amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 ~~January 1~~ of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(a) The report must ~~shall~~ include the identification of problems and a prioritized list of recommendations.

(b) The report must incorporate annual reports of other programs, including:

1. The displaced homemaker program established under s. 446.50.

2. Information provided by the Department of Revenue under s. 290.014.

3. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.

4. The Economic Gardening Business Loan Pilot Program

established under s. 288.1081 and the Economic Gardening Technical Assistance Pilot Program established under s. 288.1082.

5. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

6. The Rural Economic Development Initiative established under s. 288.0656.

Section 3. Paragraph (c) of subsection (1) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1). Prior to distribution under this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. Such costs and the service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2013, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and (b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or $541.75 million in each fiscal year. Out of such funds, the first $50 million for the 2012-2013 fiscal year; $65 million for the 2013-2014 fiscal year; and $75 million for the 2014-2015 fiscal year and all subsequent years, shall be transferred to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The remainder is to be used for the following specified purposes, notwithstanding any other law to the contrary:

a. For the purposes of capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this sub-subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach

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Program described in sub-subparagraph b. Effective July 1, 2014, the first $60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Economic Opportunity in the amount of the lesser of .23 percent of the remainder or $3.25 million in each fiscal year to fund technical assistance to local governments ~~and school boards on the requirements and implementation of this act~~.

3. The Ecosystem Management and Restoration Trust Fund in the amount of the lesser of 2.12 percent of the remainder or $30 million in each fiscal year, to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212.

4. General Inspection Trust Fund in the amount of the lesser of .02 percent of the remainder or $300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 4. Paragraph (o) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this

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chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(o) *Building materials in redevelopment projects.*—

1. As used in this paragraph, the term:

a. "Building materials" means tangible personal property that becomes a component part of a housing project or a mixed-use project.

b. "Housing project" means the conversion of an existing manufacturing or industrial building to a housing unit which is ~~units~~ in an urban high-crime area, an enterprise zone, an empowerment zone, a Front Porch Community, a designated brownfield site for which a rehabilitation agreement with the Department of Environmental Protection or a local government delegated by the Department of Environmental Protection has been executed under s. 376.80 and any abutting real property parcel within a brownfield area, or an urban infill area; and in which the developer agrees to set aside at least 20 percent of the housing units in the project for low-income and moderate-income persons or the construction in a designated brownfield area of affordable housing for persons described in s. 420.0004(9), (11), (12), or (17) or in s. 159.603(7).

c. "Mixed-use project" means the conversion of an existing manufacturing or industrial building to mixed-use units that include artists' studios, art and entertainment services, or other compatible uses. A mixed-use project must be located in an urban high-crime area, an enterprise zone, an empowerment zone, a Front Porch Community, a designated brownfield site for which a rehabilitation agreement with the Department of Environmental Protection or a local government delegated by the Department of


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Environmental Protection has been executed under s. 376.80 and any abutting real property parcel within a brownfield area, or an urban infill area; ~~,~~ and the developer must agree to set aside at least 20 percent of the square footage of the project for low-income and moderate-income housing.

d. "Substantially completed" has the same meaning as provided in s. 192.042(1).

2. Building materials used in the construction of a housing project or mixed-use project are exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the requirements of this paragraph have been met. This exemption inures to the owner through a refund of previously paid taxes. To receive this refund, the owner must file an application under oath with the department which includes:

a. The name and address of the owner.

b. The address and assessment roll parcel number of the project for which a refund is sought.

c. A copy of the building permit issued for the project.

d. A certification by the local building code inspector that the project is substantially completed.

e. A sworn statement, under penalty of perjury, from the general contractor licensed in this state with whom the owner contracted to construct the project, which statement lists the building materials used in the construction of the project and the actual cost thereof, and the amount of sales tax paid on these materials. If a general contractor was not used, the owner shall provide this information in a sworn statement, under penalty of perjury. Copies of invoices evidencing payment of

sales tax must be attached to the sworn statement.

3. An application for a refund under this paragraph must be submitted to the department within 6 months after the date the project is deemed to be substantially completed by the local building code inspector. Within 30 working days after receipt of the application, the department shall determine if it meets the requirements of this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval of the application by the department.

4. The department shall establish by rule an application form and criteria for establishing eligibility for exemption under this paragraph.

5. The exemption shall apply to purchases of materials on or after July 1, 2000.

Section 5. The amendments to sections 212.08 and 288.107, Florida Statutes, made by this act do not apply to building materials purchased before the effective date of this act or to contracts for brownfield redevelopment bonus refunds executed by the Department of Economic Opportunity or Enterprise Florida, Inc., before the effective date of this act.

Section 6. Paragraph (bb) is added to subsection (8) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section, the department may provide:

(bb) Information to the director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent, and to the coordinator of the Office of Economic and Demographic Research or his or her authorized

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agent, for purposes of completing the Economic Development Programs Evaluation. Information obtained from the department pursuant to this paragraph may be shared by the director and the coordinator, or the director's or coordinator's authorized agent, for purposes of completing the Economic Development Programs Evaluation.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 7. Subsection (9) of section 220.194, Florida Statutes, is amended to read:

220.194 Corporate income tax credits for spaceflight projects.—

(9) ANNUAL REPORT.—Beginning in 2014, the Department of Economic Opportunity, in cooperation with Space Florida and the department, shall include in the ~~submit an~~ annual incentives report required under s. 288.907 a summary of ~~summarizing~~ activities relating to the Florida Space Business Incentives Act established under this section ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives by each November 30~~.

Section 8. Section 288.001, Florida Statutes, is amended to read:

288.001 The Florida Small Business Development Center

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Network~~; purpose~~.—

(1) PURPOSE.—The Florida Small Business Development Center Network is the principal business assistance organization for small businesses in the state. The purpose of the network is to serve emerging and established for-profit, privately held businesses that maintain a place of business in the state.

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

(a) "Board of Governors" is the Board of Governors of the State University System.

(b) "Host institution" is the university designated by the Board of Governors to be the recipient organization in accordance with 13 C.F.R. s. 130.200.

(c) "Network" means the Florida Small Business Development Center Network.

(3) OPERATION; POLICIES AND PROGRAMS.—

(a) The network's statewide director shall operate the network in compliance with the federal laws and regulations governing the network and the Board of Governors Regulation 10.015.

(b) The network's statewide director shall consult with the Board of Governors, the department, and the network's statewide advisory board to ensure that the network's policies and programs align with the statewide goals of the State University System and the statewide strategic economic development plan as provided under s. 20.60.

(4) STATEWIDE ADVISORY BOARD.—

(a) The network shall maintain a statewide advisory board to advise, counsel, and confer with the statewide director on matters pertaining to the operation of the network.

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(b) The statewide advisory board shall consist of 19 members from across the state. At least 12 members must be representatives of the private sector who are knowledgeable of the needs and challenges of small businesses. The members must represent various segments and industries of the economy in this state and must bring knowledge and skills to the statewide advisory board which would enhance the board's collective knowledge of small business assistance needs and challenges. Minority and gender representation must be considered when making appointments to the board. The board must include the following members:

1. Three members appointed from the private sector by the President of the Senate.

2. Three members appointed from the private sector by the Speaker of the House of Representatives.

3. Three members appointed from the private sector by the Governor.

4. Three members appointed from the private sector by the network's statewide director.

5. One member appointed by the host institution.

6. The President of Enterprise Florida, Inc., or his or her designee.

7. The Chief Financial Officer or his or her designee.

8. The President of the Florida Chamber of Commerce or his or her designee.

9. The Small Business Development Center Project Officer from the U.S. Small Business Administration at the South Florida District Office or his or her designee.

10. The executive director of the National Federation of

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Independent Businesses, Florida, or his or her designee.

11. The executive director of the Florida United Business Association or his or her designee.

(c) The term of an appointed member shall be for 4 years, beginning August 1, 2013, except that at the time of initial appointments, two members appointed by the Governor, one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, and one member appointed by the network's statewide director shall be appointed for 2 years. An appointed member may be reappointed to a subsequent term. Members of the statewide advisory board may not receive compensation but may be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(5) SMALL BUSINESS SUPPORT SERVICES; AGREEMENT.—

(a) The statewide director, in consultation with the advisory board, shall develop support services that are delivered through regional small business development centers. Support services must target the needs of businesses that employ fewer than 100 persons and demonstrate an assessed capacity to grow in employment or revenue.

(b) Support services must include, but need not be limited to, providing information or research, consulting, educating, or assisting businesses in the following activities:

1. Planning related to the start-up, operation, or expansion of a small business enterprise in this state. Such activities include providing guidance on business formation, structure, management, registration, regulation, and taxes.

2. Developing and implementing strategic or business plans. Such activities include analyzing a business's mission, vision,

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strategies, and goals; critiquing the overall plan; and creating performance measures.

3. Developing the financial literacy of existing businesses related to their business cash flow and financial management plans. Such activities include conducting financial analysis health checks, assessing cost control management techniques, and building financial management strategies and solutions.

4. Developing and implementing plans for existing businesses to access or expand to new or existing markets. Such activities include conducting market research, researching and identifying expansion opportunities in international markets, and identifying opportunities in selling to units of government.

5. Supporting access to capital for business investment and expansion. Such activities include providing technical assistance relating to obtaining surety bonds; identifying and assessing potential debt or equity investors or other financing opportunities; assisting in the preparation of applications, projections, or pro forma or other support documentation for surety bond, loan, financing, or investment requests; and facilitating conferences with lenders or investors.

6. Assisting existing businesses to plan for a natural or man-made disaster, and assisting businesses when such an event occurs. Such activities include creating business continuity and disaster plans, preparing disaster and bridge loan applications, and carrying out other emergency support functions.

(c) A business receiving support services must agree to participate in assessments of such services. The agreement, at a minimum, must request the business to report demographic characteristics, changes in employment and sales, debt and

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equity capital attained, and government contracts acquired. The host institution may require additional reporting requirements for funding described in subsection (7).

(6) REQUIRED MATCH.—The network must provide a match equal to the total amount of any direct legislative appropriation which is received directly by the host institution and is specifically designated for the network. The match may include funds from federal or other nonstate funding sources designated for the network. At least 50 percent of the match must be cash. The remaining 50 percent may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

(7) ADDITIONAL STATE FUNDS; USES; PAY-PER-PERFORMANCE INCENTIVES; STATEWIDE SERVICE; SERVICE ENHANCEMENTS; BEST PRACTICES; ELIGIBILITY.—

(a) The statewide director, in coordination with the host institution, shall establish a pay-per-performance incentive for regional small business development centers. Such incentive shall be funded from half of any state appropriation received directly by the host institution, which appropriation is specifically designated for the network. These funds shall be distributed to the regional small business development centers based upon data collected from the businesses as provided under paragraph (5)(c). The distribution formula must provide for the distribution of funds in part on the gross number of jobs created annually by each center and in part on the number of jobs created per support service hour. The pay-per-performance incentive must supplement the operations and support services of each regional small business development center.

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(b) Half of any state funds received directly by the host institution which are specifically designated for the network shall be distributed by the statewide director, in coordination with the advisory board, for the following purposes:

1. Ensuring that support services are available statewide, especially in underserved and rural areas of the state, to assist eligible businesses;

2. Enhancing participation in the network among state universities and colleges; and

3. Facilitating the adoption of innovative small business assistance best practices by the regional small business development centers.

(c) The statewide director, in coordination with the advisory board, shall develop annual programs to distribute funds for each of the purposes described in paragraph (b). The network shall announce the annual amount of available funds for each program, performance expectations, and other requirements. For each program, the statewide director shall present applications and recommendations to the advisory board. The advisory board shall make the final approval of applications. Approved applications must be publicly posted. At a minimum, programs must include:

1. New regional small business development centers; and

2. Awards for the top six regional small business development centers that adopt best practices, as determined by the advisory board. Detailed information about best practices must be made available to regional small business development centers for voluntary implementation.

(d) A regional small business development center that has

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been found by the statewide director to perform poorly, to engage in improper activity affecting the operation and integrity of the network, or to fail to follow the rules and procedures set forth in the laws, regulations, and policies governing the network, is not eligible for funds under this subsection.

(e) Funds awarded under this subsection may not reduce matching funds dedicated to the regional small business development centers.

(8) REPORTING.—

(a) The statewide director shall quarterly update the Board of Governors, the department, and the advisory board on the network's progress and outcomes, including aggregate information on businesses assisted by the network.

(b) The statewide director, in coordination with the advisory board, shall annually report, on October 1, to the President of the Senate and the Speaker of the House of Representatives on the network's progress and outcomes for the previous fiscal year. The report must include aggregate information on businesses assisted by the network; network services and programs; the use of all federal, state, local, and private funds received by the network and the regional small business development centers, including any additional funds specifically appropriated by the Legislature for the purposes described in subsection (7); and the network's economic benefit to the state. The report must contain specific information on performance-based metrics and contain the methodology used to calculate the network's economic benefit to the state.

Section 9. Subsection (4) is added to section 288.005,

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Florida Statutes, to read:

288.005 Definitions.—As used in this chapter, the term:

(4) "Jobs" means full-time equivalent positions, including, but not limited to, positions obtained from a temporary employment agency or employee leasing company or through a union agreement or coemployment under a professional employer organization agreement, which result directly from a project in this state. This number does not include temporary construction jobs involved with the construction of facilities for the project.

Section 10. Subsection (3) of section 288.012, Florida Statutes, is amended to read:

288.012 State of Florida international offices; state protocol officer; protocol manual.—The Legislature finds that the expansion of international trade and tourism is vital to the overall health and growth of the economy of this state. This expansion is hampered by the lack of technical and business assistance, financial assistance, and information services for businesses in this state. The Legislature finds that these businesses could be assisted by providing these services at State of Florida international offices. The Legislature further finds that the accessibility and provision of services at these offices can be enhanced through cooperative agreements or strategic alliances between private businesses and state, local, and international governmental entities.

(3) ~~By October 1 of each year,~~ Each international office shall annually submit to Enterprise Florida, Inc., ~~the department~~ a complete and detailed report on its activities and accomplishments during the previous ~~preceding~~ fiscal year for

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inclusion in the annual report required under s. 288.906. In the ~~a~~ format and by the annual date prescribed ~~provided~~ by Enterprise Florida, Inc., the report must set forth information on:

(a) The number of Florida companies assisted.

(b) The number of inquiries received about investment opportunities in this state.

(c) The number of trade leads generated.

(d) The number of investment projects announced.

(e) The estimated U.S. dollar value of sales confirmations.

(f) The number of representation agreements.

(g) The number of company consultations.

(h) Barriers or other issues affecting the effective operation of the office.

(i) Changes in office operations which are planned for the current fiscal year.

(j) Marketing activities conducted.

(k) Strategic alliances formed with organizations in the country in which the office is located.

(l) Activities conducted with Florida's other international offices.

(m) Any other information that the office believes would contribute to an understanding of its activities.

Section 11. Section 288.061, Florida Statutes, is amended to read:

288.061 Economic development incentive application process.—

(1) Upon receiving a submitted economic development incentive application, the Division of Strategic Business

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Development of the Department of Economic Opportunity and designated staff of Enterprise Florida, Inc., shall review the application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant. The department shall recommend to the executive director to approve or disapprove an applicant business. If review of the application demonstrates that the application is incomplete, the executive director shall notify the applicant business within the first 5 business days after receiving the application.

(2) Beginning July 1, 2013, the department shall review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives proposed for the project. The term "economic benefits" has the same meaning as in s. 288.005. The Office of Economic and Demographic Research shall review and evaluate the methodology and model used to calculate the economic benefits. For purposes of this requirement, an amended definition of economic benefits may be developed in conjunction with the Office of Economic and Demographic Research. The Office of Economic and Demographic Research shall report on the methodology and model by September 1, 2013, and every third year thereafter, to the President of the Senate and the Speaker of the House of Representatives.

(3) ~~(2)~~ Within 10 business days after the department receives the submitted economic development incentive application, the executive director shall approve or disapprove the application and issue a letter of certification to the

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applicant which includes a justification of that decision, unless the business requests an extension of that time.

(a) The contract or agreement with the applicant must ~~shall~~ specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The department may enter into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature.

(b) The release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program, except as provided in subsection (4).

(4)(a) In order to receive an incentive under s. 288.1088 or s. 288.1089, an applicant must provide the department with a surety bond, issued by an insurer authorized to do business in this state, for the amount of the award under the incentive contract or agreement. Funds may not be paid to an applicant until the department certifies compliance with this subsection.

1. The contract or agreement must provide that the bond remain in effect until all performance conditions in the contract or agreement have been satisfied. The department may require the bond to cover the entire amount of the contract or agreement or allow for a bond to be renewed upon the completion of scheduled performance measurements specified in the contract or agreement. The contract or agreement must provide that the release of any funds is contingent upon receipt by the

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department of the surety bond.

2. The contract or agreement must provide that up to half of the premium payment on the surety bond may be paid from the award amount, not to exceed 3 percent of the award.

3. The applicant shall notify the department at least 10 days before each premium payment is due.

4. Any notice of cancellation or nonrenewal issued by an insurer must comply with the notice requirements of s. 626.9201. If the applicant receives a notice of cancellation or nonrenewal, the applicant must immediately notify the department.

5. The cancellation of the surety bond is a violation of the contract or agreement between the applicant and the department. The department is released from any obligation to make future scheduled payments unless the applicant is able to secure a new surety bond or comply with the requirements of paragraphs (b) and (c) within 90 days before the effective date of the cancellation.

(b) If an applicant is unable to secure a surety bond or can demonstrate that obtaining a bond is unreasonable in cost, the department may waive the requirements specified in paragraph (a) by certifying in writing to the Governor, President of the Senate, and Speaker of the House of Representatives the following information:

1. An explanation stating the reasons why the applicant could not obtain a bond, to the extent such information is not confidential under s. 288.075;

2. A description of the economic benefits expected to be generated by the incentive award which indicates that the

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project warrants waiver of the requirement; and

3. An evaluation of the quality and value of the applicant which supports the selection of the alternative securitization under paragraph (c). The department's evaluation must consider the following information when determining the form for securing the award amount:

a. A financial analysis of the company, including an evaluation of the company's short-term liquidity ratio as measured by its assets to liability, the company's profitability ratio, and the company's long-term solvency as measured by its debt-to-equity ratio;

b. The historical market performance of the company;

c. Any independent evaluations of the company;

d. The latest audit of the company's financial statement and the related auditor's management letter; and

e. Any other types of reports that are related to the internal controls or management of the company.

(c)1. If the department grants a waiver under paragraph (b), the incentives contract or agreement must provide for securing the award amount in one of the following forms:

a. An irrevocable letter of credit issued by a financial institution, as defined in s. 655.005;

b. Cash or securities held in trust by a financial institution, as defined in s. 655.005, and subject to a control agreement; or

c. A secured transaction in collateral under the control or possession of the applicant for the value of the award amount. The department is authorized to negotiate the terms and conditions of the security agreement.

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2. The contract or agreement must provide that the release of any funds is contingent upon the receipt of documentation by the department which satisfies all of the requirements found in this paragraph. Funds may not be paid to the applicant until the department certifies compliance with this subsection.

3. The irrevocable letter of credit, trust, or security agreement must remain in effect until all performance conditions specified in the contract or agreement have been satisfied. Failure to comply with this provision results in a violation of the contract or agreement between the applicant and the department and releases the department from any obligation to make future scheduled payments.

(d) The department may waive the requirements of paragraphs (a) through (c) by certifying to the Governor and the chair and vice chair of the Legislative Budget Commission the following information:

1. The applicant demonstrates the financial ability to fulfill the requirements of the contract and has submitted an independently audited financial statement for the previous 5 years;

2. If applicable, the applicant was previously a recipient of an incentive under an economic development program, was subject to clawback requirements, and timely complied with those provisions; and

3. The department has determined that waiver of the requirements of paragraphs (a) through (c) is in the best interest of the state.

(e) For waivers granted under paragraph (d), the department shall provide a written description and evaluation of the waiver

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to the chair and vice chair of the Legislative Budget Commission. Such information may be provided at the same time that the information for the project consultation is provided to the Legislative Budget Commission under s. 288.1088 or s. 288.1089. If the chair or vice chair of the Legislative Budget Commission timely advises the department that such action or proposed action exceeds delegated authority or is contrary to legislative policy or intent, the department shall void the waiver until the Legislative Budget Commission or the Legislature addresses the issue. A waiver granted by the department for any project exceeding $5 million must be approved by the Legislative Budget Commission.

(f) The provisions of this subsection shall apply to any contract entered into on or after July 1, 2013.

(5) In the event of default on the performance conditions specified in the contract or agreement, or violation of any of the provisions found in this section, the state may, in addition to any other remedy provided by law, bring suit to enforce its interest.

(6) ~~(3)~~ The department shall validate contractor performance and report~~.~~ such ~~Such~~ validation ~~shall be reported~~ in the annual incentives ~~incentive~~ report required under s. 288.907.

(7) The department is authorized to adopt rules to implement this section.

Section 12. Subsection (8) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(8) REDI shall submit a report to the department ~~Governor, the President of the Senate, and the Speaker of the House of~~

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~~Representatives each year on or before September 1~~ on all REDI activities for the previous ~~prior~~ fiscal year as a supplement to the department's annual report required under s. 20.60. This supplementary report must ~~shall~~ include:

(a) A status report on all projects currently being coordinated through REDI, the number of preferential awards and allowances made pursuant to this section, the dollar amount of such awards, and the names of the recipients.

(b) ~~The report shall also include~~ A description of all waivers of program requirements granted.

(c) ~~The report shall also include~~ Information as to the economic impact of the projects coordinated by REDI.~~, and~~

(d) Recommendations based on the review and evaluation of statutes and rules having an adverse impact on rural communities~~,~~ and proposals to mitigate such adverse impacts.

Section 13. Effective October 1, 2013, section 288.076, Florida Statutes, is created to read:

288.076 Return on investment reporting for economic development programs.—

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

(a) "Jobs" has the same meaning as provided in s. 288.106(2)(i).

(b) "Participant business" means an employing unit, as defined in s. 443.036, that has entered into an agreement with the department to receive a state investment.

(c) "Project" has the same meaning as provided in s. 288.106(2)(m).

(d) "Project award date" means the date a participant business enters into an agreement with the department to receive

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a state investment.

(e) "State investment" means any state grants, tax exemptions, tax refunds, tax credits, or other state incentives provided to a business under a program administered by the department, including the capital investment tax credit under s. 220.191.

(2) The department shall maintain a website for the purpose of publishing the information described in this section. The information required to be published under this section must be provided in a format accessible to the public which enables users to search for and sort specific data and to easily view and retrieve all data at once.

(3) Within 48 hours after expiration of the period of confidentiality for project information deemed confidential and exempt pursuant to s. 288.075, the department shall publish the following information pertaining to each project:

(a) *Projected economic benefits.*—The projected economic benefits at the time of the initial project award date.

(b) *Project information.*—

1. The program or programs through which state investment is being made.

2. The maximum potential cumulative state investment in the project.

3. The target industry or industries, and any high impact sectors implicated by the project.

4. The county or counties that will be impacted by the project.

5. The total cumulative local financial commitment and in-kind support for the project.

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(c) *Participant business information.*—

1. The location of the headquarters of the participant business or, if a subsidiary, the headquarters of the parent company.

2. The firm size class of the participant business, or where owned by a parent company the firm size class of the participant business's parent company, using the firm size classes established by the United States Department of Labor Bureau of Labor Statistics, and whether the participant business qualifies as a small business as defined in s. 288.703.

3. The date of the project award.

4. The expected duration of the contract.

5. The anticipated dates when the participant business will claim the last state investment.

(d) *Project evaluation criteria.*—

1. Economic benefits generated by the project.

2. The net indirect and induced incremental jobs to be generated by the project.

3. The net indirect and induced incremental capital investment to be generated by the project.

(e) *Project performance goals.*—

1. The incremental direct jobs attributable to the project, identifying the number of jobs generated and the number of jobs retained.

2. The number of jobs generated and the number of jobs retained by the project, and for projects commencing after October 1, 2013, the median annual wage of persons holding such jobs.

3. The incremental direct capital investment in the state

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generated by the project.

(f) *Total state investment to date.*—The total amount of state investment disbursed to the participant business to date under the terms of the contract, itemized by incentive program.

(4) The department shall use methodology and formulas established by the Office of Economic and Demographic Research to calculate the economic benefits of each project. The department shall calculate and publish on its website the economic benefits of each project within 48 hours after the conclusion of the agreement between each participant business and the department. The Office of Economic and Demographic Research shall provide a description of the methodology used to calculate the economic benefits of a project to the department, and the department must publish the information on its website within 48 hours after receiving such information.

(5) At least annually, from the project award date, the department shall:

(a) Publish verified results to update the information described in paragraphs (3)(b)-(f) to accurately reflect any changes in the published information since the project award date.

(b) Publish on its website the date on which the information collected and published for each project was last updated.

(6) Annually, the department shall publish information relating to the progress of Quick Action Closing Fund projects, including the average number of days between the date the department receives a completed application and the date on which the application is approved.

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(7) The department shall publish the following documents at the times specified herein:

(a) Within 48 hours after expiration of the period of confidentiality provided under s. 288.075, the department shall publish the contract or agreement described in s. 288.061. The contract or agreement must be redacted to protect the participant business from disclosure of information that remains confidential or exempt by law.

(b) Within 48 hours after submitting any report of findings and recommendations made pursuant to s. 288.106(7)(d) concerning a business's failure to complete a tax refund agreement pursuant to the tax refund program for qualified target industry businesses, the department shall publish such report.

(8) For projects completed before October 1, 2013, the department shall compile and, by October 1, 2014, shall publish the information described in subsections (3), (4), and (5), to the extent such information is available and applicable.

(9) The provisions of this section that restrict the department's publication of information are intended only to limit the information that the department may publish on its website and shall not be construed to create an exemption from public records requirements under s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

(10) The department may adopt rules to administer this section.

Section 14. Paragraph (c) of subsection (3) of section 288.095, Florida Statutes, is repealed.

Section 15. Paragraph (c) of subsection (4) and paragraph (d) of subsection (7) of section 288.106, Florida Statutes, are

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amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(4) APPLICATION AND APPROVAL PROCESS.—

(c) Each application meeting the requirements of paragraph (b) must be submitted to the department for determination of eligibility. The department shall review and evaluate each application based on, but not limited to, the following criteria:

1. Expected contributions to the state's economy, consistent with the state strategic economic development plan prepared by the department.

2. The economic benefits of the proposed award of tax refunds under this section ~~and the economic benefits of state incentives proposed for the project~~. ~~The term "economic benefits" has the same meaning as in s. 288.005. The Office of Economic and Demographic Research shall review and evaluate the methodology and model used to calculate the economic benefits and shall report its findings by September 1 of every 3rd year, to the President of the Senate and the Speaker of the House of Representatives.~~

3. The amount of capital investment to be made by the applicant in this state.

4. The local financial commitment and support for the project.

5. The <u>expected</u> effect of the project on the <u>unemployed and underemployed</u> ~~unemployment rate~~ in the county where the project will be located.

6. The <u>expected</u> effect of the award on the viability of the

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project and the probability that the project would be undertaken in this state if such tax refunds are granted to the applicant.

~~7. The expected long-term commitment of the applicant to economic growth and employment in this state resulting from the project.~~

7.~~8.~~ A review of the business's past activities in this state or other states, including whether the ~~such~~ business has been subjected to criminal or civil fines and penalties and whether the business received economic development incentives in other states and the results of such incentive agreements. This subparagraph does not require the disclosure of confidential information.

(7) ADMINISTRATION.—

(d) Beginning with tax refund agreements signed after July 1, 2010, the department shall attempt to ascertain the causes for any business's failure to complete its agreement and ~~shall report~~ its findings and recommendations must be included in the annual incentives report under s. 288.907 ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~. ~~The report shall be submitted by December 1 of each year beginning in 2011.~~

Section 16. Paragraphs (c) and (d) of subsection (1), subsections (2) and (3), and paragraphs (a), (b), and (f) of subsection (4) of section 288.107, Florida Statutes, are amended to read:

288.107 Brownfield redevelopment bonus refunds.—

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

(c) "Brownfield area eligible for bonus refunds" means a brownfield site for which a rehabilitation agreement with the

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Department of Environmental Protection or a local government delegated by the Department of Environmental Protection has been executed under s. 376.80 and any abutting real property parcel within a brownfield ~~contiguous~~ area ~~of one or more brownfield sites, some of which may not be contaminated, and~~ which has been designated by a local government by resolution under s. 376.80. ~~Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency designated brownfield pilot projects.~~

(d) "Eligible business" means:

1. A qualified target industry business as defined in s. 288.106(2); or

2. A business that can demonstrate a fixed capital investment of at least $2 million in mixed-use business activities, including multiunit housing, commercial, retail, and industrial in brownfield areas eligible for bonus refunds, ~~or at least $500,000 in brownfield areas that do not require site cleanup,~~ and that provides benefits to its employees.

(2) BROWNFIELD REDEVELOPMENT BONUS REFUND.—Bonus refunds shall be approved by the department as specified in the final order and allowed from the account as follows:

(a) A bonus refund of $2,500 shall be allowed to any qualified target industry business as defined in s. 288.106 for each new Florida job created in a brownfield area eligible for bonus refunds which ~~that~~ is claimed on the qualified target industry business's annual refund claim authorized in s. 288.106(6).

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(b) A bonus refund of up to $2,500 shall be allowed to any other eligible business as defined in subparagraph (1)(d)2. for each new Florida job created in a brownfield area eligible for bonus refunds which ~~that~~ is claimed under an annual claim procedure similar to the annual refund claim authorized in s. 288.106(6). The amount of the refund shall be equal to 20 percent of the average annual wage for the jobs created.

(3) CRITERIA.—The minimum criteria for participation in the brownfield redevelopment bonus refund are:

(a) The creation of at least 10 new full-time permanent jobs. Such jobs shall not include construction or site rehabilitation jobs associated with the implementation of a brownfield site agreement as described in s. 376.80(5).

(b) The completion of a fixed capital investment of at least $2 million in mixed-use business activities, including multiunit housing, commercial, retail, and industrial in brownfield areas eligible for bonus refunds, ~~or at least $500,000 in brownfield areas that do not require site cleanup,~~ by an eligible business applying for a refund under paragraph (2)(b) which provides benefits to its employees.

~~(c) That the designation as a brownfield will diversify and strengthen the economy of the area surrounding the site.~~

~~(d) That the designation as a brownfield will promote capital investment in the area beyond that contemplated for the rehabilitation of the site.~~

~~(e) A resolution adopted by the governing board of the county or municipality in which the project will be located that recommends that certain types of businesses be approved.~~

(4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS REFUNDS.—

(a) To be eligible to receive a bonus refund for new Florida jobs created in a brownfield area eligible for bonus refunds, a business must have been certified as a qualified target industry business under s. 288.106 or eligible business as defined in paragraph (1)(d) and must have indicated on the qualified target industry business tax refund application form submitted in accordance with s. 288.106(4) or other similar agreement for other eligible business as defined in paragraph (1)(d) that the project for which the application is submitted is or will be located in a brownfield area eligible for bonus refunds and that the business is applying for certification as a qualified brownfield business under this section, and must have signed a qualified target industry business tax refund agreement with the department that indicates that the business has been certified as a qualified target industry business located in a brownfield area eligible for bonus refunds and specifies the schedule of brownfield redevelopment bonus refunds that the business may be eligible to receive in each fiscal year.

(b) To be considered to receive an eligible brownfield redevelopment bonus refund payment, the business meeting the requirements of paragraph (a) must submit a claim once each fiscal year on a claim form approved by the department which indicates the location of the brownfield site for which a rehabilitation agreement with the Department of Environmental Protection or a local government delegated by the Department of Environmental Protection has been executed under s. 376.80, the address of the business facility's brownfield location, the name of the brownfield in which it is located, the number of jobs created, and the average wage of the jobs created by the

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business within the brownfield as defined in s. 288.106 or other eligible business as defined in paragraph (1)(d) and the administrative rules and policies for that section.

(f) Applications shall be reviewed and certified pursuant to s. 288.061. The department shall review all applications submitted under s. 288.106 or other similar application forms for other eligible businesses as defined in paragraph (1)(d) which indicate that the proposed project will be located in a brownfield area eligible for bonus refunds and determine, with the assistance of the Department of Environmental Protection, that the project location is within a brownfield area eligible for bonus refunds as provided in this act.

Section 17. Subsection (8) of section 288.1081, Florida Statutes, is amended to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(8) The annual report required under s. 20.60 must describe ~~On June 30 and December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes~~ in detail the use of the loan funds. The report must include, at a minimum, the number of businesses receiving loans, the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, the locations and types of economic activity undertaken by the borrowers, the amounts of loan repayments made to date, and the default rate of borrowers.

Section 18. Subsection (8) of section 288.1082, Florida Statutes, is amended to read:

288.1082 Economic Gardening Technical Assistance Pilot

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Program.—

(8) The annual report required under s. 20.60 must describe ~~On December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes~~ in detail the progress of the pilot program. The report must include, at a minimum, the number of businesses receiving assistance, the number of full-time equivalent jobs created as a result of the assistance, if any, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the businesses.

Section 19. Paragraph (e) of subsection (3) of section 288.1088, Florida Statutes, is amended to read:

288.1088 Quick Action Closing Fund.—

(3)

(e) The department ~~Enterprise Florida, Inc.,~~ shall validate contractor performance and report~~.~~ such validation in the annual incentives report required under s. 288.907 ~~shall be reported within 6 months after completion of the contract to the Governor, President of the Senate, and the Speaker of the House of Representatives~~.

Section 20. Paragraphs (b) and (d) of subsection (4), and subsections (9) and (11) of section 288.1089, Florida Statutes, are amended to read:

288.1089 Innovation Incentive Program.—

(4) To qualify for review by the department, the applicant must, at a minimum, establish the following to the satisfaction of the department:

(b) A research and development project must:

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1. Serve as a catalyst for an emerging or evolving technology cluster.

2. Demonstrate a plan for significant higher education collaboration.

3. Provide the state, at a minimum, a cumulative break-even economic benefit ~~return on investment~~ within a 20-year period.

4. Be provided with a one-to-one match from the local community. The match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural areas, brownfield areas, and enterprise zones.

(d) For an alternative and renewable energy project in this state, the project must:

1. Demonstrate a plan for significant collaboration with an institution of higher education;

2. Provide the state, at a minimum, a cumulative break-even economic benefit ~~return on investment~~ within a 20-year period;

3. Include matching funds provided by the applicant or other available sources. The match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural areas, brownfield areas, and enterprise zones;

4. Be located in this state; and

5. Provide at least 35 direct, new jobs that pay an estimated annual average wage that equals at least 130 percent of the average private sector wage.

(9) The department shall validate the performance of an innovation business, a research and development facility, or an alternative and renewable energy business that has received an award. At the conclusion of the innovation incentive award agreement, or its earlier termination, the department shall

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include in the annual incentives report required under s. 288.907 a detailed description of~~, within 90 days, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing~~ whether the recipient of the innovation incentive grant achieved its specified outcomes.

(11)~~(a)~~ The department shall include in ~~submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, as part of~~ the annual incentives report required under s. 288.907~~,~~ a report summarizing the activities and accomplishments of the recipients of grants from the Innovation Incentive Program during the previous 12 months and an evaluation of whether the recipients are catalysts for additional direct and indirect economic development in Florida.

~~(b) Beginning March 1, 2010, and every third year thereafter, the Office of Program Policy Analysis and Government Accountability, in consultation with the Auditor General's Office, shall release a report evaluating the Innovation Incentive Program's progress toward creating clusters of high-wage, high-skilled, complementary industries that serve as catalysts for economic growth specifically in the regions in which they are located, and generally for the state as a whole. Such report should include critical analyses of quarterly and annual reports, annual audits, and other documents prepared by the Innovation Incentive Program awardees; relevant economic development reports prepared by the department, Enterprise Florida, Inc., and local or regional economic development organizations; interviews with the parties involved; and any other relevant data. Such report should also include legislative~~

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~~recommendations, if necessary, on how to improve the Innovation Incentive Program so that the program reaches its anticipated potential as a catalyst for direct and indirect economic development in this state.~~

Section 21. Subsection (3) of section 288.1253, Florida Statutes, is amended to read:

288.1253 Travel and entertainment expenses.—

(3) The Office of Film and Entertainment ~~department~~ shall include in the annual report for the entertainment industry financial incentive program required under s. 288.1254(10) a ~~prepare an annual~~ report of the office's expenditures ~~of the Office of Film and Entertainment and provide such report to the Legislature no later than December 30 of each year~~ for ~~the expenditures of~~ the previous fiscal year. The report must ~~shall~~ consist of a summary of all travel, entertainment, and incidental expenses incurred within the United States and all travel, entertainment, and incidental expenses incurred outside the United States, as well as a summary of all successful projects that developed from such travel.

Section 22. Subsection (10) of section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

(10) ANNUAL REPORT.—Each November 1 ~~October 1~~, the Office of Film and Entertainment shall submit ~~provide~~ an annual report for the previous fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines the incentive program's return on investment and economic benefits to the state. The report must ~~shall~~ also

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include an estimate of the full-time equivalent positions created by each production that received tax credits under this section and information relating to the distribution of productions receiving credits by geographic region and type of production. The report must also include the expenditures report required under s. 288.1253(3) and the information describing the relationship between tax exemptions and incentives to industry growth required under s. 288.1258(5).

Section 23. Subsection (5) of section 288.1258, Florida Statutes, is amended to read:

288.1258 Entertainment industry qualified production companies; application procedure; categories; duties of the Department of Revenue; records and reports.—

(5) RELATIONSHIP OF TAX EXEMPTIONS AND INCENTIVES TO INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The Office of Film and Entertainment shall keep annual records from the information provided on taxpayer applications for tax exemption certificates beginning January 1, 2001. These records also must ~~shall~~ reflect a ratio of the annual amount of sales and use tax exemptions under this section, plus the incentives awarded pursuant to s. 288.1254 to the estimated amount of funds expended by certified productions. In addition, the office shall maintain data showing annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages. The employment information must ~~shall~~ include an estimate of the full-time equivalent positions created by each production that received tax credits pursuant to s. 288.1254. The Office of Film and Entertainment shall include ~~report~~ this information in the annual report for the entertainment industry financial incentive

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program required under s. 288.1254(10) ~~to the Legislature no later than December 1 of each year~~.

Section 24. Subsection (3) of section 288.714, Florida Statutes, is amended to read:

288.714 Quarterly and annual reports.—

(3) ~~By August 31 of each year,~~ The department shall include in its annual report required under s. 20.60 ~~provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~ a detailed report of the performance of the Black Business Loan Program. The report must include a cumulative summary of the quarterly report data compiled pursuant to ~~required by~~ subsection (2) ~~(1)~~.

Section 25. Section 288.7771, Florida Statutes, is amended to read:

288.7771 Annual report of Florida Export Finance Corporation.—The corporation shall annually prepare and submit to Enterprise Florida, Inc., ~~the department~~ for inclusion in its annual report required under s. 288.906 ~~by s. 288.095~~ a complete and detailed report setting forth:

(1) The report required in s. 288.776(3).

(2) Its assets and liabilities at the end of its most recent fiscal year.

Section 26. Subsections (3), (4), and (5) of section 288.903, Florida Statutes, are amended to read:

288.903 Duties of Enterprise Florida, Inc.—Enterprise Florida, Inc., shall have the following duties:

(3) Prepare an annual report pursuant to s. 288.906.

(4) Prepare, in conjunction with the department, ~~and~~ an annual incentives report pursuant to s. 288.907.

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(5) ~~(4)~~ Assist the department with the development of an annual and a long-range strategic business blueprint for economic development required in s. 20.60.

(6) ~~(5)~~ In coordination with Workforce Florida, Inc., identify education and training programs that will ensure Florida businesses have access to a skilled and competent workforce necessary to compete successfully in the domestic and global marketplace.

Section 27. Subsection (6) of section 288.904, Florida Statutes, is repealed.

Section 28. Subsection (3) is added to section 288.906, Florida Statutes, to read:

288.906 Annual report of Enterprise Florida, Inc., and its divisions; audits.—

(3) The following reports must be included as supplements to the detailed report required by this section:

(a) The annual report of the Florida Export Finance Corporation required under s. 288.7771.

(b) The report on international offices required under s. 288.012.

Section 29. Section 288.907, Florida Statutes, is amended to read:

288.907 Annual incentives report.—

~~(1)~~ By December 30 of each year, ~~In addition to the annual report required under s. 288.906,~~ Enterprise Florida, Inc., in conjunction with the department, ~~by December 30 of each year,~~ shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed incentives report quantifying the economic benefits for all of the economic

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development incentive programs marketed by Enterprise Florida, Inc.

~~(a)~~ The annual incentives report must include:

(1) For each incentive program:

(a)~~1.~~ A brief description of the incentive program.

(b)~~2.~~ The amount of awards granted, by year, since inception and the annual amount actually transferred from the state treasury to businesses or for the benefit of businesses for each of the previous 3 years.

~~3. The economic benefits, as defined in s. 288.005, based on the actual amount of private capital invested, actual number of jobs created, and actual wages paid for incentive agreements completed during the previous 3 years.~~

(c)~~4.~~ ~~The report shall also include~~ The actual amount of private capital invested, actual number of jobs created, and actual wages paid for incentive agreements completed during the previous 3 years for each target industry sector.

(2)~~(b)~~ For projects completed during the previous state fiscal year~~, the report must include~~:

(a)~~1.~~ The number of economic development incentive applications received.

(b)~~2.~~ The number of recommendations made to the department by Enterprise Florida, Inc., including the number recommended for approval and the number recommended for denial.

(c)~~3.~~ The number of final decisions issued by the department for approval and for denial.

(d)~~4.~~ The projects for which a tax refund, tax credit, or cash grant agreement was executed, identifying for each project:

1.~~a.~~ The number of jobs committed to be created.

2.~~b.~~ The amount of capital investments committed to be made.

3.~~c.~~ The annual average wage committed to be paid.

4.~~d.~~ The amount of state economic development incentives committed to the project from each incentive program under the project's terms of agreement with the Department of Economic Opportunity.

5.~~e.~~ The amount and type of local matching funds committed to the project.

(e) Tax refunds paid or other payments made funded out of the Economic Development Incentives Account for each project.

(f) The types of projects supported.

(3)~~(c)~~ For economic development projects that received tax refunds, tax credits, or cash grants under the terms of an agreement for incentives~~, the report must identify~~:

(a)~~1.~~ The number of jobs actually created.

(b)~~2.~~ The amount of capital investments actually made.

(c)~~3.~~ The annual average wage paid.

(4)~~(d)~~ For a project receiving economic development incentives approved by the department and receiving federal or local incentives, ~~the report must include~~ a description of the federal or local incentives, if available.

(5)~~(e)~~ The ~~report must state the~~ number of withdrawn or terminated projects that did not fulfill the terms of their agreements with the department and, consequently, are not receiving incentives.

(6) For any agreements signed after July 1, 2010, findings and recommendations on the efforts of the department to ascertain the causes of any business's inability to complete its

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agreement made under s. 288.106.

(7) ~~(f)~~ The amount ~~report must include an analysis of the economic benefits, as defined in s. 288.005,~~ of tax refunds, tax credits, or other payments made to projects locating or expanding in state enterprise zones, rural communities, brownfield areas, or distressed urban communities. The report must include a separate analysis of the impact of such tax refunds on state enterprise zones designated under s. 290.0065, rural communities, brownfield areas, and distressed urban communities.

(8) The name of and tax refund amount for each business that has received a tax refund under s. 288.1045 or s. 288.106 during the preceding fiscal year.

(9) ~~(g)~~ An identification of ~~The report must identify~~ the target industry businesses and high-impact businesses.

(10) ~~(h)~~ A description of ~~The report must describe~~ the trends relating to business interest in, and usage of, the various incentives, and the number of minority-owned or woman-owned businesses receiving incentives.

(11) ~~(i)~~ An identification of ~~The report must identify~~ incentive programs not used and recommendations for program changes or program elimination ~~utilized~~.

(12) Information related to the validation of contractor performance required under s. 288.061.

(13) Beginning in 2014, a summation of the activities related to the Florida Space Business Incentives Act.

~~(2) The Division of Strategic Business Development within the department shall assist Enterprise Florida, Inc., in the preparation of the annual incentives report.~~

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Section 30. Subsection (3) of section 288.92, Florida Statutes, is amended to read:

288.92 Divisions of Enterprise Florida, Inc.—

(3) ~~By October 15 each year,~~ Each division shall draft and submit an annual report for inclusion in the report required under 288.906 which details the division's activities during the previous ~~prior~~ fiscal year and includes ~~any~~ recommendations for improving current statutes related to the division's ~~related~~ area of responsibility.

Section 31. Subsection (5) of section 288.95155, Florida Statutes, is amended to read:

288.95155 Florida Small Business Technology Growth Program.—

(5) Enterprise Florida, Inc., shall prepare for inclusion in the annual report ~~of the department~~ required under s. 288.907 ~~by s. 288.095~~ a report on the financial status of the program. The report must specify the assets and liabilities of the program within the current fiscal year and must include a portfolio update that lists all of the businesses assisted, the private dollars leveraged by each business assisted, and the growth in sales and in employment of each business assisted.

Section 32. Section 288.9918, Florida Statutes, is amended to read:

288.9918 Annual reporting by a community development entity.—

(1) A community development entity that has issued a qualified investment shall submit an annual report to the department by January 31 ~~April 30~~ after the end of each year which includes a credit allowance date. The report shall include

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information on investments made in the preceding calendar year to include but not limited to the following:

~~(1) The entity's annual financial statements for the preceding tax year, audited by an independent certified public accountant~~.

(a) ~~(2)~~ The identity of the types of industries, identified by the North American Industry Classification System Code, in which qualified low-income community investments were made.

(b) ~~(3)~~ The names of the counties in which the qualified active low-income businesses are located which received qualified low-income community investments.

(c) ~~(4)~~ The number of jobs created and retained by qualified active low-income community businesses receiving qualified low-income community investments, including verification that the average wages paid meet or exceed 115 percent of the federal poverty income guidelines for a family of four.

(d) ~~(5)~~ A description of the relationships that the entity has established with community-based organizations and local community development offices and organizations and a summary of the outcomes resulting from those relationships.

(e) ~~(6)~~ Other information and documentation required by the department to verify continued certification as a qualified community development entity under 26 U.S.C. s. 45D.

(2) By April 30 after the end of each year which includes a credit allowance date, a community development entity shall submit annual financial statements for the preceding tax year, audited by an independent certified public accountant.

Section 33. Subsection (6) of section 290.0055, Florida Statutes, is amended to read:

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290.0055 Local nominating procedure.—

(6)(a) The department may approve a change in the boundary of any enterprise zone which was designated pursuant to s. 290.0065. A boundary change must continue to satisfy the requirements of subsections (3), (4), and (5).

(b) Upon a recommendation by the enterprise zone development agency, the governing body of the jurisdiction which authorized the application for an enterprise zone may apply to the department for a change in boundary once every 3 years by adopting a resolution that:

1. States with particularity the reasons for the change; and

2. Describes specifically and, to the extent required by the department, the boundary change to be made.

(c) At least 90 days before adopting a resolution seeking a change in the boundary of an enterprise zone, the governing body shall include in a notice of the meeting at which the resolution will be considered an explanation that a change in the boundary of an enterprise zone will be considered and that the change may result in loss of enterprise zone eligibility for the area affected by the boundary change.

(d)1. The governing body of a jurisdiction which has nominated an application for an enterprise zone that is at least 15 square miles and less than 20 square miles ~~no larger than 12 square miles~~ and includes a portion of the state designated as a rural area of critical economic concern under s. 288.0656(7) may apply to the department to expand the boundary of the existing enterprise zone by not more than 3 square miles. ~~An application to expand the boundary of an enterprise zone under this~~

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~~paragraph must be submitted by December 31, 2012.~~

2. The governing body of a jurisdiction which has nominated an application for an enterprise zone that is at least 20 square miles and includes a portion of the state designated as a rural area of critical economic concern under s. 288.0656(7) may apply to the department to expand the boundary of the existing enterprise zone by not more than 5 square miles.

3. An application to expand the boundary of an enterprise zone under this paragraph must be submitted by December 31, 2013.

4.~~2.~~ Notwithstanding the area limitations specified in subsection (4), the department may approve the request for a boundary amendment if the area continues to satisfy the remaining requirements of this section.

5.~~3.~~ The department shall establish the initial effective date of an enterprise zone designated under this paragraph.

Section 34. Subsection (11) of section 290.0056, Florida Statutes, is amended to read:

290.0056 Enterprise zone development agency.—

(11) Before October 1 ~~December 1~~ of each year, the agency shall submit to the department for inclusion in the annual report required under s. 20.60 a complete and detailed written report setting forth:

(a) Its operations and accomplishments during the fiscal year.

(b) The accomplishments and progress concerning the implementation of the strategic plan or measurable goals, and any updates to the strategic plan or measurable goals.

(c) The number and type of businesses assisted by the

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agency during the fiscal year.

(d) The number of jobs created within the enterprise zone during the fiscal year.

(e) The usage and revenue impact of state and local incentives granted during the calendar year.

(f) Any other information required by the department.

Section 35. Section 290.014, Florida Statutes, is amended to read:

290.014 Annual reports on enterprise zones.—

(1) By October 1 ~~February 1~~ of each year, the Department of Revenue shall submit an annual report to the department detailing the usage and revenue impact by county of the state incentives listed in s. 290.007.

(2) ~~By March 1 of each year, the department shall submit an annual report to the Governor, the Speaker of the House of Representatives, and the President of the Senate.~~ The annual report required under s. 20.60 shall include the information provided by the Department of Revenue pursuant to subsection (1) and the information provided by enterprise zone development agencies pursuant to s. 290.0056. In addition, the report shall include an analysis of the activities and accomplishments of each enterprise zone.

Section 36. Section 290.0455, Florida Statutes, is amended to read:

290.0455 Small Cities Community Development Block Grant Loan Guarantee Program; Section 108 loan guarantees.—

(1) The Small Cities Community Development Block Grant Loan Guarantee Program is created. The department shall administer the loan guarantee program pursuant to Section 108 ~~s. 108~~ of

Title I of the Housing and Community Development Act of 1974, as amended, and as further amended by s. 910 of the Cranston-Gonzalez National Affordable Housing Act. The purpose of the Small Cities Community Development Block Grant Loan Guarantee Program is to guarantee, or to make commitments to guarantee, notes or other obligations issued by public entities for the purposes of financing activities enumerated in 24 C.F.R. s. 570.703.

(2) Activities assisted under the loan guarantee program must meet the requirements contained in 24 C.F.R. ss. 570.700-570.710 and may not otherwise be financed in whole or in part from the Florida Small Cities Community Development Block Grant Program.

(3) The department may pledge existing revenues on deposit or future revenues projected to be available for deposit in the Florida Small Cities Community Development Block Grant Program in order to guarantee~~, in whole or in part,~~ the payment of principal and interest on a Section 108 loan ~~made under the loan guarantee program~~.

(4) An applicant approved by the United States Department of Housing and Urban Development to receive a Section 108 loan shall enter into an agreement with the Department of Economic Opportunity which requires the applicant to pledge half of the amount necessary to guarantee the loan in the event of default.

(5) The department shall review all Section 108 loan applications that it receives from local governments. The department shall review the applications ~~must submit all applications it receives to the United States Department of Housing and Urban Development for loan approval,~~ in the order

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received, subject to a determination by the department ~~determining~~ that each ~~the~~ application meets all eligibility requirements contained in 24 C.F.R. ss. 570.700-570.710~~,~~ and has been deemed financially feasible by a loan underwriter approved by the department. If the statewide maximum available for loan guarantee commitments established in subsection (6) has not been committed, the department may submit the Section 108 loan application to the United States Department of Housing and Urban Development with a recommendation that the loan be approved, with or without conditions, or be denied ~~provided that the applicant has submitted the proposed activity to a loan underwriter to document its financial feasibility~~.

(6)~~(5)~~ The maximum amount of an individual loan guarantee commitment that an ~~commitments that any~~ eligible local government may receive is ~~may be~~ limited to $5 ~~$7~~ million ~~pursuant to 24 C.F.R. s. 570.705,~~ and the maximum amount of loan guarantee commitments statewide may not exceed an amount equal to two ~~five~~ times the amount of the most recent grant received by the department under the Florida Small Cities Community Development Block Grant Program. The $5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, that may be refinanced.

(7)~~(6)~~ Section 108 loans guaranteed by the Small Cities Community Development Block Grant Program ~~loan guarantee~~ ~~program~~ must be repaid within 20 years.

(8)~~(7)~~ Section 108 loan applicants must demonstrate ~~guarantees may be used for an activity only if the local government provides evidence~~ to the department that the applicant investigated alternative financing services ~~were~~

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~~investigated~~ and the services were unavailable or insufficient to meet the financing needs of the proposed activity.

(9) If a local government defaults on a Section 108 loan received from the United States Department of Housing and Urban Development and guaranteed through the Florida Small Cities Community Development Block Grant Program, thereby requiring the department to reduce its annual grant award in order to pay the annual debt service on the loan, any future community development block grants that the local government receives must be reduced in an amount equal to the amount of the state's grant award used in payment of debt service on the loan.

(10) If a local government receives a Section 108 loan guaranteed through the Florida Small Cities Community Development Block Grant Program and is granted entitlement community status as defined in subpart D of 24 C.F.R. part 570 by the United States Department of Housing and Urban Development before paying the loan in full, the local government must pledge its community development block grant entitlement allocation as a guarantee of its previous loan and request that the United States Department of Housing and Urban Development release the department as guarantor of the loan.

~~(8) The department must, before approving an application for a loan, evaluate the applicant's prior administration of block grant funds for community development. The evaluation of past performance must take into account the procedural aspects of previous grants or loans as well as substantive results. If the department finds that any applicant has failed to substantially accomplish the results proposed in the applicant's last previously funded application, the department may prohibit~~

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~~the applicant from receiving a loan or may penalize the applicant in the rating of the current application.~~

Section 37. Subsection (11) of section 331.3051, Florida Statutes, is amended to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(11) Annually report on its performance with respect to its business plan, to include finance, spaceport operations, research and development, workforce development, and education. Space Florida shall submit the report ~~shall be submitted~~ to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 30 ~~no later than September 1~~ for the previous ~~prior~~ fiscal year. The annual report must include operations information as required under s. 331.310(2)(e).

Section 38. Paragraph (e) of subsection (2) of section 331.310, Florida Statutes, is amended to read:

331.310 Powers and duties of the board of directors.—

(2) The board of directors shall:

(e) Prepare an annual report of operations as a supplement to the annual report required under s. 331.3051(11). The report must ~~shall~~ include, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, the auditor's report, a summary of the status of existing and proposed bonding projects, comments from management about the year's business, and prospects for the next year~~, which shall be submitted each year by November 30 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leader of~~

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~~the Senate, and the minority leader of the House of Representatives~~.

Section 39. Paragraphs (a) and (e) of subsection (30) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, the term:

(30) "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.

(e)1. A violation of an employer's rule, unless the claimant can demonstrate that:

a.~~1.~~ He or she did not know, and could not reasonably know, of the rule's requirements;

b.~~2.~~ The rule is not lawful or not reasonably related to the job environment and performance; or

c.~~3.~~ The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

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Section 40. Paragraphs (b), (c), and (d) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

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

(b) She or he has completed the department's online work registration ~~registered with the department for work~~ and subsequently reports to the one-stop career center as directed by the regional workforce board for reemployment services. This requirement does not apply to persons who are:

1. Non-Florida residents;

2. On a temporary layoff;

3. Union members who customarily obtain employment through a union hiring hall; or

4. Claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

5. Unable to complete the online work registration due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment. If a person is exempted from the online work registration under this subparagraph, then the filing of his or her claim constitutes registration for work.

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules, and participating in an initial skills review, as directed by the department. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal

relating to her or his eligibility or disqualification for benefits.

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

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

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

the minimal proficiency level.

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

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

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in three consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided

by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

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3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 41. Subsection (13) is added to section 443.101, Florida Statutes, to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(13) For any week with respect to which the department finds that his or her unemployment is due to a discharge from employment for failure without good cause to maintain a license, registration, or certification required by applicable law necessary for the employee to perform her or his assigned job duties. For purposes of this paragraph, the term "good cause" includes, but is not limited to, failure of the employer to

submit information required for a license, registration, or certification; short-term physical injury which prevents the employee from completing or taking a required test; and inability to take or complete a required test that is outside the employee's control.

Section 42. Paragraph (b) of subsection (4) of section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(4) The project to implement the Reemployment Assistance Claims and Benefits Information System is ~~shall be~~ comprised of the following phases and corresponding implementation timeframes:

(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014 ~~2012-2013~~.

Section 43. Subsection (5) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(5) ADDITIONAL RATE FOR INTEREST ON FEDERAL ADVANCES.—

(a) When the Unemployment Compensation Trust Fund has received advances from the Federal Government under the provisions of 42 U.S.C. s. 1321, each contributing employer shall be assessed an additional rate solely for the purpose of

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paying interest due on such federal advances. The additional rate shall be assessed no later than February 1 in each calendar year in which an interest payment is due.

(b) The Revenue Estimating Conference shall estimate the amount of ~~such~~ interest due on federal advances by ~~no later than~~ December 1 of the calendar year before ~~preceding~~ the calendar year in which an interest payment is due. The Revenue Estimating Conference shall, at a minimum, consider the following as the basis for the estimate:

1. The amounts actually advanced to the trust fund.

2. Amounts expected to be advanced to the trust fund based on current and projected unemployment patterns and employer contributions.

3. The interest payment due date.

4. The interest rate that will be applied by the Federal Government to any accrued outstanding balances.

(c) ~~(b)~~ The tax collection service provider shall calculate the additional rate to be assessed against contributing employers. The additional rate assessed for a calendar year is ~~shall be~~ determined by dividing the estimated amount of interest to be paid in that year by 95 percent of the taxable wages as described in s. 443.1217 paid by all employers for the year ending June 30 of the previous ~~immediately preceding~~ calendar year. The amount to be paid by each employer is ~~shall be~~ the product obtained by multiplying such employer's taxable wages as described in s. 443.1217 for the year ending June 30 of the previous ~~immediately preceding~~ calendar year by the rate as determined by this subsection. An assessment may not be made if the amount of assessments on deposit from previous years, plus

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any earned interest, is at least 80 percent of the estimated amount of interest.

(d) The tax collection service provider shall make a separate collection of such assessment, which may be collected at the time of employer contributions and subject to the same penalties for failure to file a report, imposition of the standard rate pursuant to paragraph (3)(h), and interest if the assessment is not received on or before June 30. Section 443.141(1)(d) and (e) does not apply to this separately collected assessment. The tax collection service provider shall maintain those funds in the tax collection service provider's Audit and Warrant Clearing Trust Fund until the provider is directed by the Governor or the Governor's designee to make the interest payment to the Federal Government. Assessments on deposit must be available to pay the interest on advances received from the Federal Government under 42 U.S.C. s. 1321. Assessments on deposit may be invested and any interest earned shall be part of the balance available to pay the interest on advances received from the Federal Government under 42 U.S.C. s. 1321.

(e) Four months after ~~In the calendar year that~~ all advances from the Federal Government under 42 U.S.C. s. 1321 and associated interest are repaid, ~~if there are assessment funds in excess of the amount required to meet the final interest payment,~~ any ~~such~~ excess assessed funds in the Audit and Warrant Clearing Trust Fund, including associated interest, shall be transferred to ~~credited to employer accounts in~~ the Unemployment Compensation Trust Fund. Any assessment amounts subsequently collected shall also be transferred to the Unemployment

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Compensation Trust Fund ~~in an amount equal to the employer's contribution to the assessment for that year divided by the total amount of the assessment for that year, the result of which is multiplied by the amount of excess assessed funds~~.

(f) If ~~However, if~~ the state is permitted to defer interest payments due during a calendar year under 42 U.S.C. s. 1322, payment of the interest assessment is ~~shall~~ not ~~be~~ due. If a deferral of interest expires or is subsequently disallowed by the Federal Government, either prospectively or retroactively, the interest assessment shall be immediately due and payable. Notwithstanding any other provision of this section, if interest due during a calendar year on federal advances is forgiven or postponed under federal law and is no longer due during that calendar year, no interest assessment shall be assessed against an employer for that calendar year, and any assessment already assessed and collected against an employer before the forgiveness or postponement of the interest for that calendar year shall be credited to such employer's account in the Unemployment Compensation Trust Fund. However, such funds may be used only to pay benefits or refunds of erroneous contributions.

(g) This subsection expires July 1, 2014.

Section 44. Paragraph (b) of subsection (2) and paragraph (a) of subsection (3), and paragraph (a) of subsection (6) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(b) *Process.*—When the Reemployment Assistance Claims and Benefits Information System described in s. 443.1113 is fully

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operational, the process for filing claims must incorporate the process for registering for work with the workforce information systems established pursuant to s. 445.011. Unless exempted under s. 443.091(1)(b)5., a claim for benefits may not be processed until the work registration requirement is satisfied. The department may adopt rules as necessary to administer the work registration requirement set forth in this paragraph.

(3) DETERMINATION OF ELIGIBILITY.—

(a) *Notices of claim.*—The Department of Economic Opportunity shall promptly provide a notice of claim to the claimant's most recent employing unit and all employers whose employment records are liable for benefits under the monetary determination. The employer must respond to the notice of claim within 20 days after the mailing date of the notice, or in lieu of mailing, within 20 days after the delivery of the notice. If a contributing employer or its agent fails to timely or adequately respond to the notice of claim or request for information, the employer's account may not be relieved of benefit charges as provided in s. 443.131(3)(a), notwithstanding paragraph (5)(b). The department may adopt rules as necessary to implement the processes described in this paragraph relating to notices of claim.

(6) RECOVERY AND RECOUPMENT.—

(a) Any person who, by reason of her or his fraud, receives benefits under this chapter to which she or he is not entitled is liable for repaying those benefits to the Department of Economic Opportunity on behalf of the trust fund or, in the discretion of the department, to have those benefits deducted from future benefits payable to her or him under this chapter.

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In addition, the department shall impose upon the claimant a penalty equal to 15 percent of the amount overpaid. To enforce this paragraph, the department must find the existence of fraud through a redetermination or decision under this section within 2 years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within 7 years after the redetermination or decision.

Section 45. Effective January 1, 2014, paragraph (a) of subsection (4) of section 443.151, Florida Statutes, is amended to read:

(4) APPEALS.—

(a) Appeals referees.—The Department of Economic Opportunity shall appoint one or more impartial salaried appeals referees in accordance with s. 443.171(3) to hear and decide appealed claims. An appeals referee must be an attorney in good standing with the Florida Bar, or must be successfully admitted to the Florida Bar within 8 months of his or her date of employment. A person may not participate on behalf of the department as an appeals referee in any case in which she or he is an interested party. The department may designate alternates to serve in the absence or disqualification of any appeals referee on a temporary basis. These alternates must have the same qualifications required of appeals referees. The department shall provide the commission and the appeals referees with proper facilities and assistance for the execution of their functions.

Section 46. After January 1, 2014, the department must, through attrition of staff, meet the requirements of Section 45 of this bill.

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Section 47. Subsection (1) of section 443.1715, Florida Statutes, is amended to read:

443.1715 Disclosure of information; confidentiality.—

(1) RECORDS AND REPORTS.—Information revealing an employing unit's or individual's identity obtained from the employing unit or any individual under the administration of this chapter, and any determination revealing that information, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This confidential information may be released in accordance with the provisions in 20 C.F.R. part 603. A person receiving confidential information who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Department of Economic Opportunity or its tax collection service provider may, however, furnish to any employer copies of any report submitted by that employer upon the request of the employer and may furnish to any claimant copies of any report submitted by that claimant upon the request of the claimant. The department or its tax collection service provider may charge a reasonable fee for copies of these reports as prescribed by rule, which may not exceed the actual reasonable cost of the preparation of the copies. Fees received for copies under this subsection must be deposited in the Employment Security Administration Trust Fund.

Section 48. Subsection (1) of section 443.191, Florida Statutes, is amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—

(1) There is established, as a separate trust fund apart from all other public funds of this state, an Unemployment

Compensation Trust Fund, which shall be administered by the Department of Economic Opportunity exclusively for the purposes of this chapter. The fund must ~~shall~~ consist of:

(a) All contributions and reimbursements collected under this chapter;

(b) Interest earned on any moneys in the fund;

(c) Any property or securities acquired through the use of moneys belonging to the fund;

(d) All earnings of these properties or securities;

(e) All money credited to this state's account in the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1103; ~~and~~

(f) All money collected for penalties imposed pursuant to s. 443.151(6)(a); and

(g) Advances on the amount in the federal Unemployment Compensation Trust Fund credited to the state under 42 U.S.C. s. 1321, as requested by the Governor or the Governor's designee.

Except as otherwise provided in s. 443.1313(4), all moneys in the fund must ~~shall~~ be mingled and undivided.

Section 49. Paragraph (b) of subsection (3) and subsection (4) of section 446.50, Florida Statutes, are amended to read:

446.50 Displaced homemakers; multiservice programs; report to the Legislature; Displaced Homemaker Trust Fund created.—

(3) POWERS AND DUTIES OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY.—

(b)1. The department shall enter into contracts with, and make grants to, public and nonprofit private entities for purposes of establishing multipurpose service programs for

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displaced homemakers under this section. Such grants and contracts must ~~shall~~ be awarded pursuant to chapter 287 and based on criteria established in the program ~~state~~ plan as provided in subsection (4) ~~developed pursuant to this section~~. The department shall designate catchment areas that together, must ~~shall~~ compose the entire state, and, to the extent possible from revenues in the Displaced Homemaker Trust Fund, the department shall contract with, and make grants to, entities that will serve entire catchment areas so that displaced homemaker service programs are available statewide. These catchment areas must ~~shall~~ be coterminous with the state's workforce development regions. The department may give priority to existing displaced homemaker programs when evaluating bid responses to the request for proposals.

2. In order to receive funds under this section, and unless specifically prohibited by law from doing so, an entity that provides displaced homemaker service programs must receive at least 25 percent of its funding from one or more local, municipal, or county sources or nonprofit private sources. In-kind contributions may be evaluated by the department and counted as part of the required local funding.

3. The department shall require an entity that receives funds under this section to maintain appropriate data to be compiled in an annual report to the department. Such data must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, the number of clients served, the units of services provided, designated client-specific information including intake and outcome information specific to each client, costs associated with specific services and program administration, total program

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revenues by source and other appropriate financial data, and client followup information at specified intervals after the placement of a displaced homemaker in a job.

(4) DISPLACED HOMEMAKER PROGRAM ~~STATE~~ PLAN.—

~~(a)~~ The Department of Economic Opportunity shall include in its annual report required under s. 20.60 a ~~develop a 3-year state~~ plan for the displaced homemaker program ~~which shall be updated annually~~. The plan must address, at a minimum, the need for programs specifically designed to serve displaced homemakers, any necessary service components for such programs in addition to those described ~~enumerated~~ in this section, goals of the displaced homemaker program with an analysis of the extent to which those goals are being met, and recommendations for ways to address any unmet program goals. Any request for funds for program expansion must be based on the ~~state~~ plan.

~~(b)~~ The displaced homemaker program ~~Each annual update must address any changes in the components of the 3-year state~~ plan ~~and a report that~~ must include, but need not be limited to, the following:

(a)~~1.~~ The scope of the incidence of displaced homemakers;

(b)~~2.~~ A compilation and report, by program, of data submitted to the department pursuant to subparagraph (3)(b)3. ~~subparagraph 3.~~ by funded displaced homemaker service programs;

(c)~~3.~~ An identification and description of the programs in the state which receive funding from the department, including funding information; and

(d)~~4.~~ An assessment of the effectiveness of each displaced homemaker service program based on outcome criteria established by rule of the department.

~~(c) The 3-year state plan must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor on or before January 1, 2001, and annual updates of the plan must be submitted by January 1 of each subsequent year.~~

Section 50. Section 288.80, Florida Statutes, is created to read:

288.80 Short title.—Sections 288.80-288.84 may be cited as the "Gulf Coast Economic Corridor Act."

Section 51. Section 288.801, Florida Statutes, is created to read:

288.801 Gulf Coast Economic Corridor, Legislative Intent.—The Legislature recognizes that fully supporting areas affected by the Deepwater Horizon disaster to ensure goals for economic recovery and diversification are achieved is in the best interest of the citizens of the state. The Legislature intends to provide a long-term source of funding for efforts of economic recovery and enhancement in the gulf coast region. The Legislature finds that it is important to help businesses, individuals, and local governments in the Gulf Coast region recover.

Section 52. Section 288.81, Florida Statutes, is created to read:

288.81 Definitions.—As used in this section, the term:

(a) "Awardee" means a person, organization, or local government granted an award of funds from the Recovery Fund for a program or project.

(b) "Disproportionately affected county" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County,

Santa Rosa County, Walton County, or Wakulla County.

(c) "Earnings" means all the income generated by investments and interest.

(d) "Recovery Fund" means a trust account established by Triumph Gulf Coast, Inc., for the benefit of the disproportionately affected counties.

Section 53. Section 288.82, Florida Statutes, is created to read:

288.82 Triumph Gulf Coast, Inc.; Recovery Fund; Creation; Investment.—

(1) There is created within the Department of Economic Opportunity a nonprofit corporation, to be known as Triumph Gulf Coast, Inc., which shall be registered, incorporated, organized, and operated in compliance with chapter 617, and which is not a unit or entity of state government. Triumph Gulf Coast, Inc., may receive, hold, invest, and administer the Recovery Fund in support of this act. Triumph Gulf Coast, Inc., is a separate budget entity and is not subject to control, supervision, or direction by the Department of Economic Opportunity in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) Triumph Gulf Coast, Inc., must create and administer the Recovery Fund for the benefit of the disproportionately affected counties. The principal of the fund shall derive from:

(a) Seventy-five percent of all funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon disaster, including penalties, fines, fees, and settlements; and

(b) Any funds distributed under 33 U.S.C. 1321(t)(1)(C)(i)(I).

(3) The Recovery Fund must be maintained as a long-term and stable source of revenue, which shall decline over a 30-year period in equal amounts each year. Triumph Gulf Coast, Inc., shall establish a trust account at a federally insured financial institution to hold funds and make deposits and payments. Earnings generated by investments and interest of the fund, plus the amount of principal available each year, shall be available to make awards pursuant to this act and pay administrative costs. Earnings shall be accounted for separated from principal funds. Principal funds set forth in subsection (2) must be accounted for separately. Administrative costs are limited to 1 percent of the earnings in a calendar year. Administrative costs include payment of investment fees, travel and per diem expenses of board members, audits, salary or other costs for employed or contracted staff, including required staff under s. 288.83(9), and other allowable costs. Any funds remaining in the Recovery Fund after 30 years shall revert to the State Treasury.

(4) Triumph Gulf Coast, Inc., shall invest and reinvest the principal of the Recovery Fund in accordance with s. 617.2104, in such a manner not to subject the funds to state or federal taxes, and consistent with an investment policy statement adopted by the corporation.

(a) The board of directors shall formulate an investment policy governing the investment of the principal of the Recovery Fund. The policy shall pertain to the types, kinds or nature of investment of any of the funds, and any limitations, conditions or restrictions upon the methods, practices or procedures for

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investment, reinvestments, purchases, sales or exchange transactions, provided such policies shall not conflict with nor be in derogation of any state constitutional provision or law. The policy shall be formulated with the advice of the financial advisor in consultation with the State Board of Administration

(b) Triumph Gulf Coast, Inc., must competitively procure one or more money managers, under the advice of the financial advisor in consultation with the State Board of Administration, to invest the principal of the Recovery Fund. The applicant manager or mangers may not include representatives from the financial institution housing the trust account for the Recovery Fund. The applicant manager or managers must present a plan to invest the Recovery Fund to maximize earnings while prioritizing the preservation of Recovery Fund principal. Any agreement with a money manager must be reviewed by Triumph Gulf Coast, Inc., for continuance at least every 5 years. Plans should include investment in technology and growth businesses domiciled in, or that will be domiciled in, this state or businesses whose principal address is in this state.

(c) Costs and fees for investment services shall be deducted from the earnings as administrative costs. Fees for investment services shall be no greater than 1.5 basis points.

(d) Annually, Triumph Gulf Coast, Inc., shall cause an audit to be conducted of the investment of the Recovery Fund by the independent certified public accountant retained in s. 288.83. The expense of such audit shall be paid from earnings for administrative purposes.

(5) Triumph Gulf Coast, Inc., shall report on June 30 and December 30 each year to the Governor, the President of the

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Senate, and the Speaker of the House of Representatives on the financial status of the Recovery Fund and its investments, the established priorities, the program and project selection process, including a list of all submitted projects and reasons for approval or denial, and the status of all approved awards.

(6) The Auditor General shall conduct an audit of the Recovery Fund and Triumph Gulf Coast, Inc., annually. Triumph Gulf Coast, Inc., shall provide to the Auditor General any detail or supplemental data required.

Section 54. Section 288.83, Florida Statutes, is created to read:

288.83 Triumph Gulf Coast, Inc.; Organization; Board of Directors.—

(1) Triumph Gulf Coast, Inc., is subject to the provisions of chapter 119 relating to public records and those provisions of chapter 286 relating to public meetings and records.

(2) Triumph Gulf Coast, Inc., shall be governed by a 5-member board of directors. Each of the Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives shall each appoint one member from the private sector. The board of directors shall annually elect a chairperson from among the board's members. The chairperson may be removed by a majority vote of the members. His or her successor shall be elected to serve for the balance of the removed chairperson's term. The chairperson is responsible to ensure records are kept of the proceedings of the board of directors and is the custodian of all books, documents, and papers filed with the board; the minutes of meetings of the board; and the official seal of Triumph Gulf Coast, Inc.

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(3) Each member of the board of directors shall serve for a term of 4 years, except that initially the appointments of the President of the Senate and the Speaker of the House of Representatives each shall serve a term of 2 years to achieve staggered terms among the members of the board. A member is not eligible for reappointment to the board, except, however, any member appointed to a term of 2 years or less may be reappointed for an additional term of 4 years. The initial appointments to the board must be made by November 15, 2013. Vacancies on the board of directors shall be filled by the officer who originally appointed the member. A vacancy that occurs before the scheduled expiration of the term of the member shall be filled for the remainder of the unexpired term.

(4) The Legislature determines that it is in the public interest for the members of the board of directors to be subject to the requirements of ss. 112.3135, 112.3143, and 112.313, notwithstanding the fact that the board members are not public officers or employees. For purposes of those sections, the board members shall be considered to be public officers or employees. In addition to the postemployment restrictions of s. 112.313(9), a person appointed to the board of directors must agree to refrain from having any direct interest in any contract, franchise, privilege, program, project or other benefit arising from an award by Triumph Gulf Coast, Inc., during the term of his or her appointment and for 2 years after the termination of such appointment. It is a misdemeanor of the first degree, punishable as provided in s. 775.083 or s. 775.084, for a person to accept appointment to the board of directors in violation of this subsection or to accept a direct interest in any contract,

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franchise, privilege, program, project, or other benefit granted by Triumph Gulf Coast, Inc., to an awardee within 2 years after the termination of his or her service on the board. Further, each member of the board of directors who is not otherwise required to file financial disclosure under s. 8, Art. II of the State Constitution or s. 112.3144 shall file disclosure of financial interests under s. 112.3145.

(5) Each member of the board of directors shall serve without compensation, but shall receive travel and per diem expenses as provided in s. 112.061 while in the performance of his or her duties.

(6) Each member of the board of directors is accountable for the proper performance of the duties of office, and each member owes a fiduciary duty to the people of the state to ensure that awards provided are disbursed and used, and investments are made, as prescribed by law and contract. An appointed member of the board of directors may be removed by the officer that appointed the member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, unexcused absence from three consecutive meetings of the board, arrest or indictment for a crime that is a felony or a misdemeanor involving theft or a crime of dishonesty, or pleading nolo contendere to, or being found guilty of, any crime.

(7) The board of directors shall meet at least quarterly, upon the call of the chairperson or at the request of a majority of the membership, to review the Recovery Fund, establish and review priorities for economic recovery in disproportionately affected counties, and determine use of the earnings available.

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A majority of the members of the board of directors constitutes a quorum. Members may not vote by proxy.

(8) The executive director of the Department of Economic Opportunity, or his or her designee, the secretary of the Department of Environmental Protection, or his or her designee, and the chair of the Committee of 8 Disproportionally Affected Counties, or his or her designee, shall be available to consult with the board of directors and may be requested to attend meetings of the board of directors. These individuals shall not be permitted to vote on any matter before the board.

(9)(a) Triumph Gulf Coast, Inc., is permitted to hire or contract for all staff necessary to the proper execution of its powers and duties to implement this act. The corporation is required to retain:

1. An independent certified public accountant licensed in this state pursuant to chapter 473 to inspect the records of and to audit the expenditure of the earnings and available principal disbursed by Triumph Gulf Coast, Inc.,.

2. An independent financial advisor to assist Triumph Gulf Coast, Inc., in the development and implementation of a strategic plan consistent with the requirements of this act.

3. An economic advisor who will assist in the award process, including the development of priorities, allocation decisions, and the application and process; will assist the board in determining eligibility of award applications and the evaluation and scoring of applications; and will assist in the development of award documentation.

4. A legal advisor with expertise in not-for-profit investing and contracting and who is a member of the Florida Bar

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to assist with contracting and carrying out the intent of this statute.

(b) Triumph Gulf Coast, Inc., shall require all employees of the corporation to comply with the code of ethics for public employees under part III of chapter 112. Retained staff under paragraph (a) must agree to refrain from having any direct interest in any contract, franchise, privilege, program, project or other benefit arising from an award by Triumph Gulf Coast, Inc., during the term of his or her appointment and for 2 years after the termination of such appointment.

(c) Retained staff under paragraph (a) shall be available to consult with the board of directors and shall attend meetings of the board of directors. These individuals shall not be permitted to vote on any matter before the board.

Section 55. Section 288.831, Florida Statutes, is created to read:

288.831 Board of Directors; Powers.—In addition to the powers and duties prescribed in chapter 617 and the articles and bylaws adopted in compliance with that chapter, the board of directors may:

(1) Make and enter into contracts and other instruments necessary or convenient for the exercise of its powers and functions.

(2) Make expenditures including any necessary administrative expenditure from earnings consistent with its powers.

(3) Adopt, use, and alter a common corporate seal. Notwithstanding any provision of chapter 617 to the contrary, this seal is not required to contain the words "corporation not

for profit.”

(4) Adopt, amend, and repeal bylaws, not inconsistent with the powers granted to it or the articles of incorporation, for the administration of the activities of Triumph Gulf Coast, Inc., and the exercise of its corporate powers.

(5) Use the state seal, notwithstanding the provisions of s. 15.03, when appropriate, for standard corporate identity applications. Use of the state seal is not intended to replace use of a corporate seal as provided in this section.

Under no circumstances may the credit of the State of Florida be pledged on behalf of Triumph Gulf Coast, Inc.

Section 56. Section 288.832, Florida Statutes, is created to read:

288.832 Triumph Gulf Coast, Inc.; Duties.—Triumph Gulf Coast, Inc., shall have the following duties:

(1) Manage responsibly and prudently all funds received, and ensure that the use of such funds is in accordance with all applicable laws, bylaws, or contractual requirements.

(2) Administer the program created under this act.

(3) Monitor, review, and annually evaluate awardees and their programs or projects to determine whether an award should be continued, terminated, reduced, or increased.

(4) Operate in a transparent manner, providing public access to information, notice of meetings, awards, and the status of programs and projects. To this end, Triumph Gulf Coast, Inc., shall maintain a website that provides public access to this information.

Section 57. Section 288.84, Florida Statutes, is created to

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read:

288.84 Awards.—

(1)(a) Triumph Gulf Coast, Inc., shall make awards from available earnings and principal derived under s. 288.82(2)(a) to programs or projects that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties, notwithstanding s. 377.43. Awards may be provided for:

1. Ad valorem tax reduction within disproportionately affected counties;

2. Payment of impact fees adopted pursuant to s. 163.31801 and imposed within disproportionately affected counties;

3. Administrative funding for economic development organizations located within the disproportionately affected counties;

4. Local match requirements of ss. 288.0655, 288.0659, 288.1045, and 288.106 for projects in the disproportionately affected counties;

5. Economic development projects in the disproportionately affected counties;

6. Infrastructure projects that are shown to enhance economic development in the disproportionately affected counties;

7. Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program;

8. Grants to support programs of excellence that prepare

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students for future occupations and careers at K-20 institutions that have home campuses in the disproportionately affected counties. Eligible programs include those that increase students' technology skills and knowledge; encourage industry certifications; provide rigorous, alternative pathways for students to meet high school graduation requirements; strengthen career readiness initiatives; fund high-demand programs of emphasis at the bachelor's and master's level designated by the Board of Governors; and, similar to or the same as talent retention programs created by the Chancellor of the State University System and the Commission of Education, encourage students with interest or aptitude for science, technology, engineering, mathematics, and medical disciplines to pursue postsecondary education at a state university within the disproportionately affected counties; and

9. Grants to the tourism entity created under s. 288.1226 for the purpose of advertising and promoting tourism, Fresh From Florida, or related content on behalf of one or all of the disproportionately affected counties.

(b) Triumph Gulf Coast, Inc., shall make awards from earnings and principal derived under s. 288.82(2)(b) to programs or projects that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties, notwithstanding s. 377.43. Awards may be provided for the following purposes as eligible under 33 U.S. 1321(t)(1)(B):

1. Administrative funding for economic development organizations located within the disproportionately affected counties;

2. Local match requirements of ss. 288.0655, 288.0659, 288.1045, and 288.106 for projects in the disproportionately affected counties;

3. Economic development projects in the disproportionately affected counties;

4. Infrastructure projects that are shown to enhance economic development in the disproportionately affected counties;

5. Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program; and

6. Grants to the tourism entity created under s. 288.1226 for the purpose of advertising and promoting tourism, Fresh From Florida, or related content on behalf of one or all of the disproportionately affected counties.

(2) Triumph Gulf Coast, Inc., shall establish an application procedure for awards and a scoring process for the selection of programs and projects that have the potential to generate increased economic activity in the disproportionately affected counties, giving priority to projects that:

(a) Generate maximum estimated economic benefits, based on tools and models not generally employed by economic input-output analyses, including cost-benefit, return-on-investment, or dynamic scoring techniques to determine how the long-term economic growth potential of the disproportionately affected counties may be enhanced by the investment.

(b) Expand household income in the disproportionately

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affected counties above national average household income.

(c) Expand high growth industries or establish new high growth industries in the region.

1. Industries that are supported must have strong growth potential in the disproportionately affected counties.

2. An industry's growth potential is defined based on a detailed review of the current industry trends nationally and the necessary supporting asset base for that industry in the disproportionately affected counties region.

(d) Leverage or further enhance key regional assets, including educational institutions, research facilities, and military bases.

(e) Partner with local governments to provide funds, infrastructure, land, or other assistance for the project.

(f) Have investment commitments from private equity or private venture capital funds.

(g) Provide or encourage seed stage investments in start-up companies.

(h) Provide advice and technical assistance to companies on restructuring existing management, operations, or production to attract advantageous business opportunities.

(i) Benefit the environment in addition to the economy.

(j) Provide outcome measures for programs of excellence support, including terms of intent and metrics.

(k) Partner with K-20 educational institutions or school districts located within the disproportionately affected counties.

(l) Partner with convention and visitor bureaus, tourist development councils, or chambers of commerce located within the

disproportionately affected counties.

(3) Triumph Gulf Coast, Inc., may make awards as applications are received or may establish application periods for selection. Earnings may not be used to finance 100 percent of any project or program. Triumph Gulf Coast, Inc., may require a one-to-one private-sector match or higher for an award, if applicable and deemed prudent by the board of directors. An awardee may not receive all of the earnings or available principal in any given year.

(4) A contract executed by Triumph Gulf Coast, Inc., with an awardee must include provisions requiring a performance report on the contracted activities, must account for the proper use of funds provided under the contract, and must include provisions for recovery of awards in the event the award was based upon fraudulent information or the awardee is not meeting the performance requirements of the award. Awardees must regularly report to Triumph Gulf Coast, Inc., the status of the program or project on a schedule determined by the corporation.

Section 58. 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 the Department of Economic Opportunity; establishing the Economic Development Programs Evaluation; requiring the Office of Economic and

Demographic Research and the Office of Program Policy Analysis and Government Accountability to present the evaluation; requiring the offices to develop and submit a work plan for completing the evaluation by a certain date; requiring the offices to provide an analysis of certain economic development programs and specifying a schedule; requiring the Office of Economic and Demographic Research to make certain evaluations in its analysis; limiting the office's evaluation for the purposes of tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs; requiring the office to use a certain model to evaluate each program; requiring the Office of Program Policy Analysis and Government Accountability to make certain evaluations in its analysis; providing the offices access to all data necessary to complete the evaluation; amending s. 20.60, F.S.; revising the date on which the Department of Economic Opportunity and Enterprise Florida, Inc., are required to report on the business climate and economic development in the state; specifying reports and information that must be included; amending s. 201.15, F.S.; revising the distribution of funds in the Grants and Donations Trust Fund; amending s. 212.08, F.S.; revising definitions; clarifying the application of certain amendments; amending s. 213.053, F.S.; authorizing the Department of Revenue to make certain information available to the director of the Office of Program Policy Analysis and

Government Accountability and the coordinator of the Office of Economic and Demographic Research; authorizing the offices to share certain information; amending s. 220.194, F.S.; requiring the annual report for the Florida Space Business Incentives Act to be included in the annual incentives report; deleting certain reporting requirements; amending s. 288.001, F.S.; providing a network purpose; providing definitions; requiring the statewide director and the network to operate the program in compliance with federal laws and regulations and a Board of Governors regulation; requiring the statewide director to consult with the Board of Governors, the Department of Economic Opportunity, and the network's statewide advisory board to establish certain policies and goals; requiring the network to maintain a statewide advisory board; providing for advisory board membership; providing for terms of membership; providing for certain member reimbursement; requiring the director to develop support services; specifying support service requirements; requiring businesses that receive support services to participate in certain assessments; requiring the network to provide a match equal to certain state funding; providing criteria for the match; requiring the statewide director to coordinate with the host institution to establish a pay-per-performance incentive; providing for pay-per-performance incentive funding and distribution; providing a distribution formula

requirement; requiring the statewide director to coordinate with the advisory board to distribute funds for certain purposes and develop programs to distribute funds for those purposes; requiring the network to announce available funding, performance expectations, and other requirements; requiring the statewide director to present applications and recommendations to the advisory board; requiring applications approved by the advisory board to be publicly posted; providing minimum requirements for a program; prohibiting certain regional small business development centers from receiving funds; providing that match funding may not be reduced for regional small business development centers receiving additional funds; requiring the statewide director to regularly update the Board of Governors, the department, and the advisory board with certain information; requiring the statewide director, in coordination with the advisory board, to annually report certain information to the President of the Senate and the Speaker of the House of Representatives; amending s. 288.005, F.S.; providing a definition; amending s. 288.012, F.S.; requiring each State of Florida international office to submit a report to Enterprise Florida, Inc., for inclusion in its annual report; deleting a reporting date; amending s. 288.061, F.S.; requiring the Department of Economic Opportunity to analyze each economic development incentive application; requiring an applicant to

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provide a surety bond to the Department of Economic Opportunity before the applicant receives incentive awards through the Quick Action Closing Fund or the Innovation Incentive Program; requiring the contract or agreement to provide that the bond remain in effect until all conditions have been satisfied; providing that the department may require the bond to cover the entire contracted amount or allow for bonds to be renewed upon completion of certain performance measures; requiring the contract or agreement to provide that funds are contingent upon receipt of the surety bond; requiring the contract or agreement to provide that up to half of the premium payment on the bond may be paid from the award up to a certain amount; requiring an applicant to notify the department of premium payments; providing for certain notice requirements upon cancellation or nonrenewal by an insurer; providing that the cancellation of the surety bond violates the contract or agreement; providing an exception; providing for a waiver if certain information is provided; providing that if the department grants a waiver, the contract or agreement must provide for securing the award in a certain form; requiring the contract or agreement to provide that the release of funds is contingent upon satisfying certain requirements; requiring the irrevocable letter of credit, trust, or security agreement to remain in effect until certain conditions have been satisfied; providing for a waiver of the surety bond or other

security if certain information is provided and the department determines it to be in the best interest of the state; providing that the waiver of the surety bond or other security, for funding in excess of $5 million, must be approved by the Legislative Budget Commission; providing that the state may bring suit upon default or upon a violation of this section; providing that the department may adopt rules to implement this section; amending s. 288.0656, F.S.; requiring the Rural Economic Development Initiative to submit a report to supplement the Department of Economic Opportunity's annual report; deleting certain reporting requirements; amending s. 288.076, F.S.; providing definitions; requiring the Department of Economic Opportunity to publish on a website specified information concerning state investment in economic development programs; requiring the department to use methodology and formulas established by the Office of Economic and Demographic Research for specified calculations; requiring the Office of Economic and Demographic Research to provide a description of specified methodology and formulas to the department and the department to publish the description on its website within a specified period; providing procedures and requirements for reviewing, updating, and supplementing specified published information; requiring the department to annually publish information relating to the progress of Quick Action Closing Fund projects; requiring the department to


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publish certain confidential information pertaining to participant businesses upon expiration of a specified confidentiality period; requiring the department to publish certain reports concerning businesses that fail to complete tax refund agreements under the tax refund program for qualified target industry businesses; providing for construction and legislative intent; authorizing the department to adopt rules; repealing s. 288.095(3)(c), F.S., relating to the annual report by Enterprise Florida, Inc., of programs funded by the Economic Development Incentives Account; amending s. 288.106, F.S.; deleting and adding provisions relating to the application and approval process of the tax refund program for qualified target industry businesses; requiring the Department of Economic Opportunity to include information on qualified target industry businesses in the annual incentives report; deleting certain reporting requirements; amending 288.107, F.S.; revising definitions; revising provisions to conform to changes made by the act; revising the minimum criteria for participation in the brownfield redevelopment bonus refund; amending s. 288.1081, F.S.; requiring the use of loan funds from the Economic Gardening Business Loan Pilot Program to be included in the department’s annual report; deleting certain reporting requirements; amending s. 288.1082, F.S.; requiring the progress of the Economic Gardening Technical Assistance Pilot Program to be included in the

department's annual report; deleting certain reporting requirements; amending s. 288.1088, F.S.; requiring the department to validate contractor performance for the Quick Action Closing Fund and include the performance validation in the annual incentives report; deleting certain reporting requirements; amending s. 288.1089, F.S.; requiring that certain projects in the Innovation Incentive Program provide a cumulative break-even economic benefit; requiring the department to report information relating to the Innovation Incentive Program in the annual incentives report; deleting certain reporting requirements; deleting provisions that require the Office of Program Policy Analysis and Government Accountability and the Auditor General's Office to report on the Innovation Incentive Program; amending s. 288.1253, F.S.; revising a reporting date; requiring expenditures of the Office of Film and Entertainment to be included in the annual entertainment industry financial incentive program report; amending s. 288.1254, F.S.; revising a reporting date; requiring the annual entertainment industry financial incentive program report to include certain information; amending s. 288.1258, F.S.; revising a reporting date; requiring the report detailing the relationship between tax exemptions and incentives to industry growth to be included in the annual entertainment industry financial incentive program report; amending s. 288.714, F.S.; requiring the Department of Economic Opportunity's annual report

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to include a report on the Black Business Loan Program; deleting certain reporting requirements; amending s. 288.7771, F.S.; requiring the Florida Export Finance Corporation to submit a report to Enterprise Florida, Inc.; amending s. 288.903, F.S.; requiring Enterprise Florida, Inc., with the Department of Economic Opportunity, to prepare an annual incentives report; repealing s. 288.904(6), F.S., relating to Enterprise Florida, Inc., which requires the department to report the return on the public's investment; amending s. 288.906, F.S.; requiring certain reports to be included in the Enterprise Florida, Inc., annual report; amending s. 288.907, F.S.; requiring Enterprise Florida, Inc., with the Department of Economic Opportunity, to prepare the annual incentives report; requiring the annual incentives report to include certain information; deleting a provision requiring the Division of Strategic Business Development to assist Enterprise Florida, Inc., with the report; 288.92, F.S.; requiring each division of Enterprise Florida, Inc., to submit a report; amending s. 288.95155, F.S.; requiring the financial status of the Florida Small Business Technology Growth Program to be included in the annual incentives report; amending s. 288.9918, F.S.; revising reporting requirements related to community development entities; amending s. 290.0055, F.S.; providing for the expansion of the boundaries of enterprise zones that meet certain requirements;

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providing an application deadline; amending s. 290.0056, F.S.; revising a reporting date; requiring the enterprise zone development agency to submit certain information for the Department of Economic Opportunity's annual report; amending s. 290.014, F.S.; revising a reporting date; requiring certain reports on enterprise zones to be included in the Department of Economic Opportunity's annual report; amending s. 290.0455, F.S.; providing for the state's guarantee of certain federal loans to local governments; requiring applicants for such loans to pledge a specified amount of revenues to guarantee the loans; revising requirements for the department to submit recommendations to the Federal Government for such loans; revising the maximum amount of the loan guarantee commitment that a local government may receive and providing exceptions; providing for reduction of a local government's future community development block grants if the local government defaults on the federal loan; providing procedures if a local government is granted entitlement community status; amending ss. 331.3051 and 331.310, F.S.; revising requirements for annual reports by Space Florida; amending s. 443.036, F.S.; providing examples of misconduct; amending s. 443.091, F.S.; providing for online work registration and providing exceptions; limiting a claimant's use of the same prospective employer to meet work search requirements; providing an exception; providing that work search requirements

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do not apply to individuals required to participate in reemployment services; amending s. 443.101, F.S.; providing for disqualification in any week with respect to which the department finds that his or her unemployment is due to failure without good cause to maintain a license, registration, or certification required by applicable law necessary for the employee to perform her or his assigned job duties; providing examples of "good cause"; amending s. 443.1113, F.S., relating to the Reemployment Assistance Claims and Benefits Information System; revising timeframe for deployment of a certain Internet portal as part of such system; amending s. 443.131, F.S.; requiring the tax collection service provider to calculate a certain additional rate; providing for when an assessment may not be made; requiring assessments to be available to pay interest on federal advances; requiring certain excess funds to be transferred to the Unemployment Compensation Trust Fund after a certain time period; deleting the provision referring to crediting employer accounts; providing an expiration date; amending ss. 443.151 F.S.; revising provisions to conform to changes made to benefit eligibility; providing that an employer or its agent may not be relieved of benefit charges for failure to timely and adequately respond to notice of claim or request for information; requiring the department to impose a penalty against a claimant who is overpaid reemployment assistance benefits due to fraud by the claimant; requiring an

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appeals referee to be an attorney in good standing with the Florida Bar or successfully admitted within 8 months of hire; requiring the Department of Economic Opportunity to meet the requirements of the bill through attrition after January 1, 2014; amending s. 443.1715, F.S.; prohibiting the unlawful disclosure of certain confidential information relating to employing units and individuals under the Reemployment Assistance Program Law; providing criminal penalties; amending 443.191, F.S.; providing for the deposit of moneys recovered and penalties collected due to fraud in the Unemployment Compensation Trust Fund; amending s. 446.50, F.S.; requiring the Department of Economic Opportunity's annual report to include a plan for the displaced homemaker program; deleting certain reporting requirements; creating s. 288.80, F.S.; providing a short title; creating s. 288.801, F.S.; providing Legislative intent; creating s. 288.81, F.S.; providing definitions; creating s. 288.82, F.S.; creating Triumph Gulf Coast, Inc., as nonprofit corporation; requiring the Triumph Gulf Coast, Inc., to create and administer the Recovery Fund for the benefit of disproportionately affected counties; providing for principal of the fund; providing for payment of administrative costs from the earnings of the fund; providing any remaining funds after 30 years revert to the State Treasury; authorizing investment of the principal of the fund; requiring an investment policy; requiring competitive procurement of money

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managers; requiring annual audits; requiring biannual reports; creating s. 288.83, F.S.; providing for application of public records and meetings laws; providing for governance by a 5 member board of directors; providing membership; providing for terms; providing for appointment for vacancies; providing limitations on board members; limiting postemployment activities; providing for a misdemeanor for violations; requiring financial disclosures; providing travel and per diem expenses; providing for removal; requiring quarterly meetings; providing for staffing; creating s. 288.831, F.S.; providing the powers and duties of the board of directors; creating s. 288.832, F.S.; providing the duties of Triumph Gulf Coast, Inc.; creating s. 288.84, F.S.; permitting awards for projects or programs from available earnings and principal; proscribing the award categories; proscribing the award categories for certain funds; establishing priority ranking for applications; prohibiting award from financing 100 percent of a program or project; permitting Triumph Gulf Coast, Inc., to requiring a one-to-one match; prohibiting an awardee from receiving all available funds; requiring a contract for an award; requiring regular reporting; providing effective dates.

699348

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment to Amendment (317422)

Delete lines 2159 - 2160
and insert:
(b) Any funds distributed to the state under 33 U.S.C. 1321(t)(1)(C)(i)(I). Notwithstanding any other provision under this act, this act shall not affect any funds distributed to any county under 33 U.S.C. 1321(t).


389672

576-03039-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to the Department of Economic Opportunity; establishing the Economic Development Programs Evaluation; requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to present the evaluation; requiring the offices to develop and submit a work plan for completing the evaluation by a certain date; requiring the offices to provide an analysis of certain economic development programs and specifying a schedule; requiring the Office of Economic and Demographic Research to make certain evaluations in its analysis; limiting the office's evaluation for the purposes of tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs; requiring the office to use a certain model to evaluate each program; requiring the Office of Program Policy Analysis and Government Accountability to make certain evaluations in its analysis; providing the offices access to all data necessary to complete the evaluation; amending s. 20.60, F.S.; revising the date on which the Department of Economic Opportunity and Enterprise Florida, Inc., are required to report on the business climate and economic development in the state; specifying reports and information that must be included; amending s.


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201.15, F.S.; revising the distribution of funds in the Grants and Donations Trust Fund; amending s. 213.053, F.S.; authorizing the Department of Revenue to make certain information available to the director of the Office of Program Policy Analysis and Government Accountability and the coordinator of the Office of Economic and Demographic Research; authorizing the offices to share certain information; amending s. 220.194, F.S.; requiring the annual report for the Florida Space Business Incentives Act to be included in the annual incentives report; deleting certain reporting requirements; amending s. 288.001, F.S.; providing a network purpose; providing definitions; requiring the statewide director and the network to operate the program in compliance with federal laws and regulations and a Board of Governors regulation; requiring the statewide director to consult with the Board of Governors, the Department of Economic Opportunity, and the network's statewide advisory board to establish certain policies and goals; requiring the network to maintain a statewide advisory board; providing for advisory board membership; providing for terms of membership; providing for certain member reimbursement; requiring the director to develop support services; specifying support service requirements; requiring businesses that receive support services to participate in certain assessments; requiring the network to provide a match equal to certain state funding; providing

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criteria for the match; requiring the statewide director to coordinate with the host institution to establish a pay-per-performance incentive; providing for pay-per-performance incentive funding and distribution; providing a distribution formula requirement; requiring the statewide director to coordinate with the advisory board to distribute funds for certain purposes and develop programs to distribute funds for those purposes; requiring the network to announce available funding, performance expectations, and other requirements; requiring the statewide director to present applications and recommendations to the advisory board; requiring applications approved by the advisory board to be publicly posted; providing minimum requirements for a program; prohibiting certain regional small business development centers from receiving funds; providing that match funding may not be reduced for regional small business development centers receiving additional funds; requiring the statewide director to regularly update the Board of Governors, the department, and the advisory board with certain information; requiring the statewide director, in coordination with the advisory board, to annually report certain information to the President of the Senate and the Speaker of the House of Representatives; amending s. 288.005, F.S.; providing a definition; amending s. 288.012, F.S.; requiring each State of Florida international office to submit a

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report to Enterprise Florida, Inc., for inclusion in its annual report; deleting a reporting date; amending s. 288.061, F.S.; requiring the Department of Economic Opportunity to analyze each economic development incentive application; requiring an applicant to provide a surety bond to the Department of Economic Opportunity before the applicant receives incentive awards through the Quick Action Closing Fund or the Innovation Incentive Program; requiring the contract or agreement to provide that the bond remain in effect until all conditions have been satisfied; providing that the department may require the bond to cover the entire contracted amount or allow for bonds to be renewed upon completion of certain performance measures; requiring the contract or agreement to provide that funds are contingent upon receipt of the surety bond; requiring the contract or agreement to provide that up to half of the premium payment on the bond may be paid from the award up to a certain amount; requiring an applicant to notify the department of premium payments; providing for certain notice requirements upon cancellation or nonrenewal by an insurer; providing that the cancellation of the surety bond violates the contract or agreement; providing an exception; providing for a waiver if certain information is provided; providing that if the department grants a waiver, the contract or agreement must provide for securing the award in a certain form; requiring the contract or agreement to provide that

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the release of funds is contingent upon satisfying certain requirements; requiring the irrevocable letter of credit, trust, or security agreement to remain in effect until certain conditions have been satisfied; providing for a waiver of the surety bond or other security if certain information is provided and the department determines it to be in the best interest of the state; providing that the waiver of the surety bond or other security, for funding in excess of $5 million, must be approved by the Legislative Budget Commission; providing that the state may bring suit upon default or upon a violation of this section; providing that the department may adopt rules to implement this section; amending s. 288.0656, F.S.; requiring the Rural Economic Development Initiative to submit a report to supplement the Department of Economic Opportunity's annual report; deleting certain reporting requirements; repealing s. 288.095(3)(c), F.S., relating to the annual report by Enterprise Florida, Inc., of programs funded by the Economic Development Incentives Account; amending s. 288.106, F.S.; deleting and adding provisions relating to the application and approval process of the tax refund program for qualified target industry businesses; requiring the Department of Economic Opportunity to include information on qualified target industry businesses in the annual incentives report; deleting certain reporting requirements; amending s. 288.1081, F.S.; requiring the use of loan funds from the

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Economic Gardening Business Loan Pilot Program to be included in the department's annual report; deleting certain reporting requirements; amending s. 288.1082, F.S.; requiring the progress of the Economic Gardening Technical Assistance Pilot Program to be included in the department's annual report; deleting certain reporting requirements; amending s. 288.1088, F.S.; requiring the department to validate contractor performance for the Quick Action Closing Fund and include the performance validation in the annual incentives report; deleting certain reporting requirements; amending s. 288.1089, F.S.; requiring that certain projects in the Innovation Incentive Program provide a cumulative break-even economic benefit; requiring the department to report information relating to the Innovation Incentive Program in the annual incentives report; deleting certain reporting requirements; deleting provisions that require the Office of Program Policy Analysis and Government Accountability and the Auditor General's Office to report on the Innovation Incentive Program; amending s. 288.1226, F.S.; revising membership of the board of directors of the Florida Tourism Industry Marketing Corporation; providing that the Governor shall serve as a nonvoting member; amending s. 288.1253, F.S.; revising a reporting date; requiring expenditures of the Office of Film and Entertainment to be included in the annual entertainment industry financial incentive program report; amending s.

288.1254, F.S.; revising a reporting date; requiring the annual entertainment industry financial incentive program report to include certain information; amending s. 288.1258, F.S.; revising a reporting date; requiring the report detailing the relationship between tax exemptions and incentives to industry growth to be included in the annual entertainment industry financial incentive program report; amending s. 288.714, F.S.; requiring the Department of Economic Opportunity's annual report to include a report on the Black Business Loan Program; deleting certain reporting requirements; amending s. 288.7771, F.S.; requiring the Florida Export Finance Corporation to submit a report to Enterprise Florida, Inc.; amending s. 288.903, F.S.; requiring Enterprise Florida, Inc., with the Department of Economic Opportunity, to prepare an annual incentives report; repealing s. 288.904(6), F.S., relating to Enterprise Florida, Inc., which requires the department to report the return on the public's investment; amending s. 288.906, F.S.; requiring certain reports to be included in the Enterprise Florida, Inc., annual report; amending s. 288.907, F.S.; requiring Enterprise Florida, Inc., with the Department of Economic Opportunity, to prepare the annual incentives report; requiring the annual incentives report to include certain information; deleting a provision requiring the Division of Strategic Business Development to assist Enterprise Florida, Inc., with

the report; 288.92, F.S.; requiring each division of Enterprise Florida, Inc., to submit a report; amending s. 288.95155, F.S.; requiring the financial status of the Florida Small Business Technology Growth Program to be included in the annual incentives report; amending s. 290.0056, F.S.; revising a reporting date; requiring the enterprise zone development agency to submit certain information for the Department of Economic Opportunity's annual report; amending s. 290.014, F.S.; revising a reporting date; requiring certain reports on enterprise zones to be included in the Department of Economic Opportunity's annual report; amending ss. 290.0411 and 290.042, F.S.; revising legislative intent and definitions applicable to the Florida Small Cities Community Development Block Grant Program Act; amending s. 290.044, F.S.; requiring the department to adopt rules for the distribution of block grant funds to eligible local governments; deleting authority for block grant funds to be distributed as loan guarantees to local governments; requiring that block grant funds be distributed to achieve the department's community development objectives; requiring such objectives to be consistent with certain national objectives; amending s. 290.0455, F.S.; providing for the state's guarantee of certain federal loans to local governments; requiring applicants for such loans to pledge a specified amount of revenues to guarantee the loans; revising requirements for the department to

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submit recommendations to the Federal Government for such loans; revising the maximum amount of the loan guarantee commitment that a local government may receive and providing exceptions; providing for reduction of a local government's future community development block grants if the local government defaults on the federal loan; providing procedures if a local government is granted entitlement community status; amending s. 290.046, F.S.; revising application requirements for community development block grants and procedures for the ranking of applications and the determination of project funding; amending s. 290.047, F.S.; revising requirements for the establishment of grant ceilings and maximum expenditures on administrative costs from community development block grants; limiting an eligible local government's authority to contract for specified services in connection with community development block grants; amending s. 290.0475, F.S.; revising conditions under which grant applications are ineligible for funding; amending s. 290.048, F.S.; revising the department's duties to administer the Small Cities Community Development Block Grant Loan Guarantee Program; deleting provisions authorizing the establishment of an advisory committee; amending ss. 331.3051 and 331.310, F.S.; revising requirements for annual reports by Space Florida; amending s. 443.036, F.S.; providing examples of misconduct; amending s. 443.091, F.S.; providing for online work registration

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and providing exceptions; limiting a claimant's use of the same prospective employer to meet work search requirements; providing an exception; providing that work search requirements do not apply to individuals required to participate in reemployment services; amending s. 443.101, F.S.; providing for disqualification in any week with respect to which the department finds that his or her unemployment is due to failure without good cause to maintain a license, registration, or certification required by applicable law necessary for the employee to perform her or his assigned job duties; providing examples of "good cause"; amending s. 443.1113, F.S., relating to the Reemployment Assistance Claims and Benefits Information System; revising timeframe for deployment of a certain Internet portal as part of such system; amending s. 443.131, F.S.; requiring the tax collection service provider to calculate a certain additional rate; providing for when an assessment may not be made; requiring assessments to be available to pay interest on federal advances; requiring certain excess funds to be transferred to the Unemployment Compensation Trust Fund after a certain time period; deleting the provision referring to crediting employer accounts; providing an expiration date; amending ss. 443.151 F.S.; revising provisions to conform to changes made to benefit eligibility; requiring the department to impose a penalty against a claimant who is overpaid reemployment assistance benefits due to

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fraud by the claimant; requiring an appeals referee to be an attorney in good standing with the Florida Bar or successfully admitted within 8 months of hire; providing for a person who is an appeals referee as of the effective date of this act to become licensed by the Florida Bar by September 30, 2014; amending s. 443.1715, F.S.; prohibiting the unlawful disclosure of certain confidential information relating to employing units and individuals under the Reemployment Assistance Program Law; providing criminal penalties; amending 443.191, F.S.; providing for the deposit of moneys recovered and penalties collected due to fraud in the Unemployment Compensation Trust Fund; amending s. 446.50, F.S.; requiring the Department of Economic Opportunity's annual report to include a plan for the displaced homemaker program; deleting certain reporting requirements; providing effective dates.

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

Section 1. Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(1) The Office of Economic and Demographic Research and OPPAGA shall coordinate the development of a work plan for

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completing the Economic Development Programs Evaluation and shall submit the work plan to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(a) By January 1, 2014, and every 3 years thereafter, an analysis of the following:

1. The capital investment tax credit established under s. 220.191, Florida Statutes.

2. The qualified target industry tax refund established under s. 288.106, Florida Statutes.

3. The brownfield redevelopment bonus refund established under s. 288.107, Florida Statutes.

4. High-impact business performance grants established under s. 288.108, Florida Statutes.

5. The Quick Action Closing Fund established under s. 288.1088, Florida Statutes.

6. The Innovation Incentive Program established under s. 288.1089, Florida Statutes.

7. Enterprise Zone Program incentives established under ss. 212.08(5), 212.08(15), 212.096, 220.181, and 220.182, Florida Statutes.

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254, Florida Statutes.

2. The entertainment industry sales tax exemption program established under s. 288.1258, Florida Statutes.

3. VISIT Florida and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124, Florida Statutes.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, Florida Statutes.

(c) By January 1, 2016, and every 3 years thereafter, an analysis of the following:

1. The qualified defense contractor and space flight business tax refund program established under s. 288.1045, Florida Statutes.

2. The tax exemption for semiconductor, defense, or space technology sales established under s. 212.08(5)(j), Florida Statutes.

3. The Military Base Protection Program established under s. 288.980, Florida Statutes.

4. The Manufacturing and Spaceport Investment Incentive Program established under s. 288.1083, Florida Statutes.

5. The Quick Response Training Program established under s. 288.047, Florida Statutes.

6. The Incumbent Worker Training Program established under s. 445.003, Florida Statutes.

7. International trade and business development programs established or funded under s. 288.826, Florida Statutes.

(3) Pursuant to the schedule established in subsection (2), the Office of Economic and Demographic Research shall evaluate and determine the economic benefits, as defined in s. 288.005, Florida Statutes, of each program over the previous 3 years. The analysis must also evaluate the number of jobs created, the

increase or decrease in personal income, and the impact on state gross domestic product from the direct, indirect, and induced effects of the state's investment in each program over the previous 3 years.

(a) For the purpose of evaluating tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs, the Office of Economic and Demographic Research shall evaluate data only from those projects in which businesses received state funds during the evaluation period. Such projects may be fully completed, partially completed with future fund disbursal possible pending performance measures, or partially completed with no future fund disbursal possible as a result of a business's inability to meet performance measures.

(b) The analysis must use the model developed by the Office of Economic and Demographic Research, as required in s. 216.138, Florida Statutes, to evaluate each program. The office shall provide a written explanation of the key assumptions of the model and how it is used. If the office finds that another evaluation model is more appropriate to evaluate a program, it may use another model, but it must provide an explanation as to why the selected model was more appropriate.

(4) Pursuant to the schedule established in subsection (2), OPPAGA shall evaluate each program over the previous 3 years for its effectiveness and value to the taxpayers of this state and include recommendations on each program for consideration by the Legislature. The analysis may include relevant economic development reports or analyses prepared by the Department of Economic Opportunity, Enterprise Florida, Inc., or local or regional economic development organizations; interviews with the

parties involved; or any other relevant data.

(5) The Office of Economic and Demographic Research and OPPAGA must be given access to all data necessary to complete the Economic Development Programs Evaluation, including any confidential data. The offices may collaborate on data collection and analysis.

Section 2. Subsection (10) of section 20.60, Florida Statutes, is amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 ~~January 1~~ of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(a) The report must ~~shall~~ include the identification of problems and a prioritized list of recommendations.

(b) The report must incorporate annual reports of other programs, including:

1. The displaced homemaker program established under s. 446.50.

2. Information provided by the Department of Revenue under s. 290.014.

3. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.

4. The Economic Gardening Business Loan Pilot Program established under s. 288.1081 and the Economic Gardening

Technical Assistance Pilot Program established under s. 288.1082.

5. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

6. The Rural Economic Development Initiative established under s. 288.0656.

Section 3. Paragraph (c) of subsection (1) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1). Prior to distribution under this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. Such costs and the service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2013, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and

(b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or $541.75 million in each fiscal year. Out of such funds, the first $50 million for the 2012-2013 fiscal year; $65 million for the 2013-2014 fiscal year; and $75 million for the 2014-2015 fiscal year and all subsequent years, shall be transferred to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The remainder is to be used for the following specified purposes, notwithstanding any other law to the contrary:

a. For the purposes of capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this sub-subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b. Effective July 1, 2014,

the first $60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Economic Opportunity in the amount of the lesser of .23 percent of the remainder or $3.25 million in each fiscal year to fund technical assistance to local governments ~~and school boards on the requirements and implementation of this act~~.

3. The Ecosystem Management and Restoration Trust Fund in the amount of the lesser of 2.12 percent of the remainder or $30 million in each fiscal year, to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212.

4. General Inspection Trust Fund in the amount of the lesser of .02 percent of the remainder or $300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 4. Paragraph (bb) is added to subsection (8) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section, the department may provide:

(bb) Information to the director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent, and to the coordinator of the Office of

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Economic and Demographic Research or his or her authorized agent, for purposes of completing the Economic Development Programs Evaluation. Information obtained from the department pursuant to this paragraph may be shared by the director and the coordinator, or the director's or coordinator's authorized agent, for purposes of completing the Economic Development Programs Evaluation.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 5. Subsection (9) of section 220.194, Florida Statutes, is amended to read:

220.194 Corporate income tax credits for spaceflight projects.—

(9) ANNUAL REPORT.—Beginning in 2014, the Department of Economic Opportunity, in cooperation with Space Florida and the department, shall include in the ~~submit an~~ annual incentives report required under s. 288.907 a summary of ~~summarizing~~ activities relating to the Florida Space Business Incentives Act established under this section ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives by each November 30~~.

Section 6. Section 288.001, Florida Statutes, is amended to read:

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288.001 The Florida Small Business Development Center Network~~; purpose~~.—

(1) PURPOSE.—The Florida Small Business Development Center Network is the principal business assistance organization for small businesses in the state. The purpose of the network is to serve emerging and established for-profit, privately held businesses that maintain a place of business in the state.

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

(a) "Board of Governors" is the Board of Governors of the State University System.

(b) "Host institution" is the university designated by the Board of Governors to be the recipient organization in accordance with 13 C.F.R. s. 130.200.

(c) "Network" means the Florida Small Business Development Center Network.

(3) OPERATION; POLICIES AND PROGRAMS.—

(a) The network's statewide director shall operate the network in compliance with the federal laws and regulations governing the network and the Board of Governors Regulation 10.015.

(b) The network's statewide director shall consult with the Board of Governors, the department, and the network's statewide advisory board to ensure that the network's policies and programs align with the statewide goals of the State University System and the statewide strategic economic development plan as provided under s. 20.60.

(4) STATEWIDE ADVISORY BOARD.—

(a) The network shall maintain a statewide advisory board to advise, counsel, and confer with the statewide director on

matters pertaining to the operation of the network.

(b) The statewide advisory board shall consist of 19 members from across the state. At least 12 members must be representatives of the private sector who are knowledgeable of the needs and challenges of small businesses. The members must represent various segments and industries of the economy in this state and must bring knowledge and skills to the statewide advisory board which would enhance the board's collective knowledge of small business assistance needs and challenges. Minority and gender representation must be considered when making appointments to the board. The board must include the following members:

1. Three members appointed from the private sector by the President of the Senate.

2. Three members appointed from the private sector by the Speaker of the House of Representatives.

3. Three members appointed from the private sector by the Governor.

4. Three members appointed from the private sector by the network's statewide director.

5. One member appointed by the host institution.

6. The President of Enterprise Florida, Inc., or his or her designee.

7. The Chief Financial Officer or his or her designee.

8. The President of the Florida Chamber of Commerce or his or her designee.

9. The Small Business Development Center Project Officer from the U.S. Small Business Administration at the South Florida District Office or his or her designee.

10. The executive director of the National Federation of Independent Businesses, Florida, or his or her designee.

11. The executive director of the Florida United Business Association or his or her designee.

(c) The term of an appointed member shall be for 4 years, beginning August 1, 2013, except that at the time of initial appointments, two members appointed by the Governor, one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, and one member appointed by the network's statewide director shall be appointed for 2 years. An appointed member may be reappointed to a subsequent term. Members of the statewide advisory board may not receive compensation but may be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(5) SMALL BUSINESS SUPPORT SERVICES; AGREEMENT.—

(a) The statewide director, in consultation with the advisory board, shall develop support services that are delivered through regional small business development centers. Support services must target the needs of businesses that employ fewer than 100 persons and demonstrate an assessed capacity to grow in employment or revenue.

(b) Support services must include, but need not be limited to, providing information or research, consulting, educating, or assisting businesses in the following activities:

1. Planning related to the start-up, operation, or expansion of a small business enterprise in this state. Such activities include providing guidance on business formation, structure, management, registration, regulation, and taxes.

2. Developing and implementing strategic or business plans.

Such activities include analyzing a business's mission, vision, strategies, and goals; critiquing the overall plan; and creating performance measures.

3. Developing the financial literacy of existing businesses related to their business cash flow and financial management plans. Such activities include conducting financial analysis health checks, assessing cost control management techniques, and building financial management strategies and solutions.

4. Developing and implementing plans for existing businesses to access or expand to new or existing markets. Such activities include conducting market research, researching and identifying expansion opportunities in international markets, and identifying opportunities in selling to units of government.

5. Supporting access to capital for business investment and expansion. Such activities include providing technical assistance relating to obtaining surety bonds; identifying and assessing potential debt or equity investors or other financing opportunities; assisting in the preparation of applications, projections, or pro forma or other support documentation for surety bond, loan, financing, or investment requests; and facilitating conferences with lenders or investors.

6. Assisting existing businesses to plan for a natural or man-made disaster, and assisting businesses when such an event occurs. Such activities include creating business continuity and disaster plans, preparing disaster and bridge loan applications, and carrying out other emergency support functions.

(c) A business receiving support services must agree to participate in assessments of such services. The agreement, at a minimum, must request the business to report demographic

characteristics, changes in employment and sales, debt and equity capital attained, and government contracts acquired. The host institution may require additional reporting requirements for funding described in subsection (7).

(6) REQUIRED MATCH.—The network must provide a match equal to the total amount of any direct legislative appropriation which is received directly by the host institution and is specifically designated for the network. The match may include funds from federal or other nonstate funding sources designated for the network. At least 50 percent of the match must be cash. The remaining 50 percent may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

(7) ADDITIONAL STATE FUNDS; USES; PAY-PER-PERFORMANCE INCENTIVES; STATEWIDE SERVICE; SERVICE ENHANCEMENTS; BEST PRACTICES; ELIGIBILITY.—

(a) The statewide director, in coordination with the host institution, shall establish a pay-per-performance incentive for regional small business development centers. Such incentive shall be funded from half of any state appropriation received directly by the host institution, which appropriation is specifically designated for the network. These funds shall be distributed to the regional small business development centers based upon data collected from the businesses as provided under paragraph (5)(c). The distribution formula must provide for the distribution of funds in part on the gross number of jobs created annually by each center and in part on the number of jobs created per support service hour. The pay-per-performance incentive must supplement the operations and support services of

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each regional small business development center, and may not reduce matching funds dedicated to the regional small business development center.

(b) Half of any state funds received directly by the host institution which are specifically designated for the network shall be distributed by the statewide director, in coordination with the advisory board, for the following purposes:

1. Ensuring that support services are available statewide, especially in underserved and rural areas of the state, to assist eligible businesses;

2. Enhancing participation in the network among state universities and colleges; and

3. Facilitating the adoption of innovative small business assistance best practices by the regional small business development centers.

(c) The statewide director, in coordination with the advisory board, shall develop annual programs to distribute funds for each of the purposes described in paragraph (b). The network shall announce the annual amount of available funds for each program, performance expectations, and other requirements. For each program, the statewide director shall present applications and recommendations to the advisory board. The advisory board shall make the final approval of applications. Approved applications must be publicly posted. At a minimum, programs must include:

1. New regional small business development centers; and

2. Awards for the top six regional small business development centers that adopt best practices, as determined by the advisory board. Detailed information about best practices

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must be made available to regional small business development centers for voluntary implementation.

(d) A regional small business development center that has been found by the statewide director to perform poorly, to engage in improper activity affecting the operation and integrity of the network, or to fail to follow the rules and procedures set forth in the laws, regulations, and policies governing the network, is not eligible for funds under this subsection.

(e) Funds awarded under this subsection may not reduce matching funds dedicated to the regional small business development centers.

(8) REPORTING.—

(a) The statewide director shall quarterly update the Board of Governors, the department, and the advisory board on the network's progress and outcomes, including aggregate information on businesses assisted by the network.

(b) The statewide director, in coordination with the advisory board, shall annually report, on June 30, to the President of the Senate and the Speaker of the House of Representatives on the network's progress and outcomes for the previous fiscal year. The report must include aggregate information on businesses assisted by the network, network services and programs, the use of funds specifically dedicated to the network, and the network's economic benefit to the state. The report must contain specific information on performance-based metrics and contain the methodology used to calculate the network's economic benefit to the state.

Section 7. Subsection (4) is added to section 288.005,

Florida Statutes, to read:

288.005 Definitions.—As used in this chapter, the term:

(4) "Jobs" means full-time equivalent positions, including, but not limited to, positions obtained from a temporary employment agency or employee leasing company or through a union agreement or coemployment under a professional employer organization agreement, which result directly from a project in this state. This number does not include temporary construction jobs involved with the construction of facilities for the project.

Section 8. Subsection (3) of section 288.012, Florida Statutes, is amended to read:

288.012 State of Florida international offices; state protocol officer; protocol manual.—The Legislature finds that the expansion of international trade and tourism is vital to the overall health and growth of the economy of this state. This expansion is hampered by the lack of technical and business assistance, financial assistance, and information services for businesses in this state. The Legislature finds that these businesses could be assisted by providing these services at State of Florida international offices. The Legislature further finds that the accessibility and provision of services at these offices can be enhanced through cooperative agreements or strategic alliances between private businesses and state, local, and international governmental entities.

(3) ~~By October 1 of each year,~~ Each international office shall annually submit to Enterprise Florida, Inc., ~~the department~~ a complete and detailed report on its activities and accomplishments during the previous ~~preceding~~ fiscal year for

inclusion in the annual report required under s. 288.906. In the ~~a~~ format and by the annual date prescribed ~~provided~~ by Enterprise Florida, Inc., the report must set forth information on:

(a) The number of Florida companies assisted.

(b) The number of inquiries received about investment opportunities in this state.

(c) The number of trade leads generated.

(d) The number of investment projects announced.

(e) The estimated U.S. dollar value of sales confirmations.

(f) The number of representation agreements.

(g) The number of company consultations.

(h) Barriers or other issues affecting the effective operation of the office.

(i) Changes in office operations which are planned for the current fiscal year.

(j) Marketing activities conducted.

(k) Strategic alliances formed with organizations in the country in which the office is located.

(l) Activities conducted with Florida's other international offices.

(m) Any other information that the office believes would contribute to an understanding of its activities.

Section 9. Section 288.061, Florida Statutes, is amended to read:

288.061 Economic development incentive application process.—

(1) Upon receiving a submitted economic development incentive application, the Division of Strategic Business

Development of the Department of Economic Opportunity and designated staff of Enterprise Florida, Inc., shall review the application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant. The department shall recommend to the executive director to approve or disapprove an applicant business. If review of the application demonstrates that the application is incomplete, the executive director shall notify the applicant business within the first 5 business days after receiving the application.

(2) Beginning July 1, 2013, the department shall review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives proposed for the project. The term "economic benefits" has the same meaning as in s. 288.005. The Office of Economic and Demographic Research shall review and evaluate the methodology and model used to calculate the economic benefits. For purposes of this requirement, an amended definition of economic benefits may be developed in conjunction with the Office of Economic and Demographic Research. The Office of Economic and Demographic Research shall report on the methodology and model by September 1, 2013, and every third year thereafter, to the President of the Senate and the Speaker of the House of Representatives.

(3) ~~(2)~~ Within 10 business days after the department receives the submitted economic development incentive application, the executive director shall approve or disapprove the application and issue a letter of certification to the

applicant which includes a justification of that decision, unless the business requests an extension of that time.

(a) The contract or agreement with the applicant must ~~shall~~ specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The department may enter into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature.

(b) The release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program, except as provided in subsection (4).

(4)(a) In order to receive an incentive under s. 288.1088 or s. 288.1089, an applicant must provide the department with a surety bond, issued by an insurer authorized to do business in this state, for the amount of the award under the incentive contract or agreement. Funds may not be paid to an applicant until the department certifies compliance with this subsection.

1. The contract or agreement must provide that the bond remain in effect until all performance conditions in the contract or agreement have been satisfied. The department may require the bond to cover the entire amount of the contract or agreement or allow for a bond to be renewed upon the completion of scheduled performance measurements specified in the contract or agreement. The contract or agreement must provide that the release of any funds is contingent upon receipt by the

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department of the surety bond.

2. The contract or agreement must provide that up to half of the premium payment on the surety bond may be paid from the award amount, not to exceed 3 percent of the award.

3. The applicant shall notify the department at least 10 days before each premium payment is due.

4. Any notice of cancellation or nonrenewal issued by an insurer must comply with the notice requirements of s. 626.9201. If the applicant receives a notice of cancellation or nonrenewal, the applicant must immediately notify the department.

5. The cancellation of the surety bond is a violation of the contract or agreement between the applicant and the department. The department is released from any obligation to make future scheduled payments unless the applicant is able to secure a new surety bond or comply with the requirements of paragraphs (b) and (c) within 90 days before the effective date of the cancellation.

(b) If an applicant is unable to secure a surety bond or can demonstrate that obtaining a bond is unreasonable in cost, the department may waive the requirements specified in paragraph (a) by certifying in writing to the Governor, President of the Senate, and Speaker of the House of Representatives the following information:

1. An explanation stating the reasons why the applicant could not obtain a bond, to the extent such information is not confidential under s. 288.075;

2. A description of the economic benefits expected to be generated by the incentive award which indicates that the

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project warrants waiver of the requirement; and

3. An evaluation of the quality and value of the applicant which supports the selection of the alternative securitization under paragraph (c). The department's evaluation must consider the following information when determining the form for securing the award amount:

a. A financial analysis of the company, including an evaluation of the company's short-term liquidity ratio as measured by its assets to liability, the company's profitability ratio, and the company's long-term solvency as measured by its debt-to-equity ratio;

b. The historical market performance of the company;

c. Any independent evaluations of the company;

d. The latest audit of the company's financial statement and the related auditor's management letter; and

e. Any other types of reports that are related to the internal controls or management of the company.

(c)1. If the department grants a waiver under paragraph (b), the incentives contract or agreement must provide for securing the award amount in one of the following forms:

a. An irrevocable letter of credit issued by a financial institution, as defined in s. 655.005;

b. Cash or securities held in trust by a financial institution, as defined in s. 655.005, and subject to a control agreement; or

c. A secured transaction in collateral under the control or possession of the applicant for the value of the award amount. The department is authorized to negotiate the terms and conditions of the security agreement.

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2. The contract or agreement must provide that the release of any funds is contingent upon the receipt of documentation by the department which satisfies all of the requirements found in this paragraph. Funds may not be paid to the applicant until the department certifies compliance with this subsection.

3. The irrevocable letter of credit, trust, or security agreement must remain in effect until all performance conditions specified in the contract or agreement have been satisfied. Failure to comply with this provision results in a violation of the contract or agreement between the applicant and the department and releases the department from any obligation to make future scheduled payments.

(d) The department may waive the requirements of paragraphs (a) through (c) by certifying to the Governor and the chair and vice chair of the Legislative Budget Commission the following information:

1. The applicant demonstrates the financial ability to fulfill the requirements of the contract and has submitted an independently audited financial statement for the previous 5 years;

2. If applicable, the applicant was previously a recipient of an incentive under an economic development program, was subject to clawback requirements, and timely complied with those provisions; and

3. The department has determined that waiver of the requirements of paragraphs (a) through (c) is in the best interest of the state.

(e) For waivers granted under paragraph (d), the department shall provide a written description and evaluation of the waiver

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to the chair and vice chair of the Legislative Budget Commission. Such information may be provided at the same time that the information for the project consultation is provided to the Legislative Budget Commission under s. 288.1088 or s. 288.1089. If the chair or vice chair of the Legislative Budget Commission timely advises the department that such action or proposed action exceeds delegated authority or is contrary to legislative policy or intent, the department shall void the waiver until the Legislative Budget Commission or the Legislature addresses the issue. A waiver granted by the department for any project exceeding $5 million must be approved by the Legislative Budget Commission.

(f) The provisions of this subsection shall apply to any contract entered into on or after July 1, 2013.

(5) In the event of default on the performance conditions specified in the contract or agreement, or violation of any of the provisions found in this section, the state may, in addition to any other remedy provided by law, bring suit to enforce its interest.

(6)~~(3)~~ The department shall validate contractor performance and report~~.~~ such ~~Such~~ validation ~~shall be reported~~ in the annual incentives ~~incentive~~ report required under s. 288.907.

(7) The department is authorized to adopt rules to implement this section.

Section 10. Subsection (8) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(8) REDI shall submit a report to the department ~~Governor, the President of the Senate, and the Speaker of the House of~~

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~~Representatives each year on or before September 1~~ on all REDI activities for the previous ~~prior~~ fiscal year as a supplement to the department's annual report required under s. 20.60. This supplementary report must ~~shall~~ include:

(a) A status report on all projects currently being coordinated through REDI, the number of preferential awards and allowances made pursuant to this section, the dollar amount of such awards, and the names of the recipients.

(b) ~~The report shall also include~~ A description of all waivers of program requirements granted.

(c) ~~The report shall also include~~ Information as to the economic impact of the projects coordinated by REDI.~~, and~~

(d) Recommendations based on the review and evaluation of statutes and rules having an adverse impact on rural communities~~,~~ and proposals to mitigate such adverse impacts.

Section 11. Paragraph (c) of subsection (3) of section 288.095, Florida Statutes, is repealed.

Section 12. Paragraph (c) of subsection (4) and paragraph (d) of subsection (7) of section 288.106, Florida Statutes, are amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(4) APPLICATION AND APPROVAL PROCESS.—

(c) Each application meeting the requirements of paragraph (b) must be submitted to the department for determination of eligibility. The department shall review and evaluate each application based on, but not limited to, the following criteria:

1. Expected contributions to the state's economy,

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consistent with the state strategic economic development plan prepared by the department.

2. The economic benefits of the proposed award of tax refunds under this section ~~and the economic benefits of state incentives proposed for the project~~. ~~The term "economic benefits" has the same meaning as in s. 288.005. The Office of Economic and Demographic Research shall review and evaluate the methodology and model used to calculate the economic benefits and shall report its findings by September 1 of every 3rd year, to the President of the Senate and the Speaker of the House of Representatives.~~

3. The amount of capital investment to be made by the applicant in this state.

4. The local financial commitment and support for the project.

5. The expected effect of the project on the unemployed and underemployed ~~unemployment rate~~ in the county where the project will be located.

6. The expected effect of the award on the viability of the project and the probability that the project would be undertaken in this state if such tax refunds are granted to the applicant.

~~7. The expected long-term commitment of the applicant to economic growth and employment in this state resulting from the project.~~

7.~~8.~~ A review of the business's past activities in this state or other states, including whether the ~~such~~ business has been subjected to criminal or civil fines and penalties and whether the business received economic development incentives in other states and the results of such incentive agreements. This

subparagraph does not require the disclosure of confidential information.

(7) ADMINISTRATION.—

(d) Beginning with tax refund agreements signed after July 1, 2010, the department shall attempt to ascertain the causes for any business's failure to complete its agreement and ~~shall report~~ its findings and recommendations must be included in the annual incentives report under s. 288.907 ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~. ~~The report shall be submitted by December 1 of each year beginning in 2011.~~

Section 13. Subsection (8) of section 288.1081, Florida Statutes, is amended to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(8) The annual report required under s. 20.60 must describe ~~On June 30 and December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes~~ in detail the use of the loan funds. The report must include, at a minimum, the number of businesses receiving loans, the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, the locations and types of economic activity undertaken by the borrowers, the amounts of loan repayments made to date, and the default rate of borrowers.

Section 14. Subsection (8) of section 288.1082, Florida Statutes, is amended to read:

288.1082 Economic Gardening Technical Assistance Pilot Program.—

(8) The annual report required under s. 20.60 must describe ~~On December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes~~ in detail the progress of the pilot program. The report must include, at a minimum, the number of businesses receiving assistance, the number of full-time equivalent jobs created as a result of the assistance, if any, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the businesses.

Section 15. Paragraph (e) of subsection (3) of section 288.1088, Florida Statutes, is amended to read:

288.1088 Quick Action Closing Fund.—

(3)

(e) The department ~~Enterprise Florida, Inc.,~~ shall validate contractor performance and report~~.~~ such validation in the annual incentives report required under s. 288.907 ~~shall be reported within 6 months after completion of the contract to the Governor, President of the Senate, and the Speaker of the House of Representatives~~.

Section 16. Paragraphs (b) and (d) of subsection (4), and subsections (9) and (11) of section 288.1089, Florida Statutes, are amended to read:

288.1089 Innovation Incentive Program.—

(4) To qualify for review by the department, the applicant must, at a minimum, establish the following to the satisfaction of the department:

(b) A research and development project must:

1. Serve as a catalyst for an emerging or evolving

technology cluster.

2. Demonstrate a plan for significant higher education collaboration.

3. Provide the state, at a minimum, a cumulative break-even economic benefit ~~return on investment~~ within a 20-year period.

4. Be provided with a one-to-one match from the local community. The match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural areas, brownfield areas, and enterprise zones.

(d) For an alternative and renewable energy project in this state, the project must:

1. Demonstrate a plan for significant collaboration with an institution of higher education;

2. Provide the state, at a minimum, a cumulative break-even economic benefit ~~return on investment~~ within a 20-year period;

3. Include matching funds provided by the applicant or other available sources. The match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural areas, brownfield areas, and enterprise zones;

4. Be located in this state; and

5. Provide at least 35 direct, new jobs that pay an estimated annual average wage that equals at least 130 percent of the average private sector wage.

(9) The department shall validate the performance of an innovation business, a research and development facility, or an alternative and renewable energy business that has received an award. At the conclusion of the innovation incentive award agreement, or its earlier termination, the department shall include in the annual incentives report required under s.

288.907 a detailed description of~~, within 90 days, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing~~ whether the recipient of the innovation incentive grant achieved its specified outcomes.

(11)~~(a)~~ The department shall include in ~~submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, as part of~~ the annual incentives report required under s. 288.907~~,~~ a report summarizing the activities and accomplishments of the recipients of grants from the Innovation Incentive Program during the previous 12 months and an evaluation of whether the recipients are catalysts for additional direct and indirect economic development in Florida.

~~(b) Beginning March 1, 2010, and every third year thereafter, the Office of Program Policy Analysis and Government Accountability, in consultation with the Auditor General's Office, shall release a report evaluating the Innovation Incentive Program's progress toward creating clusters of high-wage, high-skilled, complementary industries that serve as catalysts for economic growth specifically in the regions in which they are located, and generally for the state as a whole. Such report should include critical analyses of quarterly and annual reports, annual audits, and other documents prepared by the Innovation Incentive Program awardees; relevant economic development reports prepared by the department, Enterprise Florida, Inc., and local or regional economic development organizations; interviews with the parties involved; and any other relevant data. Such report should also include legislative recommendations, if necessary, on how to improve the Innovation~~

~~Incentive Program so that the program reaches its anticipated potential as a catalyst for direct and indirect economic development in this state.~~

Section 17. Subsection (4) of section 288.1226, Florida Statutes, is amended to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(4) BOARD OF DIRECTORS.—The board of directors of the corporation shall be composed of the Governor and 31 tourism-industry-related members, appointed by Enterprise Florida, Inc., in conjunction with the department.

(a) The Governor shall serve ex officio as a nonvoting member of the board.

(b) ~~(a)~~ The board shall consist of 16 members, appointed in such a manner as to equitably represent all geographic areas of the state, with no fewer than two members from any of the following regions:

1. Region 1, composed of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Counties.

2. Region 2, composed of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Marion, Nassau, Putnam, St. Johns, Suwannee, Taylor, and Union Counties.

3. Region 3, composed of Brevard, Indian River, Lake, Okeechobee, Orange, Osceola, St. Lucie, Seminole, Sumter, and Volusia Counties.

4. Region 4, composed of Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties.

5. Region 5, composed of Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, and Lee Counties.

6. Region 6, composed of Broward, Martin, Miami-Dade, Monroe, and Palm Beach Counties.

(c) ~~(b)~~ The 15 additional tourism-industry-related members shall include 1 representative from the statewide rental car industry; 7 representatives from tourist-related statewide associations, including those that represent hotels, campgrounds, county destination marketing organizations, museums, restaurants, retail, and attractions; 3 representatives from county destination marketing organizations; 1 representative from the cruise industry; 1 representative from an automobile and travel services membership organization that has at least 2.8 million members in Florida; 1 representative from the airline industry; and 1 representative from the space tourism industry, who will each serve for a term of 2 years.

Section 18. Subsection (3) of section 288.1253, Florida Statutes, is amended to read:

288.1253 Travel and entertainment expenses.—

(3) The Office of Film and Entertainment ~~department~~ shall include in the annual report for the entertainment industry financial incentive program required under s. 288.1254(10) a ~~prepare an annual~~ report of the office's expenditures ~~of the Office of Film and Entertainment and provide such report to the Legislature no later than December 30 of each year~~ for ~~the expenditures of~~ the previous fiscal year. The report must ~~shall~~ consist of a summary of all travel, entertainment, and incidental expenses incurred within the United States and all travel, entertainment, and incidental expenses incurred outside

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the United States, as well as a summary of all successful projects that developed from such travel.

Section 19. Subsection (10) of section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

(10) ANNUAL REPORT.—Each November 1 ~~October 1~~, the Office of Film and Entertainment shall submit ~~provide~~ an annual report for the previous fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines the incentive program's return on investment and economic benefits to the state. The report must ~~shall~~ also include an estimate of the full-time equivalent positions created by each production that received tax credits under this section and information relating to the distribution of productions receiving credits by geographic region and type of production. The report must also include the expenditures report required under s. 288.1253(3) and the information describing the relationship between tax exemptions and incentives to industry growth required under s. 288.1258(5).

Section 20. Subsection (5) of section 288.1258, Florida Statutes, is amended to read:

288.1258 Entertainment industry qualified production companies; application procedure; categories; duties of the Department of Revenue; records and reports.—

(5) RELATIONSHIP OF TAX EXEMPTIONS AND INCENTIVES TO INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The Office of Film and Entertainment shall keep annual records from the information provided on taxpayer applications for tax exemption certificates

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beginning January 1, 2001. These records also must ~~shall~~ reflect a ratio of the annual amount of sales and use tax exemptions under this section, plus the incentives awarded pursuant to s. 288.1254 to the estimated amount of funds expended by certified productions. In addition, the office shall maintain data showing annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages. The employment information must ~~shall~~ include an estimate of the full-time equivalent positions created by each production that received tax credits pursuant to s. 288.1254. The Office of Film and Entertainment shall include ~~report~~ this information in the annual report for the entertainment industry financial incentive program required under s. 288.1254(10) ~~to the Legislature no later than December 1 of each year~~.

Section 21. Subsection (3) of section 288.714, Florida Statutes, is amended to read:

288.714 Quarterly and annual reports.—

(3) ~~By August 31 of each year,~~ The department shall include in its annual report required under s. 20.60 ~~provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~ a detailed report of the performance of the Black Business Loan Program. The report must include a cumulative summary of the quarterly report data compiled pursuant to ~~required by~~ subsection (2) ~~(1)~~.

Section 22. Section 288.7771, Florida Statutes, is amended to read:

288.7771 Annual report of Florida Export Finance Corporation.—The corporation shall annually prepare and submit to Enterprise Florida, Inc., ~~the department~~ for inclusion in its

annual report required under s. 288.906 ~~by s. 288.095~~ a complete and detailed report setting forth:

(1) The report required in s. 288.776(3).

(2) Its assets and liabilities at the end of its most recent fiscal year.

Section 23. Subsections (3), (4), and (5) of section 288.903, Florida Statutes, are amended to read:

288.903 Duties of Enterprise Florida, Inc.—Enterprise Florida, Inc., shall have the following duties:

(3) Prepare an annual report pursuant to s. 288.906.

(4) Prepare, in conjunction with the department, ~~and~~ an annual incentives report pursuant to s. 288.907.

(5) ~~(4)~~ Assist the department with the development of an annual and a long-range strategic business blueprint for economic development required in s. 20.60.

(6) ~~(5)~~ In coordination with Workforce Florida, Inc., identify education and training programs that will ensure Florida businesses have access to a skilled and competent workforce necessary to compete successfully in the domestic and global marketplace.

Section 24. Subsection (6) of section 288.904, Florida Statutes, is repealed.

Section 25. Subsection (3) is added to section 288.906, Florida Statutes, to read:

288.906 Annual report of Enterprise Florida, Inc., and its divisions; audits.—

(3) The following reports must be included as supplements to the detailed report required by this section:

(a) The annual report of the Florida Export Finance

Corporation required under s. 288.7771.

(b) The report on international offices required under s. 288.012.

Section 26. Section 288.907, Florida Statutes, is amended to read:

288.907 Annual incentives report.—

~~(1)~~ By December 30 of each year, ~~In addition to the annual report required under s. 288.906,~~ Enterprise Florida, Inc., in conjunction with the department, ~~by December 30 of each year,~~ shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed incentives report quantifying the economic benefits for all of the economic development incentive programs marketed by Enterprise Florida, Inc.

~~(a)~~ The annual incentives report must include:

(1) For each incentive program:

(a) ~~1.~~ A brief description of the incentive program.

(b) ~~2.~~ The amount of awards granted, by year, since inception and the annual amount actually transferred from the state treasury to businesses or for the benefit of businesses for each of the previous 3 years.

~~3. The economic benefits, as defined in s. 288.005, based on the actual amount of private capital invested, actual number of jobs created, and actual wages paid for incentive agreements completed during the previous 3 years.~~

(c) ~~4. The report shall also include~~ The actual amount of private capital invested, actual number of jobs created, and actual wages paid for incentive agreements completed during the previous 3 years for each target industry sector.

(2) ~~(b)~~ For projects completed during the previous state fiscal year~~, the report must include~~:

(a) ~~1.~~ The number of economic development incentive applications received.

(b) ~~2.~~ The number of recommendations made to the department by Enterprise Florida, Inc., including the number recommended for approval and the number recommended for denial.

(c) ~~3.~~ The number of final decisions issued by the department for approval and for denial.

(d) ~~4.~~ The projects for which a tax refund, tax credit, or cash grant agreement was executed, identifying for each project:

1. ~~a.~~ The number of jobs committed to be created.

2. ~~b.~~ The amount of capital investments committed to be made.

3. ~~c.~~ The annual average wage committed to be paid.

4. ~~d.~~ The amount of state economic development incentives committed to the project from each incentive program under the project's terms of agreement with the Department of Economic Opportunity.

5. ~~e.~~ The amount and type of local matching funds committed to the project.

(e) Tax refunds paid or other payments made funded out of the Economic Development Incentives Account for each project.

(f) The types of projects supported.

(3) ~~(c)~~ For economic development projects that received tax refunds, tax credits, or cash grants under the terms of an agreement for incentives~~, the report must identify~~:

(a) ~~1.~~ The number of jobs actually created.

(b) ~~2.~~ The amount of capital investments actually made.

(c) ~~3.~~ The annual average wage paid.

(4) ~~(d)~~ For a project receiving economic development incentives approved by the department and receiving federal or local incentives, ~~the report must include~~ a description of the federal or local incentives, if available.

(5) ~~(c)~~ The ~~report must state the~~ number of withdrawn or terminated projects that did not fulfill the terms of their agreements with the department and, consequently, are not receiving incentives.

(6) For any agreements signed after July 1, 2010, findings and recommendations on the efforts of the department to ascertain the causes of any business's inability to complete its agreement made under s. 288.106.

(7) ~~(f)~~ The amount ~~report must include an analysis of the economic benefits, as defined in s. 288.005,~~ of tax refunds, tax credits, or other payments made to projects locating or expanding in state enterprise zones, rural communities, brownfield areas, or distressed urban communities. The report must include a separate analysis of the impact of such tax refunds on state enterprise zones designated under s. 290.0065, rural communities, brownfield areas, and distressed urban communities.

(8) The name of and tax refund amount for each business that has received a tax refund under s. 288.1045 or s. 288.106 during the preceding fiscal year.

(9) ~~(g)~~ An identification of ~~The report must identify~~ the target industry businesses and high-impact businesses.

(10) ~~(h)~~ A description of ~~The report must describe~~ the trends relating to business interest in, and usage of, the

various incentives, and the number of minority-owned or woman-owned businesses receiving incentives.

(11)~~(i)~~ An identification of ~~The report must identify~~ incentive programs not used and recommendations for program changes or program elimination ~~utilized~~.

(12) Information related to the validation of contractor performance required under s. 288.061.

(13) Beginning in 2014, a summation of the activities related to the Florida Space Business Incentives Act.

~~(2) The Division of Strategic Business Development within the department shall assist Enterprise Florida, Inc., in the preparation of the annual incentives report.~~

Section 27. Subsection (3) of section 288.92, Florida Statutes, is amended to read:

288.92 Divisions of Enterprise Florida, Inc.—

(3) ~~By October 15 each year,~~ Each division shall draft and submit an annual report for inclusion in the report required under 288.906 which details the division's activities during the previous ~~prior~~ fiscal year and includes ~~any~~ recommendations for improving current statutes related to the division's ~~related~~ area of responsibility.

Section 28. Subsection (5) of section 288.95155, Florida Statutes, is amended to read:

288.95155 Florida Small Business Technology Growth Program.—

(5) Enterprise Florida, Inc., shall prepare for inclusion in the annual report ~~of the department~~ required under s. 288.907 ~~by s. 288.095~~ a report on the financial status of the program. The report must specify the assets and liabilities of the

program within the current fiscal year and must include a portfolio update that lists all of the businesses assisted, the private dollars leveraged by each business assisted, and the growth in sales and in employment of each business assisted.

Section 29. Subsection (11) of section 290.0056, Florida Statutes, is amended to read:

290.0056 Enterprise zone development agency.—

(11) Before October 1 ~~December 1~~ of each year, the agency shall submit to the department for inclusion in the annual report required under s. 20.60 a complete and detailed written report setting forth:

(a) Its operations and accomplishments during the fiscal year.

(b) The accomplishments and progress concerning the implementation of the strategic plan or measurable goals, and any updates to the strategic plan or measurable goals.

(c) The number and type of businesses assisted by the agency during the fiscal year.

(d) The number of jobs created within the enterprise zone during the fiscal year.

(e) The usage and revenue impact of state and local incentives granted during the calendar year.

(f) Any other information required by the department.

Section 30. Section 290.014, Florida Statutes, is amended to read:

290.014 Annual reports on enterprise zones.—

(1) By October 1 ~~February 1~~ of each year, the Department of Revenue shall submit an annual report to the department detailing the usage and revenue impact by county of the state

incentives listed in s. 290.007.

(2) ~~By March 1 of each year, the department shall submit an annual report to the Governor, the Speaker of the House of Representatives, and the President of the Senate.~~ The annual report required under s. 20.60 shall include the information provided by the Department of Revenue pursuant to subsection (1) and the information provided by enterprise zone development agencies pursuant to s. 290.0056. In addition, the report shall include an analysis of the activities and accomplishments of each enterprise zone.

Section 31. Section 290.0411, Florida Statutes, is amended to read:

290.0411 Legislative intent and purpose of ss. 290.0401-290.048.—It is the intent of the Legislature to provide the necessary means to develop, preserve, redevelop, and revitalize Florida communities exhibiting signs of decline, ~~or~~ distress, or economic need by enabling local governments to undertake the necessary community and economic development programs. The overall objective is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing decent housing and suitable living environments, and expanding economic opportunities, principally for persons of low or moderate income. The purpose of ss. 290.0401-290.048 is to assist local governments in carrying out effective community and economic development and project planning and design activities to arrest and reverse community decline and restore community vitality. Community development and project planning activities to maintain viable communities, revitalize existing communities, expand economic development and employment opportunities, and

improve housing conditions and expand housing opportunities, providing direct benefit to persons of low or moderate income, are the primary purposes of ss. 290.0401-290.048. The Legislature, therefore, declares that the development, redevelopment, preservation, and revitalization of communities in this state and all the purposes of ss. 290.0401-290.048 are public purposes for which public money may be borrowed, expended, loaned, pledged to guarantee loans, and granted.

Section 32. Subsections (1) and (6) of section 290.042, Florida Statutes, are amended to read:

290.042 Definitions relating to Florida Small Cities Community Development Block Grant Program Act.—As used in ss. 290.0401-290.048, the term:

(1) "Administrative closeout" means the notification of a grantee by the department that all applicable administrative actions and all required work of an existing ~~the~~ grant have been completed with the exception of the final audit.

(6) "Person of low or moderate income" means any person who meets the definition established by the department in accordance with the guidelines established in Title I of the Housing and Community Development Act of 1974, as amended, and the definition of the term "low- and moderate-income person" as provided in 24 C.F.R. s. 570.3.

Section 33. Subsections (2), (3), and (4) of section 290.044, Florida Statutes, are amended to read:

290.044 Florida Small Cities Community Development Block Grant Program Fund; administration; distribution.—

(2) The department shall adopt rules establishing guidelines for the distribution of ~~distribute such funds as loan~~

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~~guarantees and~~ grants to eligible local governments through ~~on the basis of~~ a competitive selection process.

(3) The department shall define ~~the~~ broad community development objectives consistent with national objectives established by 42 U.S.C. s. 5304 and 24 C.F.R. s. 570.483 ~~objective~~ to be achieved through the distribution of block grant funds under this section. ~~by the activities in each of the following grant program categories, and require applicants for grants to compete against each other in these grant program categories:~~

~~(a) Housing.~~

~~(b) Economic development.~~

~~(c) Neighborhood revitalization.~~

~~(d) Commercial revitalization.~~

~~(e) Project planning and design.~~

(4) The department may set aside an amount of up to 5 percent of the funds annually for use in any eligible local government jurisdiction for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities but must not be provided unless ~~for which~~ no other source of federal, state, or local disaster funds is available. The department may provide for such set-aside by rule. In the last quarter of the state fiscal year, any funds not allocated under the emergency-related set-aside must ~~shall~~ be distributed to unfunded applications from the most recent funding cycle.

Section 34. Section 290.0455, Florida Statutes, is amended to read:

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290.0455 Small Cities Community Development Block Grant Loan Guarantee Program; Section 108 loan guarantees.—

(1) The Small Cities Community Development Block Grant Loan Guarantee Program is created. The department shall administer the loan guarantee program pursuant to Section 108 ~~s. 108~~ of Title I of the Housing and Community Development Act of 1974, as amended, and as further amended by s. 910 of the Cranston-Gonzalez National Affordable Housing Act. The purpose of the Small Cities Community Development Block Grant Loan Guarantee Program is to guarantee, or to make commitments to guarantee, notes or other obligations issued by public entities for the purposes of financing activities enumerated in 24 C.F.R. s. 570.703.

(2) Activities assisted under the loan guarantee program must meet the requirements contained in 24 C.F.R. ss. 570.700-570.710 and may not otherwise be financed in whole or in part from the Florida Small Cities Community Development Block Grant Program.

(3) The department may pledge existing revenues on deposit or future revenues projected to be available for deposit in the Florida Small Cities Community Development Block Grant Program in order to guarantee~~, in whole or in part,~~ the payment of principal and interest on a Section 108 loan ~~made under the loan guarantee program~~.

(4) An applicant approved by the United States Department of Housing and Urban Development to receive a Section 108 loan shall enter into an agreement with the Department of Economic Opportunity which requires the applicant to pledge half of the amount necessary to guarantee the loan in the event of default.

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(5) The department shall review all Section 108 loan applications that it receives from local governments. The department shall review the applications ~~must submit all applications it receives to the United States Department of Housing and Urban Development for loan approval,~~ in the order received, subject to a determination by the department ~~determining~~ that each ~~the~~ application meets all eligibility requirements contained in 24 C.F.R. ss. 570.700-570.710~~,~~ and has been deemed financially feasible by a loan underwriter approved by the department. If the statewide maximum available for loan guarantee commitments established in subsection (6) has not been committed, the department may submit the Section 108 loan application to the United States Department of Housing and Urban Development with a recommendation that the loan be approved, with or without conditions, or be denied ~~provided that the applicant has submitted the proposed activity to a loan underwriter to document its financial feasibility~~.

(6)~~(5)~~ The maximum amount of an individual loan guarantee commitment that an ~~commitments that any~~ eligible local government may receive is ~~may be~~ limited to $5 ~~$7~~ million ~~pursuant to 24 C.F.R. s. 570.705,~~ and the maximum amount of loan guarantee commitments statewide may not exceed an amount equal to two ~~five~~ times the amount of the most recent grant received by the department under the Florida Small Cities Community Development Block Grant Program. The $5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, that may be refinanced.

(7)~~(6)~~ Section 108 loans guaranteed by the Small Cities Community Development Block Grant Program ~~loan guarantee~~ ~~program~~

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must be repaid within 20 years.

(8)~~(7)~~ Section 108 loan applicants must demonstrate ~~guarantees may be used for an activity only if the local government provides evidence~~ to the department that the applicant investigated alternative financing services ~~were investigated~~ and the services were unavailable or insufficient to meet the financing needs of the proposed activity.

(9) If a local government defaults on a Section 108 loan received from the United States Department of Housing and Urban Development and guaranteed through the Florida Small Cities Community Development Block Grant Program, thereby requiring the department to reduce its annual grant award in order to pay the annual debt service on the loan, any future community development block grants that the local government receives must be reduced in an amount equal to the amount of the state's grant award used in payment of debt service on the loan.

(10) If a local government receives a Section 108 loan guaranteed through the Florida Small Cities Community Development Block Grant Program and is granted entitlement community status as defined in subpart D of 24 C.F.R. part 570 by the United States Department of Housing and Urban Development before paying the loan in full, the local government must pledge its community development block grant entitlement allocation as a guarantee of its previous loan and request that the United States Department of Housing and Urban Development release the department as guarantor of the loan.

~~(8) The department must, before approving an application for a loan, evaluate the applicant's prior administration of block grant funds for community development. The evaluation of~~

~~past performance must take into account the procedural aspects of previous grants or loans as well as substantive results. If the department finds that any applicant has failed to substantially accomplish the results proposed in the applicant's last previously funded application, the department may prohibit the applicant from receiving a loan or may penalize the applicant in the rating of the current application.~~

Section 35. Section 290.046, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 290.046, F.S., for present text.)

290.046 Applications for grants; procedures; requirements.—

(1) The department shall adopt rules establishing application procedures.

(2)(a) Except for economic development projects, each local government that is eligible by rule to apply for a grant during an application cycle may submit one application for a noneconomic development project during the application cycle. A local government that is eligible by rule to apply for an economic development grant may apply up to three times each funding cycle for an economic development grant and may have more than one open economic development grant.

(b) The department shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income, the degree of private sector financial commitment, the economic feasibility of the proposed project, and any other criteria the department deems appropriate.

(c) The department may not award a grant until the department has completed a site visit to verify the information

contained in the application.

(3)(a) The department shall adopt rules establishing criteria for evaluating applications received during each application cycle and the department must rank each application in accordance with those rules. Such rules must allow the department to consider relevant factors, including, but not limited to, community need, unemployment, poverty levels, low and moderate income populations, health and safety, and the condition of physical structures. The department shall incorporate into its ranking system a procedure intended to eliminate or reduce any existing population-related bias that places exceptionally small communities at a disadvantage in the competition for funds.

(b) Project funding must be determined by the rankings established in each application cycle. If economic development funding remains available after the application cycle closes, funding will be awarded to eligible projects on a first-come, first-served basis until funding for this category is fully obligated.

(4) In order to provide the public with information concerning an applicant's proposed program before an application is submitted to the department, the applicant shall, for each funding cycle:

(a) Conduct an initial public hearing to inform the public of funding opportunities available to meet community needs and eligible activities and to solicit public input on community needs.

(b) Publish a summary of the proposed application which affords the public an opportunity to examine the contents of the

application and submit comments.

(c) Conduct a second public hearing to obtain public comments on the proposed application and make appropriate modifications to the application.

Section 36. Section 290.047, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 290.047, F.S., for present text.)

290.047 Establishment of grant ceilings and maximum administrative cost percentages.—

(1) The department shall adopt rules to establish:

(a) Grant ceilings.

(b) The maximum percentage of block grant funds that may be spent on administrative costs by an eligible local government.

(c) Grant administration procurement procedures for eligible local governments.

(2) An eligible local government may not contract with the same individual or business entity for more than one service to be performed in connection with a community development block grant, including, but not limited to, application preparation services, administrative services, architectural and engineering services, and construction services, unless it can be demonstrated by the eligible local government that the individual or business entity is the sole source of the service or is the responsive proposer whose proposal is determined in writing from a competitive process to be the most advantageous to the local government.

(3) The maximum amount of block grant funds that may be spent on architectural and engineering costs by an eligible

local government must be determined by a methodology adopted by the department by rule.

Section 37. Section 290.0475, Florida Statutes, is amended to read:

290.0475 Rejection of grant applications; penalties for failure to meet application conditions.—Applications received for funding are ineligible if ~~under all program categories shall be rejected without scoring only in the event that any of the following circumstances arise~~:

(1) The application is not received by the department by the application deadline.

(2) The proposed project does not meet one of the three national objectives as described ~~contained~~ in s. 290.044(3) ~~federal and state legislation~~.

(3) The proposed project is not an eligible activity as contained in the federal legislation.

(4) The application is not consistent with the local government's comprehensive plan adopted pursuant to s. 163.3184.

(5) The applicant has an open community development block grant, except as provided in s. 290.046(2)(a) and department rule ~~s. 290.046(2)(c)~~.

(6) The local government is not in compliance with the citizen participation requirements prescribed in ss. 104(a)(1) and (2) and 106(d)(5)(c) of Title I of the Housing and Community Development Act of 1984, s. 290.046(4), and department rule ~~rules~~.

~~(7) Any information provided in the application that affects eligibility or scoring is found to have been misrepresented, and the information is not a mathematical error~~

~~which may be discovered and corrected by readily computing available numbers or formulas provided in the application.~~

Section 38. Subsections (5), (6), and (7) of section 290.048, Florida Statutes, are amended to read:

290.048 General powers of department under ss. 290.0401-290.048.—The department has all the powers necessary or appropriate to carry out the purposes and provisions of the program, including the power to:

~~(5) Adopt and enforce strict requirements concerning an applicant's written description of a service area. Each such description shall contain maps which illustrate the location of the proposed service area. All such maps must be clearly legible and must:~~

~~(a) Contain a scale which is clearly marked on the map.~~

~~(b) Show the boundaries of the locality.~~

~~(c) Show the boundaries of the service area where the activities will be concentrated.~~

~~(d) Display the location of all proposed area activities~~.

~~(c) Include the names of streets, route numbers, or easily identifiable landmarks where all service activities are located.~~

(5) ~~(6)~~ Pledge community development block grant revenues from the Federal Government in order to guarantee notes or other obligations of a public entity which are approved pursuant to s. 290.0455.

~~(7) Establish an advisory committee of no more than 13 members to solicit participation in designing, administering, and evaluating the program and in linking the program with other housing and community development resources.~~

Section 39. Subsection (11) of section 331.3051, Florida

Statutes, is amended to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(11) Annually report on its performance with respect to its business plan, to include finance, spaceport operations, research and development, workforce development, and education. Space Florida shall submit the report ~~shall be submitted~~ to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 30 ~~no later than September 1~~ for the previous ~~prior~~ fiscal year. The annual report must include operations information as required under s. 331.310(2)(e).

Section 40. Paragraph (e) of subsection (2) of section 331.310, Florida Statutes, is amended to read:

331.310 Powers and duties of the board of directors.—

(2) The board of directors shall:

(e) Prepare an annual report of operations as a supplement to the annual report required under s. 331.3051(11). The report must ~~shall~~ include, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, the auditor's report, a summary of the status of existing and proposed bonding projects, comments from management about the year's business, and prospects for the next year~~, which shall be submitted each year by November 30 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leader of the Senate, and the minority leader of the House of Representatives~~.

Section 41. Paragraphs (a) and (e) of subsection (30) of

section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, the term:

(30) "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.

(e)1. A violation of an employer's rule, unless the claimant can demonstrate that:

a.~~1.~~ He or she did not know, and could not reasonably know, of the rule's requirements;

b.~~2.~~ The rule is not lawful or not reasonably related to the job environment and performance; or

c.~~3.~~ The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

Section 42. Paragraphs (b), (c), and (d) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

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

(b) She or he has completed the department's online work registration ~~registered with the department for work~~ and subsequently reports to the one-stop career center as directed by the regional workforce board for reemployment services. This requirement does not apply to persons who are:

1. Non-Florida residents;

2. On a temporary layoff;

3. Union members who customarily obtain employment through a union hiring hall; or

4. Claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

5. Unable to complete the online work registration due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment. If a person is exempted from the online work registration under this subparagraph, then the filing of his or her claim constitutes registration for work.

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

1. For each week of unemployment claimed, each report must,

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at a minimum, include the name, address, and telephone number of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d).

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

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

4. The department shall coordinate with Workforce Florida, Inc., the workforce boards, and the one-stop career centers to

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identify, develop, and utilize best practices for improving the skills of individuals who choose to participate in training opportunities and who have a minimal proficiency score below the score prescribed in subparagraph 2.

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

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of efforts may not include the same prospective employer at the same location for the duration of benefits, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop


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career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court


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pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 43. Subsection (13) is added to section 443.101, Florida Statutes, to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(13) For any week with respect to which the department finds that his or her unemployment is due to a discharge from employment for failure without good cause to maintain a license, registration, or certification required by applicable law necessary for the employee to perform her or his assigned job duties. For purposes of this paragraph, the term "good cause" includes, but is not limited to, failure of the employer to submit information required for a license, registration, or certification; short-term physical injury which prevents the employee from completing or taking a required test; and


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inability to take or complete a required test that is outside the employee's control.

Section 44. Paragraph (b) of subsection (4) of section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(4) The project to implement the Reemployment Assistance Claims and Benefits Information System is ~~shall be~~ comprised of the following phases and corresponding implementation timeframes:

(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014 ~~2012-2013~~.

Section 45. Subsection (5) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(5) ADDITIONAL RATE FOR INTEREST ON FEDERAL ADVANCES.—

(a) When the Unemployment Compensation Trust Fund has received advances from the Federal Government under the provisions of 42 U.S.C. s. 1321, each contributing employer shall be assessed an additional rate solely for the purpose of paying interest due on such federal advances. The additional rate shall be assessed no later than February 1 in each calendar year in which an interest payment is due.


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(b) The Revenue Estimating Conference shall estimate the amount of ~~such~~ interest due on federal advances by ~~no later than~~ December 1 of the calendar year before ~~preceding~~ the calendar year in which an interest payment is due. The Revenue Estimating Conference shall, at a minimum, consider the following as the basis for the estimate:

1. The amounts actually advanced to the trust fund.

2. Amounts expected to be advanced to the trust fund based on current and projected unemployment patterns and employer contributions.

3. The interest payment due date.

4. The interest rate that will be applied by the Federal Government to any accrued outstanding balances.

(c) ~~(b)~~ The tax collection service provider shall calculate the additional rate to be assessed against contributing employers. The additional rate assessed for a calendar year is ~~shall be~~ determined by dividing the estimated amount of interest to be paid in that year by 95 percent of the taxable wages as described in s. 443.1217 paid by all employers for the year ending June 30 of the previous ~~immediately preceding~~ calendar year. The amount to be paid by each employer is ~~shall be~~ the product obtained by multiplying such employer's taxable wages as described in s. 443.1217 for the year ending June 30 of the previous ~~immediately preceding~~ calendar year by the rate as determined by this subsection. An assessment may not be made if the amount of assessments on deposit from previous years, plus any earned interest, is at least 80 percent of the estimated amount of interest.

(d) The tax collection service provider shall make a

separate collection of such assessment, which may be collected at the time of employer contributions and subject to the same penalties for failure to file a report, imposition of the standard rate pursuant to paragraph (3)(h), and interest if the assessment is not received on or before June 30. Section 443.141(1)(d) and (e) does not apply to this separately collected assessment. The tax collection service provider shall maintain those funds in the tax collection service provider's Audit and Warrant Clearing Trust Fund until the provider is directed by the Governor or the Governor's designee to make the interest payment to the Federal Government. Assessments on deposit must be available to pay the interest on advances received from the Federal Government under 42 U.S.C. s. 1321. Assessments on deposit may be invested and any interest earned shall be part of the balance available to pay the interest on advances received from the Federal Government under 42 U.S.C. s. 1321.

(e) Four months after ~~In the calendar year that~~ all advances from the Federal Government under 42 U.S.C. s. 1321 and associated interest are repaid, ~~if there are assessment funds in excess of the amount required to meet the final interest payment,~~ any ~~such~~ excess assessed funds in the Audit and Warrant Clearing Trust Fund, including associated interest, shall be transferred to ~~credited to employer accounts in~~ the Unemployment Compensation Trust Fund. Any assessment amounts subsequently collected shall also be transferred to the Unemployment Compensation Trust Fund ~~in an amount equal to the employer's contribution to the assessment for that year divided by the total amount of the assessment for that year, the result of~~

~~which is multiplied by the amount of excess assessed funds~~.

(f) If ~~However, if~~ the state is permitted to defer interest payments due during a calendar year under 42 U.S.C. s. 1322, payment of the interest assessment is ~~shall~~ not ~~be~~ due. If a deferral of interest expires or is subsequently disallowed by the Federal Government, either prospectively or retroactively, the interest assessment shall be immediately due and payable. Notwithstanding any other provision of this section, if interest due during a calendar year on federal advances is forgiven or postponed under federal law and is no longer due during that calendar year, no interest assessment shall be assessed against an employer for that calendar year, and any assessment already assessed and collected against an employer before the forgiveness or postponement of the interest for that calendar year shall be credited to such employer's account in the Unemployment Compensation Trust Fund. However, such funds may be used only to pay benefits or refunds of erroneous contributions.

(g) This subsection expires July 1, 2014.

Section 46. Paragraph (b) of subsection (2) and paragraph (a) of subsection (6) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(b) *Process.*—When the Reemployment Assistance Claims and Benefits Information System described in s. 443.1113 is fully operational, the process for filing claims must incorporate the process for registering for work with the workforce information systems established pursuant to s. 445.011. Unless exempted

under s. 443.091(1)(b)5., a claim for benefits may not be processed until the work registration requirement is satisfied. The department may adopt rules as necessary to administer the work registration requirement set forth in this paragraph.

(6) RECOVERY AND RECOUPMENT.—

(a) Any person who, by reason of her or his fraud, receives benefits under this chapter to which she or he is not entitled is liable for repaying those benefits to the Department of Economic Opportunity on behalf of the trust fund or, in the discretion of the department, to have those benefits deducted from future benefits payable to her or him under this chapter. In addition, the department shall impose upon the claimant a penalty equal to 15 percent of the amount overpaid. To enforce this paragraph, the department must find the existence of fraud through a redetermination or decision under this section within 2 years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within 7 years after the redetermination or decision.

Section 47. Effective January 1, 2014, paragraph (a) of subsection (4) of section 443.151, Florida Statutes, is amended to read:

(4) APPEALS.—

(a) Appeals referees.—The Department of Economic Opportunity shall appoint one or more impartial salaried appeals referees in accordance with s. 443.171(3) to hear and decide appealed claims. An appeals referee must be an attorney in good standing with the Florida Bar, or must be successfully admitted to the Florida Bar within 8 months of his or her date of employment. A person may not participate on behalf of the

department as an appeals referee in any case in which she or he is an interested party. The department may designate alternates to serve in the absence or disqualification of any appeals referee on a temporary basis. These alternates must have the same qualifications required of appeals referees. The department shall provide the commission and the appeals referees with proper facilities and assistance for the execution of their functions.

Section 48. A person who is an employee of the Department of Economic Opportunity as of the effective date of this act who acts as an appeals referee and who has received the degree of Bachelor of Laws or Juris Doctor from a law school accredited by the American Bar Association, but is not licensed with the Florida Bar, must become successfully admitted to the Florida Bar by September 30, 2014.

Section 49. Subsection (1) of section 443.1715, Florida Statutes, is amended to read:

443.1715 Disclosure of information; confidentiality.—

(1) RECORDS AND REPORTS.—Information revealing an employing unit's or individual's identity obtained from the employing unit or any individual under the administration of this chapter, and any determination revealing that information, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This confidential information may be released in accordance with the provisions in 20 C.F.R. part 603. A person receiving confidential information who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Department of Economic Opportunity or its tax collection service provider may, however,

furnish to any employer copies of any report submitted by that employer upon the request of the employer and may furnish to any claimant copies of any report submitted by that claimant upon the request of the claimant. The department or its tax collection service provider may charge a reasonable fee for copies of these reports as prescribed by rule, which may not exceed the actual reasonable cost of the preparation of the copies. Fees received for copies under this subsection must be deposited in the Employment Security Administration Trust Fund.

Section 50. Subsection (1) of section 443.191, Florida Statutes, is amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—

(1) There is established, as a separate trust fund apart from all other public funds of this state, an Unemployment Compensation Trust Fund, which shall be administered by the Department of Economic Opportunity exclusively for the purposes of this chapter. The fund must ~~shall~~ consist of:

(a) All contributions and reimbursements collected under this chapter;

(b) Interest earned on any moneys in the fund;

(c) Any property or securities acquired through the use of moneys belonging to the fund;

(d) All earnings of these properties or securities;

(e) All money credited to this state's account in the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1103; ~~and~~

(f) All money collected for penalties imposed pursuant to s. 443.151(6)(a); and

(g) Advances on the amount in the federal Unemployment Compensation Trust Fund credited to the state under 42 U.S.C. s. 1321, as requested by the Governor or the Governor's designee.

Except as otherwise provided in s. 443.1313(4), all moneys in the fund must ~~shall~~ be mingled and undivided.

Section 51. Paragraph (b) of subsection (3) and subsection (4) of section 446.50, Florida Statutes, are amended to read:

446.50 Displaced homemakers; multiservice programs; report to the Legislature; Displaced Homemaker Trust Fund created.—

(3) POWERS AND DUTIES OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY.—

(b)1. The department shall enter into contracts with, and make grants to, public and nonprofit private entities for purposes of establishing multipurpose service programs for displaced homemakers under this section. Such grants and contracts must ~~shall~~ be awarded pursuant to chapter 287 and based on criteria established in the program ~~state~~ plan as provided in subsection (4) ~~developed pursuant to this section~~. The department shall designate catchment areas that together, must ~~shall~~ compose the entire state, and, to the extent possible from revenues in the Displaced Homemaker Trust Fund, the department shall contract with, and make grants to, entities that will serve entire catchment areas so that displaced homemaker service programs are available statewide. These catchment areas must ~~shall~~ be coterminous with the state's workforce development regions. The department may give priority to existing displaced homemaker programs when evaluating bid responses to the request for proposals.

2. In order to receive funds under this section, and unless specifically prohibited by law from doing so, an entity that provides displaced homemaker service programs must receive at least 25 percent of its funding from one or more local, municipal, or county sources or nonprofit private sources. In-kind contributions may be evaluated by the department and counted as part of the required local funding.

3. The department shall require an entity that receives funds under this section to maintain appropriate data to be compiled in an annual report to the department. Such data must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, the number of clients served, the units of services provided, designated client-specific information including intake and outcome information specific to each client, costs associated with specific services and program administration, total program revenues by source and other appropriate financial data, and client followup information at specified intervals after the placement of a displaced homemaker in a job.

(4) DISPLACED HOMEMAKER PROGRAM ~~STATE~~ PLAN.—

~~(a)~~ The Department of Economic Opportunity shall include in its annual report required under s. 20.60 a ~~develop a 3-year state~~ plan for the displaced homemaker program ~~which shall be updated annually~~. The plan must address, at a minimum, the need for programs specifically designed to serve displaced homemakers, any necessary service components for such programs in addition to those described ~~enumerated~~ in this section, goals of the displaced homemaker program with an analysis of the extent to which those goals are being met, and recommendations for ways to address any unmet program goals. Any request for

funds for program expansion must be based on the ~~state~~ plan.

~~(b)~~ The displaced homemaker program ~~Each annual update must address any changes in the components of the 3-year state~~ plan ~~and a report that~~ must include, but need not be limited to, the following:

(a)~~1.~~ The scope of the incidence of displaced homemakers;

(b)~~2.~~ A compilation and report, by program, of data submitted to the department pursuant to subparagraph (3)(b)3. ~~subparagraph 3.~~ by funded displaced homemaker service programs;

(c)~~3.~~ An identification and description of the programs in the state which receive funding from the department, including funding information; and

(d)~~4.~~ An assessment of the effectiveness of each displaced homemaker service program based on outcome criteria established by rule of the department.

~~(c) The 3-year state plan must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor on or before January 1, 2001, and annual updates of the plan must be submitted by January 1 of each subsequent year.~~

Section 52. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations	
BILL:	CS/CS/SB 1024
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Commerce Committee
SUBJECT:	Department of Economic Opportunity
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**CM SPB as introduced**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	Pingree	Martin	ATD	**Fav/CS**
4.	Pingree	Hansen	AP	**Fav/CS**
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 1024 modifies several activities under the jurisdiction of the Department of Economic Opportunity (DEO or department). The bill creates the Gulf Coast Economic Corridor Act and establishes a nonprofit corporation administratively housed in the DEO to administer, invest, and award certain funds received by the state related to the Deepwater Horizon oil spill. The bill amends provisions related to: the Florida Small Business Development Center Network; the reporting and evaluation of economic development programs; economic development incentives; and the Reemployment Assistance Program. Several of the changes to the Reemployment Assistance Program conform Florida law to federal requirements.

The bill has a fiscal impact on both state revenues and expenditures. The Revenue Estimating Conference adopted an impact for the provisions of the bill related to the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund of positive $1.5 million (a combination of increased revenues and decreased expenditures) for FY 2013-2014, and adopted a cash impact of negative $120,000 (decreased revenues) for FY 2013-2014 for the provisions allowing the expansion of certain enterprise zones located in rural areas of critical economic concern. In Fiscal Year 2013-2014, the bill is projected to have fiscal impacts on the Office of Economic and Demographic Research (EDR), the Office of Program Policy Analysis and Government Accountability (OPPAGA), and the DEO, which are either

addressed in the development of the Fiscal Year 2013-2014 General Appropriations Act or can be handled within existing resources. See Section V.

Highlights of the bill include:

Reporting and Evaluations of Economic Development Programs

- Streamlines the process by which all incentive program applicants are evaluated by requiring that all applicants be evaluated for the "economic benefits" of the proposed project.
- Creates a rotating, 3-year review schedule for specified incentives and programs to be evaluated by the EDR and the OPPAGA.
- Consolidates required reports and reporting dates for various economic development program reports by the DEO, Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.
- Creates a project-based reporting system to be developed by the DEO to allow the public to view information relating to economic development projects receiving state incentives.
- Moves the reporting date for the Florida New Markets Tax Credit program from April 1 to January 31.

Florida Small Business Development Center Network

- Aligns the network's statewide policies with the statewide strategic economic development plan and statewide goals of the university system.
- Specifies the composition of the network's statewide advisory board.
- Specifies the support services offered by the network.
- Requires the network to provide a match to any direct state appropriation.
- Requires the network to set up incentives for the regional centers to create jobs, institute best practices, and serve new areas of the state or underserved areas.
- Requires regular reporting by the network on programs, services, and outcomes, including information on the network's economic benefits to the state.

Economic Development Incentives

- Requires the DEO to evaluate each application for economic incentives for the economic benefits of the proposed award to the state, and the EDR is to review and report on the methodology used to calculate the economic benefit.
- Requires recipients of incentives under the Quick Action Closing Fund and the Innovation Incentive Programs to secure the award with a surety bond, letter of credit, or other security before any state funds can be disbursed.
- Provides that the DEO may waive the securitization requirements upon certifying specific information, in writing, to the Governor and the Legislature. The Legislative Budget Commission must approve any waiver granted by the DEO for a project exceeding $5 million.
- Specifies the meaning of the term "brownfield" for purposes of the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund.

- Allows enterprise zones that are between 15 and 20 square miles located in rural areas of critical economic concern to increase the zone by 3 square miles, and enterprise zones that are at least 20 square miles located in rural areas of critical economic concern to increase the zone by 5 square miles.

Reemployment Assistance Program

- Requires that an appeals referee employed by the DEO be an attorney in good standing with the Florida Bar. The DEO is permitted to fill the positions through attrition, beginning January 1, 2014.
- Prohibits a claimant from counting the same prospective employer at the same location for three consecutive weeks as proof of work search efforts, unless the employer indicates that it is hiring after the initial contact by the claimant.
- Provides that any excess assessments previously collected to pay interest on federal advances taken to cover unemployment compensation benefit claims be applied to federal interest payments due before additional assessments are made. The bill prohibits the collection of assessments if the amount on deposit is at least 80 percent of the estimated amount of interest.
- Assesses a 15 percent penalty on individuals who fraudulently collect unemployment compensation benefits, in order to comply with the requirements of federal law.
- Reenacts a provision that provides a penalty for disclosing confidential information that was inadvertently repealed in 2012 and required by federal law.
- Extends the deployment date of the Reemployment Assistance Claims and Benefits Information System to June 30, 2014.

Gulf Coast Economic Corridor Act

- Creates the Gulf Coast Economic Corridor Act;
- Creates Triumph Gulf Coast, Inc., a nonprofit corporation administratively housed within the DEO, to administer and invest certain funds received by the state related to the Deepwater Horizon oil spill;
- Directs Triumph Gulf Coast, Inc., to make awards to projects and programs in the 8 disproportionately affected counties that meet certain criteria and priorities.

This bill is effective upon becoming law, except as otherwise provided in the bill.

This bill substantially amends the following sections of the Florida Statutes: 20.60, 201.15, 212.08, 213.053, 220.194, 288.001, 288.005, 288.012, 288.061, 288.0656, 288.106, 288.107, 288.1081, 288.1082, 288.1088, 288.1089, 288.1253, 288.1254, 288.1258, 288.714, 288.7771, 288.903, 288.906, 288.907, 288.92, 288.95155, 288.9918, 290.0055, 290.0056, 290.014, 290.0455, 331.3051, 331.310, 443.036, 443.091, 443.101, 443.1113, 443.131, 443.151, 443.1715, 443.191, and 446.50.

This bill repeals sections 288.095(3)(c) and 288.904(6), Florida Statutes.

This bill creates sections 288.076, 288.80, 288.801, 288.81, 288.82, 288.83, 288.831, 288.832, and 288.84, Florida Statutes.

This bill creates three undesignated sections of the Florida Statutes.

II. Present Situation:

The Department of Economic Opportunity (DEO or department) is charged with supporting the economic and community development of Florida and facilitating the workforce development of Floridians. The department accomplishes these functions under three main divisions: Community Development, Strategic Business Development, and Workforce Services.[1]

The Division of Community Development manages the state's land use planning and community development. Under its responsibilities, the division provides technical assistance to local governments on a variety of land use planning topics, provides economic development assistance to rural and urban small businesses, and administers state and federal grant programs for community development, including grants to local governments for infrastructure and revitalization.[2]

The Division of Strategic Business Development is charged with attracting out-of-state businesses, as well as promoting the creation and expansion of Florida businesses. This division is also responsible for facilitating economic development partnerships.[3] Among other things, the division provides oversight and evaluation of the state's economic development incentive programs and coordinates with public and private entities, including Enterprise Florida, Inc. (EFI), to strategically plan for Florida's short-term and long-term economic development needs. The department contracts with Enterprise Florida, Inc. (EFI) to attract businesses to locate, expand, or remain in Florida.

Under Florida's current economic development framework, Enterprise Florida, Inc. (EFI) serves as the state's economic development organization, operating under a contract with the DEO. EFI is a public-private partnership that serves as the state's primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities.[4] EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business. EFI performs an evaluation of each potential project to determine its prospective economic impact. After EFI has offered an incentive proposal to a business, EFI submits the incentive application to the DEO and the department evaluates the application based on the statutorily defined requirements for the incentive(s). The DEO makes the final determination of incentive eligibility, executes incentive contracts, and is responsible for contract monitoring and compliance.[5]

[1] Section 20.60, F.S.
[2] See Department of Economic Opportunity brochure, available at http://www.floridajobs.org/pdg/Factsheets/DEO_brochure.pdf (last visited Mar. 26, 2013).
[3] *Id.*
[4] Section 288.901, F.S.
[5] Section 288.061, F.S.

On August 2, 2012, the DEO launched an online portal for the public to view economic development projects receiving state funds.[6] Generally, information related to all non-confidential projects is available on the portal. The portal does not include projects "that are confidential or approved but do not yet have an executed agreement and projects that have withdrawn or decided not to proceed with the incentive."[7] Projects whose confidentiality has expired will be added to the website quarterly. The portal website allows users to view projects by incentive program, by the county of the project's location, by the date of the project, and by the recipient business's name. Information provided includes the total state incentive awarded, payments to date, job requirements, and capital investment requirements.

The Division of Workforce Services administers the reemployment assistance program and partners with Workforce Florida, Inc. (WFI) and the state's 24 Regional Workforce Boards (RWBs) to administer a number of federally funded workforce development programs. The division also provides technical assistance to One-Stop Career Centers that directly provide employment and training services.[8]

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.[9] Individual states collect 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).[10] FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. In addition, the FUTA pays one-half 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.[11]

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 the FUTA or the Social Security Act requirements. Florida's unemployment insurance program was created by the Legislature in 1937.[12] The program was rebranded as the "reemployment assistance program" in 2012.[13] The Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division for Workforce

[6] DEO press release, "DEO Launches Public Economic Development Incentives Portal, (August 02, 2012), available at http://www.floridajobs.org/news-center/news-feed/2012/08/02/deo-launches-public-economic-development-incentives-portal (last visited Apr. 20, 2013).
[7] DEO, Economic Development Incentives Portal website, available at http://www.floridajobs.org/office-directory/division-of-strategic-business-development/economic-development-incentives-portal (last visited Apr. 19, 2013).
[8] See Department of Economic Opportunity, About Workforce Services, available at http://www.floridajobs.org/office-directory/division-of-workforce-services (last visited Mar. 26, 2013).
[9] USDOL, Employment and Training Administration, State Unemployment Insurance Benefits, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited Apr. 20, 2013).
[10] FUTA is codified at 26 U.S.C.
[11] USDOL, Employment and Training Administration, Unemployment Insurance Tax Topic, available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited Apr. 20, 2013).
[12] Chapter 18402, L.O.F.
[13] Chapter 2012-30, L.O.F.

Services. The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.[14]

In Florida, Reemployment Assistance (RA) benefits are financed solely through contributions by employers – employers pay taxes on the first $8,000 of each employee's wages.[15] The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience" (as former employees collect RA benefits, these benefits are charged to the employer), the balance of the Unemployment Compensation Trust Fund, and other factors.

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.0 percent of employees' annual wages.[16] 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 tax rate 0.6 percent. Employers file an annual return with the Internal Revenue Service each January for taxes on the first $7,000 of employee's annual wages during the previous year.

The USDOL provides the DEO with administrative resource grants from the taxes collected from employers pursuant to the FUTA. These grants are used to fund the operations of the state's program, including the processing of claims for benefits by DEO, state unemployment tax collections performed by the DOR, appeals conducted by the DEO and the Reemployment Assistance Appeals Commission, and related administrative functions.

Unfortunately, due to the past few years of high unemployment in Florida, more funds have been paid out of the Unemployment Compensation Trust Fund than have been collected. The trust fund fell into deficit in August 2009, and since that time, the state has requested over $2 billion in federal advances in order to continue to fund unemployment compensation claims. Through voluntary repayment and partial loss of the federal tax credit, Florida has substantially paid down its debt.[17] It is estimated that all federal advances should be repaid by mid-2013.[18]

Federal advances accrue interest on a federal fiscal year basis (October to September), and such interest is due no later than September 30 each year. The interest rate for 2013 is 2.5765

[14] Section 443.1316, F.S.
[15] 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. State and local governments are reimbursing employers. Most employers are contributory employers. In January 2015, the "wage base" will be reduced to $7,000. See s. 443.1217(2)(a), F.S.
[16] 26 U.S.C. s. 3301.
[17] As of April 17, 2013, Florida had an outstanding advance balance of slightly less than $509 million. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited Apr. 20, 2013).
[18] The most recent forecast by the Revenue Estimating Conference shows repayment of all federal advances by June 2013. On file with the Senate Commerce and Tourism Committee.

percent.[19] The Revenue Estimating Conference estimated on January 15, 2013, that the interest due for 2013 would be $9.6 million.[20]

The interest due on advances cannot be paid from funds from the Unemployment Compensation Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose an assessment on employers.[21] In 2010, the Legislature imposed an additional assessment on employers to pay interest on federal advances.[22]

Section 443.131(5)(b), F.S., sets forth the calculations for the assessment. 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 amount, the formula multiplies an employer's taxable wages by the additional rate. DOR is required to calculate and bill the assessment prior to February 1 of the year, based upon the interest estimated by the Revenue Estimating Conference. An employer has 5 months, until June 30th, to pay the assessment. The assessments are paid into the DOR's Audit and Warrant Clearing Trust Fund and may earn interest. Any interest earned is part of the balance available to pay the interest due to the federal government.

On April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010. BP p.l.c., one of the responsible parties, set up a process for individuals and businesses to submit claims for losses due to the oil spill. Currently, individual and business claims for economic and property damages and medical benefits are being processed through a court-ordered settlement process.[23] On July 6, 2012 President Obama signed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) of the Gulf Coast Act of 2012.[24] The RESTORE Act requires 80 percent of the administrative and civil penalties paid by responsible parties under provisions of the federal Clean Water Act (formerly known as the Federal Water Pollution Control Act) be distributed to the Gulf Coast States through five programs outlined in the RESTORE Act.[25] The remaining 20 percent of the administrative and civil penalties paid by the responsible parties is deposited in the Oil Spill Liability Trust Fund, which can fund removal costs or damages resulting from discharges of oil.[26]

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[19] 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. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Unemployment Trust Fund Quarterly Yields at http://treasurydirect.gov/govt/rates/rates_tfr.htm (last visited Apr. 20, 2013).

[20] Revenue Estimating Conference forecast, available at http://edr.state.fl.us/content/revenues/reports/unemployment-compensation-trust-fund/UnemploymentCompensationTax2013InterestDueonFederalAdvancesRevised.pdf (last visited Apr. 20, 2013).

[21] The option of issuing bonds to repay the interest may be unavailable to Florida, See Art. VII, s. 11, Fla. Const.

[22] Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.

[23] Deepwater Horizon Court-Supervised Settlement Program website, available at http://www.deepwaterhorizonsettlements.com/Default.aspx (last visited Apr. 19, 2013).

[24] Pub. L. No. 112-141 (113th Congress). Codified at 33 U.S.C. 1321.

[25] For more information, see "Flow of Oil Spill Funds in Florida," Version C, as of 12/18/12, available at http://www.monroecounty-fl.gov/DocumentCenter/View/5157 (last visited Apr. 20, 2013).

[26] See 33 U.S.C. s. 1321(s) and 26 U.S.C. s. 9509 for more information. See also U.S. Coast Guard, "The Oil Spill Liability Trust Fund (OSLTF)," available at http://www.uscg.mil/npfc/About NPFC/osltf.asp (last visited April 24, 2013),

In 2011, the Legislature addressed the negative economic impacts of the Deepwater Horizon oil spill.[27] For "disproportionally affected counties," the law provided for the tolling of permits and waiver of certain requirements for certain economic development programs.[28] The law also created s. 377.43, F.S., to direct how funds received by the state for damages caused by the Deepwater Horizon oil spill may be distributed and spent.[29] Section 377.43, F.S., provides that 75 percent of "[a]ny funds received by the state from any governmental or private entity for damages caused by the Deepwater Horizon oil spill" may be used in disproportionally affected counties and 25 percent may be used for other counties for the following purposes:

- Scientific research into the impact of the oil spill on fisheries and coastal wildlife and vegetation along the shoreline and the development of strategies to implement restoration measures suggested by that research;
- Environmental restoration of coastal areas damaged by the oil spill;
- Economic incentives directed to any county; and
- Initiatives to expand and diversify the economies of the counties.

Section 377.43, F.S., designates the Department of Environmental Protection as the lead agency for expending funds directed to environmental restoration and the DEO is the lead agency for expending funds directed to economic incentives and diversification efforts.

The Legislature also created the Commission on Oil Spill Response Coordination in 2011. The commission issued its final report in December 2012 for "Recommendations for Improving Oil Spill Planning and Response Capability in Florida".[30] The commission made several recommendations, including recommending that local governments acquire and maintain equipment and trained personnel to respond to disasters, and that local governments work with federal agencies to update response plans.

On April 23, 2013, Attorney General Pam Bondi announced that Florida has filed a lawsuit against HP and Halliburton seeking $5.48 billion in economic damages related to the oil spill.

III. Effect of Proposed Changes:

Evaluation of Economic Development Programs

The bill creates the Economic Development Programs Evaluation (evaluation). (**Section 1 – undesignated section of the Florida Statutes.**) EDR and OPPAGA are required to jointly present the evaluation to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees. The offices are

[27] Chapter 2011-142, L.O.F.
[28] The "disproportionally affected counties" are Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton and Wakulla counties.
[29] See 2011 Bill Summary for Senate Bill 2156 – Governmental Reorganization, available at http://www.flsenate.gov/Committees/BillSummaries/2011/html/2156BC (last visited April 24, 2013).
[30] Report available at http://www.dep.state.fl.us/deepwater horizon/files2/corc/122112_fcosrc_finalreport.pdf (last visited April 24, 2013). See also Department of Environmental Protection, website for the Commission on Oil Spill Response Coordination, available at http://www.dep.state.fl.us/deepwaterhorizon/commission.htm (last visited April 24, 2013).

required to evaluate specified economic development programs according to a 3-year review schedule. Programs are grouped together based on general program type. The evaluation schedule is as follows:

YEAR 1 (January 1, 2014) and every 3rd year	
Programs	**Florida Statute(s)**
Quick Action Closing Fund	s. 288.1088
Brownfield Redevelopment Bonus Tax Refund	s. 288.107
High Impact Sector Performance Grants	s. 288.108
Capital Investment Tax Credit	s. 220.191
Qualified Target Industry Tax Refund	s. 288.106
Innovation Incentive Program	s. 288.1089
Enterprise Zone Programs	ss. 220.181-182, 212.08(5), 212.096, 212.08(15)

YEAR 2 (January 1, 2015) and every 3rd year	
Programs	**Florida Statute(s)**
Entertainment Industry Financial Incentive Program	s. 288.1254
Entertainment Industry Sales Tax Exemption Program	s. 288.1258
The Florida Commission on Tourism/Visit Florida	ss. 288.122-124
Florida Sports Foundation	ss. 288.1162-1171

YEAR 3 (January 1, 2016) and every 3rd year	
Programs	**Florida Statute(s)**
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045
Semiconductor, Defense, or Space Technology Sales Tax Exemption	s. 212.08(5)(j)
Military Base Protection	s. 288.980
Manufacturing & Spaceport Investment Incentive Program	s. 288.1083
Quick Response Training	s. 288.047
Incumbent Worker Training	s. 445.003
International Trade & Business Development	s. 288.826

EDR and OPPAGA are required to coordinate and submit a work plan for the evaluation to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

The bill requires EDR to use specialized modeling techniques to evaluate the economic development programs listed above. EDR is required to evaluate each program for "economic benefits," as well as jobs created, the increase or decrease in personal income, and the impact on state GDP of each program using data from the previous 3 years. The data used to evaluate any tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs is specified as being data from projects that are either fully complete, partially complete with future fund disbursal possible pending performance measures, or partially completed with no future fund disbursal possible as a result of a business's inability to meet performance measures. EDR is required to provide an explanation of the model used in its analysis, and the model's key assumptions. EDR is permitted to use another model if it explains why another model is more appropriate.

The OPPAGA is required to evaluate each program for effectiveness and value to Florida taxpayers, and to provide recommendations to the Legislature based on its evaluation of each program. OPPAGA's analysis is required to include information from interviews, reviews of relevant reports, or other data.

The bill gives EDR and the OPPAGA access to all data necessary to complete the Economic Development Programs Evaluation, including confidential data. The offices may coordinate data collection and analysis. (**Section 6, amends s. 213.053, F.S.**)

The bill updates requirements for the Annual Incentives Report currently produced by EFI (**Section 29, amends s. 288.907, F.S.**) and requires the report to be a joint report by the DEO and EFI. The agencies will no longer be required to report on the "economic benefits" of each project or program in the Annual Incentives Report. The evaluation of "economic benefits" will now be conducted as part of the Economic Development Programs Evaluation, conducted jointly by EDR and the OPPAGA. See above and discussions below under "Evaluation of Incentive Program Applicants" and "Return on Investment Reporting for Economic Development Programs."

"Jobs" is defined to ensure that all jobs data is reported and evaluated in the same manner across programs. The term means only full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project. (**Section 9, amends s. 288.005, F.S.**)

The bill repeals a required OPPAGA report on the Innovation Incentive Program. (**Section 20, amends s. 288.1089(11)(b), F.S.**) This report is duplicative as a result of the evaluation of the Innovation Incentive Program required as part of the Economic Development Programs Evaluation created in Section 1 of the bill.

A duplicative analysis of EFI's return on the public's investment is repealed. (**Section 27, repeals s. 288.904(6), F.S.**) Current law requires the analysis to be included as part of the EFI annual report. Currently, section 20.601(3), F.S., requires the OPPAGA to conduct a similar analysis in 2016.

Agency Reporting Consolidation

Presently, there are multiple reporting requirements for the state's various economic development programs and activities. Some entities are required to submit reports to the Governor, Legislature, and/or the department and the report due dates lack uniformity. The bill consolidates several independent program reports and reporting dates.

Department of Economic Opportunity's Annual Report

The bill makes several changes to the department's annual report. (**Section 2, amends s. 20.60, F.S.**) The report's due date is changed from January 1st to November 1st. The department is directed to include supplements to its annual report on several programs. As a result, the independent due dates for each of the reports are deleted. The programs to be included in the department's annual report are:

- Displaced Homemaker program. (**Section 49, amends s. 446.50, F.S.**)
- Enterprise Zone program. (Sections 29 and 30).
  - Changes the due date of each enterprise zone development agency's report to the department from December 1st to October 1st. (**Section 34, amends s. 290.0056, F.S.**)
  - Changes the due date of the Department of Revenue's report on the usage and revenue impacts, by county, of state incentives relating to enterprise zones from February 1st to October 1st. (**Section 35, amends s. 290.014, F.S.**)
- Economic Gardening Business Loan Pilot Program. (**Section 17, amends s. 288.1081, F.S.**)
- Economic Gardening Technical Assistance Pilot Program. (**Section 18, amends s. 288.1082, F.S.**)
- Black Business Loan Program. (**Section 24, amends s. 288.714, F.S.**)
- Rural Economic Development Initiative. (**Section 12, amends s. 288.0656, F.S.**)

EFI's Annual Report

The bill requires EFI to include, as a supplement in its annual report, information on: (**Section 28, amends s. 288.906, F.S.**)

- State of Florida International Offices. (**Section 10, amends s. 288.012, F.S.**)
- Florida Export Finance Corporation annual report. (**Section 25, amends s. 288.7771, F.S.**)

Additionally, under current law EFI division reports are due independently on October 1st, for inclusion in EFI's annual report. The bill repeals this independent due date. (**Section 30, amends s. 288.92, F.S.**)

Annual Incentives Report

The bill revises the duties of EFI to require the Annual Incentives Report to be a joint report by EFI and the DEO. (**Section 26, amends s. 288.903, F.S.**) The report is currently produced independently by EFI using data supplied by the department.

Information on the Economic Development Trust Fund is required to be included in the Annual Incentives Report. The information is currently required under s. 288.095(3)(c), F.S. The bill repeals this paragraph (**Section 14**) and incorporates the information into the Annual Incentives Report. (**Section 29, amends s. 288.907, F.S.**) The information includes:

- The types of projects supported;
- Tax refunds or other payments made out of the Economic Development Incentives Account for each project supported;
- A separate analysis of the impact of tax refunds on Enterprise Zones, rural communities, brownfield areas, and distressed urban communities; and
- The name and tax refund amounts for each business receiving a qualified target industry or qualified defense space contractor and space flight business tax refund.

Several other stand-alone program reports are incorporated as supplements to the Annual Incentives Report. As a result, the independent due dates for the reports are deleted. The reports required to be included as supplements to the Annual Incentives Report include:

- Florida Space Business Incentives Act annual report (**Section 7, amends s. 220.194, F.S.**), beginning in 2014.
- Information on the causes of a business's failure to complete its qualified target industry incentive agreement. (**Section 15, amends s. 288.106, F.S.**)
- Information relating to Innovation Incentive Program recipients, including the evaluation as to whether the recipients were catalysts for additional economic development. (**Section 20, amends s. 288.1089(11)(a), F.S.**)
- Florida Small Business Technology Growth Program annual report. (**Section 31, amends s. 288.95155, F.S.**)

Validation of contractor performance for all incentive programs is currently required as part of the Annual Incentives Report. The bill adds a cross-reference to s. 288.061, F.S., clarifying that validation of contractor performance is to be included in the Annual Incentives Report. (**Section 29, amends s. 288.907, F.S.)**

The bill clarifies that the DEO, rather than EFI, is responsible for validating contractor performance for the Quick Action Closing Fund incentives and that such information is to be included in the Annual Incentives Report. Current law requires the contractor performance validation to be reported within 6 months of completion. This requirement is deleted by the bill. (**Section 19, amends s. 288.1088, F.S.**)

Validation of contractor performance for the Innovation Incentive Program recipients is required to be included in the Annual Incentives Report. The current law requirement that a report on contractor performance be submitted within 90 days of an agreement's conclusion is repealed. (**Section 20, amends s. 288.1089(9), F.S.**)

Office of Film and Entertainment's Annual Report

The bill changes the due date of the Office of Film and Entertainment's (OFE) Annual Report on the entertainment industry financial incentive program from October 1st to November 1st. (**Section 22, amends s. 288.1254, F.S.**) The OFE's Annual Report is also required to include the OFE expenditures report (**Section 21, amends s. 288.1253, F.S.**) and the report detailing the relationship between tax exemptions and incentives to industry growth. (**Section 23, amends s. 288.1258, F.S.**)

Space Florida's Annual Report

The bill changes the due date for the Space Florida annual performance report from September 1st to November 30th (**Section 37, amends s. 331.3051, F.S.**), and requires Space Florida's annual operations report to be included in the performance report. (**Section 38, amends s. 331.310, F.S.**)

New Markets Tax Credit Program
Section 32 amends s. 288.9918, F.S., to change the due date for a community development entity to issue its annual report to the DEO from April 30 to January 31. The bill requires the annual report to include information on investments made under the New Markets Tax Credit program in the preceding calendar year. Due to financial reporting, the report due date for annual financial statements of a community development entity remains April 30 each year.

Community Planning – Use of Documentary Stamp Tax Distribution

Section 3 amends s. 201.15(1)(c), F.S., to delete obsolete language and clarify that the share of the documentary stamp distribution that DEO receives in the Grants and Donations Trust Fund must be used by the Community Planning Program to provide technical assistance to local governments.

Brownfields

In 1997, the Legislature enacted the Brownfields Redevelopment Act (Act).[31] The act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites[32] in order to improve public health and reduce environmental hazards.[33] The act also created the Brownfield Redevelopment Bonus Refund to provide a refund to qualified businesses for new jobs that are created in a brownfield area.[34, 35] The act identifies specific

[31] Chapter 97-277, Laws of Fla.
[32] Section 376.79(3), F.S., defines "brownfield sites" as real property, the expansion, redevelopment, or reuse of which may be complicated by actual or *perceived* environmental contamination.
[33] DEP, *Florida Brownfields Redevelopment Act-1998 Annual Report, available at* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited Feb. 15, 2013).
[34] Section 376.79(4), F.S., defines "brownfield area" as a contiguous are of one or more brownfield site, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment area, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.
[35] Section 288.107, F.S.

procedures and criteria for the designation of a brownfield area by local governments,[36] counties,[37] and municipalities.[38] Brownfield areas are also eligible for a number of other incentives created throughout the years.

Section 4 amends s. 212.08, F.S., to specify that a redevelopment project is eligible for the sales tax exemption if it is located in a brownfield site for which a rehabilitation agreement with the Department of Environmental Protection (DEP), or a local government delegated by the DEP, has been executed under s. 376.80, F.S., or any abutting real property parcel within a brownfield area designated by the local government.

Section 16 amends s. 288.107, F.S., to specify that in order to be eligible for the brownfield redevelopment bonus refund for a qualified target industry agreement, the jobs must be created in a brownfield area eligible for bonus refunds. The term "brownfield area eligible for bonus refunds" is defined as a brownfield site for which a rehabilitation agreement with the DEP, or a local government delegated by the DEP, has been executed under s. 376.80, F.S., or any abutting real property parcel within a brownfield area designated by the local government.

Section 5 provides that amendments to ss. 212.08 and 288.107, F.S., do not apply to building materials purchased before the effective date of the bill, or to contracts for brownfield redevelopment bonus refunds executed by the DEO or EFI prior to the bill's effective date. (**Undesignated section of the Florida Statutes**)

Enterprise Zones

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 65 enterprise zones.[39] The DEO is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Legislature. Florida's enterprise zones qualify for various state and local incentives from credits for corporate income tax and exemptions from sales and use tax. The program expires on December 31, 2015.[40]

Section 33 amends s. 290.0055, F.S., to allow certain enterprise zones to expand. A local government may apply to DEO to expand its enterprise zone by December 31, 2013, for any enterprise zone that is:

- At least 15 square miles and less than 20 square miles and includes a portion of a rural area of critical economic concern (RACEC) may apply to expand the boundary of the enterprise zone up to 3 square miles.
- At least 20 square miles and includes a portion of the state designated as a RACEC may apply to expand the boundary of the enterprise zone up to 5 square miles.

[36] Section 376.80, F.S.
[37] Section 125.66, F.S.
[38] Section 166.041, F.S.
[39] For more information on enterprise zones, see Appropriations Subcommittee on Finance and Tax, Meeting Packet for March 6, 2013, p. 82, available at http://www.flsenate.gov/Committees/Show/AFT/ (last visited Apr. 21, 2013).
[40] Section 11, ch. 2005-287, L.O.F.

Florida Small Business Development Center Network

Section 8 significantly amends s. 288.001, F.S., relating to the Florida Small Business Development Center Network (network). The bill provides that the purpose of the network is to serve emerging and established private, for-profit businesses that maintain a place of business in Florida. Florida's network is a consortium of regional small business development centers throughout the state that offer consulting services, training opportunities, and access to other resources and information to current and prospective small businesses.

The national Small Business Development Center program is administered by the U.S. Small Business Administration (SBA) and federal laws and regulations require that various state-level programs be located at higher education institutions. Regional centers are based at several of Florida's colleges and universities, with a total of 39 locations in the state. The network's state headquarters are located at the University of West Florida (UWF).[41]

Statewide Director

The bill requires the statewide director to:

- Operate the network in compliance with federal law and Board of Governors Regulation 10.015;
- Consult with the Board of Governors, the DEO, and the network's statewide advisory board to ensure that the network's policies and programs align with the statewide economic development plan and the statewide goals of the State University System;
- Develop support services, in consultation with the advisory board, to be delivered through regional small business development centers;
- Develop a pay-per-performance incentive for regional small business development centers, in coordination with the center's host institution;
- Develop annual programs that support small business assistance best practices, enhance network participation among state universities and colleges, and ensure that network services are offered statewide, especially in rural and underserved areas;
- Update the Board of Governors, the DEO, and the advisory board quarterly on the network's performance, including aggregate information on businesses assisted by the network; and
- Present an annual report on June 30th to the President of the Senate and the Speaker of the House of Representatives on the network's progress and outcomes for the previous fiscal year, including the network's economic benefit to the state.

Statewide Advisory Board

Federal requirements do not specify how members of the network's statewide advisory board are selected or the size of the board, but the board must have members who are small business owners and representative of the program's entire Service Area (in Florida, the Service Area is the entire state). The bill codifies the current membership of the statewide advisory board, with the exception of two additional members to be appointed by the network's statewide director.

[41] See History of the Florida SBDC Network, available at http://floridasbdc.org/history.php (last visited March 26, 2013).

The bill requires the statewide advisory board to consist of 19 members from across the state, with at least twelve members being representatives of the private sector who are knowledgeable of the needs and challenges of small businesses, as follows:

- Three members from the private sector appointed by the Governor - two of whom initially serve 2-year terms.
- Three members from the private sector appointed by the President of the Senate - one of whom initially serves a 2-year term.
- Three members from the private sector appointed by the Speaker of the House of Representatives - one of whom initially serves a 2-year term.
- Three members appointed by the statewide director - one of whom initially serves a 2-year term.
- One member appointed by the host institution (the University of West Florida).
- The President of Enterprise Florida, Inc., or his or her designee.
- The Chief Financial Officer or his or her designee.
- The President of the Florida Chamber of Commerce or his or her designee.
- The Small Business Development Center Project Officer from the U.S. Small Business Administration's South Florida District Office or his or her designee.
- The Executive Director of the National Federation of Independent Businesses, Florida or his or her designee.
- The Executive Director of the Florida United Business Association or his or her designee.

The bill requires that minority and gender representation be considered when making appointments to the statewide advisory board.

The bill sets a member's term on the board at 4 years, except for five members who initially serve 2 year terms (as specified above). Statewide advisory board members may be reappointed to a subsequent term. Board members cannot receive compensation for serving on the board but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

Small Business Support Services

The bill specifies that the statewide director and the statewide advisory board must develop support services that are delivered by regional small business development centers. Support services must target the needs of businesses that employ fewer than 100 persons and demonstrate an assessed capacity to grow in employment or revenue. Businesses receiving support services must agree to participate in assessments of services received. Information requested of participating businesses includes demographic information, changes in employment and sales, debt and equity capital attained, government contracts obtained, and other information as required by the host institution (UWF).

The bill requires regional small business development centers to provide businesses with support services that include, but are not limited to providing information or research, consulting, educating, or otherwise assisting businesses in specific activities. These activities largely codify the support services already offered by the network and include:

- Planning related to starting-up, operating, or expanding a small business.
- Developing and implementing strategic or business plans.
- Developing the financial literacy of existing businesses.
- Developing and implementing plans for existing businesses to access or expand to new or existing markets.
- Supporting access to capital for business investment and expansion, including providing technical assistance related to obtaining surety bonds.
- Assisting existing business with natural or man-made disaster planning.

Additional State Funds

The bill requires the network to provide a match equal to the amount of any direct legislative appropriation. The match provided by the network must consist of 50 percent cash, with the remaining 50 percent coming from any allowable combination of additional cash, in-kind contributions or indirect costs. The 50 percent cash requirement may include funds from federal or other non-state funding sources designated for the network.

If the host institution (UWF) receives additional state funding specifically designated for the network, half of the funds must be used to establish a pay-per-performance incentive for regional small business development centers. The statewide director, in coordination with the host institution (UWF), will develop the pay-per-performance incentive. The incentive must be distributed based data collected from businesses as provided in the bill. The distribution formula must include recognition of the gross number of jobs created annually by each regional center and the number of jobs created per support service hour. Pay-per-performance incentive funds received by regional centers must be used to supplement operations and services provided by regional centers.

The remaining half of any additional state funds received by the host institution (UWF) for the network must be distributed by the statewide director, in coordination with the advisory board, for the purposes of:

- Ensuring support services are available statewide, especially in underserved and rural areas of the state;
- Encouraging colleges and universities to participate in the program; and
- Encouraging the adoption of small business assistance best practices by regional centers.

The network must announce the annual amount of available funds for each program, as well as any performance expectations or other requirements. The statewide director must present applications and recommendations to the statewide advisory board. The advisory board must approve applications and publicly post approved applications. At a minimum, programs must include new regional small business development centers and awards for the top six regional centers that adopt best practices, as determined by the advisory board. Detailed information about best practices must be made available to regional centers for voluntary implementation.

A regional center cannot receive an award from this allocation of additional state funds if the statewide director has found that the regional center has:

- Performed poorly,
- Engaged in improper activity affecting the operation and integrity of the network, or
- Failed to follow the rules and procedures set forth in the laws, regulations and policies governing the network.

Additional state funds awarded may not reduce matching funds dedicated to the small business development centers.

Reporting Requirements

The bill requires that the statewide director update the Board of Governors, the Department of Economic Opportunity, and the advisory board each quarter on the network's progress and outcomes, including aggregate information on businesses assisted by the network. In addition to quarterly updates, the statewide director and the advisory board must produce an annual report, due by June 30th, to the President of the Senate and the Speaker of the House of Representatives. The report must include: the information provided quarterly; information regarding network services and programs; the use of all federal, state, local, and private funds received by the network and the small business development centers, including the additional state funds discussed above; and the network's economic benefit to the state. The report must include specific information on performance-based metrics used by the network and the methodology used to calculate the network's economic benefit to the state.

Evaluation of Incentive Program Applicants

The bill requires that the department evaluate each economic development incentive application for the "economic benefits" of the proposed award of state incentives for the project. The bill provides that "economic benefits" has the same meaning as in s. 288.005, F.S. Section 288.005(1), F.S., provides:

> "Economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.

EDR must review and evaluate the methodology and model used by the DEO to calculate the economic benefits. The department and EDR are authorized to develop an amended definition of "economic benefits" to evaluate applications. EDR must submit a report on the methodology and model by September 1, 2013, and every third year thereafter, to the President of the Senate and the Speaker of the House of Representatives. (**Section 11, amends s. 288.061, F.S.**)

The bill deletes similar language requiring an up-front analysis of "economic benefits" for a qualified target industry (QTI) tax refund application. The bill requires that applications for a QTI incentive be evaluated to determine if an applicant has previously received economic development incentives in other states, and if applicable, the outcome of those agreements.

Current law requires that QTI tax refund applications be evaluated for their *effect* on the *unemployment rate* in the county where a project will be located. The bill revises this requirement to require that applications be evaluated for the *expected effect* on the *unemployed and underemployed* in the county where a project will be located. The bill deletes the existing requirement that a QTI tax refund application be evaluated for the expected long-term commitment to economic growth and employment in Florida. The bill also expands the review of a business's past activities in other states to include a review of economic development incentives and the results of any incentive agreements. (**Section 15, amends s. 288.106, F.S.**)

Current law requires that a project qualifying for the Innovation Incentive Program as a research and development program or as an alternative and renewable energy project demonstrate that the project will provide a *break-even "return on investment"* to the state over a 20-year period. The term "return on investment" as it relates to the Innovation Incentive Program is not defined under current law.

The bill changes this requirement to a demonstration that the project will provide a *cumulative break-even "economic benefit"* within a 20-year period. This change creates consistent terminology and ensures applicants for the Innovation Incentive Program will be evaluated similarly to other incentive programs. (**Section 20, amends s. 288.1089(4)(b) and (d), F.S.**)

Securitization of Economic Development Incentives

The Quick Action Closing Fund and the Innovation Incentive Program provide financial incentives that can be used in highly competitive negotiations or to attract high-value research and development, innovation business, and alternative and renewal energy projects. The funds are generally distributed prior to the project's completion. Currently, the department uses payment schedules and sanctions, including clawbacks, to address a business's failure to comply with performance conditions.

Section 11 amends s. 288.061, F.S., to require that applicants for Quick Action Closing Fund and Innovation Incentive Program economic development incentives obtain a surety bond for the entire amount of the award before any state funds can be disbursed. Up to half of the premium payment on the surety bond may be paid from the award amount, not to exceed 3 percent of the award.

The DEO is authorized to waive the surety bond requirement by certifying specific information, in writing, to the Governor, President of the Senate, and Speaker of the House of Representatives. If the DEO waives the surety bond requirement, the applicant must secure the award through an irrevocable letter of credit, cash or securities held in trust, or a secured transaction in collateral. The DEO may waive the surety bond or alternate security requirement if the DEO certifies to the Governor and the chair and vice-chair of the Legislative Budget Commission that the applicant has the financial ability to fulfill the requirements of the contract; has previously demonstrated timely compliance with any clawback provisions, if the applicant has received any incentives; and that the waiver is in the best interest of the state.

Return on Investment Reporting for Economic Development Programs

The bill establishes an economic development incentive review and online publication process to be implemented by DEO. **Section 13** creates s. 288.076, F.S., relating to reporting for economic development programs, requiring the DEO to maintain a website that publishes information on economic development incentive awards to businesses. Information must be made available in an easy to use format that allows users to view and retrieve all required information at once. The DEO has 48 hours after the expiration of the period of confidentiality to publish the following information on each project:

Projected Economic Benefits

- The economic benefits *projected* to occur for each project at the time of the initial project award date.

Project Information

- The program or programs through which state investment is being made. "State investment" is defined by the bill as any state grants, tax exemptions, tax refunds, tax credits, or other state incentives awarded to a business under a program administered by the DEO, including the capital investment tax credit.
- The maximum potential cumulative value of the state investment in a project.
- The target industries[42] or high-impact sectors[43] that the project falls under.
- The county or counties that may be impacted by the project.
- The total cumulative value of any local financial commitment and in-kind support for the project.

Participant Business Information

- The location of the participant business's headquarters or the headquarters of the parent company if it is a subsidiary. "Participant business" is defined by the bill to mean an employing unit, as defined in s. 443.036, F.S., that has entered into an agreement with the DEO to receive a state investment.
- The firm size class of the participant business, or where owned by a parent company, the firm size class of the participant business's parent company, using firm size classes established by the U.S. Department of Labor's Bureau of Labor Statistics.
- Whether the participant business qualifies as a small business under s. 288.703, F.S.
- The date of the project award.
- The expected duration of the contract.
- The anticipated date when the participant business will claim its last state investment.

Project Evaluation Criteria

- The economic benefits generated by the project.

[42] Section 288.106(2)(q), F.S.
[43] Section 288.108(6)(a), F.S.

- The net indirect and induced incremental jobs to be generated by the project. The bill states that "jobs" has the same meaning as in s. 288.106(2)(i), F.S., which means full-time equivalent positions, including positions obtained from a temporary employment agency or employee leasing company, or through a union agreement or coemployment under a professional employer organization agreement. Temporary construction jobs are not included in the definition.
- The net indirect and induced incremental capital investment to be generated by the project.

Project Performance Goals

- The incremental direct jobs attributable to the project, identifying the number of jobs generated and the number of jobs retained.
- The number of jobs generated and the number of jobs retained by the project.
- For projects that begin after October 21, 2013, the DEO must report the median annual wage of persons holding such jobs.
- The incremental direct capital investment in the state generated by the project.

Total State Investment to Date

- The total amount of state investment disbursed to the participant business to date, itemized by incentive program.

Additionally, each project's economic benefits must be published on the DEO website within 48 hours after the conclusion of an agreement between a participant business and the DEO. The DEO is required to use the methodology and formulas developed by the EDR to determine each project's economic benefits. This ensures a project's total economic benefits that actually occurred are published, allowing visitors of the website to view and compare the information with projected economic benefits at the time of the project's award date. The DEO is directed to publish a description of the methodology developed by the EDR to calculate economic benefits of a project, and must publish the information on its website within 48 hours after receiving it from the EDR.

The bill requires the DEO to update information on its website for each project annually from its award date. Verified results must be updated for each project, including information on Project Information, Participant Business Information, Project Evaluation Criteria, Project Performance Goals, and Total State Investment discussed above. The DEO must publish the date the information was last updated on the website.

Within 48 hours after the expiration of the period of confidentiality, the DEO must publish the contract or award agreement with the participant business on its website. The agreement may be redacted to protect a participant business from disclosure of any information that remains confidential or exempt by law.

The bill requires the DEO to publish all information required above for all projects completed prior to October 1, 2013. The DEO has until October 1, 2014, to compile and publish the information.

The bill clarifies that provisions restricting the publication of any information on the DEO's website is limited to that purpose, and is not to be construed as creating a public records exemption.

The DEO may adopt rules to administer the provisions included in **section 13** of the bill.

Qualified Target Industry Tax Refund Reports

DEO must publish on the website any reports of findings and recommendations concerning a business's failure to complete its qualified target industry tax refund program agreement within 48 hours after submitting the report.

Quick Action Closing Fund Timeline

The bill requires DEO to publish information on its website relating to Quick Action Closing Fund[44] (QACF) incentive projects, including the average number of days between the date the DEO receives a completed QACF application and the date on which the application was approved.

Section 108 Loan Guarantee Program

Currently, the DEO administers the Community Development Block Grant (CDBG) program, a federally funded housing and community development program that targets assistance to low and moderate income populations. Rural or smaller area governments receive grants from the department through a competitive rural distribution mechanism known as the Florida Small Cities Community Development Block Grant (Small Cities CDBG) program. Local governments in urban areas apply and receive funds directly from the U.S. Department of Housing and Urban Development (HUD).

The bill focuses on reducing risks associated with the Section 108 loan guarantee program by amending s. 290.0455, F.S., (**Section 36**) to require an applicant approved by the HUD to receive a Section 108 loan to enter into an agreement with the department that requires the applicant to pledge half the amount necessary to guarantee the loan in the event of default. The department must review all Section 108 loan applications in the order received, provided the applications meet all eligibility requirements and have been deemed financially feasible by a loan underwriter approved by the department. If the statewide maximum available for loan guarantees has not been met, the department may submit the application to HUD with a recommendation that the loan be approved, with or without conditions, or denied.

The bill reduces the maximum amount of an individual loan guarantee commitment from $7 million to $5 million and decreases the maximum statewide amount of loan guarantees from five times to two times the amount of the most recent grant received by the department under the Florida Small Cities CDBG Program. The $5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, so that they may be refinanced.

[44] Section 288.1088, F.S.

If a local government defaults on a Section 108 loan requiring the department to reduce its annual grant award to pay the annual debt service on the loan, any future CDBG program funds that the local government receives must be reduced in the amount equal to the amount of the state's grant award used in payment of debt service on the loan.

If a local government, that has received a Section 108 loan through the Florida Small Cities CDBG Program, is granted entitlement community status by HUD, then the local government must pledge its entitlement allocation as a guarantee of its previous loan and request HUD to release the department as guarantor of the loan.

Reemployment Assistance Program

Additional Assessment on Employers to Repay Federal Interest

The bill amends s. 443.131, F.S., (**Section 43**) to provide that no assessment will be levied against contributing employers if the amount of assessments on deposit, plus any earned interest, is at least 80 percent of the estimated amount of interest. The bill further provides that any assessments that remain on deposit, including associated interest, 4 months after all federal advances and associated interest have been repaid are to be transferred to the Unemployment Compensation Trust Fund. The provisions relating to interest assessments on federal advances will expire on July 1, 2014.

Reemployment Assistance Claims and Benefits Information System

In 2009, the Legislature authorized the Department of Economic Opportunity to upgrade and enhance its Unemployment Compensation Claims and Benefits Information System.[45] The statute provides a project completion date of no later than June 30, 2013 (end of Fiscal Year 2012-2013).

In early 2012, the vendor indicated that an extension of the timeline would be required. The vendor paid $1,965,000 in liquidated damages and provided a credit of $2,500,000 to cover the costs incurred by the DEO caused by the delay. After negotiations and a corrective action plan, the revised project schedule calls for an October 28, 2013, implementation date.[46]

Section 42 amends s. 443.1113, F.S., to extend the operational deadline for the Reemployment Assistance Claims and Benefits Information System to June 30, 2014 (end of Fiscal Year 2013-2014).

[45] Chapter 2009-73, L.O.F. At the time, the Unemployment Compensation program was housed in the Agency for Workforce Innovation, whose functions were transferred to the Department of Economic Opportunity in 2011.
[46] See Project Connect, Executive Steering Committee Meeting Minutes for August 8, 2012, http://sitefinity.floridajobs.org/Unemployment/UC_ModernizationProject/documents/MinutesAgendas/20120808%20RA%20ESC%20Meeting%20Minutes%20%20FINAL.pdf (last visited Arp. 21, 2013).

Fraudulent Claims

A fraudulent claim is one that knowingly contains a false or fraudulent statement or fails to disclose a material fact for the purpose of obtaining or increasing reemployment benefits.[47] A claimant found to be collecting benefits fraudulently is disqualified from received benefits beginning the week that the fraudulent claim was made. The disqualification will continue for a period not to exceed 1 year after the DEO discovered the fraud and until any resulting overpayment of benefits has been repaid. Reemployment Assistance fraud can also be prosecuted as a third degree felony.

Federal law requires states to assess a penalty, of at least 15 percent of the amount of the erroneous payment, on any claimant who fraudulently obtained benefits.[48] Florida does not currently assess a penalty for fraudulent overpayments.

Section 44 amends s. 443.151(6)(a), F.S., to impose a penalty equal to 15 percent of the amount overpaid, on any claimant who fraudulently receives reemployment benefits. This provision will bring Florida into compliance with federal law. Any amounts collected for penalties are to be deposited into the Unemployment Compensation Trust Fund. (**Section 48, amends s. 443.191, F.S.**)

Confidentiality

Information received from an employing unit or individual that reveals an employing unit's or individual's identity under the administration of the RA program is confidential and exempt from disclosure.[49]

In 2012, the statute was amended and the language that made disclosure of such confidential information a second-degree misdemeanor was inadvertently repealed.[50] Federal regulations require Florida to provide penalties for the unlawful disclosure of confidential information related to reemployment assistance.[51]

Section 47 amends s. 443.1715, F.S., to restore penalties for the disclosure of confidential information that were inadvertently repealed in 2012. This provision will bring Florida into compliance with federal law.

[47] Sections 443.071 and 443.101(6), F.S., discuss fraud and associated penalties.
[48] 42 U.S.C. s. 503(a)(11).
[49] Section 443.1715, F.S. This subsection authorizes a number of exceptions for disclosure. Information may be released to the extent necessary for presentation of a claim or upon written authorization of a claimant who has a workers' compensation claim pending or is receiving compensation benefits. Public employees may receive this information in the performance of their public duties but must maintain the confidentiality of the information. A claimant or his or her legal representative is entitled to this information, to the extent necessary, to present a claim at a hearing before an appeals referee or the commission. DEO or DOR may provide a copy of any report submitted by an employer to the employer or a copy of any report submitted by the claimant to the claimant, upon request. Confidential information may also be released pursuant to 20 C.F.R. part 603.
[50] Chapter 2012-30, L.O.F.
[51] 20 C.F.R. part 603.

Employer Response to Notice of Claim

Under current law, the DEO sends a notice of claim to each employer whose employment records may be impacted by an individual's claim for benefits. Each employer must timely respond to the notice within 20 days of delivery or mailing of the notice of claim in order to be relieved of benefit charges under s. 443.131(3)(a), F.S. Federal law requires that the employer, or its agent, "timely or adequately" respond to the notice of claim.[52] On March 29, 2013, the U.S. Department of Labor informed the DEO that the state was out of compliance on this provision.[53]

Section 44 amends s. 443.151(3)(a), F.S., to provide that each employer, *or its agent*, must timely *or adequately* respond to the notice of claim *or request for information*.

Disqualification for Reemployment Assistance Benefits

Under current law, an individual may be disqualified from receiving reemployment assistance benefits for any week in which the department finds that he or she was discharged by his or her employer for misconduct. The bill adds specific examples of "misconduct" to be included in the definition, but the examples are not intended to limit the definition. (**Section 39, amends s. 443.036(30), F.S.**)

Current law also provides additional grounds for which an individual may be disqualified from obtaining reemployment benefits, such as voluntarily leaving employment. The bill adds loss of employment due to failure without good cause to maintain a license, registration, or certification, required by law for the employee to perform her or his assigned duties. "Good cause" is defined to include, but is not limited to, failure of the employer to submit required information for the license, registration, or certification; short term physical injury that prevents the employee from completing a required test; and inability to complete a required test that is outside the employee's control. (**Section 41, creates s. 443.101(13), F.S.)**

Benefit Eligibility Conditions

Section 40 amends s. 443.091, F.S., to amend three current benefit eligibility conditions.

Under current law, an individual must register with the DEO for work. The bill clarifies this requirement to specifically require unemployed individuals to complete the department's online work registration.

Under current law, only individuals who can attest to being illiterate or having a language impediment are exempt from the initial skills review. The bill expands the exemption so that individuals unable to complete the online work registration or initial skills review due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment are exempt from the online work registration and initial skills review. The bill also adds a cross reference to this provision in **Section 44**, amending s. 443.151(2)(b), F.S.

[52] 26 U.S.C. s. 3303(f) (effective October 21, 2011).
[53] See e-mail from U.S. Department of Labor to DEO, March 29, 2013, on file with the Senate Commerce and Tourism Committee.

Under current law, an individual must also provide proof of work search efforts, which includes contacting at least 5 prospective employers for each week of benefits claimed. The bill limits an individual's proof of work search efforts by prohibiting reporting of contacting the same employer at the same location for 3 consecutive weeks. The bill does provide an exception for times when an employer indicates that it is hiring since the time of initial contact by the individual. Further, the bill provides that the work search requirements do not apply to individuals selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).[54]

Reemployment Assistance Benefits- Determinations, Redeterminations and Appeals

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements[55] for reemployment assistance benefits. 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 the DEO'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.[56] Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests. Generally, an appeal must be filed within 20 days of the determination date.

> Upon receiving an appeal, the Office of Appeals will schedule a hearing involving all interested parties to address the issues. The parties will be mailed a *Notice of Hearing* telling them when the hearing will be held and whether they are expected to participate in-person or by telephone… The parties are expected to present all of their evidence and testimony to the appeals referee, who will then make a decision based only upon the evidence and testimony presented during the hearing. An audio recording of the hearing will be made by the referee. When the hearing is completed, the referee will issue a written decision.[57]

In the 2012 calendar year, there were a total of 116,534 appeals filed, and the Office of Appeals issued 128,968 decisions. Most appeals were filed by applicants (about 74 percent of the filed appeals), but the outcomes of the decisions were evenly split between decisions to pay or deny

[54] REAs are in-person interviews with selected claimants to review the claimants' adherence to state 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 benefit duration and saves Unemployment Compensation Trust Fund resources by helping claimants find jobs faster and eliminating payments to ineligible individuals. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

[55] Section 443.151(3), F.S.

[56] Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Information about the Office of Appeals and the appeals process may be found on the DEO website at http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-an-appeal (last visited Apr. 21, 2013).

[57] The DEO, "Reemployment Assistance Appeals Process, Reemployment Assistance Appeals Commission," available at http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/reemployment-assistance-appeals-commission/reemployment-assistance-appeals-process (last visited Apr. 21, 2013).

benefits to the applicants.[58] A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission.

Currently, appeals referees are not required to be licensed attorneys. The DEO currently employs 79 appeals referees, of which approximately 12% are attorneys in good standing with the Florida Bar. **Section 45** amends s. 443.151, F.S., to require that an appeals referee employed by the DEO be an attorney in good standing with the Florida Bar. New employees hired on or after January 1, 2014, must be an attorney within 8 months of his or her employment date. This section is effective January 1, 2014. **Section 46** provides that after January 1, 2014, the DEO must meet these requirements through attrition of staff. (**Undesignated section of the Florida Statutes**)

Gulf Coast Economic Corridor Act

Section 50 creates s. 288.80, F.S., which designates ss. 288.80 – 288.84, F.S., as the "Gulf Coast Economic Corridor Act" (the GCEC act). **Section 51** states that the Legislature intends to provide a long-term source of funding for economic recovery and enhancement efforts in the Gulf Coast region.

Section 52 creates s. 288.81, F.S., to provide definitions for the GCEC act. In particular, "disproportionately affected county" is defined as 8 Florida counties: Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and Wakulla. Additionally, "Recovery Fund" is defined as "a trust account established by Triumph Gulf Coast, Inc., for the benefit of the disproportionately affected counties."

Triumph Gulf Coast, Inc., and the Recovery Fund

Section 53 creates s. 288.82, F.S., to create Triumph Gulf Coast, Inc., a nonprofit corporation administratively housed within the DEO, but which is not a unity or entity of state government. The corporation is not subject to the control, supervision, or direction of the DEO.

Triumph Gulf Coast, Inc., is directed to create and administer the Recovery Fund as a long-term source of revenue, the principal of which will decline over a 30-year period in equal amounts each year. A portion of the principal and any earnings (income generated from investments and interest) will be available each year to make awards to programs and projects in the disproportionately affected counties. The principal of the Recovery Fund is made up of 75 percent of all funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon oil spill;[59] and any funds distributed to the state under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies

[58] Data from the DEO, "Reemployment Assistance Data, 1st Quarter 2007 through 4th Quarter 2012," January 7, 2013, on file with the Senate Commerce and Tourism Committee. Note, that not all outcomes that award benefits impact an employer's taxes, as some cases find that the former employee separated from work due to reasons not attributable to the employer.
[59] The Attorney General filed a lawsuit for "loss of tax revenue and income and other economic damages" against BP p.l.c. and Halliburton Energy Services, Inc., on April 20, 2013, in the Panama City Division of the Northern District of Florida. For more information, see Attorney General Pam Bondi News Release, Attorney General Pam Bondi Sues BP on Three-Year Anniversary of Deepwater Horizon Oil Spill, April 20, 2013, available at http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D37C3803876F7AF285257B5300516938 (last visited Apr. 21, 2013).

(RESTORE) of the Gulf Coast Act of 2012. The bill does not affect funds distributed to a county under the RESTORE Act. Any funds remaining in the Recovery Fund after 30 years reverts to the State Treasury. The bill does not make an appropriation.

Triumph Gulf Coast, Inc., is permitted to invest the principal, and must account for each type of principal funds separately from each other and any earnings. The board of directors of the corporation is required to create an investment policy and competitively procure one or more money managers to invest the funds. Any agreement with a money manager must be reviewed every 5 years to determine if the agreement should be continued. Management fees for investments are limited to 1.5 basis points.

Administrative costs, including any management fees for investments, are limited to 1 percent of the earnings each calendar year.

Triumph Gulf Coast, Inc., is required to have two annual audits – one of the investment of the Recovery Fund by an independent certified public accountant, and one of the Recovery Fund and Triumph Gulf Coast, Inc., itself by the Auditor General.

Triumph Gulf Coast, Inc., must report twice a year, on June 30 and December 30, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Board of Directors

Section 54 creates s. 288.83, F.S., to create a 5-member board of directors for Triumph Gulf Coast, Inc., and the set forth requirements on the members.

The Governor, Attorney General, Chief Financial Officer, (as Trustees of the State Board of Administration), the President of the Senate, and the Speaker of the House of Representatives each select one person from the private sector to serve on the board.

The board is required to annually elect a chair from its members, who serve 4-year terms. The bill provides for staggered terms by limiting the appointments of the President of the Senate and Speaker of the House of Representative to serve 2 year terms initially. All initial appointments are to be made by November 15, 2013. Board members are uncompensated, except for travel and per diem expenses.

Triumph Gulf Coast, Inc., and its board of directors are subject to public records and meeting requirements, as well as, provisions for restrictions on employment of relatives, voting conflicts, and standards of conduct for public officers, which include prohibitions on self-dealing, solicitation of gifts, and postemployment restrictions. Additionally; each board member must agree to refrain from having any direct interest in any contract, program, project, or other benefit arising from an award from the Recovery Fund during the term of appointment to the board and for 2 years following the end of the appointment. The bill provides that it is a first degree misdemeanor to violate these terms of board membership.[60] Board members must also file

[60] Punishable by a fine of up to $1,000 and up to one year imprisonment. See ss. 775.082 and 775.083, F.S.

financial disclosure forms. Board members have a fiduciary duty to the Recovery Fund, and may be removed by the state officer that made the appointment for certain delineated reasons.

The board is required to meet at least quarterly. The executive director of the DEO, the secretary of the Department of Environmental Protection, and the chair of the Committee of 8 Disproportionately Affected Counties (of the Gulf Consortium) must be available to consult with the board and may be requested to attend board meetings.

The board is permitted to hire necessary staff, and is required to retain:

- An independent certified public accountant licensed in Florida;
- An independent financial advisor;
- An economic advisor; and
- A legal advisor.

All staff must also comply with the code of ethics for public employees and agree to refrain from having any direct interest in any contract, program, project, or other benefit arising from an award from the Recovery Fund during the term of employment or contract to the board and for 2 years following the end of employment or contract.

Section 55 creates s. 288.831, F.S., to set forth the powers and duties of the board of directors. These include making and entering into contracts, adopting and using a corporate seal, and a prohibition on pledging the credit of the state on behalf of Triumph Gulf Coast, Inc.

Section 56 creates s. 288.832, F.S., to set forth the duties of Triumph Gulf Coast, Inc. These include managing all funds responsibly and prudently, monitoring and reviewing awardees, and operating in a transparent manner.

Awards

Section 57 creates s. 288.84, F.S., which sets forth the type and requirements for awards from the Recovery Fund. Triumph Gulf Coast, Inc., is permitted to make awards from available earnings and principal for projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties, notwithstanding s. 377.43, F.S.

For awards from earnings and principal of the funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon oil spill, awards may be made for the following projects or programs within the disproportionately affected counties:

- Ad valorem tax reduction;
- Payment of impact fees;
- Administrative funding for economic development organizations;
- Local match requirements for certain economic incentives programs in ch. 288, F.S.;
- Economic development projects;
- Infrastructure projects that are shown to enhance economic development;

- Grants to local governments to establish and maintain equipment and trained personnel for local action plans of response to disasters;
- Grants to support programs of excellence that prepare students for future occupations and careers at K-20 institutions; and
- Grants to Visit Florida for advertising and promoting tourism, the Fresh From Florida program, or other related content.

For awards from earnings and principal of the funds distributed under the RESTORE act, awards may be made for the following projects or programs within the disproportionately affected counties, in accordance with federal law:

- Administrative funding for economic development organizations;
- Local match requirements for certain economic incentive programs in ch. 288, F.S.;
- Economic development projects;
- Infrastructure projects that are shown to enhance economic development;
- Grants to local governments to establish and maintain equipment and trained personnel for local action plans of response to disasters; and
- Grants to Visit Florida for advertising and promoting tourism, the Fresh From Florida program, or other related content.

Triumph Gulf Coast, Inc., must establish an application and scoring process for all awards. The scoring process should lead to the selection of projects or programs that "have the potential to generate increased economic activity in the disproportionately affected counties." The process should give priority to projects or programs that:

- Generate maximum economic benefits;
- Expand household income above the national average;
- Expand or establish new high growth industries;
- Leverage or enhance key regional assets, including research facilities and military bases;
- Partner with local governments, convention and visitor bureaus, chambers of commerce, school districts, or educational institutions;
- Have investment commitments from private equity or venture capital funds;
- Provide or encourage seed-stage investments;
- Provide advice or technical assistance to companies on restructuring existing management, operations, or production to attract business opportunities;
- Benefit the environment in addition to the economy; and
- Provide outcome measures for program of excellence.

Triumph Gulf Coast, Inc., is permitted to make awards by establishing an application period or as applications are received. The awards may not be used to finance 100 percent of a project or program, and no one awardee may receive all of the available funds in any given calendar year. A one-to-one private-sector match may be required if applicable and deemed prudent by the board of directors.

Contracts for awards must include performance measures and reports and provisions for recovery of the award if the award was made based on fraudulent information or if the awardee is not

meeting the performance measures. Triumph Gulf Coast, Inc., must establish a schedule for regular reporting by the awardees on the status of the project or program.

Effective Date

The bill takes effect upon becoming law, except as otherwise expressly provided in the act. (**Section 58**).

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 transfer of any remaining funds to the Unemployment Compensation Trust Fund after the final federal interest payment is made may have a positive impact on employer contribution rates.

Revenues generated by the imposition and collection of the penalty created in the bill for fraudulently obtaining unemployment compensation benefits could have a positive impact on employer contribution rates.

The Revenue Estimating Conference adopted an impact for the provisions of the bill related to the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund of positive $1.5 million (a combination of increased revenues and decreased expenditures) for FY 2013-2014, and adopted a cash impact of negative $120,000 (decreased revenues) for FY 2013-2014 for the provisions allowing the expansion of certain enterprise zones located in rural areas of critical economic concern. [61]

[61] Revenue Estimating Conference, Impact on HB 7007 – Proposed Amendment, Issue: Enterprise Zone Expansion, RACEC, February 22, 2013, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page82-85.pdf (last visited Apr. 21, 2013).

B. Private Sector Impact:

To the extent that more small businesses are assisted through increased performance by the network and regional centers, the bill may have a positive impact on the private sector.

The bill may impose costs on prospective economic development incentive applicants due to the requirement to secure or guarantee the award amount. The costs imposed may be in the form of premiums or other professional fees related to creating the secured transaction.

If the amount of assessments collected in previous years to pay the interest due on federal advances is at least 80 percent of the estimated interest payment, the Department of Revenue may not make an assessment against employers, which would have a positive fiscal impact to the private sector.

The bill will have a positive fiscal impact to individuals and organizations that are granted an award of funds from the Recovery Fund for a program or project.

Also, see Tax/Fee Issues.

C. Government Sector Impact:

This bill is projected to have a fiscal impact to the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability, as follows:

- Office of Economic and Demographic Research (EDR)
  - Economic Development Program Evaluation Workload - three positions and $302,324 to cover salaries, benefits and expenses associated with the new positions ($37,002 of the expenses are nonrecurring).
  - Modifications to Statewide Model - $34,400 to design and develop an employment module for the statewide model.

Funding for EDR would need to be appropriated in the General Appropriation Bill.

- Office of Program Policy Analysis and Government Accountability (OPPAGA)
  - Economic Development Program Evaluation Workload - two positions and a part-time intern - $178,163 for salaries and benefits. OPPAGA has indicated that they can absorb the additional workload within existing resources.

These estimates assume that EDR and OPPAGA will obtain access to all information related to economic development programs that is needed to complete the Economic Development Program Evaluations without cost to EDR or OPPAGA.

The DEO projects that the provisions of the bill that require “return on investment” reporting for economic development programs will require two full-time positions and

$398,000 of additional state funds to implement. Currently, information regarding economic development incentives available on the DEO's Economic Development Incentives Portal includes the following:

- Quick Action Closing Fund
- Innovation Incentive Program
- Qualified Target Industry Tax Refund Program
- Qualified Defense Contractor and Space Flight Business Tax Refund Program
- Brownfield Redevelopment Bonus Tax Refund
- Semiconductor, Defense, or Space Technology Sales Tax Exemption
- Capital Investment Tax Credit
- Manufacturing & Spaceport Investment Incentive Program
- High Impact Sector Performance Grants.

The bill requires the DEO to provide additional information for the programs listed above and to expand the enhanced reporting to all economic development "projects" (defined as the creation of a new business or expansion of an existing business) that receive state grants, tax exemptions, tax refunds, tax credits, or other state incentives provided to a business under an economic development program administered by the DEO. The department projects that it will need an additional $398,000 from state funding sources in Fiscal Year 2013-2014 and two full-time positions to implement these requirements, as follows:

	Total	Nonrecurring
Process Mapping	$75,000	$75,000
Sales Force and portal development	$85,000	$85,000
Data Migration	$50,000	$50,000
Training	$ 6,000	$ 6,000
Cloud Storage	$12,000	
Additional Software Licenses	$10,000	
FTE – Technical Administrator	$80,000	
FTE – Substantive Administrator	$80,000	
Total Projected Costs	$398,000	$216,000

As of April 24, 2013, the Conference Committee on Senate Transportation, Tourism, and Economic Development Appropriations/House Transportation and Economic Development Appropriations has agreed to provide two positions and $398,000 from the State Economic Enhancement and Development (SEED) Trust Fund to the DEO in the Conference Committee Report on Senate Bill 1500 (Fiscal Year 2013-2014 General Appropriations Act).

Failure to provide a penalty for individuals who fraudulently collect unemployment benefits, restore the penalty for disclosing confidential information, or require the employer's response to a notice of claim to be made timely *or adequately* puts Florida at risk of being deemed out of conformity with federal law. If the United States Department of Labor made such a finding, it may not certify the state's reemployment assistance

program and could withhold all administrative funding (approximately $77 million for Federal FY 2013) or cause the employer federal tax rates to increase to the total of 6.0 percent because of loss of the entire Federal Unemployment Tax Act tax credit.

Imposing the 15 percent penalty upon individuals who fraudulently receive unemployment compensation benefits could have a positive impact to the Unemployment Compensation Trust Fund. According to the department, during FY 2011-12, the department made 25,294 fraud determinations totaling $33.2 million in benefit overpayments. If these benefit overpayments had been subject to the 15 percent penalty, approximately $4.9 million could have been deposited in the Unemployment Compensation Trust Fund. Revenues generated by the imposition and collection of the penalty created in the bill could have a positive impact on employer contribution rates.

The provisions of the bill that streamline reporting requirements, delete duplicative reports, and consolidate reporting due dates may improve efficiencies and are not expected to have a fiscal impact to the Department of Economic Opportunity, Enterprise Florida, Inc., the Office of Film and Entertainment, or Space Florida.

The provisions of the bill related to the Small Business Development Center Network are expected to have a minimal, but indeterminate, impact on the operating budgets of the Board of Governors and the department. As of April 24, 2013, the Conference Committee on Senate Appropriations on Education/House Education Appropriations has agreed to include$4 million of recurring general revenue funds for Small Business Development Centers in Specific Appropriation 142 (Grants and Aids – Education and General Activities appropriation category) in the Conference Committee Report on Senate Bill 1500 (Fiscal Year 2013-2014 General Appropriations Act).

The bill requires the department to establish a process for determining compliance with, or waiving, the securitization requirements created in the bill. The department may promulgate rules to implement the bill. The costs associated with establishing and maintaining processes and rulemaking that the department may incur are indeterminate, but are anticipated to be insignificant.

- The Department of Economic Opportunity

indicates that federal funding received to administer the state's reemployment assistance program could be redirected to cover the increased salaries and benefits costs associated with the requirement that the department fill vacant appeals referees positions with attorneys in good standing with the Florida Bar after January 1, 2014 .

The bill will have a positive fiscal impact to local governments that are granted an award of funds from the Recovery Fund for a program or project.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DEO is authorized to adopt rules to:

- Establish a process for determining compliance with, or waiving, the securitization requirements created in Section 11 of the bill; and
- Create the website for the return on investment reporting for economic development programs created in Section 13 of the bill.

VIII. Additional Information:

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

CS/CS by Appropriations on April 23, 2013:
The committee substitute:

- Clarifies that the annual report by the Small Business Development Network include information on the use of all federal, state, local, and private funds received by the network and the small business development centers.
- Specifies the meaning of the term "brownfield" for the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund.
- Adds a requirement that DEO publish certain project-specific information on each economic development program awarded to businesses on its website in an easy-to-use format.
- Removes the provision that the Governor serve as an ex officio, non-voting member of the board of directors of the Florida Tourism Industry Marketing Corporation (VISIT Florida).
- Moves the annual report due date for the New Markets Tax Credit program from April 1 to January 31.
- Permits enterprise zones of certain sizes to expand their boundaries if the zone also includes a portion of a rural area of critical economic concern.
- Revises the limitation on proof of work search contacts for reemployment assistance benefits to prohibit a claimant from reporting a contact to the same employer at the same location in 3 consecutive weeks, unless that employer has indicated that it is hiring since the time of the initial contact.
- Provides that the DEO may fulfill the requirement for appeals referees to be attorneys through attrition of staff.
- Creates the Gulf Coast Economic Corridor Act to create the Triumph Gulf Coast, Inc., to invest funds related to the Deepwater Horizon oil spill and make awards to projects and programs in the 8 disproportionately affected counties.
- Creates a rotating, 3-year review schedule for all incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Provides EDR and OPPAGA access to all data necessary to complete its evaluations of the economic development programs.

- Defines "jobs" as full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project.
- Repeals duplicative evaluations of economic development programs.
- Aligns the Small Business Development Center Network's (network) statewide policies with the statewide strategic economic development plan and statewide goals of the university system.
- Specifies the composition of the network's statewide advisory board.
- Specifies the support services offered by the network.
- Requires the network to provide a match to any direct state appropriation.
- Requires the network to set up incentives for the regional centers to create jobs, institute best practices, and serve new areas of the state or underserved areas.
- Requires regular reporting by the network on programs, services, and outcomes, including information on the network's economic benefits to the state.
- Requires the department to evaluate each application for economic incentives for the economic benefits of the proposed award to the state, and EDR is to review and report on the methodology used to calculate the economic benefit.
- Requires recipients of incentives under the Quick Action Closing Fund and the Innovation Incentive Programs to secure the award with a surety bond, letter of credit, or other security; provides procedures for the department to waive securitization requirements.
- Eliminates school boards as entities for which funds from the Grants and Donations Trust Fund in the Department of Economic Opportunity may be used to provide community planning technical assistance.
- Creates specific examples of misconduct for which an individual may be disqualified for benefits.
- Prohibits a claimant from counting the same prospective employer at the same location more than once during his or her claim as proof of work search efforts, unless the employer indicates that it is hiring after the initial contact by the claimant.
- Provides that an individual is disqualified from receiving benefits if his or her unemployment is due to a discharge from employment for failure, without good cause, to maintain a license, registration, or certification required by law for the performance of his or her assigned duties and provides examples of good cause.
- Requires an appeals referee to be a member in good standing with the Florida Bar or be successfully admitted to the Florida Bar within 8 months of his or her employment date, effective January 1, 2014, and current appeals referees who have law degrees but are not members in good standing in the Florida Bar must be successfully admitted by September 30, 2014.

CS by Community Affairs on March 7, 2013:
The CS provides the $5 million loan guarantee limit for the Florida Small Cities Community Development Block Grant Program does not apply to loans guaranteed prior to July 1, 2013, that may be refinanced. The CS creates an exemption for people who are unable to complete the online work registration due to various stated reasons from having to complete the department's online work registration.

B. Amendments:

None.

By the Committees on Community Affairs; and Commerce and Tourism

578-02025-13 20131024c1

A bill to be entitled

An act relating to the Department of Economic Opportunity; amending ss. 20.60, 288.906, and 288.907, F.S.; revising requirements for various annual reports submitted to the Governor and Legislature, including the annual report of the Department of Economic Opportunity, the annual report of Enterprise Florida, Inc., and the annual incentives report; consolidating the reporting requirements for various economic development programs into these annual reports; amending ss. 220.194, 288.012, 288.061, and 288.0656, F.S.; conforming provisions to changes made by the act; amending s. 288.095, F.S.; deleting requirements for an annual report related to certain payments made from the Economic Development Incentives Account of the Economic Development Trust Fund; amending ss. 288.106, 288.1081, 288.1082, 288.1088, and 288.1089, F.S.; conforming provisions to changes made by the act; amending s. 288.1226, F.S.; revising membership of the board of directors of the Florida Tourism Industry Marketing Corporation; providing that the Governor shall serve as a nonvoting member; amending ss. 288.1253, 288.1254, and 288.1258, F.S.; revising requirements for annual reports by the Office of Film and Entertainment; amending ss. 288.714 and 288.7771, F.S.; conforming provisions to changes made by the act; amending s. 288.903, F.S.; revising the duties of Enterprise Florida, Inc., with respect to preparation of the annual incentives report; amending ss. 288.92,

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288.95155, 290.0056, and 290.014, F.S.; conforming provisions to changes made by the act; amending ss. 290.0411 and 290.042, F.S.; revising legislative intent and definitions applicable to the Florida Small Cities Community Development Block Grant Program Act; amending s. 290.044, F.S.; requiring the department to adopt rules for the distribution of block grant funds to eligible local governments; deleting authority for block grant funds to be distributed as loan guarantees to local governments; requiring that block grant funds be distributed to achieve the department's community development objectives; requiring such objectives to be consistent with certain national objectives; amending s. 290.0455, F.S.; providing for the state's guarantee of certain federal loans to local governments; requiring applicants for such loans to pledge a specified amount of revenues to guarantee the loans; revising requirements for the department to submit recommendations to the Federal Government for such loans; revising the maximum amount of the loan guarantee commitment that a local government may receive and providing exceptions; providing for reduction of a local government's future community development block grants if the local government defaults on the federal loan; providing procedures if a local government is granted entitlement community status; amending s. 290.046, F.S.; revising application requirements for community development block grants and procedures for the ranking of

applications and the determination of project funding; amending s. 290.047, F.S.; revising requirements for the establishment of grant ceilings and maximum expenditures on administrative costs from community development block grants; limiting an eligible local government's authority to contract for specified services in connection with community development block grants; amending s. 290.0475, F.S.; revising conditions under which grant applications are ineligible for funding; amending 290.048, F.S.; revising the department's duties to administer the Small Cities Community Development Block Grant Loan Guarantee Program; deleting provisions authorizing the establishment of an advisory committee; amending ss. 331.3051 and 331.310, F.S.; revising requirements for annual reports by Space Florida; amending s.443.091, F.S.; providing for online work registration and providing exceptions; amending s. 443.1113, F.S., relating to the Reemployment Assistance Claims and Benefits Information System; revising timeframe for deployment of a certain Internet portal as part of such system; amending s. 443.131, F.S.; revising requirements for the estimate of interest due on advances received from the Federal Government to the Unemployment Compensation Trust Fund and the calculation of additional assessments to contributing employers to repay the interest; providing an exemption from such additional assessments; amending ss. 443.151 and 443.191, F.S.; revising provisions to

conform to changes made to benefit eligibility; requiring the department to impose a penalty against a claimant who is overpaid reemployment assistance benefits due to fraud by the claimant and providing for deposit of moneys collected for such penalties in the Unemployment Compensation Trust Fund; amending s. 443.1715, F.S.; prohibiting the unlawful disclosure of certain confidential information relating to employing units and individuals under the Reemployment Assistance Program Law; providing criminal penalties; amending s. 446.50, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (10) of section 20.60, Florida Statutes, is amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 ~~January 1~~ of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state. The report must ~~shall~~ include the identification of problems and a prioritized list of recommendations. The report must also include the following information from reports of other programs, including:

(a) Information from the displaced homemaker program plan

required under s. 446.50.

(b) Information from the report on the usage and revenue impact by county of state incentives required under s. 290.014, and from the report of each enterprise zone development agency required under s. 290.0056. The report must include an analysis of the activities and accomplishments of each enterprise zone.

(c) Information from the report on the use of loan funds awarded pursuant to the Economic Gardening Business Loan Pilot Program required under s. 288.1081(8) and from the report on the progress of the Economic Gardening Technical Assistance Pilot Program required under s. 288.1082(8).

(d) Information from the report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

(e) Information from the report of all Rural Economic Development Initiative activities required under s. 288.0656.

Section 2. Subsection (3) is added to section 288.906, Florida Statutes, to read:

288.906 Annual report of Enterprise Florida, Inc., and its divisions; audits.—

(3) The following reports must be included as supplements to the detailed report required by this section:

(a) The annual report of the Florida Export Finance Corporation required under s. 288.7771.

(b) The report on the state's international offices required under s. 288.012.

Section 3. Subsection (1) of section 288.907, Florida Statutes, is amended to read:

288.907 Annual incentives report.—

(1) ~~In addition to the annual report required under s. 288.906,~~ Enterprise Florida, Inc., in conjunction with the department, shall, by December 30 of each year, submit an annual incentives report to ~~shall provide~~ the Governor, the President of the Senate, and the Speaker of the House of Representatives which details and quantifies ~~a detailed incentives report quantifying~~ the economic benefits for all of the economic development incentive programs marketed by Enterprise Florida, Inc.

(a) The annual incentives report must include for each incentive program:

1. A brief description of the incentive program.

2. The amount of awards granted, by year, since inception.

3. The economic benefits, as defined in s. 288.005, based on the actual amount of private capital invested, actual number of jobs created, and actual wages paid for incentive agreements completed during the previous 3 years.

4. ~~The report shall also include~~ The actual amount of private capital invested, actual number of jobs created, and actual wages paid for incentive agreements completed during the previous 3 years for each target industry sector.

(b) For projects completed during the previous state fiscal year, the report must include:

1. The number of economic development incentive applications received.

2. The number of recommendations made to the department by Enterprise Florida, Inc., including the number recommended for approval and the number recommended for denial.

3. The number of final decisions issued by the department

for approval and for denial.

4. The projects for which a tax refund, tax credit, or cash grant agreement was executed and~~,~~ identifying for each project:

a. The number of jobs committed to be created.

b. The amount of capital investments committed to be made.

c. The annual average wage committed to be paid.

d. The amount of state economic development incentives committed to the project from each incentive program under the project's terms of agreement with the Department of Economic Opportunity.

e. The amount and type of local matching funds committed to the project.

5. Tax refunds paid or other payments made funded out of the Economic Development Incentives Account for each project.

6. The types of projects supported.

(c) For economic development projects that received tax refunds, tax credits, or cash grants under the terms of an agreement for incentives, the report must identify:

1. The number of jobs actually created.

2. The amount of capital investments actually made.

3. The annual average wage paid.

(d) For a project receiving economic development incentives approved by the department and receiving federal or local incentives, the report must include a description of the federal or local incentives, if available.

(e) The report must state the number of withdrawn or terminated projects that did not fulfill the terms of their agreements with the department and consequently are not receiving incentives.

(f) The report must include an analysis of the economic benefits, as defined in s. 288.005, of tax refunds, tax credits, or other payments made to projects locating or expanding in state enterprise zones, rural communities, brownfield areas, or distressed urban communities.

(g) The report must also include a separate analysis of the impact of tax refunds on rural communities, brownfield areas, distressed urban communities, and state enterprise zones designated pursuant to s. 290.0065.

(h) The report must list the name of each business that received a tax refund during the previous fiscal year, and the amount of the tax refund, pursuant to the qualified defense contractor and space flight business tax refund program under s. 288.1045 or the tax refund program for qualified target industry businesses under s. 288.106.

(i)~~(g)~~ The report must identify the target industry businesses and high-impact businesses.

(j)~~(h)~~ The report must describe the trends relating to business interest in, and usage of, the various incentives, and the number of minority-owned or woman-owned businesses receiving incentives.

(k)~~(i)~~ The report must identify incentive programs not used and include recommendations for changes to such programs ~~utilized~~.

(l) The report must include information related to the validation of contractor performance required under s. 288.061.

(m) Beginning in 2014, the report must summarize the activities related to the Florida Space Business Incentives Act, s. 220.194.

Section 4. Subsection (9) of section 220.194, Florida Statutes, is amended to read:

220.194 Corporate income tax credits for spaceflight projects.—

(9) ANNUAL REPORT.—Beginning in 2014, the Department of Economic Opportunity, in cooperation with Space Florida and the department, shall include in the ~~submit an~~ annual incentives report required under s. 288.907 a summary of ~~summarizing~~ activities relating to the Florida Space Business Incentives Act established under this section ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives by each November 30~~.

Section 5. Subsection (3) of section 288.012, Florida Statutes, is amended to read:

288.012 State of Florida international offices; state protocol officer; protocol manual.—The Legislature finds that the expansion of international trade and tourism is vital to the overall health and growth of the economy of this state. This expansion is hampered by the lack of technical and business assistance, financial assistance, and information services for businesses in this state. The Legislature finds that these businesses could be assisted by providing these services at State of Florida international offices. The Legislature further finds that the accessibility and provision of services at these offices can be enhanced through cooperative agreements or strategic alliances between private businesses and state, local, and international governmental entities.

(3) ~~By October 1 of each year,~~ Each international office shall annually submit to Enterprise Florida, Inc., ~~the~~

~~department~~ a complete and detailed report on its activities and accomplishments during the previous ~~preceding~~ fiscal year for inclusion in the annual report required under s. 288.906. In the ~~a~~ format and by the annual date prescribed ~~provided~~ by Enterprise Florida, Inc., the report must set forth information on:

(a) The number of Florida companies assisted.

(b) The number of inquiries received about investment opportunities in this state.

(c) The number of trade leads generated.

(d) The number of investment projects announced.

(e) The estimated U.S. dollar value of sales confirmations.

(f) The number of representation agreements.

(g) The number of company consultations.

(h) Barriers or other issues affecting the effective operation of the office.

(i) Changes in office operations which are planned for the current fiscal year.

(j) Marketing activities conducted.

(k) Strategic alliances formed with organizations in the country in which the office is located.

(l) Activities conducted with Florida's other international offices.

(m) Any other information that the office believes would contribute to an understanding of its activities.

Section 6. Subsection (3) of section 288.061, Florida Statutes, is amended to read:

288.061 Economic development incentive application process.—

(3) The department shall validate contractor performance and report~~.~~ such validation ~~shall be reported~~ in the annual incentives ~~incentive~~ report required under s. 288.907.

Section 7. Subsection (8) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(8) REDI shall submit a report to the department ~~Governor, the President of the Senate, and the Speaker of the House of Representatives each year on or before September 1~~ on all REDI activities for the previous ~~prior~~ fiscal year as a supplement to the department's annual report required under s. 20.60. This supplementary report must ~~shall~~ include:

(a) A status report on all projects currently being coordinated through REDI, the number of preferential awards and allowances made pursuant to this section, the dollar amount of such awards, and the names of the recipients.

(b) ~~The report shall also include~~ A description of all waivers of program requirements granted.

(c) ~~The report shall also include~~ Information as to the economic impact of the projects coordinated by REDI.~~, and~~

(d) Recommendations based on the review and evaluation of statutes and rules having an adverse impact on rural communities~~,~~ and proposals to mitigate such adverse impacts.

Section 8. Paragraphs (d) and (e) of subsection (3) of section 288.095, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and present paragraph (c) of that subsection is amended to read:

288.095 Economic Development Trust Fund.—

(3)

~~(c) Pursuant to s. 288.907, Enterprise Florida, Inc., shall submit a complete and detailed annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives of all applications received, recommendations made to the department, final decisions issued, tax refund agreements executed, and tax refunds paid or other payments made under all programs funded out of the Economic Development Incentives Account, including analyses of benefits and costs, types of projects supported, and employment and investment created. The department shall also include a separate analysis of the impact of such tax refunds on state enterprise zones designated pursuant to s. 290.0065, rural communities, brownfield areas, and distressed urban communities. The report must also discuss the efforts made by the department to amend tax refund agreements to require tax refund claims to be submitted by January 31 for the net new full-time equivalent jobs in this state as of December 31 of the preceding calendar year. The report must also list the name and tax refund amount for each business that has received a tax refund under s. 288.1045 or s. 288.106 during the preceding fiscal year.~~

Section 9. Paragraph (d) of subsection (7) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(7) ADMINISTRATION.—

(d) Beginning with tax refund agreements signed after July 1, 2010, the department shall attempt to ascertain the causes for any business's failure to complete its agreement and shall include ~~report~~ its findings and recommendations in the annual

incentives report required under s. 288.907 ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~. ~~The report shall be submitted by December 1 of each year beginning in 2011~~.

Section 10. Subsection (8) of section 288.1081, Florida Statutes, is amended to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(8) ~~On June 30 and December 31 of each year,~~ The department shall include in its annual ~~submit a~~ report required under s. 20.60 a detailed description of ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes in detail~~ the use of the loan funds. The report must include, at a minimum, the number of businesses receiving loans, the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, the locations and types of economic activity undertaken by the borrowers, the amounts of loan repayments made to date, and the default rate of borrowers.

Section 11. Subsection (8) of section 288.1082, Florida Statutes, is amended to read:

288.1082 Economic Gardening Technical Assistance Pilot Program.—

(8) ~~On December 31 of each year,~~ The department shall include in its annual ~~submit a~~ report required under s. 20.60 a detailed description of ~~to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes in detail~~ the progress of the pilot program. The report must include, at a minimum, the number of businesses receiving assistance, the number of full-time equivalent jobs

created as a result of the assistance, if any, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the businesses.

Section 12. Paragraph (e) of subsection (3) of section 288.1088, Florida Statutes, is amended to read:

288.1088 Quick Action Closing Fund.—

(3)

(e) The department ~~Enterprise Florida, Inc.,~~ shall validate contractor performance and report~~.~~ such validation in the annual incentives report required under s. 288.907 ~~shall be reported within 6 months after completion of the contract to the Governor, President of the Senate, and the Speaker of the House of Representatives~~.

Section 13. Subsection (9) and paragraph (a) of subsection (11) of section 288.1089, Florida Statutes, are amended to read:

288.1089 Innovation Incentive Program.—

(9) The department shall validate the performance of an innovation business, a research and development facility, or an alternative and renewable energy business that has received an award. At the conclusion of the innovation incentive award agreement, or its earlier termination, the department shall include in the annual incentives report required under s. 288.907 a detailed description of~~, within 90 days, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing~~ whether the recipient of the innovation incentive grant achieved its specified outcomes.

(11)(a) The department shall include in ~~submit to the~~

~~Governor, the President of the Senate, and the Speaker of the House of Representatives, as part of~~ the annual incentives report required under s. 288.907~~,~~ a report summarizing the activities and accomplishments of the recipients of grants from the Innovation Incentive Program during the previous 12 months and an evaluation of whether the recipients are catalysts for additional direct and indirect economic development in Florida.

Section 14. Subsection (4) of section 288.1226, Florida Statutes, is amended to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(4) BOARD OF DIRECTORS.—The board of directors of the corporation shall be composed of the Governor and 31 tourism-industry-related members, appointed by Enterprise Florida, Inc., in conjunction with the department.

(a) The Governor shall serve ex officio as a nonvoting member of the board.

(b)~~(a)~~ The board shall consist of 16 members, appointed in such a manner as to equitably represent all geographic areas of the state, with no fewer than two members from any of the following regions:

1. Region 1, composed of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Counties.

2. Region 2, composed of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Marion, Nassau, Putnam, St. Johns, Suwannee, Taylor, and Union Counties.

3. Region 3, composed of Brevard, Indian River, Lake,

Okeechobee, Orange, Osceola, St. Lucie, Seminole, Sumter, and Volusia Counties.

4. Region 4, composed of Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties.

5. Region 5, composed of Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, and Lee Counties.

6. Region 6, composed of Broward, Martin, Miami-Dade, Monroe, and Palm Beach Counties.

(c)~~(b)~~ The 15 additional tourism-industry-related members shall include 1 representative from the statewide rental car industry; 7 representatives from tourist-related statewide associations, including those that represent hotels, campgrounds, county destination marketing organizations, museums, restaurants, retail, and attractions; 3 representatives from county destination marketing organizations; 1 representative from the cruise industry; 1 representative from an automobile and travel services membership organization that has at least 2.8 million members in Florida; 1 representative from the airline industry; and 1 representative from the space tourism industry, who will each serve for a term of 2 years.

Section 15. Subsection (3) of section 288.1253, Florida Statutes, is amended to read:

288.1253 Travel and entertainment expenses.—

(3) The Office of Film and Entertainment ~~department~~ shall include in the annual report for the entertainment industry financial incentive program required under s. 288.1254(10) a ~~prepare an annual~~ report of the office's expenditures ~~of the Office of Film and Entertainment and provide such report to the Legislature no later than December 30 of each year~~ for ~~the~~

~~expenditures of~~ the previous fiscal year. The report must ~~shall~~ consist of a summary of all travel, entertainment, and incidental expenses incurred within the United States and all travel, entertainment, and incidental expenses incurred outside the United States, as well as a summary of all successful projects that developed from such travel.

Section 16. Subsection (10) of section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

(10) ANNUAL REPORT.—Each November 1 ~~October 1~~, the Office of Film and Entertainment shall submit ~~provide~~ an annual report for the previous fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines the incentive program's return on investment and economic benefits to the state. The report must ~~shall~~ also include an estimate of the full-time equivalent positions created by each production that received tax credits under this section and information relating to the distribution of productions receiving credits by geographic region and type of production. The report must also include the expenditures report required under s. 288.1253(3) and the information describing the relationship between tax exemptions and incentives to industry growth required under s. 288.1258(5).

Section 17. Subsection (5) of section 288.1258, Florida Statutes, is amended to read:

288.1258 Entertainment industry qualified production companies; application procedure; categories; duties of the Department of Revenue; records and reports.—

(5) RELATIONSHIP OF TAX EXEMPTIONS AND INCENTIVES TO INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The Office of Film and Entertainment shall keep annual records from the information provided on taxpayer applications for tax exemption certificates beginning January 1, 2001. These records also must ~~shall~~ reflect a ratio of the annual amount of sales and use tax exemptions under this section, plus the incentives awarded pursuant to s. 288.1254 to the estimated amount of funds expended by certified productions. In addition, the office shall maintain data showing annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages. The employment information must ~~shall~~ include an estimate of the full-time equivalent positions created by each production that received tax credits pursuant to s. 288.1254. The Office of Film and Entertainment shall include ~~report~~ this information in the annual report for the entertainment industry financial incentive program required under s. 288.1254(10) ~~to the Legislature no later than December 1 of each year~~.

Section 18. Subsection (3) of section 288.714, Florida Statutes, is amended to read:

288.714 Quarterly and annual reports.—

(3) ~~By August 31 of each year,~~ The department shall include in its annual report required under s. 20.60 ~~provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~ a detailed report of the performance of the Black Business Loan Program. The report must include a cumulative summary of the quarterly report data compiled pursuant to ~~required by~~ subsection (2) ~~(1)~~.

Section 19. Section 288.7771, Florida Statutes, is amended

to read:

288.7771 Annual report of Florida Export Finance Corporation.—The corporation shall annually prepare and submit to Enterprise Florida, Inc., ~~the department~~ for inclusion in its annual report required under s. 288.906 ~~by s. 288.095~~ a complete and detailed report setting forth:

(1) The report required in s. 288.776(3).

(2) Its assets and liabilities at the end of its most recent fiscal year.

Section 20. Subsections (3), (4), and (5) of section 288.903, Florida Statutes, are amended to read:

288.903 Duties of Enterprise Florida, Inc.—Enterprise Florida, Inc., shall have the following duties:

(3) Prepare an annual report pursuant to s. 288.906.

(4) Prepare, in conjunction with the department, ~~and~~ an annual incentives report pursuant to s. 288.907.

(5)~~(4)~~ Assist the department with the development of an annual and a long-range strategic business blueprint for economic development required in s. 20.60.

(6)~~(5)~~ In coordination with Workforce Florida, Inc., identify education and training programs that will ensure Florida businesses have access to a skilled and competent workforce necessary to compete successfully in the domestic and global marketplace.

Section 21. Subsection (3) of section 288.92, Florida Statutes, is amended to read:

288.92 Divisions of Enterprise Florida, Inc.—

(3) ~~By October 15 each year,~~ Each division shall draft and submit an annual report for inclusion in the report required

under 288.906 which details the division's activities during the previous ~~prior~~ fiscal year and includes ~~any~~ recommendations for improving current statutes related to the division's ~~related~~ area of responsibility.

Section 22. Subsection (5) of section 288.95155, Florida Statutes, is amended to read:

288.95155 Florida Small Business Technology Growth Program.—

(5) Enterprise Florida, Inc., shall include in the annual incentives report required under s. 288.907 ~~prepare for inclusion in the annual report of the department required by s. 288.095~~ a report on the financial status of the program. The report must specify the assets and liabilities of the program within the current fiscal year and must include a portfolio update that lists all of the businesses assisted, the private dollars leveraged by each business assisted, and the growth in sales and ~~in~~ employment of each business assisted.

Section 23. Subsection (11) of section 290.0056, Florida Statutes, is amended to read:

290.0056 Enterprise zone development agency.—

(11) Before October 1 ~~December 1~~ of each year, the agency shall submit to the department for inclusion in the department's annual report required under s. 20.60 a complete and detailed written report setting forth:

(a) Its operations and accomplishments during the fiscal year.

(b) The accomplishments and progress concerning the implementation of the strategic plan or measurable goals, and any updates to the strategic plan or measurable goals.

(c) The number and type of businesses assisted by the agency during the fiscal year.

(d) The number of jobs created within the enterprise zone during the fiscal year.

(e) The usage and revenue impact of state and local incentives granted during the calendar year.

(f) Any other information required by the department.

Section 24. Section 290.014, Florida Statutes, is amended to read:

290.014 Annual reports on enterprise zones.—

~~(1)~~ By October 1 ~~February 1~~ of each year, the Department of Revenue shall submit a ~~an annual~~ report to the department for inclusion in the department's annual report required under s. 20.60 which details ~~detailing~~ the usage and revenue impact by county of the state incentives listed in s. 290.007.

~~(2) By March 1 of each year, the department shall submit an annual report to the Governor, the Speaker of the House of Representatives, and the President of the Senate.~~ The report must also ~~shall~~ include ~~the information provided by the department of Revenue pursuant to subsection (1) and the~~ information provided by the enterprise zone development agencies pursuant to s. 290.0056(11) ~~290.0056~~. In addition, the report must ~~shall~~ include an analysis of the activities and accomplishments of each enterprise zone.

Section 25. Section 290.0411, Florida Statutes, is amended to read:

290.0411 Legislative intent and purpose of ss. 290.0401-290.048.—It is the intent of the Legislature to provide the necessary means to develop, preserve, redevelop, and revitalize

Florida communities exhibiting signs of decline, ~~or~~ distress, or economic need by enabling local governments to undertake the necessary community and economic development programs. The overall objective is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing decent housing and suitable living environments, and expanding economic opportunities, principally for persons of low or moderate income. The purpose of ss. 290.0401-290.048 is to assist local governments in carrying out effective community and economic development and project planning and design activities to arrest and reverse community decline and restore community vitality. Community development and project planning activities to maintain viable communities, revitalize existing communities, expand economic development and employment opportunities, and improve housing conditions and expand housing opportunities, providing direct benefit to persons of low or moderate income, are the primary purposes of ss. 290.0401-290.048. The Legislature, therefore, declares that the development, redevelopment, preservation, and revitalization of communities in this state and all the purposes of ss. 290.0401-290.048 are public purposes for which public money may be borrowed, expended, loaned, pledged to guarantee loans, and granted.

Section 26. Subsections (1) and (6) of section 290.042, Florida Statutes, are amended to read:

290.042 Definitions relating to Florida Small Cities Community Development Block Grant Program Act.—As used in ss. 290.0401-290.048, the term:

(1) "Administrative closeout" means the notification of a grantee by the department that all applicable administrative

actions and all required work of an existing ~~the~~ grant have been completed with the exception of the final audit.

(6) "Person of low or moderate income" means any person who meets the definition established by the department in accordance with the guidelines established in Title I of the Housing and Community Development Act of 1974, as amended, and the definition of the term "low- and moderate-income person" as provided in 24 C.F.R. s. 570.3.

Section 27. Subsections (2), (3), and (4) of section 290.044, Florida Statutes, are amended to read:

290.044 Florida Small Cities Community Development Block Grant Program Fund; administration; distribution.—

(2) The department shall adopt rules establishing guidelines for the distribution of ~~distribute such funds as loan guarantees and~~ grants to eligible local governments through ~~on the basis of~~ a competitive selection process.

(3) The department shall define ~~the~~ broad community development objectives consistent with national objectives established by 42 U.S.C. s. 5304 and 24 C.F.R. s. 570.483 ~~objective~~ to be achieved through the distribution of block grant funds under this section. ~~by the activities in each of the following grant program categories, and require applicants for grants to compete against each other in these grant program categories:~~

~~(a) Housing.~~

~~(b) Economic development.~~

~~(c) Neighborhood revitalization.~~

~~(d) Commercial revitalization.~~

~~(e) Project planning and design.~~

(4) The department may set aside an amount of up to 5 percent of the funds annually for use in any eligible local government jurisdiction for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities but must not be provided unless ~~for which~~ no other source of federal, state, or local disaster funds is available. The department may provide for such set-aside by rule. In the last quarter of the state fiscal year, any funds not allocated under the emergency-related set-aside must ~~shall~~ be distributed to unfunded applications from the most recent funding cycle.

Section 28. Section 290.0455, Florida Statutes, is amended to read:

290.0455 Small Cities Community Development Block Grant Loan Guarantee Program; Section 108 loan guarantees.—

(1) The Small Cities Community Development Block Grant Loan Guarantee Program is created. The department shall administer the loan guarantee program pursuant to Section 108 ~~s. 108~~ of Title I of the Housing and Community Development Act of 1974, as amended, and as further amended by s. 910 of the Cranston-Gonzalez National Affordable Housing Act. The purpose of the Small Cities Community Development Block Grant Loan Guarantee Program is to guarantee, or to make commitments to guarantee, notes or other obligations issued by public entities for the purposes of financing activities enumerated in 24 C.F.R. s. 570.703.

(2) Activities assisted under the loan guarantee program must meet the requirements contained in 24 C.F.R. ss. 570.700-

570.710 and may not otherwise be financed in whole or in part from the Florida Small Cities Community Development Block Grant Program.

(3) The department may pledge existing revenues on deposit or future revenues projected to be available for deposit in the Florida Small Cities Community Development Block Grant Program in order to guarantee~~, in whole or in part,~~ the payment of principal and interest on a Section 108 loan ~~made under the loan guarantee program~~.

(4) An applicant approved by the United States Department of Housing and Urban Development to receive a Section 108 loan shall enter into an agreement with the Department of Economic Opportunity which requires the applicant to pledge half of the amount necessary to guarantee the loan in the event of default.

(5) The department shall review all Section 108 loan applications that it receives from local governments. The department shall review the applications ~~must submit all applications it receives to the United States Department of Housing and Urban Development for loan approval,~~ in the order received, subject to a determination by the department ~~determining~~ that each ~~the~~ application meets all eligibility requirements contained in 24 C.F.R. ss. 570.700-570.710~~,~~ and has been deemed financially feasible by a loan underwriter approved by the department. If the statewide maximum available for loan guarantee commitments established in subsection (6) has not been committed, the department may submit the Section 108 loan application to the United States Department of Housing and Urban Development with a recommendation that the loan be approved, with or without conditions, or be denied ~~provided that the~~

~~applicant has submitted the proposed activity to a loan underwriter to document its financial feasibility~~.

(6)~~(5)~~ The maximum amount of an individual loan guarantee commitment that an ~~commitments that any~~ eligible local government may receive is ~~may be~~ limited to $5 ~~$7~~ million ~~pursuant to 24 C.F.R. s. 570.705,~~ and the maximum amount of loan guarantee commitments statewide may not exceed an amount equal to two ~~five~~ times the amount of the most recent grant received by the department under the Florida Small Cities Community Development Block Grant Program. The $5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, that may be refinanced.

(7)~~(6)~~ Section 108 loans guaranteed by the Small Cities Community Development Block Grant Program ~~loan guarantee~~ ~~program~~ must be repaid within 20 years.

(8)~~(7)~~ Section 108 loan applicants must demonstrate ~~guarantees may be used for an activity only if the local government provides evidence~~ to the department that the applicant investigated alternative financing services ~~were investigated~~ and the services were unavailable or insufficient to meet the financing needs of the proposed activity.

(9) If a local government defaults on a Section 108 loan received from the United States Department of Housing and Urban Development and guaranteed through the Florida Small Cities Community Development Block Grant Program, thereby requiring the department to reduce its annual grant award in order to pay the annual debt service on the loan, any future community development block grants that the local government receives must be reduced in an amount equal to the amount of the state's grant

award used in payment of debt service on the loan.

(10) If a local government receives a Section 108 loan guaranteed through the Florida Small Cities Community Development Block Grant Program and is granted entitlement community status as defined in subpart D of 24 C.F.R. part 570 by the United States Department of Housing and Urban Development before paying the loan in full, the local government must pledge its community development block grant entitlement allocation as a guarantee of its previous loan and request that the United States Department of Housing and Urban Development release the department as guarantor of the loan.

~~(8) The department must, before approving an application for a loan, evaluate the applicant's prior administration of block grant funds for community development. The evaluation of past performance must take into account the procedural aspects of previous grants or loans as well as substantive results. If the department finds that any applicant has failed to substantially accomplish the results proposed in the applicant's last previously funded application, the department may prohibit the applicant from receiving a loan or may penalize the applicant in the rating of the current application.~~

Section 29. Section 290.046, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 290.046, F.S., for present text.)

290.046 Applications for grants; procedures; requirements.—

(1) The department shall adopt rules establishing application procedures.

(2)(a) Except for economic development projects, each local

government that is eligible by rule to apply for a grant during an application cycle may submit one application for a noneconomic development project during the application cycle. A local government that is eligible by rule to apply for an economic development grant may apply up to three times each funding cycle for an economic development grant and may have more than one open economic development grant.

(b) The department shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income, the degree of private sector financial commitment, the economic feasibility of the proposed project, and any other criteria the department deems appropriate.

(c) The department may not award a grant until the department has completed a site visit to verify the information contained in the application.

(3)(a) The department shall adopt rules establishing criteria for evaluating applications received during each application cycle and the department must rank each application in accordance with those rules. Such rules must allow the department to consider relevant factors, including, but not limited to, community need, unemployment, poverty levels, low and moderate income populations, health and safety, and the condition of physical structures. The department shall incorporate into its ranking system a procedure intended to eliminate or reduce any existing population-related bias that places exceptionally small communities at a disadvantage in the competition for funds.

(b) Project funding must be determined by the rankings established in each application cycle. If economic development

funding remains available after the application cycle closes, funding will be awarded to eligible projects on a first-come, first-served basis until funding for this category is fully obligated.

(4) In order to provide the public with information concerning an applicant's proposed program before an application is submitted to the department, the applicant shall, for each funding cycle:

(a) Conduct an initial public hearing to inform the public of funding opportunities available to meet community needs and eligible activities and to solicit public input on community needs.

(b) Publish a summary of the proposed application which affords the public an opportunity to examine the contents of the application and submit comments.

(c) Conduct a second public hearing to obtain public comments on the proposed application and make appropriate modifications to the application.

Section 30. Section 290.047, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 290.047, F.S., for present text.)

290.047 Establishment of grant ceilings and maximum administrative cost percentages.—

(1) The department shall adopt rules to establish:

(a) Grant ceilings.

(b) The maximum percentage of block grant funds that may be spent on administrative costs by an eligible local government.

(c) Grant administration procurement procedures for

eligible local governments.

(2) An eligible local government may not contract with the same individual or business entity for more than one service to be performed in connection with a community development block grant, including, but not limited to, application preparation services, administrative services, architectural and engineering services, and construction services, unless it can be demonstrated by the eligible local government that the individual or business entity is the sole source of the service or is the responsive proposer whose proposal is determined in writing from a competitive process to be the most advantageous to the local government.

(3) The maximum amount of block grant funds that may be spent on architectural and engineering costs by an eligible local government must be determined by a methodology adopted by the department by rule.

Section 31. Section 290.0475, Florida Statutes, is amended to read:

290.0475 Rejection of grant applications; penalties for failure to meet application conditions.—Applications received for funding are ineligible if ~~under all program categories shall be rejected without scoring only in the event that any of the following circumstances arise~~:

(1) The application is not received by the department by the application deadline.

(2) The proposed project does not meet one of the three national objectives as described ~~contained~~ in s. 290.044(3) ~~federal and state legislation~~.

(3) The proposed project is not an eligible activity as

contained in the federal legislation.

(4) The application is not consistent with the local government's comprehensive plan adopted pursuant to s. 163.3184.

(5) The applicant has an open community development block grant, except as provided in s. 290.046(2)(a) and department rule ~~s. 290.046(2)(c)~~.

(6) The local government is not in compliance with the citizen participation requirements prescribed in ss. 104(a)(1) and (2) and 106(d)(5)(c) of Title I of the Housing and Community Development Act of 1984, s. 290.046(4), and department rule ~~rules~~.

~~(7) Any information provided in the application that affects eligibility or scoring is found to have been misrepresented, and the information is not a mathematical error which may be discovered and corrected by readily computing available numbers or formulas provided in the application.~~

Section 32. Subsections (5), (6), and (7) of section 290.048, Florida Statutes, are amended to read:

290.048 General powers of department under ss. 290.0401-290.048.—The department has all the powers necessary or appropriate to carry out the purposes and provisions of the program, including the power to:

~~(5) Adopt and enforce strict requirements concerning an applicant's written description of a service area. Each such description shall contain maps which illustrate the location of the proposed service area. All such maps must be clearly legible and must:~~

~~(a) Contain a scale which is clearly marked on the map.~~

~~(b) Show the boundaries of the locality.~~

~~(c) Show the boundaries of the service area where the activities will be concentrated.~~

~~(d) Display the location of all proposed area activities~~.

~~(e) Include the names of streets, route numbers, or easily identifiable landmarks where all service activities are located.~~

(5)~~(6)~~ Pledge community development block grant revenues from the Federal Government in order to guarantee notes or other obligations of a public entity which are approved pursuant to s. 290.0455.

~~(7) Establish an advisory committee of no more than 13 members to solicit participation in designing, administering, and evaluating the program and in linking the program with other housing and community development resources.~~

Section 33. Subsection (11) of section 331.3051, Florida Statutes, is amended to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(11) Annually report on its performance with respect to its business plan, to include finance, spaceport operations, research and development, workforce development, and education. Space Florida shall submit the report ~~shall be submitted~~ to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 30 ~~no later than September 1~~ for the previous ~~prior~~ fiscal year. The annual report must include operations information as required under s. 331.310(2)(e).

Section 34. Paragraph (e) of subsection (2) of section 331.310, Florida Statutes, is amended to read:

331.310 Powers and duties of the board of directors.—

(2) The board of directors shall:

(e) Prepare an annual report of operations as a supplement to the annual report required under s. 331.3051(11). The report must ~~shall~~ include, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, the auditor's report, a summary of the status of existing and proposed bonding projects, comments from management about the year's business, and prospects for the next year~~, which shall be submitted each year by November 30 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leader of the Senate, and the minority leader of the House of Representatives~~.

Section 35. Paragraphs (b) and (c) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

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

(b) She or he has completed the department's online work registration ~~registered with the department for work~~ and subsequently reports to the one-stop career center as directed by the regional workforce board for reemployment services. This requirement does not apply to persons who are:

1. Non-Florida residents;

2. On a temporary layoff;

3. Union members who customarily obtain employment through a union hiring hall; or

4. Claiming benefits under an approved short-time

compensation plan as provided in s. 443.1116.

5. Unable to complete the online work registration due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment. If a person is exempted from the online work registration under this subparagraph, then the filing of his or her claim constitutes registration for work.

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

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

2. The administrator or operator of the initial skills review shall notify the department when the individual completes the initial skills review and report the results of the review to the regional workforce board or the one-stop career center as directed by the workforce board. The department shall prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills. The department, workforce board, or one-stop career center shall use the initial skills review to develop a plan for referring individuals to training and employment opportunities. The failure of the

individual to comply with this requirement will result in the individual being determined ineligible for benefits for the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied. However, this requirement does not apply if the individual ~~is able to affirmatively attest to being unable to complete such review due to illiteracy or a language impediment or~~ is exempt from the work registration requirement as set forth in paragraph (b).

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

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

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

Section 36. Paragraph (b) of subsection (4) of section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(4) The project to implement the Reemployment Assistance Claims and Benefits Information System is ~~shall be~~ comprised of the following phases and corresponding implementation timeframes:

(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014 ~~2012-2013~~.

Section 37. Subsection (5) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(5) ADDITIONAL RATE FOR INTEREST ON FEDERAL ADVANCES.—

(a) When the Unemployment Compensation Trust Fund has received advances from the Federal Government under the provisions of 42 U.S.C. s. 1321, each contributing employer shall be assessed an additional rate solely for the purpose of paying interest due on such federal advances. The additional rate shall be assessed no later than February 1 in each calendar year in which an interest payment is due.

(b) The Revenue Estimating Conference shall estimate the amount of ~~such~~ interest due on federal advances by ~~no later than~~ December 1 of the calendar year before ~~preceding~~ the calendar year in which an interest payment is due. The Revenue Estimating

Conference shall, at a minimum, consider the following as the basis for the estimate:

1. The amounts actually advanced to the trust fund.

2. Amounts expected to be advanced to the trust fund based on current and projected unemployment patterns and employer contributions.

3. The interest payment due date.

4. The interest rate that will be applied by the Federal Government to any accrued outstanding balances.

(c) ~~(b)~~ The tax collection service provider shall calculate the additional rate to be assessed against contributing employers. The additional rate assessed for a calendar year is ~~shall be~~ determined by dividing the estimated amount of interest to be paid in that year by 95 percent of the taxable wages as described in s. 443.1217 paid by all employers for the year ending June 30 of the previous ~~immediately preceding~~ calendar year. The amount to be paid by each employer is ~~shall be~~ the product obtained by multiplying such employer's taxable wages as described in s. 443.1217 for the year ending June 30 of the previous ~~immediately preceding~~ calendar year by the rate as determined by this subsection. An assessment may not be made if the amount of assessments on deposit from previous years, plus any earned interest, is at least 80 percent of the estimated amount of interest.

(d) The tax collection service provider shall make a separate collection of such assessment, which may be collected at the time of employer contributions and subject to the same penalties for failure to file a report, imposition of the standard rate pursuant to paragraph (3)(h), and interest if the

assessment is not received on or before June 30. Section 443.141(1)(d) and (e) does not apply to this separately collected assessment. The tax collection service provider shall maintain those funds in the tax collection service provider's Audit and Warrant Clearing Trust Fund until the provider is directed by the Governor or the Governor's designee to make the interest payment to the Federal Government. Assessments on deposit must be available to pay the interest on advances received from the Federal Government under 42 U.S.C. s. 1321. Assessments on deposit may be invested and any interest earned shall be part of the balance available to pay the interest on advances received from the Federal Government under 42 U.S.C. s. 1321.

(e) Four months after ~~In the calendar year that~~ all advances from the Federal Government under 42 U.S.C. s. 1321 and associated interest are repaid, ~~if there are assessment funds in excess of the amount required to meet the final interest payment,~~ any ~~such~~ excess assessed funds in the Audit and Warrant Clearing Trust Fund, including associated interest, shall be transferred to ~~credited to employer accounts in~~ the Unemployment Compensation Trust Fund. Any assessment amounts subsequently collected shall also be transferred to the Unemployment Compensation Trust Fund ~~in an amount equal to the employer's contribution to the assessment for that year divided by the total amount of the assessment for that year, the result of which is multiplied by the amount of excess assessed funds~~.

(f) If ~~However, if~~ the state is permitted to defer interest payments due during a calendar year under 42 U.S.C. s. 1322, payment of the interest assessment is ~~shall~~ not ~~be~~ due. If a

deferral of interest expires or is subsequently disallowed by the Federal Government, either prospectively or retroactively, the interest assessment shall be immediately due and payable. Notwithstanding any other provision of this section, if interest due during a calendar year on federal advances is forgiven or postponed under federal law and is no longer due during that calendar year, no interest assessment shall be assessed against an employer for that calendar year, and any assessment already assessed and collected against an employer before the forgiveness or postponement of the interest for that calendar year shall be credited to such employer's account in the Unemployment Compensation Trust Fund. However, such funds may be used only to pay benefits or refunds of erroneous contributions.

(g) This subsection expires July 1, 2014.

Section 38. Paragraph (b) of subsection (2) and paragraph (a) of subsection (6) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(b) *Process.*—When the Reemployment Assistance Claims and Benefits Information System described in s. 443.1113 is fully operational, the process for filing claims must incorporate the process for registering for work with the workforce information systems established pursuant to s. 445.011. Unless exempted under s. 443.091(1)(b)5., a claim for benefits may not be processed until the work registration requirement is satisfied. The department may adopt rules as necessary to administer the work registration requirement set forth in this paragraph.

(6) RECOVERY AND RECOUPMENT.—

(a) Any person who, by reason of her or his fraud, receives benefits under this chapter to which she or he is not entitled is liable for repaying those benefits to the Department of Economic Opportunity on behalf of the trust fund or, in the discretion of the department, to have those benefits deducted from future benefits payable to her or him under this chapter. In addition, the department shall impose upon the claimant a penalty equal to 15 percent of the amount overpaid. To enforce this paragraph, the department must find the existence of fraud through a redetermination or decision under this section within 2 years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within 7 years after the redetermination or decision.

Section 39. Subsection (1) of section 443.191, Florida Statutes, is amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—

(1) There is established, as a separate trust fund apart from all other public funds of this state, an Unemployment Compensation Trust Fund, which shall be administered by the Department of Economic Opportunity exclusively for the purposes of this chapter. The fund must ~~shall~~ consist of:

(a) All contributions and reimbursements collected under this chapter;

(b) Interest earned on any moneys in the fund;

(c) Any property or securities acquired through the use of moneys belonging to the fund;

(d) All earnings of these properties or securities;

(e) All money credited to this state's account in the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1103; ~~and~~

(f) All money collected for penalties imposed pursuant to s. 443.151(6)(a); and

(g) Advances on the amount in the federal Unemployment Compensation Trust Fund credited to the state under 42 U.S.C. s. 1321, as requested by the Governor or the Governor's designee.

Except as otherwise provided in s. 443.1313(4), all moneys in the fund must ~~shall~~ be mingled and undivided.

Section 40. Subsection (1) of section 443.1715, Florida Statutes, is amended to read:

443.1715 Disclosure of information; confidentiality.—

(1) RECORDS AND REPORTS.—Information revealing an employing unit's or individual's identity obtained from the employing unit or any individual under the administration of this chapter, and any determination revealing that information, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This confidential information may be released in accordance with the provisions in 20 C.F.R. part 603. A person receiving confidential information who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Department of Economic Opportunity or its tax collection service provider may, however, furnish to any employer copies of any report submitted by that employer upon the request of the employer and may furnish to any claimant copies of any report submitted by that claimant upon the request of the claimant. The department or its tax

collection service provider may charge a reasonable fee for copies of these reports as prescribed by rule, which may not exceed the actual reasonable cost of the preparation of the copies. Fees received for copies under this subsection must be deposited in the Employment Security Administration Trust Fund.

Section 41. Paragraph (b) of subsection (3) and subsection (4) of section 446.50, Florida Statutes, are amended to read:

446.50 Displaced homemakers; multiservice programs; report to the Legislature; Displaced Homemaker Trust Fund created.—

(3) POWERS AND DUTIES OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY.—

(b)1. The department shall enter into contracts with, and make grants to, public and nonprofit private entities for purposes of establishing multipurpose service programs for displaced homemakers under this section. Such grants and contracts must ~~shall~~ be awarded pursuant to chapter 287 and based on criteria established in the program ~~state~~ plan as provided in subsection (4) ~~developed pursuant to this section~~. The department shall designate catchment areas that together, must ~~shall~~ compose the entire state, and, to the extent possible from revenues in the Displaced Homemaker Trust Fund, the department shall contract with, and make grants to, entities that will serve entire catchment areas so that displaced homemaker service programs are available statewide. These catchment areas must ~~shall~~ be coterminous with the state's workforce development regions. The department may give priority to existing displaced homemaker programs when evaluating bid responses to the request for proposals.

2. In order to receive funds under this section, and unless

specifically prohibited by law from doing so, an entity that provides displaced homemaker service programs must receive at least 25 percent of its funding from one or more local, municipal, or county sources or nonprofit private sources. In-kind contributions may be evaluated by the department and counted as part of the required local funding.

3. The department shall require an entity that receives funds under this section to maintain appropriate data to be compiled in an annual report to the department. Such data must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, the number of clients served, the units of services provided, designated client-specific information including intake and outcome information specific to each client, costs associated with specific services and program administration, total program revenues by source and other appropriate financial data, and client followup information at specified intervals after the placement of a displaced homemaker in a job.

(4) DISPLACED HOMEMAKER PROGRAM ~~STATE~~ PLAN.—

~~(a)~~ The Department of Economic Opportunity shall include in its annual report required under s. 20.60 a ~~develop a 3-year state~~ plan for the displaced homemaker program ~~which shall be updated annually~~. The plan must address, at a minimum, the need for programs specifically designed to serve displaced homemakers, any necessary service components for such programs in addition to those described ~~enumerated~~ in this section, goals of the displaced homemaker program with an analysis of the extent to which those goals are being met, and recommendations for ways to address any unmet program goals. Any request for funds for program expansion must be based on the ~~state~~ plan.

~~(b)~~ The displaced homemaker program ~~Each annual update must address any changes in the components of the 3-year state~~ plan ~~and a report that~~ must include, but need not be limited to, the following:

(a)~~1.~~ The scope of the incidence of displaced homemakers;

(b)~~2.~~ A compilation and report, by program, of data submitted to the department pursuant to subparagraph (3)(b)3. ~~subparagraph 3.~~ by funded displaced homemaker service programs;

(c)~~3.~~ An identification and description of the programs in the state which receive funding from the department, including funding information; and

(d)~~4.~~ An assessment of the effectiveness of each displaced homemaker service program based on outcome criteria established by rule of the department.

~~(c) The 3-year state plan must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor on or before January 1, 2001, and annual updates of the plan must be submitted by January 1 of each subsequent year.~~

Section 42. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic RESTORE Funds

Bill Number 1024 *(if applicable)*

Name Jay Liles

Amendment Barcode 317422 *(if applicable)*

Job Title Policy Consultant

Address PO Box 6870
Street
Tallahassee FL 32314
City *State* *Zip*

Phone 850/294-5004

E-mail jliles@fwfonline.org

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Wildlife Federation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic RESTORE Act

Bill Number CS/SB 1024 *(if applicable)*

Name Dave Parisot

Amendment Barcode 317422 *(if applicable)*

Job Title Okaloosa County Commissioner, Vice Chairman

Address 1804 Lewis Turner Blvd
Street

Phone (850) 651-7105

Fort Walton Beach FL 32547
City *State* *Zip*

E-mail DParisot@co.okaloosa.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Representing Okaloosa County Board of Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Restore — Bill Number CS/SB 1024 *(if applicable)*

Name Lynn Bannister — Amendment Barcode 699348 *(if applicable)*

Job Title State Director - Bill Nelson

Address 111 N. Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 528.2188

E-mail lynn_bannister@billnelson.senate.gov

Speaking: ☐ For ☐ Against ☑ Information

Representing Senator Bill Nelson

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic RESTORE Act

Bill Number CS/SB 1024 *(if applicable)*

Name Lori Hutto

Amendment Barcode 699345 *(if applicable)*

Job Title Deputy District Director

Address 3116 Capital Circle NE, Ste 9
Street
Tallahassee
City *State* *Zip*

Phone 850-201-3929

E-mail lori.hutto@mail.house.gov

Speaking: ☐ For ☒ Against ☒ Information

Representing Congressman Southerland

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Gulf Coast Economic Corridor

Bill Number SB 1024 *(if applicable)*

Name Grover Robinson

Amendment Barcode _____ *(if applicable)*

Job Title Escambia County Commissioner

Address 221 Palafox Place, Suite 400
Street
Pensacola, F
City *State* *Zip*

Phone district4@co.escambia.fl.us

E-mail (850) 595-4940

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Consortium of Gulf Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

Topic _____ Bill Number SB 1024 *(if applicable)*

Name Pinki Jackel Amendment Barcode _____ *(if applicable)*

Job Title FRANKLIN COUNTY COMMISSIONER

Address 33 MARKET STREET Phone 770 312 5000
Street

APALACHICOLA FL 32328 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing FRANKLIN COUNTY FLORIDA 32328

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic RESTORE

Bill Number 1024 *(if applicable)*

Name KELLY INLINES

Amendment Barcode *(if applicable)*

Job Title COUNTY COMMISSIONER

Address 787 SPRING LAKE DR.
Street

Phone 850-803-2320

DESTIN, FLA 32541
City *State* *Zip*

E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing OKALOOSA COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

10.23.13
Meeting Date

Topic RESTORE ACT - Tiny amendment — Bill Number 1024 *(if applicable)*

Name Henry Kelley — Amendment Barcode *(if applicable)*

Job Title

Address PO Box 82 — Phone

Street

FWB — FL — 32548 — E-mail

City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing CITIZEN

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic AMENDMENT 1024 Bill Number _____ *(if applicable)*

Name RALPH THOMAS Amendment Barcode _____ *(if applicable)*

Job Title COUNTY COMMISSIONER DISTRICT 1

Address 637 HUNTERS TRACE Phone 850-597-3858
Street

CRAWFORDVILLE FL 32327 E-mail rthomas@mywakulla.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing WAKULLA COUNTY

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Restore Act

Bill Number SB 1024 (if applicable)

Name Howard Kessler

Amendment Barcode (if applicable)

Job Title County Commissioner

Address 112 Old Still Rd
Street
Crawfordville FL 32327
City *State* *Zip*

Phone 850 597 3856

E-mail hkessler@mywakulla.com

Speaking: ☐ For ☐ Against ☑ Information

Representing Wakulla County
County Administrator

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic _____ Bill Number _____ *(if applicable)*

Name Jerry Scott Moore Amendment Barcode _____ *(if applicable)*

Job Title Commissioner Wakulla

Address _____ Phone _____
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing _____

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/23
Meeting Date

Topic _____ Bill Number 1024 *(if applicable)*

Name Ryan Matthews Amendment Barcode _____ *(if applicable)*

Job Title Legislative Advocate

Address PO Box 1757 Phone 222 9484
Street

Tallahassee FL 32302 E-mail rmatthews@flchamber.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing The League of Cities

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

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

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

S-001 (10/20/11)

The Florida Senate

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 Committee on Appropriations

BILL:	PCS/SB 1026 (342350)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Thrasher
SUBJECT:	Tax Collectors
DATE:	April 20, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Babin	Diez-Arguelles	AFT	**Fav/CS**
3.	Babin	Hansen	AP	**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:

Tax collectors are currently authorized to collect a tax deed application fee of $75. PCS/SB 1026 authorizes tax collectors to also charge fees as reimbursement for the cost to process tax deed applications electronically. If the tax deed application fee and the cost reimbursement exceed $75, the tax deed applicant has the option to not use the electronic tax deed application process.

The Revenue Estimating Conference (REC) has not yet determined the revenue impact of this bill. Staff estimates that this bill will increase tax collector revenue by an indeterminate amount.

This bill amends section 197.502, Florida Statutes.

II. Present Situation:

Tax Certificates

Property taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector and tax notices are mailed to taxpayers notifying them of the amount of taxes due and any discounts that are available to them.[1] Taxes are considered delinquent if they are not paid by April 1 following the year in which they are assessed.[2] By April 30, the tax collector must mail an additional tax notice to each taxpayer whose payment has not been received, notifying the taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.[3]

On or before June 1, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes.[4] Tax certificates are issued to the person who will pay the taxes, interest, cost and charges and demands the lowest rate of interest.[5]

A tax certificate is a legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued in accordance with ch. 197, F.S., against a specific parcel of real property.[6] Tax certificates that are not sold are issued to the county at the maximum interest rate (18 percent).[7] The sale of the tax certificate acts as first lien on the property that is superior to all other liens, but it does not convey any property rights to the investor.[8]

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax certificate is required to pay the investor or county all taxes, interest, costs, charges, and a $6.25 fee to the tax collector.[9]

Tax Deeds

If the property owner has not redeemed the tax certificate, a tax certificate holder may apply for a tax deed on the property on or after the second year following the sale of the certificate and before the expiration of seven years from issuance.[10] The holder files an application for tax deed with the county tax collector and pays all amounts required for redemption or purchase of all other outstanding tax certificates, any omitted taxes or delinquent taxes, and any current taxes due, plus interest.[11] The tax collector is authorized to collect a tax deed application fee of $75 at

[1] Sections 197.322 and 197.333, F.S.
[2] Section 197.333, F.S.
[3] Section 197.343(1), F.S.
[4] Section 197.402, F.S. For tax rolls that are not completed timely, tax certificate sales begin 60 days after the date of delinquency.
[5] Section 197.432(5), F.S.
[6] Section 197.102(3), F.S.
[7] Section 197.432(6), F.S.
[8] Section 197.122, F.S., *see also* s. 197.432, F.S.
[9] Section 197.472, F.S.
[10] Sections 197.502 and 197.482, F.S.
[11] Section 197.502(2), F.S.

the time of application for the tax deed.[12] The property is then placed on the list of lands available for sale and sold to the highest bidder at a public auction held by the clerk of the circuit court.[13] If property placed on the list of lands available for sale is not sold within three years after the public auction, the land escheats to the county in which the property is located, free and clear of all liens.[14] Tax certificates that are not redeemed or, for which a tax deed has not been applied for within seven years, become null and void.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 197.502, F.S., to authorize the tax collector to charge fees as reimbursement for the cost to process tax deed applications electronically. If the tax deed application fee and the cost reimbursement exceed $75, the tax deed applicant has the option to not use the electronic tax deed application process.

Section 2 provides an effective date of July 1, 2013.

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 REC has not reviewed the impact of this bill. Staff estimates that it will increase tax collector revenue by an indeterminate amount.

B. Private Sector Impact:

Tax certificate holders may be required to pay additional fees to apply for a tax deed.

C. Government Sector Impact:

Tax collectors will be able to more efficiently process tax deed applications.

[12] Section 197.502(1), F.S.
[13] Section 197.542(1), F.S.
[14] Section 197.502(8), F.S.
[15] Section 197.482(1), F.S.

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.)

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 17, 2013:
The committee substitute:

- Authorizes the tax collector to charge fees to recover the costs of processing tax deed applications electronically.
- Authorizes tax deed applicants to opt out of an electronic tax deed application process when the total fees for the tax deed application exceed $75.

B. Amendments:

None.

342350

576-04550-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to tax deeds; amending s. 197.502, F.S.; authorizing the tax collector to charge for reimbursement of the costs for providing online tax deed application services; providing that an applicant's use of such online application services is optional under certain circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 197.502, Florida Statutes, is amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(1) The holder of a tax certificate at any time after 2 years have elapsed since April 1 of the year of issuance of the tax certificate and before the cancellation of the certificate, may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located. The tax collector may charge a tax deed application fee of $75 and for reimbursement of the costs for providing online tax deed application services. If the tax collector charges a combined fee in excess of $75, applicants shall have the option of using the electronic tax deed application process or filing applications without using such service.

342350

576-04550-13

Section 2. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/SB 1026
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Thrasher
SUBJECT:	Tax Collectors
DATE:	April 25, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Babin	Diez-Arguelles	AFT	**Fav/CS**
3.	Babin	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1026 authorizes tax collectors to charge fees as reimbursement for the cost to process tax deed applications electronically. Tax collectors are currently authorized to collect a tax deed application fee of $75. If the tax deed application fee and the cost reimbursement exceed $75, the tax deed applicant has the option to not use the electronic tax deed application process.

The Revenue Estimating Conference (REC) has not yet determined the revenue impact of this bill. Staff estimates that this bill will increase tax collector revenue by an indeterminate amount.

This bill amends section 197.502, Florida Statutes.

II. Present Situation:

Tax Certificates

Property taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector and tax notices are mailed to taxpayers notifying

them of the amount of taxes due and any discounts that are available to them.[1] Taxes are considered delinquent if they are not paid by April 1 following the year in which they are assessed.[2] By April 30, the tax collector must mail an additional tax notice to each taxpayer whose payment has not been received, notifying the taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.[3]

On or before June 1, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes.[4] Tax certificates are issued to the person who will pay the taxes, interest, cost and charges and demands the lowest rate of interest.[5]

A tax certificate is a legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued in accordance with ch. 197, F.S., against a specific parcel of real property.[6] Tax certificates that are not sold are issued to the county at the maximum interest rate (18 percent).[7] The sale of the tax certificate acts as first lien on the property that is superior to all other liens, but it does not convey any property rights to the investor.[8]

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax certificate is required to pay the investor or county all taxes, interest, costs, charges, and a $6.25 fee to the tax collector.[9]

Tax Deeds

If the property owner has not redeemed the tax certificate, a tax certificate holder may apply for a tax deed on the property on or after the second year following the sale of the certificate and before the expiration of seven years from issuance.[10] The holder files an application for tax deed with the county tax collector and pays all amounts required for redemption or purchase of all other outstanding tax certificates, any omitted taxes or delinquent taxes, and any current taxes due, plus interest.[11] The tax collector is authorized to collect a tax deed application fee of $75 at the time of application for the tax deed.[12] The property is then placed on the list of lands available for sale and sold to the highest bidder at a public auction held by the clerk of the circuit court.[13] If property placed on the list of lands available for sale is not sold within three years after the public auction, the land escheats to the county in which the property is located, free and clear

[1] Sections 197.322 and 197.333, F.S.
[2] Section 197.333, F.S.
[3] Section 197.343(1), F.S.
[4] Section 197.402, F.S. For tax rolls that are not completed timely, tax certificate sales begin 60 days after the date of delinquency.
[5] Section 197.432(5), F.S.
[6] Section 197.102(3), F.S.
[7] Section 197.432(6), F.S.
[8] Section 197.122, F.S., *see also* s. 197.432, F.S.
[9] Section 197.472, F.S.
[10] Sections 197.502 and 197.482, F.S.
[11] Section 197.502(2), F.S.
[12] Section 197.502(1), F.S.
[13] Section 197.542(1), F.S.

of all liens.[14] Tax certificates that are not redeemed or, for which a tax deed has not been applied for within seven years, become null and void.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 197.502, F.S., to authorize the tax collector to charge fees as reimbursement for the cost to process tax deed applications electronically. If the tax deed application fee and the cost reimbursement exceed $75, the tax deed applicant has the option to not use the electronic tax deed application process.

Section 2 provides an effective date of July 1, 2013.

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 REC has not reviewed the impact of this bill. Staff estimates that it will increase tax collector revenue by an indeterminate amount.

B. Private Sector Impact:

Tax certificate holders may be required to pay additional fees to apply for a tax deed.

C. Government Sector Impact:

Tax collectors will be able to more efficiently process tax deed applications.

VI. Technical Deficiencies:

None.

[14] Section 197.502(8), F.S.
[15] Section 197.482(1), 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 by Appropriations on April 23, 2013:
The committee substitute:

- Authorizes the tax collector to charge fees to recover the costs of processing tax deed applications electronically.
- Authorizes tax deed applicants to opt out of an electronic tax deed application process when the total fees for the tax deed application exceed $75.

B. Amendments:

None.

By Senator Thrasher

6-00397C-13 20131026__

A bill to be entitled

An act relating to tax collectors; amending s. 197.332, F.S.; specifying that the tax collector may collect delinquent taxes by processing tax deed applications; providing an effective date.

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

Section 1. Subsection (1) of section 197.332, Florida Statutes, is amended to read:

197.332 Duties of tax collectors; branch offices.—

(1) The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or ~~to~~ collect delinquent taxes, interest, and costs~~,~~ by sale of tax certificates on real property, by processing tax deed applications, and by seizure and sale of personal property. In exercising their powers to contract, the tax collector may perform such duties by use of contracted services or products or by electronic means. The use of contracted services, products, or vendors does not diminish the responsibility or liability of the tax collector to perform such duties pursuant to law. The tax collector may collect the cost of contracted services. The tax collector may also collect ~~and~~ reasonable attorney ~~attorney's~~ fees and court costs in actions on proceedings to recover delinquent taxes, interest, and costs.

Section 2. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	PCS/SB 1064 (725598)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Latvala
SUBJECT:	Assessment of Residential and Nonhomestead Real Property
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Fav/CS**
3.	Fournier	Hansen	AP	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

PCS/SB 1064 provides that, in determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

This bill is estimated to reduce property tax revenue by $5.2 million in Fiscal Year 2014-2015 and by $12.6 million on a recurring basis.

The bill implements a part of a constitutional amendment approved by voters in the November 2008 General Election. The amendment added the following language to article VII, section 4 of the Florida Constitution:

> (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.[1]

The constitutional amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated.

[1] FLA. CONST. art. VII, s. 4.

The bill defines "renewable energy source devices," and specifies that these provisions apply to changes or improvements made on or after January 1, 2013, to new and existing residential real.

This bill substantially amends the following sections of the Florida Statutes: 193.155, 193.1551, 193.1554, 196.012, 196.121, and 196.1995.

The bill creates section 193.624, Florida Statutes.

The bill repeals section 196.175, Florida Statutes.

II. Present Situation:

Property Tax Assessments

Article VII, s. 4, 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] Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.[3]

Exceptions to the just valuation requirement exist for agricultural land, land producing high water recharge to Florida's aquifers, land used exclusively for noncommercial recreational purposes, and land used for conservation purposes. Each of these property categories may be assessed solely on the basis of their character or use.[4] Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[5] Certain working waterfront properties are assessed on the basis of the current use of the property.[6] The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.[7]

Article VII, sections 3 and 6, Florida Constitution, permit a number of ad valorem tax exemptions. These include exemptions for homesteads and for 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 property's taxable value.

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[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] *See* s. 193.011(5), F.S.
[4] FLA. CONST. art. VII, s. 4.
[5] Section 196.185, F.S.
[6] FLA. CONST. art. VII, s. 4.
[7] *See* FLA. CONST. art. VII, s. 4(d) and (g) (stating that the assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year).

Early Efforts at Renewable Energy Source Incentives

Property tax incentives for renewable energy in Florida date back over 30 years. In 1980, Florida voters added the following ad valorem tax exemption authorization to art. VII, s. 3(d), Florida Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, for the period of time fixed by general law not to exceed ten years.[8]

During that same year, the Legislature enacted s. 196.175, F.S., to implement the constitutional amendment.[9] The legislation limited the ad valorem exemption to the lesser of:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

The statute granting the exemption mirrored the 10-year time limit in the constitution. Specifically, the exemption period authorized was from January 1, 1980, through December 31, 1990. Therefore, no exemptions were granted after December 31, 1990, and exemptions granted in December 1990 expired 10 years later in December 2000. At this point, the statute was rendered inoperative and art. VII, s. 3(d), Florida Constitution was not implemented by general law.

2008: Legislative Action and Constitutional Amendment 3

On April 30, 2008, the Legislature enacted ch. 2008-227, L.O.F., (HB 7135) to remove the expiration date of the property tax exemption for renewable energy source devices. This allowed property owners to apply again for the exemption effective January 1, 2009, and once more bound it with a 10-year life span. The bill also revised the means for calculating the exemption limit. The exemption was no longer capped at 8 percent of assessed value. Instead, it was limited to the original cost of the renewable energy device, including the installation cost, but excluding the cost of replacing previously existing property.[10]

In November 2008, Florida voters approved the following constitutional amendment placed on the ballot by the Florida Tax and Budget Reform Commission (TBRC):

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the

[8] FLA. CONST. art. VII, s. 3.
[9] Section 196.175, F.S.
[10] Section 196.175, F.S.

> 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.[11]

The amendment was permissive; unless the Legislature enacted implementing legislation it had no effect. The 2008 amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated. Although the constitutional provisions granting the ad valorem tax exemptions were repealed in 2008, the implementing language in s. 196.175, F.S., is still part of the Florida Statues.[12]

Florida Statutes currently do not provide property tax incentives for changes or improvements for wind damage resistance or for installation of a renewable energy source device. Bills were filed during the 2009, 2010, 2011 and 2012 legislative sessions to implement the changes made to the constitution in 2008; however, no legislation was passed.[13]

2009 Senate Interim Report

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.[14] The report reviewed proposed legislation that was filed during the 2009 legislative session to implement the constitutional amendment. It also discussed property tax incentives that are provided in other states for installing renewable energy equipment or improving disaster resistance.[15]

At the time of the interim report, 17 states had enacted property tax incentives for renewable energy equipment including devices related to solar, wind, and geothermal energy. Although the report noted that tax incentives for improvements related to disaster preparedness are less common, three states had enacted such laws.

III. Effect of Proposed Changes:

Section 1 creates s. 193.624, F.S., related to renewable energy source devices installed on or after January 1, 2013, to new and existing residential real property. The section provides that, when determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of the installation and operation of a renewable energy

[11] FLA. CONST. art. VII, s. 4.
[12] In 2010, HB 7005 was filed, repealing the obsolete language in ss. 196.175 and 196.12(14), F.S. This legislation passed the House on March 10, 2010, but died in messages.
[13] During the 2009 legislative session, SB 2454 and HB 7113 were filed; in 2010, SB 1164, HB 151, SB 1410, and SPB 7020; in 2011 SB 434, SB 732 and HB 531. CS/CS/HB 531 passed the House but died in messages. In 2012, CS/SB 156 and CS/HB 133both died in committee.
[14] Comm. on Finance and Tax, The Florida Senate, *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, (Interim Report 2010-116) (Oct. 2009).
[15] *Id. citing State Tax Guide Volume 2,* Commerce Clearing House (Chicago, IL).

source device, which means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; or
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Section 2 amends s. 193.155, F.S., relating to homestead assessments to make cross references which incorporate changes made by the bill.

Section 3 amends s. 193.1554, F.S., relating to nonhomestead assessments to make cross references which incorporate changes made by the bill.

Section 4 amends s. 196.012, F.S., to delete the existing definition for renewable energy source devices provided in subsection (14).

Section 5 amends s. 193.121, F.S., relating to homestead exemption forms to make cross references which incorporate changes made by the bill.

Section 6 amends s. 193.1995, F.S., relating to economic development ad valorem tax exemptions to make cross references which incorporate changes made by the bill.

Section 7 repeals s. 196.175, F.S., the provisions of which are obsolete as a result of the removal of the constitutional tax exemption for renewable energy source devices in 2008.

Section 8 provides that this act shall take effect on July 1, 2013, and shall apply to assessments beginning January 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. By reducing the tax base upon which counties and municipalities raise ad valorem revenue, this bill reduces their revenue-raising authority and may 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:

The Revenue Estimating Conference has determined that the bill's recurring impact on non-school local tax revenue is -$7.2 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on non-school local tax revenue is -$3.0 million. The recurring impact on school tax revenue is -$5.4 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on school tax revenue is -$2.2 million.

B. Private Sector Impact:

The bill may provide incentives for residential property owners and home builders to install renewable energy source devices, since such devices will not increase the assessed value of the property.

C. Government Sector Impact:

The bill may create additional workload for property appraisers.

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.)

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 17, 2013:
The committee substitute:

- Deletes parts of the bill relating to changes or improvements made for the purpose of improving resistance to wind damage.
- Removes requirement that a property owner apply for assessment under this bill.

B. Amendments:

None.

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576-04553-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the assessment of residential and nonhomestead real property; creating s. 193.624, F.S.; defining the term "renewable energy source device"; excluding the value of renewable energy source devices from the assessed value of residential real property; providing for applicability; amending s. 193.155, F.S.; specifying additional exceptions to the assessment of homestead property at just value; amending s. 193.1554, F.S.; specifying additional exceptions to assessment of nonhomestead residential property at just value; amending s. 196.012, F.S.; deleting the definition of the terms "renewable energy source device" and "device"; conforming a cross-reference; amending ss. 196.121 and 196.1995, F.S.; conforming cross-references; repealing s. 196.175, F.S., relating to the property tax exemption for renewable energy source devices; providing for applicability; providing an effective date.

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

Section 1. Section 193.624, Florida Statutes, is created to read:

193.624 Assessment of residential property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment that

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collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

(3) This section applies to the installation of a renewable energy source device installed on or after January 1, 2013, to

new and existing residential real property.

Section 2. Paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 3. Paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. Subsections (14) through (20) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

~~(14) "Renewable energy source device" or "device" means any of the following equipment which, when installed in connection with a dwelling unit or other structure, collects, transmits,~~

~~stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:~~

~~(a) Solar energy collectors.~~

~~(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.~~

~~(c) Rockbeds.~~

~~(d) Thermostats and other control devices.~~

~~(e) Heat exchange devices.~~

~~(f) Pumps and fans.~~

~~(g) Roof ponds.~~

~~(h) Freestanding thermal containers.~~

~~(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.~~

~~(j) Windmills.~~

~~(k) Wind-driven generators.~~

~~(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.~~

~~(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.~~

(14)~~(15)~~ "New business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any one or more of the following operations:

a. Manufactures, processes, compounds, fabricates, or

produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

b. Is a target industry business as defined in s. 288.106(2)(q);

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or

3. An office space in this state owned and used by a business or organization newly domiciled in this state; provided such office space houses 50 or more full-time employees of such business or organization; provided that such business or organization office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

(b) Any business or organization located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

(c) A business or organization that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.

(15)~~(16)~~ "Expansion of an existing business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state,

paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any of the operations referred to in subparagraph (15)(a)1.; or

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site located within the same county, municipality, or both colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization, resulting in a net increase in employment of not less than 10 percent or an increase in productive output or sales of not less than 10 percent.

(b) Any business or organization located in an enterprise zone or brownfield area that increases operations on a site located within the same zone or area colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization.

(16)~~(17)~~ "Permanent resident" means a person who has established a permanent residence as defined in subsection (17)~~(18)~~.

(17)~~(18)~~ "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent

residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

(18) ~~(19)~~ "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(19) ~~(20)~~ "Ex-servicemember" means any person who has served as a member of the United States Armed Forces on active duty or state active duty, a member of the Florida National Guard, or a member of the United States Reserve Forces.

Section 5. Subsection (2) of section 196.121, Florida Statutes, is amended to read:

196.121 Homestead exemptions; forms.—

(2) The forms shall require the taxpayer to furnish certain information to the property appraiser for the purpose of determining that the taxpayer is a permanent resident as defined in s. 196.012(16) ~~196.012(17)~~. Such information may include, but need not be limited to, the factors enumerated in s. 196.015.

Section 6. Subsections (6), (8), (9), and (11) of section 196.1995, Florida Statutes, are amended to read:

196.1995 Economic development ad valorem tax exemption.—

(6) With respect to a new business as defined by s. 196.012(14)(c) ~~196.012(15)(c)~~, the municipality annexing the property on which the business is situated may grant an economic development ad valorem tax exemption under this section to that business for a period that will expire upon the expiration of the exemption granted by the county. If the county renews the exemption under subsection (7), the municipality may also extend

its exemption. A municipal economic development ad valorem tax exemption granted under this subsection may not extend beyond the duration of the county exemption.

(8) Any person, firm, or corporation which desires an economic development ad valorem tax exemption shall, in the year the exemption is desired to take effect, file a written application on a form prescribed by the department with the board of county commissioners or the governing authority of the municipality, or both. The application shall request the adoption of an ordinance granting the applicant an exemption pursuant to this section and shall include the following information:

(a) The name and location of the new business or the expansion of an existing business;

(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;

(d) Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012~~(15) or (16)~~;

(e) The number of jobs the applicant expects to create along with the average wage of the jobs and whether the jobs are full-time or part-time;

(f) The expected time schedule for job creation; and

(g) Other information deemed necessary or appropriate by

the department, county, or municipality.

(9) Before it takes action on the application, the board of county commissioners or the governing authority of the municipality shall deliver a copy of the application to the property appraiser of the county. After careful consideration, the property appraiser shall report the following information to the board of county commissioners or the governing authority of the municipality:

(a) The total revenue available to the county or municipality for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;

(b) Any revenue lost to the county or municipality for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate of such revenue if the actual revenue lost cannot be determined;

(c) An estimate of the revenue which would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and

(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012~~(15) or (16)~~, or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide to him or her such information as it may have available to assist in making such determination.

(11) An ordinance granting an exemption under this section shall be adopted in the same manner as any other ordinance of the county or municipality and shall include the following:

(a) The name and address of the new business or expansion of an existing business to which the exemption is granted;

(b) The total amount of revenue available to the county or municipality from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the county or municipality for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the county or municipality for the current fiscal year attributable to the exemption of the business named in the ordinance;

(c) The period of time for which the exemption will remain in effect and the expiration date of the exemption, which may be any period of time up to 10 years; and

(d) A finding that the business named in the ordinance meets the requirements of s. 196.012(14) or (15) ~~196.012 (15) or (16)~~.

Section 7. Section 196.175, Florida Statutes, is repealed.

Section 8. This act shall take effect July 1, 2013, and applies to assessments beginning January 1, 2014.

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 Committee on Appropriations

BILL:	CS/SB 1064
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Latvala
SUBJECT:	Assessment of Residential and Nonhomestead Real Property
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Fav/CS**
3.	Fournier	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

I. Summary:

CS/SB 1064 provides that, in determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

This bill is estimated to reduce property tax revenue by $5.2 million in Fiscal Year 2014-2015 and by $12.6 million on a recurring basis.

The bill implements a part of a constitutional amendment approved by voters in the November 2008 General Election. The amendment added the following language to article VII, section 4 of the Florida Constitution:

> (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.[1]

The constitutional amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated.

[1] FLA. CONST. art. VII, s. 4.

The bill defines "renewable energy source devices," and specifies that these provisions apply to changes or improvements made on or after January 1, 2013, to new and existing residential real.

This bill substantially amends the following sections of the Florida Statutes: 193.155, 193.1551, 193.1554, 196.012, 196.121, and 196.1995.

The bill creates section 193.624, Florida Statutes.

The bill repeals section 196.175, Florida Statutes.

II. Present Situation:

Property Tax Assessments

Article VII, s. 4, 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] Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.[3]

Exceptions to the just valuation requirement exist for agricultural land, land producing high water recharge to Florida's aquifers, land used exclusively for noncommercial recreational purposes, and land used for conservation purposes. Each of these property categories may be assessed solely on the basis of their character or use.[4] Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[5] Certain working waterfront properties are assessed on the basis of the current use of the property.[6] The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.[7]

Article VII, sections 3 and 6, Florida Constitution, permit a number of ad valorem tax exemptions. These include exemptions for homesteads and for 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 property's taxable value.

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[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] *See* s. 193.011(5), F.S.
[4] FLA. CONST. art. VII, s. 4.
[5] Section 196.185, F.S.
[6] FLA. CONST. art. VII, s. 4.
[7] *See* FLA. CONST. art. VII, s. 4(d) and (g) (stating that the assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year).

Early Efforts at Renewable Energy Source Incentives

Property tax incentives for renewable energy in Florida date back over 30 years. In 1980, Florida voters added the following ad valorem tax exemption authorization to art. VII, s. 3(d), Florida Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, for the period of time fixed by general law not to exceed ten years.[8]

During that same year, the Legislature enacted s. 196.175, F.S., to implement the constitutional amendment.[9] The legislation limited the ad valorem exemption to the lesser of:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

The statute granting the exemption mirrored the 10-year time limit in the constitution. Specifically, the exemption period authorized was from January 1, 1980, through December 31, 1990. Therefore, no exemptions were granted after December 31, 1990, and exemptions granted in December 1990 expired 10 years later in December 2000. At this point, the statute was rendered inoperative and art. VII, s. 3(d), Florida Constitution was not implemented by general law.

2008: Legislative Action and Constitutional Amendment 3

On April 30, 2008, the Legislature enacted ch. 2008-227, L.O.F., (HB 7135) to remove the expiration date of the property tax exemption for renewable energy source devices. This allowed property owners to apply again for the exemption effective January 1, 2009, and once more bound it with a 10-year life span. The bill also revised the means for calculating the exemption limit. The exemption was no longer capped at 8 percent of assessed value. Instead, it was limited to the original cost of the renewable energy device, including the installation cost, but excluding the cost of replacing previously existing property.[10]

In November 2008, Florida voters approved the following constitutional amendment placed on the ballot by the Florida Tax and Budget Reform Commission (TBRC):

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the

[8] FLA. CONST. art. VII, s. 3.
[9] Section 196.175, F.S.
[10] Section 196.175, F.S.

> 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.[11]

The amendment was permissive; unless the Legislature enacted implementing legislation it had no effect. The 2008 amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated. Although the constitutional provisions granting the ad valorem tax exemptions were repealed in 2008, the implementing language in s. 196.175, F.S., is still part of the Florida Statues.[12]

Florida Statutes currently do not provide property tax incentives for changes or improvements for wind damage resistance or for installation of a renewable energy source device. Bills were filed during the 2009, 2010, 2011 and 2012 legislative sessions to implement the changes made to the constitution in 2008; however, no legislation was passed.[13]

2009 Senate Interim Report

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.[14] The report reviewed proposed legislation that was filed during the 2009 legislative session to implement the constitutional amendment. It also discussed property tax incentives that are provided in other states for installing renewable energy equipment or improving disaster resistance.[15]

At the time of the interim report, 17 states had enacted property tax incentives for renewable energy equipment including devices related to solar, wind, and geothermal energy. Although the report noted that tax incentives for improvements related to disaster preparedness are less common, three states had enacted such laws.

III. Effect of Proposed Changes:

Section 1 creates s. 193.624, F.S., related to renewable energy source devices installed on or after January 1, 2013, to new and existing residential real property. The section provides that, when determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of the installation and operation of a renewable energy

[11] FLA. CONST. art. VII, s. 4.
[12] In 2010, HB 7005 was filed, repealing the obsolete language in ss. 196.175 and 196.12(14), F.S. This legislation passed the House on March 10, 2010, but died in messages.
[13] During the 2009 legislative session, SB 2454 and HB 7113 were filed; in 2010, SB 1164, HB 151, SB 1410, and SPB 7020; in 2011 SB 434, SB 732 and HB 531. CS/CS/HB 531 passed the House but died in messages. In 2012, CS/SB 156 and CS/HB 133both died in committee.
[14] Comm. on Finance and Tax, The Florida Senate, *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, (Interim Report 2010-116) (Oct. 2009).
[15] *Id. citing State Tax Guide Volume 2,* Commerce Clearing House (Chicago, IL).

source device, which means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; or
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Section 2 amends s. 193.155, F.S., relating to homestead assessments to make cross references which incorporate changes made by the bill.

Section 3 amends s. 193.1554, F.S., relating to nonhomestead assessments to make cross references which incorporate changes made by the bill.

Section 4 amends s. 196.012, F.S., to delete the existing definition for renewable energy source devices provided in subsection (14).

Section 5 amends s. 193.121, F.S., relating to homestead exemption forms to make cross references which incorporate changes made by the bill.

Section 6 amends s. 193.1995, F.S., relating to economic development ad valorem tax exemptions to make cross references which incorporate changes made by the bill.

Section 7 repeals s. 196.175, F.S., the provisions of which are obsolete as a result of the removal of the constitutional tax exemption for renewable energy source devices in 2008.

Section 8 provides that this act shall take effect on July 1, 2013, and shall apply to assessments beginning January 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. By reducing the tax base upon which counties and municipalities raise ad valorem revenue, this bill reduces their revenue-raising authority and may 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:

The Revenue Estimating Conference has determined that the bill's recurring impact on non-school local tax revenue is -$7.2 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on non-school local tax revenue is -$3.0 million. The recurring impact on school tax revenue is -$5.4 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on school tax revenue is -$2.2 million.

B. Private Sector Impact:

The bill may provide incentives for residential property owners and home builders to install renewable energy source devices, since such devices will not increase the assessed value of the property.

C. Government Sector Impact:

The bill may create additional workload for property appraisers.

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 Appropriations on April 23, 2013:
The committee substitute:

- Deletes parts of the bill relating to changes or improvements made for the purpose of improving resistance to wind damage.
- Removes requirement that a property owner apply for assessment under this bill.

B. Amendments:

None.

By Senator Latvala

20-00676A-13 20131064__

A bill to be entitled

An act relating to the assessment of residential and nonhomestead real property; creating s. 193.624, F.S.; providing definitions; excluding the value of certain installations, changes, or improvements made after a specified date from the assessed value of residential real property; providing for application; requiring the filing of applications by specified times in order for such installations, changes, or improvements to be excluded from the assessed value of residential real property; providing procedural requirements and limitations; requiring a nonrefundable filing fee for a petition to the value adjustment board; amending s. 193.155, F.S.; specifying additional exceptions to the assessment of homestead property at just value; reenacting s. 193.1551, F.S., relating to assessment of certain homestead property damaged in 2004 named storms, to incorporate the amendments made to s. 193.155, F.S., in a reference thereto; amending s. 193.1554, F.S.; specifying additional exceptions to assessment of nonhomestead property at just value; amending s. 196.012, F.S.; deleting the definition of the terms "renewable energy source device" and "device"; conforming cross-references; amending ss. 196.121 and 196.1995, F.S.; conforming cross-references; repealing s. 196.175, F.S., relating to the property tax exemption for renewable energy source devices; providing for application of the act; providing an effective date.

20-00676A-13 20131064__

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

Section 1. Section 193.624, Florida Statutes, is created to read:

193.624 Assessment of residential property improved to resist wind damage; using renewable energy devices.—

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

(a) "Changes or improvements made for the purpose of improving a property's resistance to wind damage" means:

1. Improving the strength of the roof-deck attachment;

2. Creating a secondary water barrier to prevent water intrusion;

3. Installing wind-resistant shingles;

4. Installing gable-end bracing;

5. Reinforcing roof-to-wall connections;

6. Installing storm shutters; or

7. Installing opening protections.

(b) "Renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

1. Solar energy collectors, photovoltaic modules, and inverters.

2. Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

3. Rockbeds.

4. Thermostats and other control devices.

5. Heat exchange devices.

6. Pumps and fans.

7. Roof ponds.

8. Freestanding thermal containers.

9. Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

10. Windmills and wind turbines.

11. Wind-driven generators.

12. Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.

13. Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of real property used for residential purposes, any increase in the just value of the property attributable to the installation of a renewable energy source device or changes or improvements made for the purpose of improving a property's resistance to wind damage may not be considered.

(3) For a parcel of residential property to be assessed pursuant to this section, the owner of the property must file with the county property appraiser an application on or before March 1 of the first year such assessment is requested. The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the increase in just value attributable to the renewable energy source device or changes or improvements made for the purpose of

improving the property's resistance to wind damage. Failure to make timely application by March 1 constitutes a waiver of the property owner to have his or her assessment calculated for that year under this section. However, an applicant who fails to file an application by March 1 may file a late application and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting assessment under this section. The petition must be filed on or before the 25th day after the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting assessment under this section, the property appraiser shall calculate the assessment pursuant to this section.

(4) This section applies to the installation of a renewable energy source device or changes or improvements made for the purpose of improving a property's resistance to wind damage installed or made on or after January 1, 2013, to new and existing residential real property.

Section 2. Paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8)

apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 3. For the purpose of incorporating the amendment made by this act to section 193.155, Florida Statutes, in a reference thereto, section 193.1551, Florida Statutes, is reenacted to read:

193.1551 Assessment of certain homestead property damaged in 2004 named storms.—Notwithstanding the provisions of s. 193.155(4), the assessment at just value for changes, additions, or improvements to homestead property rendered uninhabitable in one or more of the named storms of 2004 shall be limited to the square footage exceeding 110 percent of the homestead property's total square footage. Additionally, homes having square footage of 1,350 square feet or less which were rendered uninhabitable may rebuild up to 1,500 total square feet and the increase in square footage shall not be considered as a change, an addition, or an improvement that is subject to assessment at just value. The provisions of this section are limited to homestead properties in which repairs are commenced by January 1, 2008, and apply retroactively to January 1, 2005.

Section 4. Paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January

1 after the changes, additions, or improvements are substantially completed.

Section 5. Subsections (14) through (20) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

~~(14) "Renewable energy source device" or "device" means any of the following equipment which, when installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:~~

~~(a) Solar energy collectors.~~

~~(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.~~

~~(c) Rockbeds.~~

~~(d) Thermostats and other control devices.~~

~~(e) Heat exchange devices.~~

~~(f) Pumps and fans.~~

~~(g) Roof ponds.~~

~~(h) Freestanding thermal containers.~~

~~(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.~~

~~(j) Windmills.~~

~~(k) Wind-driven generators.~~

~~(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.~~

~~(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.~~

(14)~~(15)~~ "New business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any one or more of the following operations:

a. Manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

b. Is a target industry business as defined in s. 288.106(2)(q);

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or

3. An office space in this state owned and used by a business or organization newly domiciled in this state; provided such office space houses 50 or more full-time employees of such business or organization; provided that such business or organization office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

(b) Any business or organization located in an enterprise

zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

(c) A business or organization that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.

(15)~~(16)~~ "Expansion of an existing business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any of the operations referred to in subparagraph (14)(a)1. ~~(15)(a)1.~~; or

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site located within the same county, municipality, or both colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization, resulting in a net increase in employment of not less than 10 percent or an increase in productive output or sales of not less than 10 percent.

(b) Any business or organization located in an enterprise zone or brownfield area that increases operations on a site

located within the same zone or area colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization.

(16)~~(17)~~ "Permanent resident" means a person who has established a permanent residence as defined in subsection (17) ~~(18)~~.

(17)~~(18)~~ "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

(18)~~(19)~~ "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(19)~~(20)~~ "Ex-servicemember" means any person who has served as a member of the United States Armed Forces on active duty or state active duty, a member of the Florida National Guard, or a member of the United States Reserve Forces.

Section 6. Subsection (2) of section 196.121, Florida Statutes, is amended to read:

196.121 Homestead exemptions; forms.—

(2) The forms shall require the taxpayer to furnish certain information to the property appraiser for the purpose of determining that the taxpayer is a permanent resident as defined in s. 196.012(16) ~~196.012(17)~~. Such information may include, but

need not be limited to, the factors enumerated in s. 196.015.

Section 7. Subsections (6) and (8), paragraph (d) of subsection (9), and paragraph (d) of subsection (11) of section 196.1995, Florida Statutes, are amended to read:

196.1995 Economic development ad valorem tax exemption.—

(6) With respect to a new business as defined by s. 196.012(14)(c) ~~196.012(15)(c)~~, the municipality annexing the property on which the business is situated may grant an economic development ad valorem tax exemption under this section to that business for a period that will expire upon the expiration of the exemption granted by the county. If the county renews the exemption under subsection (7), the municipality may also extend its exemption. A municipal economic development ad valorem tax exemption granted under this subsection may not extend beyond the duration of the county exemption.

(8) Any person, firm, or corporation which desires an economic development ad valorem tax exemption shall, in the year the exemption is desired to take effect, file a written application on a form prescribed by the department with the board of county commissioners or the governing authority of the municipality, or both. The application shall request the adoption of an ordinance granting the applicant an exemption pursuant to this section and shall include the following information:

(a) The name and location of the new business or the expansion of an existing business;

(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;

(d) Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012~~(15) or (16)~~;

(e) The number of jobs the applicant expects to create along with the average wage of the jobs and whether the jobs are full-time or part-time;

(f) The expected time schedule for job creation; and

(g) Other information deemed necessary or appropriate by the department, county, or municipality.

(9) Before it takes action on the application, the board of county commissioners or the governing authority of the municipality shall deliver a copy of the application to the property appraiser of the county. After careful consideration, the property appraiser shall report the following information to the board of county commissioners or the governing authority of the municipality:

(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012~~(15) or (16)~~, or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide to him or her such information as it may have available to assist in making such determination.

(11) An ordinance granting an exemption under this section

shall be adopted in the same manner as any other ordinance of the county or municipality and shall include the following:

(d) A finding that the business named in the ordinance meets the requirements of s. 196.012(14) or (15) ~~196.012 (15) or (16)~~.

Section 8. Section 196.175, Florida Statutes, is repealed.

Section 9. This act shall take effect July 1, 2013, and applies to assessments beginning January 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic ASSESSMENT OF PROPERTY

Bill Number 1064 *(if applicable)*

Name DAVID CULLEN

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1674 UNIVERSITY PKWY #286
Street
SARASOTA FL 34243
City *State* *Zip*

Phone 941-323-2404

E-mail cullensea@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

April 17, 2013

The Honorable Joe Negron
Senate Appropriations Committee
404 S. Monroe St., 201C
Tallahassee, FL 32399-1100

Dear Chair Negron:

I respectfully request that my bill, SB 1064/Assessment of Residential and Nonhomestead Real Property, be placed on the agenda of the Senate Appropriations Committee at the earliest possible time. The bill was favorably considered by the Senate Appropriations Sub-Committee on Finance and Tax April 17.

This bill implements part of the 2008 Constitutional Amendment which prohibits the consideration of the installation of a renewable energy source device in assessing the value of real property.

Please contact me if you have any questions. I appreciate your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

JL:tc

Cc: Mike Hansen, Staff Director

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☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations	
BILL:	PCS/CS/SB 1132 (730310)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Community Affairs Committee; and Senator Brandes
SUBJECT:	Department of Transportation
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/7 amendments**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	Price	Martin	ATD	**Fav/CS**
4.	Price	Hansen	AP	**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:

PCS/CS/SB 1132 makes a number of revisions to statutes addressing the functions and responsibilities of the Florida Department of Transportation (FDOT or department) and various transportation issues.

The bill contains several issues that will impact state revenues, most of which have an indeterminate or negligible fiscal impact. Please see Section V.

The bill:

- Extends the Florida Transportation Commission's oversight of expressway and bridge authorities to regional transportation finance authorities created under a new ch. 345, F.S., and repeals provisions relating to the Florida Statewide Passenger Rail Commission.
- Establishes the FDOT as the agency responsible for administering the small county dredging program and sunsets the program on July 1, 2018.
- Provides funding for space transportation projects from the State Transportation Trust Fund (STTF).

- Authorizes the FDOT to fund up to 100 percent of the cost of strategic airport investment projects under specified conditions.
- Prohibits the FDOT from entering into any lease-purchase agreement with any expressway authority, regional transportation authority, or other entity and preserves existing lease-purchase agreements.
- Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way.
- Amends the process that the FDOT must follow relating to proposals to enter into a lease of the FDOT property for joint public-private development or commercial development.
- Revises provisions relating to the uses of fees generated from certain tolls to include the design and construction of a fire station; revises provisions relating to the transfer of certain excess revenues; and removes authority of a water management district to issue bonds or notes which pledge excess toll revenues.
- Revises provisions relating to metropolitan planning organization (MPO) designation to conform language to federal law, provides a cap on the number of voting members of an MPO re-designated as specified, provides that certain authorities or agencies in metropolitan areas may be provided voting membership on the MPO, and makes editorial changes to eliminate redundancy and provide clarity.
- Authorizes Enterprise Florida, Inc., to be a consultant to the FDOT for consideration of expenditures associated with and contracts for economic development transportation projects and revises the requirements for those project contracts between the FDOT and a governmental entity.
- Repeals the Transportation Corporation Act and other obsolete provisions related to the Act.
- Includes projects that provide intermodal connectivity with spaceports as eligible for loans from the State-funded Infrastructure Bank.
- Expands eligibility of intercity bus companies to compete for federal and state program funding.
- Revises the types of eligible projects and criteria of the Intermodal Development Program.
- Creates the Florida Regional Transportation Finance Authority Act authorizing counties to form a regional tollway authority that can construct, maintain, and operate transportation projects in a region of the state.
- Renames the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority and revises related provisions.
- Creates chapter 345, F.S., to authorize the formation of regional transportation finance authorities.
- Creates the Santa Rosa-Escambia Regional Transportation Finance Authority and the Suncoast Regional Transportation Finance Authority.
- Provides for the transfer of the governance and control of the Mid-Bay Bridge Authority System to the Northwest Florida Regional Transportation Finance Authority.
- Renames the Orlando-Orange County Expressway Authority as the Central Florida Expressway Authority and revises related provisions.
- Transfers all powers, governance, and control of the Osceola County Expressway System to the Central Florida Expressway Authority and repeals part V of ch. 348, F.S., on the same date that the Osceola County Expressway System is transferred.
- Revises provisions relating to mitigation of the environmental impacts of transportation projects.

- Requires public information systems located on water management district property to be approved by the FDOT and the Federal Highway Administration if approval is required by federal law.
- Prohibits the use of public block grant funds to pursue or promote the levy of new or additional taxes through public referenda.
- Repeals obsolete language, clarifies ambiguous language, and makes editorial, grammatical, and conforming changes.
- Provides an effective date.

This bill amends the following sections of the Florida Statutes: 20.23, 110.205, 311.22, 316.545, 331.360, 334.044, 335.06, 337.11, 337.14, 337.168, 337.25, 337.251, 338.161, 338.165, 338.26, 339.175, 339.2821, 339.55, 341.031, 341.053, 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.84, 343.85, 343.875, 343.89, 343.922, 343.922, 348.751, 348.752, 348.753, 348.754, 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, 348.756, 348.757, 348.758, 348.759, 348.760, 348.761, 348.765, 369.317, 369.324, 373.4137, 373.618, and 341.052.

The bill repeals the following sections of the Florida Statutes: 11.45(3)(m), 316.530(3), 339.401, 339.402, 339.403, 339.404, 339.405, 339.406, 339.407, 339.408, 339.409, 339.410, 339.411, 339.412, 339.414, 339.415, 339.416, 339.417, 339.418, 339.419, 339.420, 339.421.

The bill creates the following sections of the Florida Statutes: 332.007(11), and chapter 345, consisting of the following sections of the Florida Statutes: 345.0001, 345.0002, 345.0003, 345.0004, 345.0005, 345.0006, 345.0007, 345.0008, 345.0009, 345.0010, 345.0011, 345.0012, 345.0013, 345.0014, 345.0015, and 345.0016.

II. Present Situation:

Florida Transportation Corporation Act and Related Audit Authority

Sections 339.401 through 339.421, F.S., create the "Florida Transportation Corporation Act." This act was created in 1988[1] to allow certain nonprofit corporations authorized by the FDOT to act on FDOT's behalf in assisting with project planning and design, assembling right-of-way and financial support, and generally promoting projects included in the FDOT's adopted five-year work program. The act contains various statutory provisions related to the formation, operation, and dissolution of these corporations.

Among the specific activities of transportation corporations authorized under the act are:
- Acquiring, holding, investing, and administering property and transferring title to the FDOT for project development;
- Performing preliminary and final alignment studies;
- Receiving contributions of land for right-of-way and case donations to be applied to the purchase of right-of-way or design and construction projects; and,
- Making official presentations to groups concerning the project and issuing press releases and promotional materials.

[1] s. 3, ch. 88-271, Laws of Florida.

Florida transportation corporations cannot issue bonds and are not empowered to enter into construction contracts or to undertake construction. They are enabled to otherwise borrow money or accept donations to help defray expenses or needs associated with the corporation or a particular transportation project.

According to the FDOT, after a limited number of inquiries immediately following passage of the act, the FDOT has received no further requests for information or other indications of interest in the act, and the provisions of the act have never been used. As a result, the Auditor General's authority to audit corporations acting on behalf of the FDOT in s. 11.45(3)(m), F.S., has never been exercised, and the provisions of Fla. Admin. Code Rule Chapter 14-35, which implement the act, have never been applied.

Overlapping Responsibility for Passenger Rail Systems

Florida Transportation Commission

The Florida Transportation Commission (FTC) has long been charged with periodically reviewing the status of the state transportation system, including rail and other component modes, and with recommending system improvements to the Governor and the Legislature. Beginning in 2007, the Legislature also directed the FTC in s. 20.23(2)(b)8., F.S., to:

> Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, F.S.,[2] including any authority formed using the provisions of part I of ch. 348, F.S., and any authority formed under ch. 343, F.S., which is not monitored under subsection (3). The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

The only publicly funded passenger rail system in the state (Tri-Rail) then and now existing is operated by the South Florida Regional Transportation Authority, which is established in ch. 343, F.S.

Florida Statewide Passenger Rail Commission (FSPRC)

In 2009, the Florida Legislature provided a statutory framework for enhancing the consideration of passenger rail as a modal choice in the development and operation of Florida's transportation network.[3] The Legislature created the Florida Rail Enterprise, modeled after the Florida Turnpike

[2] Chapter 343, F.S., entities include the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Area Regional Transportation Authority. Chapter 348, F.S., entities include the Miami-Dade Expressway Authority, the Tampa-Hillsborough County Expressway Authority, the Orlando-Orange County Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority. Chapter 349, F.S., establishes the Jacksonville Transportation Authority.

[3] Chapter 2011-271, L.O.F.

Enterprise, to coordinate the development and operation of passenger rail services statewide, and established the FSPRC to monitor, advise, and review publicly-funded passenger rail systems.[4]

Specifically, and similar to the duty of the FTC, the Legislature charged the FSPRC in s. 20.23(3)(b)1., F.S., with the function of:

> Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapters 343, 349, or 163, F.S., if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

State Public Transportation and Modal Administrator

Recognizing the significant role played by freight mobility as an economic driver for the state, the FDOT recently created an Office of Freight, Logistics, and Passenger Operations, and the 2012 Legislature directed the FDOT to develop a Freight Mobility and Trade Plan to assist in making freight mobility investments that contribute to the economic growth of the state.[5] As part of its focus on freight and intermodal issues, the FDOT requested approval from the Department of Management Services (DMS) to change the title of an existing Senior Management Service class position, from State Public Transportation and Modal Administrator, to State Freight and Logistics Administrator.[6] The DMS approved the requested change on September 2, 2011.

Small County Dredging Program

The Small County Dredging Program was created by the Legislature in 2005 assist in financing certain dredging improvements at small ports in counties with a population of less than 300,000 persons based on the last official United States Census, but which were not eligible for existing Florida Seaport Transportation and Economic Development (FSTED) funding.[7] Under the program, funding is authorized for dredging or deepening of channels, turning basins, or harbors

[4] The first phase (31 miles) of a commuter rail project, SunRail, – an eventual 61-mile stretch of existing rail freight tracks through Orange, Seminole, Volusia and Osceola counties and the City of Orlando -- is under construction, and service could begin as early as 2014.
[5] Chapter 2012-174, L.O.F.
[6] Section 110.205(2)(j), F.S.
[7] Section 311.22, F.S.

on a 25-percent local matching basis with any port authority[8] that meets environmental permitting and other specified criteria. There are at least seven entities meeting the definition of "port authority" in counties with less than 300,000 population: the Panama City Port Authority; the Citrus County Port Authority; the Port St. Joe Port Authority; the Hernando County Port Authority; the Ocean, Highway, and Port Authority (Nassau County); the Putnam County Port Authority; and the St. Lucie County Port Authority.

The program was initially funded with a $5 million appropriation to the State Transportation Trust Fund to provide a 50-percent state match. An additional $9.2 million was provided in the 2006-2007 General Appropriations Acts to provide a 75-percent state match. No further funding has been provided to the program.

Wrecker Permits/Disabled Vehicles

Current s. 316.515(8), F.S., allows wreckers to tow disabled vehicles when the combination of wrecker and towed vehicle are over legal weight, provided that the wrecker is operating under a special use permit. This provision was passed during the 1997 session. During the same session, s. 316.550(5), F.S., was passed to authorize the FDOT to issue such overweight permits.[9] However, s. 316.530(3), F.S., (originally passed as s. 316.205(3) in 1976) which allows wreckers to tow disabled vehicles when the combination of wrecker and towed vehicle are over the legal weight without a special use permit, was inadvertently overlooked and still remains in current law, despite the direct conflict with subsequently passed legislation.

As the 1997 changes rendered the provisions of s. 316.530(3), F.S., obsolete, the last-passed provisions of s. 316.515(8), F.S., and s. 316.550(5), F.S., have been enforced since that time.

Commercial Motor Vehicles/Auxiliary Power Units

Section 756 of the Energy Policy Act of 2005, "Idle Reduction and Energy Conservation Deployment Program," amended 23 U.S.C. 127(a)(12) to allow for a national 400-pound exemption on the maximum weight limit on the interstate system for the additional weight of idling reduction technology ("auxiliary power units" or "APUs")[10] on heavy-duty vehicles. Section 316.545(3)(c), F.S., was created by the 2010 Legislature to provide for a 400-pound reduction in the gross weight of commercial motor vehicles equipped with idling reduction technology when calculating a penalty for exceeding maximum weight limits. The reauthorized Federal-aid highway program, Moving Ahead for Progress in the 21st Century (MAP-21) further amended 23 U.S.C. 127(a)(12) to increase from 400 to 550 pounds the allowable exemption for additional weight of APUs.

[8] Defined in s. 315.02(2), F.S., to mean any port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law.

[9] These changes are consistent with federal law, specifically 23 U.S.C. 127(a) and 23 C.F.R. 658.17, which authorize states to permit nondivisible loads and vehicles (defined to include emergency response vehicles) exceeding maximum weight limits upon the issuance of special permits in accordance with state law.

[10] An APU is a portable, truck-mounted system that can provide climate control and power for trucks without idling, keeping drivers comfortable during resting periods while reducing negative economic impact (fuel costs) and environmental impact (greenhouse gases and other pollutants, as well as noise).

Space Transportation Facilities

The FDOT and Space Florida are currently authorized to enter into a joint participation agreement to effectuate the provisions of ch. 331, F.S., and the FDOT is authorized to allocate funds for such purposes in its five-year work program. The FDOT is prohibited from funding the administrative or operational costs of Space Florida.

Space Florida is required to develop a spaceport master plan for expansion and modernization of space transportation facilities within defined spaceport territories, containing recommended projects, and is required to submit the plan to the FDOT. The FDOT may include the plan within the FDOT's five-year work program of qualifying aerospace discretionary capacity improvement projects and is authorized to participate in the capital cost of eligible spaceport discretionary capacity improvement projects, subject to the availability of appropriated funds. The plan is required to identify appropriate funding levels and include recommendations on appropriate sources of revenue that may be developed to contribute to the STTF. The FDOT's annual LBR must be based on the proposed funding requested for approved spaceport discretionary capacity improvement projects.[11]

The FDOT Adopted Work Program included $16 million for spaceport projects in both Fiscal Year 2011-2012 and Fiscal Year 2012-2013. The FDOT Final Tentative Work Program for Fiscal Years 2014-2018 includes $20 million for Space Florida transportation projects in each of the five years.[12]

State Aviation Program

Section 332.007, F.S., requires the FDOT to prepare and continuously update an aviation and airport work program that separately identifies development projects and discretionary capacity improvement projects. Subject to the availability of appropriated funds, FDOT is authorized to participate in the capital cost of eligible public airport and aviation development projects,[13] unless otherwise directed as specified, at percentage rates that vary depending on factors such as available federal funding. The FDOT is also authorized, subject to the availability of appropriated funds in addition to aviation fuel tax revenues, to participate in the capital cost of eligible public airport and aviation discretionary capacity improvement projects,[14] again at percentage rates that vary. The FDOT notes that the Legislature created a Strategic Investment Initiative within its Seaport Office during the 2012 Legislative Session and that the FDOT does not have a similar investment initiative or authority for the Aviation Program.

[11] "Spaceport discretionary capacity improvement projects" is defined in s. 331.303(21), F.S., to mean capacity improvements that enhance space transportation capacity at spaceports that have had one or more orbital or suborbital flights during the previous calendar year or have an agreement in writing for installation of one or more regularly scheduled orbital or suborbital flights upon the commitment of funds for stipulated spaceport capital improvements.
[12] FDOT email, February 7, 2013, on file in the Senate Transportation Committee.
[13] In short, defined in s. 332.004(4), F.S., as "…any activity associated with the design, construction, purchase, improvement, or repair of a public-use airport or portion thereof…."
[14] Defined in s. 332.004(5), F.S., as "…capacity improvements … which enhance intercontinental capacity at [specified] airports…."

Toll Authorities/Lease-Purchase Agreements

In addition to the FDOT, various authorities are currently operating toll facilities and collecting and reinvesting toll revenues. Aside from Florida's Turnpike Enterprise (which is part of the FDOT), most, but not all, of the toll authorities are established under ch. 348, F.S., entitled "Expressway and Bridge Authorities." Various sections of ch. 348, F.S., provide the toll authorities the ability to enter into lease-purchase agreements with the FDOT. In addition to authorities created under ch. 348, F.S., two transportation authorities are authorized under ch. 343, F.S., to enter into lease-purchase agreements with the FDOT, and a bridge authority established by special act of the Legislature is similarly authorized. The FDOT has entered into lease-purchase agreements with some, but not all, of these authorities.

The FDOT is authorized to enter these agreements by s. 334.044, F.S. Additionally, s. 339.08(1)(g), F.S., allows the FDOT to lend or pay a portion of the operation and maintenance (O&M) and capital costs of any revenue-producing transportation project located on the SHS or that is demonstrated to relieve traffic congestion on the SHS. The FDOT pays such costs using funds from the STTF.

In a typical lease-purchase agreement between the FDOT and a toll authority, the FDOT, as lessee, agrees to pay the O&M (which usually includes replacement and renewal, or the R&R) costs of the associated toll facility. Upon completion of the lease-purchase agreement, ownership of the facility would be transferred to the State and the FDOT would retain all revenues collected, as well as the O&M responsibility.

As required by existing agreements, the FDOT paid $9.2 million in the O&M expenses in FY 2011-2012 and an additional $32.8 million in the R&R expenses, periodic maintenance, and toll equipment capital costs, on behalf of the authorities. These funds accrue to an authority's long-term debt owed to the FDOT. When the O&M and the R&R expenses are not reimbursed by the toll authority on a current basis, *e.g.*, monthly or annually, the STTF monetary advances are added to the authority's long-term debt due to the FDOT. As of June 30, 2012, debt owed to FDOT from various toll authorities for expenses paid totaled approximately $419.7 million.

Roadside Enhancement and Maintenance Requirements

The FDOT is responsible for enhancing environment benefits, preventing roadside erosion, conserving natural roadside growth and scenery, and providing for the implementation and maintenance of roadside conservation, enhancement, and stabilization programs.[15] The FDOT is required to purchase all plant materials from Florida commercial nursery stock on a uniform competitive basis. This provision conflicts with federal requirements that specify a state transportation department cannot require the use of materials produced in state or restrict the use of materials produced out of state.[16] Failure to comply with federal requirements for purchases of plant material for roadside landscaping may subject the FDOT to a significant federal funds penalty, generally 10 percent of annual highway constructions funds.[17]

[15] *See* s. 334.044(26), F.S.
[16] See 23 C.F.R. s. 635.409.
[17] *See* 23 U.S.C. s. 131(b).

Access to State Park Roads

Section 335.06, F.S., currently requires the FDOT to maintain any road that is part of the State Highway System and provides access to property within the state park system. Local governments are required to maintain roads that are part of the county road or city street system.

Vehicle Registration/FDOT Contractors

Section 320.02(1), F.S., provides that every owner or person in charge of a motor vehicle operated or driven on the roads of this state shall register the vehicle in this state, except as otherwise provided. Section 320.37, F.S., provides that the registration requirement (and license plate display requirements) does not apply to a motor vehicle owned by a nonresident if the nonresident has complied with the registration law of the foreign country, state, territory, or federal district of the owner's residence. However, s. 320.38, F.S., provides that if a nonresident accepts employment or engages in any trade, profession, or occupation in this state, the nonresident must register his or her motor vehicle in this state within 10 days after beginning such employment.

Section 337.11(13), F.S., requires each road or bridge construction or maintenance contract let by the FDOT to contain a provision requiring the contractor to provide proof to the FDOT, in the form of a notarized affidavit from the contractor, that all motor vehicles that he or she operates or causes to be operated in this state are registered in compliance with ch. 320, F.S.

Transportation Projects/Prequalification/Bidding

Section 337.14(1), F.S., requires that persons "…desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified…." Section 337.14(2), F.S., provides: "Certification shall be necessary in order to bid on a road, bridge, or public transportation construction contract of more than $250,000." The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "…with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."

This language could be interpreted as being tied to a bid amount, *i.e.*, so long as the *bid* is not in excess of $250,000, a person would not be required to first be certified prior to bidding. The FDOT's bid solicitation notices, however, currently advise: "A prequalified contractor must have a current certificate of qualification in accordance with Rule Chapter 14-22, F.A.C., on the date of the letting to bid on construction projects over $250,000 as established by the Department's budget." Consequently, persons seeking to bid on construction contracts in excess of $250,000 are currently required to be qualified on the date of the letting.

For comparison, revisions to s. 337.14(1), F.S., during the last legislative session with respect to financial statements submitted in connection with the performance of construction contracts of less than $1 million expressly tied that submission to proposed budget estimates, rather than to the bid amount.

Public Records/Identities of Potential Bidders

Section 337.168(2), F.S., currently provides that a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins 2 working days prior to the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. The FDOT maintains a website that posts a list of persons who have requested or obtained bid packages, plans, or specifications for a given project.[18] The list is removed from the website two working days prior to the deadline for obtaining bid packages, plans, or specifications.

The Florida Transportation Builders' Association advises that small contractors need and rely on access to the identities of potential bidders that are not made exempt under s. 337.168(2), F.S., for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for the FDOT projects.

Disposal and Lease of Real and Personal Property

The FDOT is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings or other improvements necessary for rights-of-way for existing or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in an FDOT designated rail or transportation corridor. The FDOT may also accept donations of land, building, or other improvements for transportation rights-of-way and may compensate an entity by providing replacement facilities when the land, building, or other improvements are needed for transportation purposes but are held by a federal, state, or local governmental entity and used for public purposes other than transportation.[19]

The FDOT is required to conduct a complete inventory of all real or personal property immediately upon acquisition, including an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or site of each piece of realty, structure, or severable item, and the serial number assigned to each.[20] The FDOT must evaluate the inventory of real property which has been owned for at least 10 years and which is not within a transportation corridor or the right-of-way of a transportation facility. If the property is not located within a transportation corridor or is not needed for a transportation facility, FDOT is authorized to dispose of the property.[21] According to the FDOT, 85 percent of its currently-owned surplus property is valued at under $50,000.

[18] http://www.dot.state.fl.us/cc-admin/Letting_Project_Info.shtm: Retrieved March 1, 2013. To access a list, click on a letting date in the near future under "2013 Lettings" and then choose "Proposal Holders" under "Important Letting Documents."
[19] Section 337.25(1), F.S.
[20] Section 337.25(2), F.S.
[21] Section 337.25(3), F.S.

Sale of Property

The FDOT is authorized to sell any land, building, or other real or personal property it acquired if the FDOT determines the property is not needed for a transportation facility.[22] The FDOT is required to first offer the property ("first right of refusal") to the local government in whose jurisdiction the property is located, with the following exceptions:

- If in the FDOT's discretion, public sale would be inequitable, the sale of the property may be negotiated, at no less than fair market value as determined by an independent appraisal, with the owner holding title to abutting property.[23]
- Property acquired for use as a borrow pit may be sold at no less than fair market value to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed.[24]
- Property acquired by a county or the FDOT using constitutional gas tax funds for right of way or borrow pit may be conveyed to a county without consideration if the property is no longer used or needed by the FDOT, and the county may sell the property on receipt of competitive bids.[25]
- Property donated to the state for transportation purposes, on which a facility as not been constructed for at least 5 years, and for which no plans for construction of a facility have been prepared, and that is not located on a transportation corridor, may be re-conveyed to the original donor of the property by a governmental entity[26]
- Property which was originally acquired for persons displaced by transportation projects provided the state receives no less than its investment in the properties, or fair market value, whichever is lower. The FDOT may negotiate the sale of property as replacement housing only to persons actually displaced by a project. Dispositions to any other person must be for fair market value. [27]

Once the FDOT determines the property is not needed for a transportation facility and has extended and received rejection of required first rights of refusal, FDOT is also authorized to:

- Negotiate the sale of property if its value is $10,000 or less as determined by FDOT estimate;[28]
- Sell the property to the highest bidder through "due advertisement" of receipt of sealed competitive bids or by public auction if its value exceeds $10,000 as determined by the FDOT estimate;[29]
- Determine the fair market value of property through appraisal conducted by an FDOT appraiser, if the FDOT begins the process for disposing of property on its own initiative,

[22] Section 337.25(4), F.S.
[23] Section 337.25(4)(c), F.S.
[24] Section 337.25(4)(d), F.S.
[25] Section 337.25(4)(f), F.S.
[26] Section 337.25(4)(g), F.S.
[27] Section 337.25(4)(i), F.S.
[28] Section 337.25(4)(a), F.S.
[29] Section 337.25(4)(b), F.S.

either by authorized negotiation or by authorized receipt of sealed competitive bids or public auction;[30]

- Convey the property without consideration to a governmental entity if the property is to be used for a public purpose;[31] and
- Use the projected maintenance costs of the property over the next five years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if the FDOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks.[32]

Lease of Property

The FDOT is further authorized to convey a leasehold interest for commercial or other purposes to any acquired land, building, or other property, real or personal, subject to the following:[33] the FDOT may negotiate a lease at the prevailing market value with the owner from whom the property was acquired, with the holders of leasehold estates existing at the time of the FDOT's acquisition, or, if public bidding would be inequitable, with the owner of privately owned abutting property, after reasonable notice to all other abutting property owners.[34] All other leases must be by competitive bid,[35] and limited to five years; however the FDOT may renegotiate a lease for an additional five year term without rebidding. Each lease must require that any improvements made to the property during the lease term be removed at the lessee's expense.[36] Property that is to be used for a public purpose, including a fair, art show, or other educational, cultural , or fundraising activity may be leased at no cost to a governmental entity or school board.[37]If property is to be used for a public purpose, including a fair, art show, or other educational, cultural, or fundraising activity, the property may be leased without consideration to a governmental entity or school board. The FDOT may enter into a long-term lease agreement without compensation with certain public ports for rail corridors used in the operation of a short-line railroad to the port.[38]

The appraisals currently required under s. 337.25(4)(c) and (d), F.S., must be prepared in accordance with the FDOT guidelines and rules by an independent appraiser certified by the FDOT. When "due advertisement" is required, an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held satisfies the requirement.[39]

Unsolicited Lease Proposals

Section 337.251, F.S., *Lease of property for joint public-private development and areas above or below department property*, authorizes the FDOT to request proposals for the lease of the FDOT

[30] Section 337.25(4)(e), F.S.
[31] Section 337.25(4)(h), F.S.
[32] Section 337.25(4)(j), F.S.
[33] Section 337.25(5), F.S.
[34] Section 337.25(5)(a), F.S.
[35] Section 337.25(5)(b), F.S.
[36] Section 337.25(5)(d), F.S.
[37] Section 337.25(5)(e), F.S.
[38] Section 337.25(5)(h), F.S.
[39] Section 337.25(8), F.S.

property for joint public-private development or commercial development. The FDOT may also receive and consider unsolicited proposals for such uses. If the FDOT receives an unsolicited proposal to negotiate a lease, the FDOT must publish a notice in a newspaper of general circulation at least once a week for two weeks, stating that it has received the proposal and will accept, for 60 days after the date of publication, other proposals for use of the space. The FDOT must also mail a copy of the notice to each local government in the affected area.

Any unsolicited lease proposal must be selected based on competitive bidding, and the FDOT is authorized to consider such factors as the value of property exchanges, the cost of construction, and other recurring costs for the benefit of the FDOT by the lessee in lieu of direct revenue to the FDOT if such other factors are of equal value including innovative proposals to involve minority businesses. Before entering into any lease, the FDOT must determine that the property subject to the lease has a permanent transportation use related to the FDOT responsibilities, has the potential for such future transportation uses, or constitutes airspace or subsurface rights attached to property having such uses, and is therefore not available for sale as surplus property.

Section 334.30, F.S., *Public-private transportation facilities*, authorizes the FDOT to lease certain toll facilities through public-private partnerships and also authorizes the FDOT to receive unsolicited proposals. That section directs the FDOT to establish by rule an application fee sufficient to pay the costs of evaluating a proposal. The FDOT is further authorized to engage the services of private consultants to assist in the evaluation.

Unlike s. 337.251, F.S., before approving a proposal, the FDOT must determine that the proposed project is in the public's best interest; would not require state funds to be used unless the project is on the SHS; would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the FDOT; would have adequate safeguards in place to ensure that the department or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and would be owned by the FDOT upon completion or termination of the agreement.[40] In addition, before awarding a contract for lease of an existing toll facility through a public-private partnership, the FDOT is required to provide an independent analysis of the proposed lease that demonstrates the cost-effectiveness and overall public benefit.

If the FDOT receives an unsolicited proposal for a lease through a public-private partnership, the FDOT must publish a notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for two weeks stating that the FDOT has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose. The FDOT must also mail a copy of the notice to each local government in the affected area.

Toll Collection/Interoperable Facilities

During the 2012 Legislative Session, the Legislature passed both HB 599 and SB 1998, and both contained language relating to the FDOT authority to enter into agreements with public or

[40] The ownership requirement in s. 334.30, F.S., would not, of course, apply to a lease arrangement under s. 337.251, F.S.

private transportation facility owners (whose systems become interoperable with the FDOT's systems) for the use of the FDOT systems to collect and enforce for the owner tolls, fares, administrative fees, and other applicable charges due in connection with use of the owner's facility. The language, however, is not identical. Part of the last-passed version of the language contained in HB 599 is potentially ambiguous, leading to more than one possible interpretation, and part of needed language that passed in HB 599 was not included in SB 1998. Section 338.161, F.S., now reflects four different history notes highlighting the differences between the two 2012 bills.

Beeline-East Expressway and Navarre Bridge

Section 338.165(4), F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the FDOT's adopted work program. The Beeline-East Expressway (renamed the Beachline East Expressway) became part of the Turnpike Enterprise on July 1, 2012, pursuant to ch. 2012-128, L.O.F.[41] The Navarre Bridge is now county-owned and no longer used for toll revenue. The references to each facility in s. 338.165(4), F.S., are now obsolete.

Alligator Alley Excess Revenues

Section 338.26, F.S., provides that any excess revenues from Alligator Alley, after facility operation and maintenance, contractual obligations, reconstruction and restoration, and the development and operation of a fire station at mile marker 63,[42] *may* be transferred to the South Florida Water Management District (SFWMD) Everglades Fund for specified projects.

The FDOT advises that operation of the fire station is expected to begin in FY 2013-2014; and the FDOT finance plan, based on projections provided to the FDOT, contains the following funding for operation of the fire station:[43]

FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2018-19
$1,200,000	$1,242,000	$1,285,470	$1,330,461	$1,377,028

With respect to transfers to the SFWMD, the FDOT and the SFWMD entered into a memorandum of understanding on June 30, 1997,[44] under which the FDOT agreed to a schedule of payments to the SFWMD totaling $63,589,000. The FDOT expects to be able to meet its obligations under the current payment schedule by Fiscal Year 2016 as follows:[45]

[41] See s. 338.165(10), F.S.
[42] The FDOT indicates that the fire station is currently under construction, and construction is funded by the FDOT. The FDOT notes that another fire station is located on the Alley in Broward County. Broward County provided the funding for construction of that station and provides the funding for its operation.
[43] The FDOT email, March 1, 2013, on file in the Senate Transportation Committee.
[44] On file in the Senate Transportation Committee.
[45] The FDOT email, March 1, 2013, on file in the Senate Transportation Committee.

FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
$4,400,000	$5,000,000	$8,000,000	$7,064,000

The agreement further provides that prior to its expiration, the FDOT and the SFWMD will renegotiate the terms, conditions, and duration of the agreement, taking into account toll revenues from the Alley, future costs to operate and maintain the Alley, reconstruction and restoration activities of the Alley, the transportation funding needs of Broward and Collier counties pursuant to s. 338.165(2), F.S.,[46] and the continuing costs of the Everglades restoration projects.

Metropolitan Planning Organizations/Designation/Membership

Based on census data, the U.S. Bureau of the Census designates urbanized areas throughout the state. Federal law and rule (23 U.S.C. 134 and 23 C.F.R 450 Part C) require a metropolitan planning organization (MPO) to be designated for each urbanized area[47] or group of contiguous urbanized areas. In addition, federal law and rules specify the requirements for a MPO transportation planning and programming activities. These requirements are updated after each federal transportation reauthorization bill enacted by Congress. State law also includes provisions governing MPO activities. Section 339.175, F.S., paraphrases or restates some key federal requirements. In addition, state law includes provisions that go beyond the federal requirements. For example, federal requirements regarding MPO membership are very general, while state law is more specific.

Section 339.175(2)(a)2., F.S., currently provides that designation of an MPO be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area; however, the unit of general-purpose local government that represents the central city or cities within the MPO jurisdiction, as defined by the United State Bureau of the Census, must be a party to such agreement. This language has been superseded by revisions to 23 U.S.C. 134(d) and 23 C.F.R. 450.310(b), which now require designation to be accomplished by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

An existing MPO may be re-designated by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the existing population in the area served, including the largest incorporated city.[48] Re-designation of an MPO is required whenever the existing MPO proposes to make a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general-purpose local government served by the MPO, and the State; or a

[46] That section requires that if a revenue-producing project is on the State Highway System, any remaining toll revenue after discharge of indebtedness related to such project must be used for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the revenue-producing project is located.
[47] An urbanized area is defined by the U.S. Bureau of the Census and has a population of 50,000 or more.
[48] 23 C.F.R. 450.301(h) (2012).

substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under the MPO bylaws.[49]

Current law does not authorize more than 19 members on an MPO in cases when the MPO is re-designated as a result of the expansion of an MPO to include a new urbanized area or the consolidation of two or more MPOs, even if the membership is already at 19 members.

Economic Development Transportation Projects

Florida has a number of economic development incentive programs used to recruit industry to Florida, or to persuade existing businesses to expand their operations. One such incentive exists in what is commonly referred to as the Road Fund, which is funded by the STTF and used to assist local government in paying for highway or other transportation infrastructure improvements that will benefit a relocating or expanding company. The amount appropriated for this transfer varies from year to year. The Legislature in 2012 repealed s. 288.063, F.S., in which the Road Fund was statutorily placed, and created s. 339.2821, F.S. The revisions did not change the purpose of the Road Fund but simply moved oversight of the fund from the DEO to the FDOT.[50]

The FDOT, in consultation with the DEO, is authorized under the new section to make and approve expenditures and contract with the appropriate government body for the direct costs of transportation projects. Current law specifies that as part of the contractual agreement between the FDOT and a governmental body, that the FDOT may only transfer funds on a quarterly basis, the governmental body must expend funds received in a timely manner, and the FDOT may only transfer funds after construction has begun on the facility of a business on whose behalf the award was made.

State-Funded Infrastructure Bank/Spaceports

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB), which provides loans to government units and private entities to help fund transportation projects. The loans are repaid from revenues generated by the project, such as a toll road or other pledged resources. The repayments are then re-loaned to fund new transportation projects. A SIB loan may lend capital costs or provide credit enhancements for a transportation facility project on the SHS or for a project which provides intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals. Loans from the SIB may bear interest at or below market interest rates, as determined by the FDOT. Repayment of any SIB loan must begin no later than 5 years after the project has been complete or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.

[49] 23 C.F.R. 450.301(k) (2012).
[50] Budget Committee Final Analysis of SB 1998: http://www.flsenate.gov/Session/Bill/2012/1998/Analyses/M6TO2qtoNCs60=PL=Y=PL=DT9BT2bnWNo=%7C11/Public/Bills/1900-1999/1998/Analysis/s1998z2.TEDAS.PDF.

Intercity Bus Service/Funding Eligibility

The Federal Transit Administration's Intercity Bus Program (49 U.S.C. 5311(f)), is administered by the FDOT. Its purpose is to support and maintain intercity bus services, in order to preserve service through rural areas of the state. The FDOT provides matching funds as required by s. 339.135(4), F.S. Florida's statutory definition of "intercity bus service" is more restrictive than the federal definition, which limits the number of companies competing for funding.

Section 341.031(11), F.S., defines "intercity bus service" as regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available; maintains schedule information in the National Official Bus Guide; and provides package express service incidental to passenger transportation. Greyhound Bus Lines is currently the only private, for-profit company operating intercity bus services in Florida that meets the statutory definition to receive federal and state intercity bus program funding, as it is the only company in Florida that maintains schedule information in the National Official Bus Guide and provides package express service incidental to passenger transportation.

Intermodal Development Program

Section 341.053, F.S., was originally enacted in 1990 to create the Intermodal Development Program administered by the FDOT to provide for major capital investments in fixed-guideway transportation systems, access to seaports, airports and other transportation terminals, and to assist in the development of dedicated bus lanes. The Legislature in 1999 added direction to the FDOT to develop a proposed intermodal development plan to connect Florida's airports, deepwater seaports, rail systems serving both passenger and freight, and major intermodal connectors to the Florida Intrastate Highway System facilities as the primary system for the movement of people and freight in this state.

Section 341.053(6), F.S., currently authorizes the FDOT to fund projects including major capital investments in public rail and fixed-guideway transportation facilities and systems which provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between seaports, airports, and other transportation terminals; construction of intermodal or multimodal terminals; development and construction of dedicated bus lanes; and projects which otherwise facilitate the intermodal or multimodal movement of people and goods.

Toll Facilities Revolving Trust Fund/Obsolete References

The Legislature repealed s. 338.251, F.S., during the 2012 Legislative Session.[51] That section created the Toll Facilities Revolving Trust Fund, which was a loan program created to develop and enhance the financial feasibility of revenue-producing road projects undertaken by local governmental entities and the Turnpike Enterprise. Two references to the now repealed trust fund remain in statute.

[51] Ch. 2012-128, L.O.F.

Currently Established Toll Authorities

Aside from the FDOT and Florida's Turnpike Enterprise, a number of authorities exist in Florida that operate toll facilities and collect and reinvest toll revenues.[52]

Miami-Dade Expressway Authority

The Miami-Dade Expressway Authority (MDX) governing body consists of 13 voting members. The Miami-Dade County Commission appoints seven members, the Governor appoints five members, and the FDOT district six secretary is the *ex-officio* member of the Board. Except for the secretary, all members must be residents of Miami-Dade County and each serves a four-year term and may be reappointed.[53]

The MDX currently oversees, operates and maintains five tolled expressways constituting approximately 34 centerline-miles and 220 lane-miles of roadway in Miami-Dade County: Dolphin Expressway (SR 836); Airport Expressway (SR 112); Don Shula Expressway (SR 874); Gratigny Parkway (SR 924) and Snapper Creek Expressway (SR 878). MDX reported toll and fee revenue of $121.9 million (net of $2.8 million of allowance) in Fiscal Year (FY) 2011 based on 220 million transactions.[54] The FTC report indicates that approximately $45.5 million in outstanding debt ($6 million in loans from the now-repealed Toll Facilities Revolving Trust Fund and $39.5 million in loans from the State Infrastructure Bank) is due to FDOT as of June 30, 2011.[55]

Tampa-Hillsborough County Expressway Authority

The Tampa-Hillsborough County Expressway Authority (THEA) governing body consists of seven members, four of which are appointed by the Governor and serve four-year terms. The City of Tampa mayor, a member of the Board of County Commissioners selected by the board, and the FDOT's district seven secretary are *ex-officio* members.[56]

The THEA owns the four-lane Selmon Expressway, which is a 15-mile limited access toll road crossing the City of Tampa from Gandy Boulevard in south Tampa, through downtown Tampa and east to I-75 and Brandon. The FTC report indicates that beginning in Fiscal Year 2001, the THEA has reimbursed the FDOT for annual O&M expenses pursuant to the adopted budget and that only renewal and replacement costs continue to be added to long-term debt. As of June 30, 2011, the THEA owes the FDOT approximately $200.7 million for the O&M, renewal and replacement expense advances, and other FDOT loans.[57]

[52] The Mid-Bay Bridge Authority is also included among these authorities.
[53] s. 348.0003, F.S.
[54] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 22.
[55] Id.
[56] Section 348.52, F.S.
[57] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 73.

Tampa Bay Area Regional Transportation Authority

The Tampa Bay Area Regional Transportation Authority (TBARTA) is an agency of the state whose purposes are to improve mobility and expand multimodal transportation options for passengers and freight throughout the seven-county Tampa Bay region.[58] The TBARTA's governing body consists of 16 members: one elected official appointed by the respective County Commissions from Citrus, Hernando, Hillsborough, Pasco, Pinellas, Manatee and Sarasota counties; one member appointed by the West Central Florida Metropolitan Planning Organization Chairs Coordinating Committee who must be a chair of one of the six Metropolitan Planning Organizations in the region; two members who are the mayor or the mayor's designee of the largest municipality within the area served by the Pinellas Suncoast Transit Authority and the Hillsborough Area Transit Authority; one member who is the mayor or the mayor's designee of the largest municipality within Manatee or Sarasota County, providing that the membership rotates every two years; four members who are business representatives appointed by the Governor, each of whom must reside in one of the seven counties of the TBARTA; and one non-voting member who is the secretary of one of the FDOT districts within the seven-county area appointed by the FDOT secretary.[59]

The TBARTA is not currently operating any facility. The FTC report indicates that "TBARTA is beginning to prioritize projects, develop financial strategies for implementation, coordinate the advancement of more detailed planning and environmental analysis for the prioritized projects, and continue public engagement and education efforts." The FTC report lists nine current TBARTA projects (evaluations and studies) funded by the FDOT.[60] The TBARTA also operates the TBARTA Commuter Services, which is a free, online ride-matching program enabling commuters to connect with each other to share rides and is engaging in additional activities, such as identifying opportunities for collaboration and consolidation with other entities in the region, strengthening existing partnerships and examining the potential for new ones, identify short-term solutions to traffic congestion, and continuing to look for process improvements and potential cost savings.[61]

The TBARTA and the FDOT entered into an agreement under which, in 2009, the FDOT advanced $500,000 from a $2 million appropriation to pay initial administrative expenses, and the 2009, 2010 and 2011 Legislatures re-appropriated unspent funds from the $2 million to the TBARTA; however, the 2011 appropriation was vetoed by the Governor.

Northwest Florida Transportation Corridor Authority

The Northwest Florida Transportation Corridor Authority (NFTCA) is an agency of the state with the primary purpose of improving mobility on the U.S. 98 corridor in Northwest Florida to enhance traveler safety, identify and develop hurricane routes, promote economic development along the corridor, and implement transportation projects to alleviate current or anticipated traffic congestion. The NFTCA is also authorized to issue bonds.[62] Eight voting members, one

[58] Section 343.922, F.S.
[59] Section 343.92, F.S.
[60] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 177.
[61] Id. at 179.
[62] Section 343.82, F.S.

each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin and Wakulla counties, are appointed by the Governor to serve four-year terms on the governing body. The FDOT's district three secretary serves an as *ex-officio*, non-voting member.[63]

The NFTCA is not currently operating any facility. The FTC report indicates:

> As part of the Master Plan update, NFTCA's general consultant (HDR) is conducting a business case analysis to help the Authority in selecting and planning transportation projects by assessing their respective economic benefits, developing an investment plan and proposing viable funding strategies. The business case analysis includes an extensive public outreach program involving regional planning councils in the eight-county geographic area covered by the NFTCA and a series of workshops involving other key stakeholders in the region.[64]

The NFTCA currently operates under an agreement that uses federal earmark funds for administrative expenses, professional services, and regional transportation planning.[65]

Mid-Bay Bridge Authority

The 1986 Legislature created the Mid-Bay Bridge Authority [66] as the governing body of an independent special district in Okaloosa County for the purpose of planning, constructing, operating, and maintaining a bridge over the Choctawhatchee Bay. The Mid-Bay Bridge Authority operates the tolled, 3.6-mile long Mid-Bay Bridge across the Choctawhatchee Bay and approaches (SR 293) on the northern and southern sides of the bridge. The facility, which connects SR 20 with U.S. 98 east of Destin, is a link between Interstate 10 and U.S. 98 and provides a more direct route for tourists and residents between northern and southern Okaloosa and Walton Counties.[67]

The FDOT, under the provisions of a lease-purchase agreement with the Mid-Bay Bridge Authority, maintains and operates the existing bridge and remits all of the tolls collected to the authority as lease payments. The term of the lease runs concurrently with the bonds issued by the Mid-Bay Bridge Authority, and when the bonds are matured and fully paid, the FDOT will own the bridge. As of June 30, 2012, the Mid-Bay Bridge Authority's long-term debt obligation to the FDOT for operations and maintenance pursuant to the existing agreement was $9.5 million. In accordance with bond covenants, this liability is payable from excess toll revenues, after debt service obligations have been met.

The Florida Turnpike Enterprise provides toll plaza operations for the Mid-Bay Bridge Authority. For the fiscal year ending September 2012, toll revenues amounted to $15,765,967. Earned investment income from Revenue and Reserve Funds of $1,395,789, plus $30,886 from

[63] Section 343.81, F.S.
[64] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 160.
[65] Id.
[66] Re-created by special act, ch. 2000-411.
[67] Senate Issue Brief 2012-208, *Cost Effectiveness of Regional Expressway and Bridge Authorities,* (September 2011).

SunPass collections, raised total revenue to $17,192,642.[68] Florida law reflects no state entity charged with monitoring the efficiency, productivity, and management of the Mid-Bay Bridge Authority, unlike other regional transportation, expressway and bridge authorities.

Santa Rosa Bay Bridge Authority

The Santa Rosa Bay Bridge Authority (SRBBA) governing body consists of seven members. The Governor and the Board of County Commissioners each appoint three members, and the FDOT district three secretary is an ex-officio member of the Board. Except for the secretary, all members are required to be permanent residents of Santa Rosa County at all times during their term of office.[69]

The SRBBA owns the Garcon Point Bridge, a 3.5-mile tolled bridge that spans Pensacola/East Bay between Garcon Point (south of Milton) and Redfish Point (between Gulf Breeze and Navarre) in southwest Santa Rosa County.[70] Florida's Turnpike Enterprise provides toll operations for the SRBBA, and the FDOT's district three performs maintenance functions on the bridge. Because toll revenues are insufficient to pay both debt service on outstanding bonds and O&M expenses, the costs of the O&M are recorded as debt owed to FDOT. The FTC report indicates that the SRBBA also has outstanding loans from the Toll Facilities Revolving Trust Fund, and the balance of these liabilities on June 30, 2011, was $24.7 million.[71]

Orlando-Orange County Expressway Authority

The Orlando-Orange County Expressway Authority (OOCEA) governing body consists of five members. The Governor appoints three members who are citizens of Orange County and who serve four-year terms and may be reappointed. The Orange County mayor and the FDOT's district five secretary are the two ex-officio members of the Board.[72]

The OOCEA currently owns and operates 105 centerline miles of roadway in Orange County: 22 miles of the Spessard L. Holland East-West Expressway (SR 408), 23 miles of the Martin Andersen Beachline Expressway (SR 528), 33 miles of the Central Florida GreeneWay (SR 417), 22 miles of the Daniel Webster Western Beltway (SR 429) and 5 miles of the John Land Apopka Expressway (SR 414). OOCEA reported toll revenue of $260 million in FY 2011 based on 296 million transactions.[73] The FTC report indicates that approximately $270 million in outstanding debt ($221 million in advances for O&M expenses, $14 million in advances for completion of the East-West Expressway, and $34.8 million in loans from the State Infrastructure Bank) is due to FDOT as of June 30, 2011.[74]

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[68] *Traffic Engineers' Annual Report for Fiscal Year 2012*, prepared by URS for Mid-Bay Bridge Authority: http://www.mid-bay.com/pdfs/FY2012-Annual-Report.pdf. Retrieved February 23, 2013.
[69] Section 348.967, F.S.
[70] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, pp. 57-58.
[71] Id.
[72] s. 348.753, F.S.
[73] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 38.
[74] Id. at 39.

In addition, the OOCEA will independently finance, build, own and manage certain portions of the Wekiva Parkway and, pursuant to direction in SB 1998 (2012), the OOCEA will repay the FDOT for costs of operation and maintenance of the OOCEA system; the FDOT's obligation to pay any cost of operation, maintenance, repair, or rehabilitation of the OOCEA system terminates as specified; and ownership of the system remains with the OOCEA.

Osceola County Expressway Authority

Created in 2010, the Osceola County Expressway Authority (OCX) governing body consists of six members. Five members, one of which must be a member of a racial or ethnic minority, must be residents of Osceola County. Three of the five are appointed by the governing body of the county and the remaining two are appointed by the Governor. The FDOT's district five secretary serves as an *ex-officio*, non-voting member.[75]

The OCX is not currently operating any facility and has no funding or staff. Staff assistance and other support have been provided by Osceola County. The OCX has developed a Master Plan that includes construction of four proposed tolled expressways: Poinciana Parkway, Southport Connector Expressway, Northeast Connector Expressway, and Osceola Parkway Extension.[76]

Wekiva River Basin Commission

The Wekiva River Basin Commission is charged with monitoring and ensuring the implementation of the recommendations of the Wekiva river Basin Coordinating Committee for the Wekiva Study Area. The commission is comprised of 19 voting members, 9 of whom are voting members, and nine of whom are ad hoc nonvoting members. A representative of the previously repealed Seminole County Expressway Authority remains in statute as an ad hoc nonvoting member.

Environmental Mitigation for Transportation Projects

Pursuant to s. 373.4137, F.S., the FDOT and participating transportation authorities offset adverse environmental impacts of transportation projects through the use of mitigation banks and other mitigation options, including the payment of funds to the Water Management Districts (WMD) to develop and implement mitigation plans. The mitigation plan is developed by the WMDs and is ultimately approved by the Department of Environmental Protection (DEP). The ability to exclude a project from the mitigation plan is provided to the FDOT, a participating transportation authority, or a WMD.

In 2012, HB 599 modified s. 373.413, F.S., to reflect that adverse impacts may be offset by the use of mitigation banks or the payment of funds to develop and implement mitigation plans. The mitigation plan is based on an environmental impact inventory that is created by the FDOT and reflects habitats that would be adversely impacted by transportation projects listed in the next three years of the FDOT's tentative work program. The FDOT provides funding in its work program to the DEP or the WMDs for its mitigation requirements. To fund the programs, the

[75] Section 348.9952, F.S.
[76] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 165.

statute directs the FDOT and the authorities to pay $75,000 per impacted acre, adjusted by a calculation using the Consumer Product Index (CPI).[77]

Pursuant to s. 373.4137, F.S., mitigation plans developed by the WMDs must consider water resource needs and focus on activities in wetlands and surface waters, including preservation, restoration and enhancement, as well as control of invasive and exotic vegetation. The WMDs must also consider the purchase of credits from public and private mitigation banks if the purchase provides equal benefit to water resources and is the most cost effective option. Before transportation projects are added to the WMDs mitigation plans, the FDOT must consider if using mitigation bank credits will be more cost-effective and efficient. The WMD mitigation plans are updated annually to reflect the most recent FDOT work program and transportation authority project list and may be amended throughout the year. The mitigation plans are submitted to the governing board of the WMD or its designee for approval, and to the DEP for final approval.[78]

The FDOT and the participating expressway authorities are required to transfer funds each year to pay for mitigation of the projected impact acreage resulting from projects identified in the inventory. The projected impact acreage and costs are reconciled quarterly with the actual impact acreage, and the costs and balances are adjusted.[79]

Section 373.4137, F.S., provides for exclusion of specific transportation projects from the mitigation plan at the discretion of the FDOT, participating transportation authorities, and the WMDs.

Public Information Systems

Pursuant to s. 373.618, F.S., public information systems may be located on WMD property, provided certain terms and conditions are met. The systems must display messages to the general public concerning water management services, activities, events, watering restrictions, severe weather reports, amber alerts, and other essential public information. The law prohibits the use of WMDs funds to acquire, develop, construct, operate, or manage a public information system. Commercial messages are to be paid for by private sponsors.

Section 479.02, F.S., requires the FDOT to regulate the size, height, lighting, and spacing of signs on the interstate highway system in accordance with state and federal regulations. A permit and annual fee are required by any individual that proposes to erect, operate, use, or maintain any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system. Certain signs do not require a permit as long as the signs are in compliance with the provisions in s. 479.11(4)-(8), F.S.

Section 479.16, F.S, specifies that signs owned by a municipality or county that contain messages related to any commercial enterprise, a commercial sponsor of an event, personal messages, or political messages, are not considered information regarding government services.

[77] *See* s. 373.4137 F.S.
[78] *Id*.
[79] *Id*.

The FDOT may potentially be subject to an annual loss of 10 percent of federal highway funding if these signs are located within a "controlled area."[80]

Expenditures by Local Governments

Under current law, a county, municipality, school district, or other political subdivision of the state, and any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of the state, or a person acting on such entity's behalf, is prohibited from spending or authorizing expenditure of any moneys under the jurisdiction or control of such entity for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state questions, that is subject to a vote of the electors. The prohibition does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information, nor does it preclude an elected official of the local government from expressing an opinion on any issue.

III. Effect of Proposed Changes:

Section 1 repeals s. 11.45(3)(m), F.S., which contains the Auditor General's power to audit transportation corporations authorized under the Florida Transportation Corporation Act, in connection with sections 21 through 40 of the bill, which repeal the never-used act. This change will also enable the repeal of an unused administrative rule.

Section 2 amends s. 20.23, F.S., to require the FTC to monitor the efficiency, productivity, and management of regional transportation finance authorities created under a new ch. 345, F.S., and to repeal the Florida Statewide Passenger Rail Commission. Overlapping oversight of publicly-funded passenger rail systems is eliminated and remains solely with the FTC.

Section 3 amends s. 110.205(2), F.S., to change the title of the FDOT's State Public Transportation and Modal Administrator to State Freight and Logistics Administrator.

Section 4 amends s. 311.22, F.S., relating to small county dredging projects, to establish FDOT, rather than FSTED, as the agency responsible for administering any additional funding for dredging projects in counties having a population of fewer than 300,000 according to the last official census and sunsets the program on July 1, 2018.

Section 5 repeals s. 316.530(3), F.S., to remove obsolete language authorizing wreckers to tow disabled vehicles when the combination of wrecker and towed vehicle are over the legal weight without a special use permit.

Section 6 amends s. 316.545(3)(c), F.S., to increase from 400 to 550 pounds the authorized maximum gross vehicle weight to compensate for the additional weight of auxiliary power units (or idle-reduction technology) installed on commercial motor vehicles, as authorized by recent federal law.

[80] "Controlled area" means 660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system outside an urban area. *See* s. 479.01, F.S.

Section 7 amends s. 331.360, F.S., to require Space Florida to develop a spaceport system plan which contains recommendations for projects that meet current and future commercial, national and state space transportation requirements; and to submit the plan to the FDOT which may include portions of the system plan in the department's 5 year work program.

Beginning in Fiscal Year 2013-2014, the FDOT is authorized to make available from the STTF a minimum of $15 million annually from funds dedicated to public transportation projects[81] to fund space transportation projects. Project specific criteria must be provided by Space Florida to demonstrate that the project includes transportation and aerospace benefits. The FDOT may fund up to 50 percent of eligible project costs.

FDOT is authorized to fund up to 100 percent of eligible costs if the project provides important access and on-spaceport capacity improvements, capital improvements which will position the state to maximize opportunities of a sustainable and world-leading aerospace industry, meets state goals of an integrated intermodal transportation system, and demonstrates the feasibility of available matching funds.

Section 8 creates s. 332.007(11), F.S., to authorize the FDOT to fund, at up to 100 percent of the project's cost, strategic airport investment projects which provide important access and on-airport capacity improvements, capital improvements which will position the state to maximize opportunities in international trade, logistics, and the aviation industry, meet state goals of an integrated intermodal transportation system, and demonstrate the feasibility of available matching funds.

Section 9 amends s. 334.044(16), F.S., to prohibit the FDOT from entering into any lease-purchase agreement with any expressway authority, regional transportation authority or other entity effective July 1, 2013. These provisions have no effect on the existing lease-purchase agreements. This section of the bill also amends subsection (26) of s. 334.044, F.S., to provide that the FDOT purchase all plant materials from Florida commercial nursery stock in this state on a uniform competitive bid basis, except as prohibited by applicable federal law or regulation. This revision will ensure compliance with federal regulation and avoid a potential federal funds penalty.

Section 10 amends s. 335.06, F.S., to allow but not require the FDOT to improve and maintain a road that is part of a county road system or city street system. If the FDOT does not maintain a county or city road that provides access to the state park system, the road must be maintained by the appropriate county or municipality.

Section 11 amends s. 337.11(13), F.S., to require each road or bridge construction contract or maintenance contract let by FDOT to require all motor vehicles operated by the contractor in this state to be registered in compliance with ch. 320, F.S., eliminating the requirement of proof to the FDOT in the form a notarized affidavit from the contractor.

[81] Section 206.46(3), F.S.

Section 12 amends s. 337.14(1), F.S., to clarify that any person desiring to bid for the performance of any construction contract *with a proposed budget estimate* in excess of $250,000 must first be certified as qualified prior to bidding in accordance with Rule Chapter 14-22, F.A.C. No change in current practice results, the revisions simply provide internal statute consistency and consistency between statute and rule.

Section 13 amends s. 337.168(2), F.S., to clarify an existing public records exemption by which the identity of a person who has requested or obtained from FDOT, a bid package, plan, or specifications pertaining to any project to be let by FDOT remains a public record until two days prior to the deadline for obtaining the materials.

Section 14 amends s. 337.25, F.S., to revise the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way and to authorize the FDOT to contract for auction services used in the conveyance of real or personal property or leasehold interests and to authorize such contracts to allow the contractor to retain a portion of the proceeds as compensation.

The FDOT is authorized to "convey", rather than "sell" land, buildings, or other real or personal property after determining the property isn't needed for a transportation facility and to dispose of property through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the department's best interest. Due advertisement is required for property valued at more than $10,000, and no property may be sold at less than fair market value except as specified. The department is authorized, rather than required, to afford a right of first refusal to a political subdivision, or local government in which the parcel is located, except in conveyances when the property has been donated to the state for transportation purposes and a facility has not been constructed for at least 5 years, the property was originally required for replacement housing for persons displaced by transportation projects, or property which the FDOT has determined a sale to anyone other than the abutting land owner would be inequitable.

The FDOT is prohibited from conveying a leasehold interest at a price less than the department's current estimate of value and specifies that a lease may be created through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the best interest by the department. A lease shall not be for a period of more than 5 years, however, the department may extend the lease for an additional 5 years without rebidding.

The department is required to publish a notice when a proposal to lease property has been received, stating that a proposal has been received and that FDOT will accept other proposals for 120 days after the date of publication for lease of the property. The FDOT is authorized to establish, by rule, an application fee for the submission of the proposals.

The FDOT's estimate of value must be prepared in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property exceeds $50,000, the sale or lease must be negotiated at a price not less than the estimated value determined by the department.

This section does not modify the eminent domain requirements of s. 73.013, F.S.

Section 15 amends s. 337.251(2), F.S., to require a newspaper publication of 120 days for lease proposals, when the FDOT wishes to consider an unsolicited proposal for a lease of particular property. The FDOT is authorized to establish by rule an application fee for the submission of proposals, sufficient to pay the anticipated costs of evaluating the proposals. Further, the FDOT is required, prior to approval of any proposal, to determine that the proposed lease is in the public's best interest and meets specified criteria.

Section 16 amends s. 338.161(5), F.S., to replace the potentially ambiguous language regarding agreements for use of the FDOT toll collection systems that passed in HB 599 and SB 1998 during the 2012 Legislative Session, thereby avoiding any confusion that might result from ambiguous language or from statutory construction rules.

Section 17 amends s. 338.165(4), F.S., to remove obsolete references to the Beeline-East Expressway and the Navarre Bridge within the FDOT's authority to request issuance of bonds secured by toll revenues from certain toll facilities, as the expressway and bridge are no longer owned by the FDOT.

Section 18 amends s. 338.26(3) and (4), F.S., to remove the obligations of Alligator Alley excess toll revenues to operate and maintain the fire station at mile marker 63, and limits the transfer of annual excess revenue to SFWMD to that which is agreed upon in the June 30, 1997 memorandum of understanding. The SFWMD's authority to issue bonds or notes which pledge the excess toll revenues from the transfer is eliminated.

Section 19 amends s. 339.175, F.S., to revise provisions relating to designation of MPOs to conform to changed federal terminology, and to provide that the voting membership of an MPO re-designated as a result of the expansion of an MPO to include a new urbanized area, or the consolidation of two or more MPOs, may consist of no more than 25 members.

Section 20 amends s. 339.2821, F.S., to include Enterprise Florida, Inc., as an FDOT consultant in making and approving economic development transportation project contracts. Provides authority for the FDOT to terminate a grant award if construction of the transportation project does not begin within four years after the date of the initial grant award; and expands the type of authorized transportation facility projects to include spaceports.

Sections 21-40 repeals ss. 339.401 through 339.421, the never-used Transportation Corporation Act, in connection with the related audit authority repeal in section 1 of the bill.

Section 41 amends s. 339.55, F.S., to include projects that provide intermodal connectivity with spaceports as eligible for loans from the State-funded Infrastructure Bank.

Section 42 amends s. 341.031(11), F.S., to expand eligibility for intercity bus companies to compete for federal and state program funding by removing from the definition of "intercity bus service" the requirements that the carrier maintain schedule information in the National Official Bus Guide and provides package express service incidental to passenger transportation.

Section 43 amends s. 341.053, F.S., to expand the Intermodal Development Program to include access to spaceports, and to further define the activities of the program to include planning and funding the construction of airport, spaceport, seaport, transit and rail projects that facilitate the intermodal or multimodal movement of people and goods.

Projects included in the Intermodal Development Program must support statewide goals as specified in the Florida Transportation Plan, the Strategic Intermodal System Plan, the Freight Mobility and Trade Plan, or other appropriate department modal plan. Eligible projects are expanded to include: planning studies; major capital investments in freight facilities and systems that provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between spaceports and intermodal logistics centers; and construction of intermodal or multimodal terminals, including projects on airports, spaceports, intermodal logistics centers or seaports which assist in the movement or transfer of people or goods.

Section 44 amends s. 343.80, F.S., to revise the short title of part III of ch. 343, F.S., from the Northwest Florida Transportation Corridor Authority Law to the Northwest Florida Regional Transportation Finance Authority Law.

Section 45 amends s. 343.805, F.S., to define the "Northwest Florida Regional Transportation Finance authority System" or "system" to mean any and all expressways and appurtenant facilities thereto owned by the authority, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressway or expressways.

Section 46 amends s. 343.81, F.S., to rename the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority. The bill also revises the composition of the governing board of the authority from eight to five voting members, with two members from Okaloosa County and one each from Walton, Bay, and Gulf Counties. Escambia, Santa Rosa, Franklin, and Walton Counties are removed from voting membership. The bill also revises quorum requirements for the governing board, providing that three, rather than five, members constitutes a quorum, and the vote of at least three members, rather than five, is necessary for any action taken by the authority. Authorization to establish technical advisory committees and related provisions are repealed. Note: the Santa Rosa-Escambia Regional Transportation Finance Authority serving Escambia and Santa Rosa Counties is created in section 55 of the bill, as is the Suncoast Regional Transportation Finance Authority, serving Citrus, Levy, Marion, and Alachua Counties.

Section 47 amends s. 343.82, F.S., granting the NWFTFA the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Northwest Florida Regional Transportation Finance Authority System, thereby expanding the authority's responsibility beyond the U.S. 98 corridor. The bill also removes direction to the current Corridor Authority to develop and annually update a specified corridor master plan, to undertake projects contained in the plan, and to request funding and technical assistance from the FDOT from specified sources. Further, the bill authorizes the NWFTFA to dispose of any property which the authority and the FDOT determine is not needed for the system. In addition, the bill conforms terminology by removing references limiting the authority to activities along the U.S. 98 corridor and eliminating reference to the Santa Rosa Sound

Section 48 amends s. 343.83, F.S., to change a reference to the Northwest Florida Transportation Corridor Authority to the Northwest Florida Regional Transportation Finance Authority.

Section 49 amends s. 343.835, F.S., to conform terminology by removing references to U.S. 98 corridor improvements. The bill also revises a reference to facilities "constructed" by the authority to those "owned or provided" by the authority, which is also a conforming change. in connection with the provisions of section 50 of the bill.

Section 50 amends s. 343.84, F.S., to provide that the FDOT is the agent of the authority for the purpose of constructing system improvements; and to alternatively allow the authority, with the FDOT's consent and approval, to appoint a local agency certified by the FDOT as the authority's agent to administer federal aid projects in accordance with federal law. The bill requires the FDOT to act as the agent of the authority for purposes of operating and maintaining the system and requires the authority to reimburse the FDOT for the costs incurred from system revenues. The bill specifies that the authority remains obligated as principal to operate and maintain its system, and except as otherwise provided by the existing lease-purchase agreement between the FDOT and the Mid-Bay Bridge Authority in connection with its issuance of bonds, the authority's bondholders do not have a right to compel the FDOT to operate and maintain the system. The Mid-Bay Bridge Authority is transferred to the Northwest Florida Regional Transportation Finance Authority in section 56 of the bill. The bill also directs the authority to establish and collect tolls and other charges for the authority's facilities as specified.

Section 51 amends s. 343.85, F.S., to conform terminology.

Section 52 amends s. 343.875, F.S., to repeal the current Corridor Authority's power to receive or solicit proposals and enter into public-private partnership agreements and related provisions.

Section 53 amends s. 343.89, F.S, to conform terminology.

Section 54 amends s. 343.922(4), F.S., to remove a reference to the previously repealed Toll Facilities Revolving Trust Fund.

Section 55 creates ch. 345, F.S., to authorize the formation of regional transportation finance authorities, consisting of sections 345.0001 – 345.0016, F.S., and creates as agencies of the state, the following authorities:

- the Santa Rosa-Escambia Regional Transportation Finance Authority serving Escambia and Santa Rosa counties, and
- the Suncoast Regional Transportation Finance Authority serving Citrus, Levy, Marion, and Alachua counties.

This section authorizes a county, or two or more contiguous counties, to form a regional transportation finance authority for the purposes of financing, constructing, maintaining, and operating transportation projects in a region of this state, if approved by the Legislature and the county commission of each county that will be part of the authority, and specifies that there be only one authority created and operating within the area served by the authority. Other provisions include:

- The governance and powers and duties of the authority;
- The authority to issue bonds and provide for the rights and remedies of bondholders;
- Naming the FDOT as the agent of each authority for the purpose of performing all phases of a project, including constructing improvements and extensions to the system; and for the purpose of operating and maintaining the system;
- Reimbursement to the FDOT for costs incurred for operating and maintaining the system from system revenues; and
- Exemption from certain taxation for an authority.

Section 56 transfers to the Northwest Florida Regional Transportation Finance Authority the governance and control of the Mid-Bay Bridge Authority, including the assets, facilities, tangible and intangible property and any rights in such property, and any other legal rights of the Mid-Bay Bridge Authority, including the bridge system operated by the authority. Activities relating to the Mid-Bay Bridge will be monitored under the Transportation Commission's existing oversight over entities created pursuant to ch. 343, F.S.

Section 57 amends s. 348.751, F.S., to change the short title of part III of ch. 348, F.S., from the "Orlando-Orange County Expressway Authority Law" to the "Central Florida Expressway Authority Law."

Section 58 amends s. 348.752, F.S., to define:

- "Central Florida Expressway Authority" (CFX) to mean the body politic and corporate and agency of the state;
- "Central Florida Expressway System," to mean a transportation facility, expressway, or appurtenant facility, and
- "Transportation facilities" to mean and include the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance, and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations granted in this part.

Research reveals no language elsewhere in ch. 348, F.S., that would include in any definition or in any other provision under current law the "administrative and other office space" of an expressway authority. This definition presumably would allow CFX to finance or even bond expenses for administrative and other office space.

This section of the bill also deletes the definitions of "city" and "county," revises various definitions to conform terminology to the renaming, and makes various other editorial and grammatical changes.

Section 59 amends s. 348.753, F.S., in which the OOCEA is created, to replace the OOCEA and:

- Create the Central Florida Expressway Authority (CFX), effective July 1, 2014;

- Require that CFX assume the governance and control of the OOCEA System, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property;
- Transfer any rights in such property and other OOCEA legal rights to CFX; and
- Provide that the powers, responsibilities, and obligations of the OOCEA shall succeed to and be assumed by CFX on July 1, 2014.

The bill also provides for eleven members of the CFX governing board as follows:

- Three members appointed by the chairs of the boards of county commissioners of Seminole, Lake, and Osceola Counties, which members may be a commission member or chair;
- Xix citizen members appointed by the Governor, two of which must be Orange County citizens; one member each of which must be a citizen of Seminole, Lake, and Osceola Counties; and one member which may be a citizen of any of the identified counties;
- The tenth member must be the City of Orlando Mayor; and
- The executive director of the Turnpike Enterprise serves as a nonvoting advisor to the governing board of the authority.

The Governor's appointees are to serve four-year terms; county-appointed members are to serve two-year terms; and currently standing OOCEA board members are to complete their terms. A person who is an officer or employee of a municipality or county may not be an appointed member, except as otherwise provided.

In addition, the bill provides for election of CFX officers, provides quorum and voting requirements, makes editorial and grammatical changes, and conforms terminology to the renaming.

Section 60 amends s. 348.754, F.S., setting forth purposes and powers, to:

- Provide, with specified exception, that the CFX area served is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties.
- Include in the authority to construct the Central Florida Expressway System rapid transit, trams, fixed guideways, thoroughfares, and boulevards.
- Prohibit CFX, without the prior consent of the FDOT secretary, from constructing an extension, addition, or improvement to the expressway system in Lake County, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT.
- Authorize CFX to enter into leases, as lessee or lessor, for terms not exceeding 99 years, rather than the 40 years to which the OOCEA is currently limited, to facilitate projects that will require leases of a longer term. For example, stakeholders involved in the All Aboard Florida passenger rail project desire a longer term.
- Authorize CFX to enter into lease-purchase agreements with the FDOT for terms not exceeding 99 years, or until any bonds secured by a pledge of rentals pursuant to the agreement and any refunding pursuant to the agreement are fully paid, whichever is longer.
- Deem CFX a party to the existing lease-purchase agreement with the FDOT.

- Prohibit CFX from entering into other lease-purchase agreements with the FDOT or from amending the existing agreement in a manner that expands or increases the FDOT's obligations unless the FDOT determines the agreement or amendment is necessary to permit the refunding of bonds issued before July 1, 2012.
- Prohibit use of toll revenues from an increase in the toll rates charged on July 1, 2014, to construct or expand a different facility absent a two-thirds majority vote of the members, with specified exceptions.
- Authorize use of revenues of the expressway system within the right-of-way of the system for certain purposes, if the expenditures are consistent with the MPO's adopted long-range plan and notwithstanding s. 338.165, F.S., relating to continuation of tolls.
- Provide that specified bonds must mature not more than 40 years after their issue date.
- Authorize CFX to construct, operate, and maintain transportation facilities (in addition to roads, bridges, avenues of access, thoroughfares, and boulevards, and electronic toll payment systems on such roads and bridges, etc., outside the boundaries of Seminole, Lake, and Osceola Counties (in addition to Orange County) with the consent of the county within whose jurisdiction the activities occur.
- Remove the municipal governing board approval of a project route currently required before acquisition of right-of-way for an OOCEA project within the boundaries of Orange County.
- Require CFX to encourage the inclusion of local-, small-, minority-, and women-owned business in its procurement and contracting opportunities.
- Authorize CFX, within the right-of-way of the system, to finance or refinance the planning, design, construction, extension, maintenance, etc., of an intermodal facility or facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system.
- Remove provisions authorizing the OOCEA to waive payment and performance bonds on certain construction contracts and related small business provisions.
- Make editorial and grammatical changes and conform terminology to the renaming.

Sections 61-67 amend ss. 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, and 348.756, F.S., relating to bond financing authority for improvements, construction and financing of the Northwest Beltway Part A, construction and financing of the Western Beltway Part C, construction and financing of the Wekiva Parkway, construction and financing of the Maitland Boulevard Extension and Northwest Beltway Part A realignment, bonds of the authority, and remedies of the bondholders, respectively, to make editorial and grammatical changes and conform terminology to the renaming.

Section 68 amends s. 348.757, F.S., relating to lease-purchase agreements with the FDOT, to insert references to the *former* OOCEA system, make editorial changes, and conform terminology to the renaming.

Sections 69-74 amend ss. 348.758, 348.759, 348.760, 348.761, 348.765, and 369.317, F.S., relating to appointment of FDOT as construction agent for the authority; acquisition of lands and property; cooperation with other units, boards, agencies, and individuals; covenant of the state; complete and additional authority, and Wekiva Parkway, respectively, to make editorial and grammatical changes and conform terminology to the renaming.

Section 75 amends s. 369.324, F.S., to reduce the membership of the Wekiva River Basin Commission from 19 to 18 members appointed by the Governor, nine of whom remain as voting members, and reducing from ten to nine the number of ad hoc nonvoting members, removing the representative from the previously repealed Seminole County Expressway Authority.

Section 76, effective upon the completion of construction of the Poinciana Parkway, transfers all powers, governance, and control of the Osceola County Expressway System, and the assets, liabilities, facilities, tangible and intangible property and any rights in the property, as well as any other legal rights, to CFX, with specified extension of the transfer date until completion of certain projects. This section of the bill also repeals part V, ch. 348, F.S., consisting of ss. 348.9950 – 348.9961, F.S., on the same date that the Osceola County Expressway System is transferred to CFX. This section also requires CFX to reimburse other governmental entities for obligations related to the Osceola County Expressway System.

Section 77 amends s. 373.4137, F.S., to provide that mitigation take place in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness. The bill requires the following for the development of environmental impact inventories for transportation projects proposed by the FDOT or a transportation authority:

- The FDOT must submit an environmental impact inventory of habitat impacts and the anticipated amount of mitigation needed to offset the impacts to the WMDs by July 1, and may include in the inventory the habitat impacts and the anticipated amount of mitigation needed for future projects; and
- The environmental impact inventory must include the proposed amount of mitigation needed based on the Uniform Mitigation Assessment Method (UMAM) and identification of the proposed mitigation option.

The bill requires FDOT to consider using credits from a permitted mitigation bank before projects are identified for inclusion in a WMD plan, taking into account state and federal requirements, maintenance, and liability.

The bill allows FDOT to implement the mitigation option identified in the environmental impact inventory by:
- Purchasing credits for current and future use directly from a mitigation bank;
- Purchasing mitigation services through the WMDs or the DEP;
- Conducting its own mitigation; or
- Using other mitigation options that meet state and federal requirements.

The bill requires funding for the identified mitigation option in the inventory to be included in FDOT's work program under s. 339.135, F.S., and requires and the amount programmed each year to correspond to an estimated cost of $150,000 per mitigation credit, multiplied by the projected number of credits identified in the inventory. The estimated cost per credit will be adjusted every two years by FDOT based on the average cost per UMAM credit.

The bill specifies that for mitigation implemented by the WMDs or the DEP, the amount paid each year must be based on mitigation services provided by the WMD or the DEP pursuant to an

approved WMD mitigation plan. The WMDs or the DEP may request payment no sooner than 30 days before the date the funds are needed.

The bill requires that each quarter, the projected amount of mitigation must be reconciled with the actual amount of mitigation needed for projects as permitted. The programming of funds must be adjusted to reflect the mitigation as permitted.

FDOT may use the associated funds for the purchase of mitigation bank credits or any other mitigation option that satisfies the requirements, if the:

- WMD excludes a project from an approved WMD mitigation plan;
- WMD cannot timely permit a mitigation site to offset the impacts of an FDOT project identified in the inventory; or
- Proposed mitigation does not meet state and federal requirements.

The bill specifies that the WMD or the DEP, as appropriate, has continuing responsibility for the mitigation project upon final payment for mitigation and FDOT's or the participating transportation authority's obligation is satisfied.

The bill requires each WMD or the DEP to invoice the FDOT for mitigation services to offset only the impacts of an FDOT project identified in the inventory, beginning with the March 2014 WMD plans. If the WMD identifies the use of mitigation bank credits to offset an FDOT impact, the WMD must exclude that purchase from the mitigation plan and the FDOT must purchase the bank credits.

The bill requires that for mitigation activities occurring on existing WMD or DEP mitigation sites initiated with FDOT mitigation funds prior to July 1, 2013, the WMD or the DEP is required to invoice FDOT at $75,000 per acre multiplied by the projected acres of impact. The cost per acre must be adjusted by a calculation using the CPI.

The WMD must maintain records of the costs incurred including:

- Planning;
- Land acquisition;
- Design and construction;
- Staff support, long-term maintenance and monitoring of the mitigation site; and
- Other costs necessary to meet federal requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. s. 332.

The bill requires the funds identified in the FDOT's work program or participating transportation authorities' escrow accounts, for preparing and implementing the mitigation plans, adopted by the WMDs on or before March 1, 2013, to correspond to $75,000 per acre multiplied by the projected acres of impact, adjusted by the CPI. The WMD must maintain records of the costs incurred in implementing the mitigation. If monies paid to a WMD exceed the amount spent by the WMD to implement the mitigation, the funds must be refunded to FDOT or the participating transportation authority. This provision expires June 30, 2014.

The bill requires each WMD to develop a plan to offset only the impacts of transportation projects in the inventory for which a WMD is implementing mitigation. The WMD plan must identify the site where the WMD will mitigate, the scope of the mitigation activities at each mitigation site, and the functional gain at each mitigation site as determined using UMAM. The mitigation plan must be submitted to the WMD's governing board for review and approval. The bill requires that the WMD provide a copy of the draft mitigation plan to the DEP at least 14 days before governing board approval. The plan may not be implemented until it is subsequently approved by the DEP. The bill also requires the plan to describe how the mitigation offsets the impacts of each transportation project and provide a schedule for the mitigation services.

Section 78 amends s. 373.618, F.S., to provide that a public information system located on WMD property that is subject to the Highway Beautification Act of 1965 must be approved by the FDOT and the Federal Highway Administration, if such approval is required by federal law.

Section 79 amends s. 341.052, F.S., relating to the public transit block grant program, to prohibit a public transit provider from using public transit block grant funds to pursue or promote the levy of new or additional taxes through public referenda. It also reduces the amount of a provider's grant to the extent that a public transit provider so uses other public funds and defines the term "public funds" for purposes of the prohibition.

Section 80 provides that the bill takes effect upon becoming law, except as otherwise expressly provided.

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

Section 6

The increased allowable weight of APUs decreases the potential fine for a commercial motor vehicle overweight violation by no more than $7.50.

Section 9

Motor fuel tax funds paid by citizens and businesses in a particular locality may be at less risk of diversion to a different area of the state in a manner contrary to the statutory allocation for those funds if the funds were expended by FDOT through its normal work program process, rather than through a lease-purchase agreement.

Section 15

Those wishing to submit proposals for lease of FDOT property that FDOT wishes to consider will be subject to an application fee sufficient to pay the anticipated cost of evaluating the proposal, to be established by FDOT rule. Opportunities for private consultant contracts with FDOT are authorized.

Section 42

Revision of the definition of "intercity bus service" allows companies other than Greyhound Bus Lines to compete for federal and state program funds.

C. Government Sector Impact:

Section 1

The FTC will incur additional expenditures associated with monitoring the regional transportation finance authorities. These expenses are expected to be absorbed within existing resources. However, the FTC notes that, depending on the number of authorities eventually established, additional FTE(s) may be needed to effectively conduct its responsibility.

Section 5

Removing the obsolete language regarding wrecker permits will avoid any negative impact to the state from a potential federal funds penalty for failure to comply with federal commercial motor vehicle requirements, as giving effect to the obsolete provisions would render the state noncompliant with federal law.

Section 6

The increased allowable weight of APUs decreases a potential fine by no more than $7.50.

Section 15

The FDOT's costs associated with evaluating lease proposals pursuant to s. 337.251, F.S., would presumably be covered by the application fee the FDOT is required to establish by rule, particularly if the fee includes the cost of private consultants the FDOT is authorized to engage to assist in its evaluations.

Section 18

The obligations of Alligator Alley toll revenues to operate a local fire station and of the FDOT to transfer excess toll revenues to the Everglades Restoration Fund beyond that which is agreed to in the Memorandum of Understanding between the FDOT and the SFWMD, are removed. A positive fiscal impact to the state is expected.

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.)

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 11, 2013:
The committee substitute:

- Removes all language relating to the following issues previously contained in the bill:
  - Bus benches in state road rights-of-way,
  - Local government noise mitigation regulations,
  - Aviation fuel tax revisions,
  - Natural gas fuel taxation, and
  - The FDOT's authority to undertake ancillary development in state-owned rail corridors.
- Adds the following new issues to the bill:
  - Renames and reconfigures the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority and revises related provisions;
  - Renames and reconfigures the Orlando-Orange County Expressway Authority as the Central Florida Expressway Authority and revises related provisions, including extending the allowed term of leases from 40 to 99 years;
  - Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way;

- Prohibits the expenditure of public transit block grant funds to pursue or promote the levy of new or additional taxes through public referenda.
- Revises provisions relation to environmental mitigation for transportation projects, state park road maintenance, water management district public information systems, and the FDOT purchase of plant materials for roadside enhancement and maintenance;
- Authorizes the FDOT to administer the small county dredging program and sunsets the program on July 1, 2018;
- Repeals the Florida Transportation Corporation Act and related audit authority; and

- Makes technical and conforming changes.

CS by Community Affairs on March 20, 2013:
The committee substitute:

- Removes reference to the Mid-Bay Bridge Authority and inserts a reference to the new ch. 345, F.S., in s. 20.23, F.S. The bill also transfers the Mid-Bay Bridge Authority to the Okaloosa-Bay Regional Tollway Authority, which is governed by the provisions of the new ch. 345, F.S. The reference to the new ch. 345, F.S., subjects the Okaloosa-Bay Regional Tollway Authority, and any other regional tollway authority created in the bill or subsequently created under provisions in the new ch. 345, F.S., to oversight and monitoring by the Florida Transportation Commission, as are various other expressway, road and bridge, and regional transportation authorities. The amendment also strikes a phrase referencing subsection (3), which subsection establishes the Florida Statewide Passenger Rail Commission, as the bill also repeals the Florida Statewide Passenger Rail Commission.
- Provides that the $15 million minimum annual funding authorized to be made available from the State Transportation Trust Fund for space transportation projects shall be from the funds dedicated to public transportation projects pursuant to s. 206.46(3), F.S.
- Removes from the bill provisions for the "Spaceport Investment Program," which required allocation of $5 million annually, for up to 30 years, for the purpose of funding any spaceport project identified in the FDOT's Adopted Work Program; and authorized the revenues to be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or other forms of indebtedness issued by Space Florida, or used to purchase credit support to permit such borrowings.
- Removes from the bill authorization for installation of parking meters or other time-limit devices within the right-of-way limits of a state road if permitted by the FDOT; removes direction requiring each county and municipality to promptly remit to the FDOT 50 percent of the revenue generated from the fees collected by a parking meter or other time-limit device installed or already existing within the right-of-way limits of a state road under the FDOT's jurisdiction; and removes the requirements that funds received by the FDOT to be deposited into the STTF and used in accordance with s. 339.08, F.S.
- Adds to the bill the provisions of CS/SB 579, establishing a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning in 2019,

eliminating the current decal program for vehicles powered by alternative fuels, and repealing the Local Alternative Fuel User Fee Clearing Trust Fund.

- Adds to the bill the revised bus bench and bus shelter language shifting liability from the cities and counties to the private owner installers of bus benches and bus shelters within the right-of-way of the SHS.
- Makes technical changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 633 and 634
insert:

Section 5. Paragraph (a) of subsection (3) of section 316.515, Florida Statutes, is amended to read

316.515 Maximum width, height, length.—

(3) LENGTH LIMITATION.—Except as otherwise provided in this section, length limitations apply solely to a semitrailer or trailer, and not to a truck tractor or to the overall length of a combination of vehicles. No combination of commercial motor vehicles coupled together and operating on the public roads may

consist of more than one truck tractor and two trailing units. Unless otherwise specifically provided for in this section, a combination of vehicles not qualifying as commercial motor vehicles may consist of no more than two units coupled together; such nonqualifying combination of vehicles may not exceed a total length of 65 feet, inclusive of the load carried thereon, but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Notwithstanding any other provision of this section, a truck tractor-semitrailer combination engaged in the transportation of automobiles or boats may transport motor vehicles or boats on part of the power unit; and, except as may otherwise be mandated under federal law, an automobile or boat transporter semitrailer may not exceed 50 feet in length, exclusive of the load; however, the load may extend up to an additional 6 feet beyond the rear of the trailer. The 50-feet length limitation does not apply to non-stinger-steered automobile or boat transporters that are 65 feet or less in overall length, exclusive of the load carried thereon, or to stinger-steered automobile or boat transporters that are 75 feet or less in overall length, exclusive of the load carried thereon. For purposes of this subsection, a "stinger-steered automobile or boat transporter" is an automobile or boat transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit. Notwithstanding paragraphs (a) and (b), any straight truck or truck tractor-semitrailer combination engaged in the transportation of horticultural trees may allow the load to extend up to an additional 10 feet beyond the rear of the

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vehicle, provided said trees are resting against a retaining bar mounted above the truck bed so that the root balls of the trees rest on the floor and to the front of the truck bed and the tops of the trees extend up over and to the rear of the truck bed, and provided the overhanging portion of the load is covered with protective fabric.

(a) *Straight trucks.*—A straight truck may not exceed a length of 40 feet in extreme overall dimension, exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. A straight truck may attach a forklift to the rear of the cargo bed, provided the overall combined length of the vehicle and the forklift does not exceed 50 feet. A straight truck may tow no more than one trailer, and the overall length of the truck-trailer combination may not exceed 68 feet, including the load thereon. Notwithstanding any other provisions of this section, a truck-trailer combination engaged in the transportation of boats, or boat trailers whose design dictates a front-to-rear stacking method may not exceed the length limitations of this paragraph exclusive of the load; however, the load may extend up to an additional 6 feet beyond the rear of the trailer.

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

And the title is amended as follows:

Delete line 19

and insert:

repeal of the section; amending s. 316.515, F.S.; providing that a straight truck may attach a forklift to the rear of the cargo bed if it does not exceed a

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71 specified length; repealing s. 316.530(3), F.S.,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Between lines 814 and 815
insert:

Section 10. Subsection (6) is added to section 335.0415, Florida Statutes, to read:

335.0415 Public road jurisdiction and transfer process.—

(6) Notwithstanding the provisions of subsections (1)-(5) or any other provision of law to the contrary, it is the intent of the Legislature that, as a pilot program, the City of Miami be provided and assume certain responsibilities for the maintenance of State Road 5/Brickell Avenue/Biscayne Boulevard

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within defined limits in the City of Miami.

(a) The department shall enter into an interlocal agreement with the City of Miami which must provide that the City of Miami be responsible for street cleaning, landscaping, and maintenance of the right-of-way of State Road 5/Brickell Avenue/Biscayne Boulevard, from its intersection with Interstate 95 to its intersection with Northeast 15th Street, excluding the Brickell Bridge and its approaches, for a 5-year period. The interlocal agreement must:

1. Contain performance measures to ensure that the facility and landscaping are maintained in accordance with applicable department standards.

2. Require the city to meet or exceed the performance measures as a condition of payment by the department for the work performed by the city.

3. Indemnify and hold the department harmless from any liability arising out of the city's exercise of, or failure to exercise, the transferred responsibilities.

(b) During the final year of the 5-year pilot program, the Florida Transportation Commission shall conduct a study to evaluate the effectiveness and benefits of the pilot program. The commission may retain such experts as are reasonably necessary to complete the study, and the department shall pay the expenses of such experts. The commission shall complete the study within 60 days after the end of the 5-year pilot program and shall provide a written report of its findings and conclusions to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of each of the appropriations committees of the Legislature.

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43 ================ T I T L E A M E N D M E N T ================
44 And the title is amended as follows:
45 Delete line 40
46 and insert:
47 law or regulation; amending s. 335.0415, F.S.;
48 creating a pilot program in the City of Miami to
49 transfer department responsibilities for public road
50 maintenance to the city; requiring the department to
51 enter into an interlocal agreement with the City of
52 Miami; specifying requirements of the interlocal
53 agreement; requiring the Florida Transportation
54 Commission to conduct a study at the conclusion of the
55 pilot program and provide the study to the Governor
56 and the Legislature; requiring the department to pay
57 the expenses of the study’s experts; amending s.
58 335.06, F.S.; revising

499346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 827 and 828
insert:

Section 11. Section 336.71, Florida Statutes, is created to read:

336.71 Public-private cooperation in construction of county roads.—

(1) If a county receives a proposal, solicited or unsolicited, from a private entity seeking to construct, extend, or improve a county road or portion thereof, the county may enter into an agreement with the private entity for completion

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of the road construction project, which agreement may provide for payment to the private entity, from public funds, if the county conducts a noticed public hearing and finds that the proposed county road construction project:

(a) Is in the best interest of the public.

(b) Would only use county funds for portions of the project that will be part of the county road system.

(c) Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and residents of the state.

(d) Upon completion, would be a part of the county road system owned by the county.

(e) Would result in a financial benefit to the public by completing the subject project at a cost to the public significantly lower than if the project were constructed by the county using the normal procurement process.

(2) The notice for the public hearing provided for in subsection (1) must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project and the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to accept the proposal and enter into an agreement. The determination of cost savings pursuant to paragraph (1)(e) must be supported by a cost estimate of a professional engineer which is made available to the public at least 14 days before the public meeting and placed in the record for that meeting.

(3) The project and agreement are exempt from s. 255.20

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pursuant to s. 255.20(1)(c)11. if the process in subsection (1) is followed.

(4) Except as otherwise expressly provided in this section, this section does not affect existing law by granting additional powers to or imposing further restrictions on local government entities.

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

And the title is amended as follows:

Delete line 44

and insert:

within the state park system; creating s. 336.71, F.S.; authorizing counties to enter into public-private partnership agreements for construction of transportation facilities; providing requirements and limitations for such agreements; providing procurement procedures; providing for applicability; amending s. 337.11,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete lines 1051 - 1058
and insert:
the department's current estimate of value. ~~the department begins the process for disposing of the property on its own initiative, either by negotiation under the provisions of paragraph (a), paragraph (c), paragraph (d), or paragraph (i), or by receipt of sealed competitive bids or public auction under the provisions of paragraph (b) or paragraph (i), a department staff appraiser may determine the fair market value of the property by an appraisal.~~

632806

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1733 - 1734
and insert:
Section 44. New subsections (2) and (7) are added to section 341.8203, Florida Statutes, to read:
341.8203 Definitions.—As used in ss. 341.8201-341.842, unless the context clearly indicates otherwise, the term:
(1) "Associated development" means property, equipment, buildings, or other related facilities which are built, installed, used, or established to provide financing, funding, or revenues for the planning, building, managing, and operation

of a high-speed rail system and which are associated with or part of the rail stations. The term includes air and subsurface rights, services that provide local area network devices for transmitting data over wireless networks, parking facilities, retail establishments, restaurants, hotels, offices, advertising, or other commercial, civic, residential, or support facilities.

(2) "Communication facilities" means the communication systems related to high-speed passenger rail operations, including those which are built, installed, used, or established for the planning building, managing, and operating of a high-speed rail system. The term includes the land, structures, improvements, rights-of-way, easements, positive train control system, wireless communication towers and facilities that are designed to provide voice and data services for the safe and efficient operation of the high-speed rail system and as amenities that may be made available to crew and passengers as part of a high-speed rail service, and any other facilities or equipment used for operation of, or the facilitation of communications for, a high-speed rail system.

(3) ~~(2)~~ "Enterprise" means the Florida Rail Enterprise.

(4) ~~(3)~~ "High-speed rail system" means any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the United States Department of Transportation, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the enterprise. The term includes a corridor,


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associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.

(5) ~~(4)~~ "Joint development" means the planning, managing, financing, or constructing of projects adjacent to, functionally related to, or otherwise related to a high-speed rail system pursuant to agreements between any person, firm, corporation, association, organization, agency, or other entity, public or private.

(6) ~~(5)~~ "Rail station," "station," or "high-speed rail station" means any structure or transportation facility that is part of a high-speed rail system designed to accommodate the movement of passengers from one mode of transportation to another at which passengers board or disembark from transportation conveyances and transfer from one mode of transportation to another.

(7) "Railroad company" means a person developing, or providing service on, a high-speed rail system.

(8) ~~(6)~~ "Selected person or entity" means the person or entity to whom the enterprise awards a contract to establish a high-speed rail system pursuant to ss. 341.8201-341.842.

Section 45. Paragraph (c) is added to subsection (2) of section 341.822, Florida Statutes, to read:

341.822 Powers and duties.—

(2)(a) In addition to the powers granted to the department, the enterprise has full authority to exercise all powers granted to it under this chapter. Powers shall include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system, to acquire corridors, and to coordinate the development and operation of publicly funded passenger rail systems in the state.

(b) It is the express intention of ss. 341.8201-341.842 that the enterprise be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system; to expend funds to publicize, advertise, and promote the advantages of using the high-speed rail system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private, to accomplish these purposes.

(c) The enterprise shall establish a process to issue permits to railroad companies for the construction of communication facilities within a new or existing public or private high-speed rail system. The enterprise may adopt rules to administer such permits, including rules regarding the form, content, and necessary supporting documentation for permit applications, the process for submitting applications, and the application fee for a permit under s. 341.825.

Section 46. Section 341.825, Florida Statutes, is created to read:

341.825 Communication facilities.—

(1) LEGISLATIVE INTENT.—The Legislature intends to:

(a) Establish a streamlined process to authorize the

location, construction, operation, and maintenance of communication facilities within new and existing high-speed rail systems.

(b) Expedite the expansion of the high-speed rail system's wireless voice and data coverage and capacity for the safe and efficient operation of the high-speed rail system and the safety, use, and efficiency of its crew and passengers as a critical communication facilities component.

(2) APPLICATION SUBMISSION.—A railroad company may submit to the enterprise an application to obtain a permit to construct communication facilities within a new or existing high speed rail system. The application shall include an application fee that shall not exceed $10,000, which shall be deposited into the State Transportation Trust Fund. The application shall include the following information:

(a) The location of the proposed communication facilities.

(b) A description of the proposed communication facilities.

(c) Any other information reasonably required by the enterprise.

(3) APPLICATION REVIEW.—The enterprise shall review each application for completeness within 30 days after receipt of the application.

(a) If the enterprise determines that an application is not complete, the enterprise shall, within 30 days after the receipt of the initial application, notify the applicant in writing of any errors or omissions. An applicant shall have 30 days within which to correct the errors or omissions in the initial application.

(b) If the enterprise determines that an application is

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complete, the enterprise shall act upon the permit application within 60 days of the receipt of the completed application by approving in whole, approving with conditions as the enterprise deems appropriate, or denying the application, and stating the reason for issuance or denial. In determining whether an application should be approved, approved with modifications or conditions, or denied, the enterprise shall consider the extent to which the proposed communication facilities:

1. Are located in a manner that is appropriate for the communication technology specified by the applicant.

2. Serve an existing or projected future need for communication facilities.

3. Provide sufficient wireless voice and data coverage and capacity for the safe and efficient operation of the high-speed rail system and the safety, use, and efficiency of its crew and passengers.

(4) EFFECT OF PERMIT.—Subject to the conditions set forth therein, a permit issued by the enterprise shall constitute the sole permit of the state and any agency as to the approval of the location, construction, operation, and maintenance of the communication facilities within the new or existing high speed rail system.

(a) A permit authorizes the permittee to locate, construct, operate, and maintain the communication facilities within a new or existing high speed rail system, subject only to the conditions set forth in the permit. Such activities are not subject to local government land use or zoning regulations.

(b) A permit may include conditions that constitute variances and exemptions from rules of the enterprise or any

other agency, which would otherwise be applicable to the communication facilities within the new or existing high speed rail system.

(c) The permit shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency under, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 258, chapter 298, chapter 373, chapter 376, chapter 379, chapter 380, chapter 381, chapter 403, chapter 404, chapter 553, and the Florida Transportation Code.

(d) If any provision of this section is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this section shall control and such law, rule, regulation, or ordinance shall be deemed superseded. Nothing in this section is intended to impose procedures or restrictions on railroad companies that are subject to the exclusive jurisdiction of the federal Surface Transportation Board pursuant to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. ss. 10101, et seq.

(5) MODIFICATION OF PERMIT.—A permit may be modified by the applicant after issuance upon the filing of a petition with the enterprise.

(a) A petition for modification must set forth the proposed modification and the factual reasons asserted for the modification.

(b) The enterprise shall act upon the petition within 30 days by approving or denying the application, and stating the reason for issuance or denial.


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Section 47. Paragraph (b) of subsection (2) of section 341.840, is amended to read:

341.840 Tax exemption.—

(2)

(b) For the purposes of this section, any item or property that is within the definition of the term "associated development" in s. 341.8203(1) may not be considered part of the high-speed rail system as defined in s. 341.3203(4) ~~341.8203(3)~~.

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

And the title is amended as follows:

Delete line 151

and insert:

of the intermodal development program; amending s. 341.3203, F.S.; defining the terms "communication facilities" and "railroad company;" amending s. 341.822, F.S.; directing the Florida Rail Enterprise to establish a process to issue permits to railroad companies for the construction of communication facilities within a new or existing public or private high-speed rail system; authorizing the enterprise to adopt rules to administer the permits, including rules regarding the application, submission of the application, and an application fee; providing Legislative intent; authorizing a railroad company to submit to the enterprise an appl8ication to obtain a permit to construct communication facilities within a new or existing high-speed rail system; limiting the application fee; requiring the application fee to be


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deposited into the State Transportation Trust Fund; specifying information to be included in the application; directing the enterprise to review each application for completeness within 30 days of receipt; requiring the enterprise to provide a specified notice in writing of an incomplete application; providing an application 30 days within which to correct errors or omissions in the initial application; requiring the enterprise to act upon complete applications within 60 days of receipt; providing criteria for enterprise consideration in determining whether an application should be approved, approved with modifications or conditions, or denied; providing that a permit issued by the enterprise constitutes the sole permit of the state or any agency as to approval of communication facilities within the new or existing high-speed rail system; providing that a permit authorizes the location, construction, operation, and maintenance of the communication facilities, subject only to conditions set forth in the permit; providing that such activities are not subject to local government land use or zoning regulations; authorizing a permit to include conditions constituting variances and exemptions from rules of the enterprise or any other agency; providing that the permit is in lieu of any license, permit, certification, or similar document required by any state, regional, or local agency under, but not limited to, certain provisions of law; providing that

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the section controls and supersedes any conflicting law, rule, regulation, or ordinance; providing that the section is not intended to impose restrictions on railroad companies that are subject to certain federal law; providing a procedure for modification of a permit; revising a cross-reference; amending s.

753148

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment to Amendment (632806)

Delete line 3
and insert:
Between lines 1733 - 1734

894362

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1973 - 1974
and insert:
(i) ~~(j)~~ Without limitation of the foregoing, to ~~borrow money and~~ accept grants from and to enter into contracts, leases, or

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 188
and insert:
agreements with the department; removing the

894362

authority's power to borrow money from any federal agency, the state, any agency of the state, or any other public body of the state; amending s. 343.83,

593382

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete line 2348
and insert:
accept grants from, and to enter into

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2388 - 2610

and insert:

secure bonds; and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2)(a) Bonds issued by an authority pursuant to paragraph (1)(a) or paragraph (1)(b) must be authorized by resolution of the members of the authority and must bear such date or dates; mature at such time or times, not exceeding 30 years after their respective dates; bear interest at such rate or rates, not

exceeding the maximum rate fixed by general law for authorities; be in such denominations; be in such form, either coupon or fully registered; carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption; and be entitled to such priorities of lien on the revenues and other available moneys as such resolution or any resolution subsequent to the bonds' issuance may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature that is manually executed thereon. The coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as designated by the authority. Such bonds shall have the seal of the authority affixed, imprinted, reproduced, or lithographed thereon.

(b) Bonds issued pursuant to paragraph (1)(a) or paragraph (1)(b) must be sold at public sale in the same manner provided in the State Bond Act. Pending the preparation of definitive bonds, temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(3) A resolution that authorizes any bonds may contain provisions that must be part of the contract with the holders of the bonds, as to:

(a) The pledging of all or any part of the revenues, available municipal or county funds, or other charges or receipts of the authority derived from the regional system.

(b) The construction, reconstruction, improvement,

extension, repair, maintenance, and operation of the system, or any part or parts of the system, and the duties and obligations of the authority with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter issued, or of any loan or grant by any federal agency or the state or any political subdivision of the state may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing, and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the system or any part of the system.

(e) The setting aside of reserves or of sinking funds and the regulation and disposition of the reserves or sinking funds.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any deed of trust or indenture securing the bonds, or under which the bonds may be issued.

(h) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(4) The authority may enter into any deeds of trust, indentures, or other agreements with any bank or trust company within or without the state, as security for such bonds, and may, under such agreements, assign and pledge any of the revenues and other available moneys, including any available municipal or county funds, pursuant to the terms of this chapter. The deed of trust, indenture, or other agreement may contain provisions that are customary in such instruments or that the authority may authorize, including, but without

limitation, provisions that:

(a) Pledge any part of the revenues or other moneys lawfully available therefor.

(b) Apply funds and safeguard funds on hand or on deposit.

(c) Provide for the rights and remedies of the trustee and the holders of the bonds.

(d) Provide for the terms and provisions of the bonds or for resolutions authorizing the issuance of the bonds.

(e) Provide for any other or additional matters, of like or different character, which affect the security or protection of the bonds.

(5) Any bonds issued pursuant to this act are negotiable instruments and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) A resolution that authorizes the issuance of authority bonds and pledges the revenues of the system must require that revenues of the system be periodically deposited into appropriate accounts in such sums as are sufficient to pay the costs of operation and maintenance of the system for the current fiscal year as set forth in the annual budget of the authority and to reimburse the department for any unreimbursed costs of operation and maintenance of the system from prior fiscal years before revenues of the system are deposited into accounts for the payment of interest or principal owing or that may become owing on such bonds.

(7) State funds may not be used or pledged to pay the principal or interest of any authority bonds, and all such bonds must contain a statement on their face to this effect.

345.0006 Remedies of bondholders.—

(1) The rights and the remedies granted to authority bondholders under this chapter are in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or indenture providing for the issuance of bonds, or by any deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If an authority defaults in the payment of the principal of or interest on any of the bonds issued pursuant to this chapter after such principal of or interest on the bonds becomes due, whether at maturity or upon call for redemption, as provided in the resolution or indenture, and such default continues for 30 days, or in the event that the authority fails or refuses to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes of the default provided that the holders of 25 percent in aggregate principal amount of the bonds then outstanding first gave written notice of their intention to appoint a trustee, to the authority and to the department.

(2) The trustee, and any trustee under any deed of trust, indenture, or other agreement, may, and upon written request of the holders of 25 percent, or such other percentages specified in any deed of trust, indenture, or other agreement, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his, her, or its own name:

(a) By mandamus or other suit, action, or proceeding at

law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) Bring suit upon the bonds.

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders.

(d) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

(3) A trustee, if appointed pursuant to this section or acting under a deed of trust, indenture, or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver. The receiver may enter upon and take possession of the system or the facilities or any part or parts of the system, the revenues and other pledged moneys, for and on behalf of and in the name of, the authority and the bondholders. The receiver may collect and receive all revenues and other pledged moneys in the same manner as the authority might do. The receiver shall deposit all such revenues and moneys in a separate account and apply all such revenues and moneys remaining after allowance for payment of all costs of operation and maintenance of the system in such manner as the court directs. In a suit, action, or proceeding by

the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court must be a first charge on any revenues after payment of the costs of operation and maintenance of the system. The trustee also has all other powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) This section or any other section of this chapter does not authorize a receiver appointed pursuant to this section for the purpose of operating and maintaining the system or any facilities or parts thereof to sell, assign, mortgage, or otherwise dispose of any of the assets belonging to the authority. The powers of such receiver are limited to the operation and maintenance of the system, or any facility or parts thereof and to the collection and application of revenues and other moneys due the authority, in the name and for and on behalf of the authority and the bondholders. A holder of bonds or any trustee does not have the right in any suit, action, or proceeding, at law or in equity, to compel a receiver, or a receiver may not be authorized or a court may not direct a receiver to, sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

345.0007 Department to construct, operate, and maintain facilities.—

(1) The department is the agent of each authority for the purpose of performing all phases of a project, including, but not limited to, constructing improvements and extensions to the

system. The authority shall provide to the department complete copies of the documents, agreements, resolutions, contracts, and instruments that relate to the project and shall request that the department perform the construction work, including the planning, surveying, design, and actual construction of the completion, extensions, and improvements to the system. After the issuance of bonds to finance construction of an improvement or addition to the system, the authority shall transfer to the credit of an account of the department in the State Treasury the necessary funds for construction. The department shall proceed with construction and use the funds for the purpose authorized and as otherwise provided by law for construction of roads and bridges. An authority may alternatively, with the consent and approval of the department, elect to appoint a local agency certified by the department to administer federal aid projects in accordance with federal law as the authority's agent for the purpose of performing each phase of a project.

(2) Notwithstanding the provisions of subsection (1), the department is the agent of each authority for the purpose of operating and maintaining the system. The department shall operate and maintain the system, and the costs incurred by the department for operation and maintenance shall be reimbursed from revenues of the system. The appointment of the department as agent for each authority does not create an independent obligation of the department to operate and maintain a system. Each authority shall remain obligated as principal to operate and maintain its system, and an authority's bondholders do not have an independent right to compel the department to operate or maintain the authority's system.

(3) Each authority shall fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the authority's facilities, as otherwise provided in this chapter.

345.0008 Department contributions to authority projects.—

(1) The department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, or construction of an authority project or system included in the 10-year Strategic Intermodal Plan, subject to appropriation by the Legislature.

(a) In the manner required by chapter 216, the department shall include any issue or issues in its legislative budget request for funding the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, or construction of an authority project or system. The request for funding may be included as part of the 5-year Tentative Work Program; however, it will be decided upon separately as a distinct funding item for consideration by the Legislature. The department must include a financial feasibility test to accompany such legislative budget request for consideration of funding any authority project.

(b) As determined by the Legislature in the General Appropriations Act, funding provided for authority projects shall be appropriated in a specific fixed capital outlay appropriation category that clearly identifies the authority project.

(c) The department may not request legislative approval of acquisition or construction of a proposed authority project unless the estimated net revenues of the proposed project will

be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of the 12th year of operation and to pay at least 100 percent of the debt service on the bonds by the end of the 30th year of operation.

(2) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under subsection (1). The department may participate in authority-funded projects that, at a minimum:

(a) Serve national, statewide, or regional functions and function as part of an integrated regional transportation system.

(b) Are identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.

(c) Are consistent with the Strategic Intermodal System Plan developed under s. 339.64.

(d) Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

(3) Before approval, the department must determine that the proposed project:

(a) Is in the public’s best interest;

(b) Would not require state funds to be used unless the project is on the State Highway System;

(c) Would have adequate safeguards in place to ensure that

no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the department; and (d) Would have adequate safeguards in place to ensure that the department and the regional transportation finance authority have the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations.

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

And the title is amended as follows:

Delete lines 267 - 270

and insert:

10-year Strategic Intermodal Plan, if included in a specific plan and approved by the Legislature; providing for feasibility studies; requiring certain criteria to be met before department approval; providing for payment of

169590

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 4507 and 4508
insert:

Section 80. The Florida Transportation Commission shall conduct a study of the potential for the state to obtain revenue from any parking meters or other parking time-limit devices that regulate designated parking spaces located within or along the right-of-way limits of a state road. The commission may retain such experts as are reasonably necessary to complete the study, and the department shall pay the expenses of such experts. On or before August 31, 2013, each municipality and county that

169590

receives revenue from any parking meters or other parking time-limit devices that regulate designated parking spaces located within or along the right-of-way limits of a state road shall provide the commission a written inventory of the location of each such meter or device and the total revenue collected from such locations during the last 3 fiscal years. Each municipality and county shall at the same time inform the commission of any pledge or commitment by the municipality or county of such revenues to the payment of debt service on any bonds or other debt issued by the municipality or county. The commission shall consider the information provided by the municipalities and counties, together with such other matters as it deems appropriate, including, but not limited to, the use of variable rate parking, and shall develop policy recommendations regarding the manner and extent that revenues generated by regulating parking within the right-of-way limits of a state road may be allocated between the department and municipalities and counties. The commission shall develop specific recommendations concerning the allocation of revenues generated by meters or devices regulating such parking that were installed before July 1, 2013, and the allocation of revenues that may be generated by meters or devices installed thereafter. The commission shall complete the study and provide a written report of its findings and conclusions to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of each of the appropriations committees of the Legislature by October 31, 2013.

(2) The Legislature finds that preservation of the status quo pending the commission’s study and the Legislature’s review

169590

of the commission's report is appropriate and desirable. From July 1, 2013, through July 1, 2014, no county or municipality shall install any parking meters or other parking time-limit devices that regulate designated parking spaces located within or along the right-of-way limits of a state road. This subsection does not prohibit the replacement of meters or similar devices installed before July 1, 2013, with new devices that regulate the same designated parking spaces.

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

And the title is amended as follows:

Delete line 398

and insert:

prohibition; requiring the Florida Transportation Commission to study the potential for state revenue from parking meters and other parking time-limit devices; authorizing to commission to retain experts; requiring the department to pay for the experts; requiring certain information from municipalities and counties; requiring certain information to be considered in the study; requiring a written report; providing for a moratorium on new parking meters of other parking time-limit devices on the state right-of-way; providing an exception; providing effective dates.

676670

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 4507 and 4508
insert:

Section 80. Sale of used tires.—

(1) It is unlawful for any used tire retailer in this state to sell unsafe used tires for the purpose of mounting on a vehicle as defined in s. 316.003. This section does not apply to a used tire retailer who sells used tires for recapping.

(2) For purposes of this section, a used tire is considered unsafe if the tire:

(a) Is worn to 2/32 of an inch tread depth or less on any

676670

area of the tread;

(b) Has any damage exposing the reinforcing plies of the tire, including any cuts, cracks, bulges, punctures, scrapes, or wear;

(c) Has had an improper repair including:

1. Any repair made in the tread shoulder or belt edge area of the tire;

2. Any puncture that has not been sealed or patched on the inside and repaired with a cured rubber stem through to the outside of the tire;

3. A repair to the sidewall or bead area of the tire; or

4. A puncture repair of damage larger than one-quarter of an inch;

(d) Has evidence of prior use of a temporary tire sealant without evidence of a subsequent proper repair;

(e) Has its tire identification number defaced or removed;

(f) Has inner liner or bead damage; or

(g) Has an indication of internal separation, such as bulges or local areas of irregular tread wear.

(3) A person who violates this section commits an unfair and deceptive trade practice as defined in part II of chapter 501, Florida Statutes.

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

And the title is amended as follows:

Delete line 398

and insert:

prohibition; prohibiting the sale of unsafe used tires by used tire retailers under certain circumstances;

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providing an exception; providing what constitutes an unsafe used tire; providing that a person who violates this section commits an unfair and deceptive trade practice; providing effective dates.

146010

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 608 and 609
insert:

Section 4. Subsection (5) is added to section 212.0606, Florida Statutes, to read:

212.0606 Rental car surcharge.—

(5) Notwithstanding subsection (1), if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, a surcharge of 8 cents per hour of usage is imposed. Partial portions of an hour shall be rounded up to the nearest hour for calculation

146010

purposes. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, a surcharge of $2.00 per day or any part of the day is imposed. For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

(a) Only at unstaffed locations;

(b) Twenty-four hours per day, seven days per week;

(c) That are unlocked through decentralized automated means, including, but not limited to, smartphone applications and electronic membership cards;

(d) That cannot be started or turned on using the same decentralized automated means used to unlock the motor vehicle;

(e) On hourly or shorter increments; and

(f) Without additional costs for fuel or insurance per single use.

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

And the title is amended as follows:

Delete line 14

and insert:

covered under career service; amending s. 212.0606, F.S.; providing for a surcharge for the use of a motor vehicle in a car-sharing service; providing a definition of the term "car-sharing service"; amending s. 311.22,

127608

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 608 and 609
insert:

Section 4. Subsection (5) is added to section 212.0606, Florida Statutes, to read:

212.0606 Rental car surcharge.—

(5) Notwithstanding subsection (1), if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, a surcharge of 8 cents per hour of usage is imposed. Partial portions of an hour shall be rounded up to the nearest hour for calculation

127608

purposes. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, a surcharge of $2 per day or any part of the day is imposed. For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

(a) Only at unstaffed locations;

(b) Twenty-four hours per day, seven days per week;

(c) That are unlocked through decentralized automated means, including, but not limited to, smartphone applications and electronic membership cards;

(d) That cannot be started or turned on using the same decentralized automated means used to unlock the motor vehicle;

(e) On hourly or shorter increments; and

(f) Without additional costs for fuel or insurance used during the single trip.

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

And the title is amended as follows:

Delete line 14

and insert:

covered under career service; amending s. 212.0606, F.S.; providing a rental car surcharge for a car-sharing service; providing a definition for the term "car-sharing service"; amending s. 311.22,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2980 - 3114
and insert:
provided in the bond resolution securing the bonds, and expressly assumes all obligations relating to the bonds to ensure that the transfer will have no adverse impact on the security for the bonds. The transfer does not make the obligation to pay the principal and interest on the bonds a general liability of the Central Florida Expressway Authority or pledge additional expressway system revenues to payment of the bonds. Revenues that are generated by the expressway system and

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other facilities of the Central Florida Expressway Authority which were pledged by the Orlando-Orange County Expressway Authority to payment of the bonds will remain subject to the pledge for the benefit of the bondholders. The transfer does not modify or eliminate any prior obligation of the department to pay certain costs of the expressway system from sources other than revenues of the expressway system.

(3) ~~(2)~~ The governing body of the authority shall consist of 11 ~~five~~ members. The chairs of the boards of the county commissions of Seminole, Lake, and Osceola Counties shall each appoint one member, who may be a commission member or chair. The Governor shall appoint six citizen members. Of the Governor's appointments, two ~~Three~~ members must ~~shall~~ be citizens of Orange County, one member each must be a citizen of Seminole, Lake, and Osceola Counties, and one member may be a citizen of any of the identified counties ~~who shall be appointed by the Governor~~. The 10th ~~fourth~~ member must ~~shall~~ be~~, ex officio,~~ the Mayor of ~~chair of the County Commissioners of~~ Orange County. The 11th member must be the Mayor of the City of Orlando. The executive director of Florida Turnpike Enterprise shall serve as a nonvoting advisor to the governing body of the authority~~, and the fifth member shall be, ex officio, the district secretary of the Department of Transportation serving in the district that contains Orange County~~. ~~The term of~~ Each ~~appointed~~ member appointed by the Governor shall serve ~~be~~ for 4 years. Each county-appointed member shall serve for 2 years. Standing board members shall complete their terms. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term must ~~shall~~ be

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filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but, except as provided in this subsection, a ~~no~~ person who is an officer or employee of a municipality or ~~any city or of Orange~~ county may not ~~in any other capacity shall~~ be an appointed member of the authority. Any member of the authority is ~~shall be~~ eligible for reappointment.

(4)~~(3)~~(a) The authority shall elect one of its members as chair of the authority. The authority shall also elect one of its members as vice chair, one of its members as ~~a~~ secretary, and one of its members as ~~a~~ treasurer ~~who may or may not be members of the authority~~. The chair, vice chair, secretary, and treasurer shall hold such offices at the will of the authority. Six ~~Three~~ members of the authority ~~shall~~ constitute a quorum, and the vote of six ~~three~~ members is ~~shall be~~ necessary for any action taken by the authority. A ~~No~~ vacancy in the authority does not ~~shall~~ impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(b) Upon the effective date of his or her appointment, or as soon thereafter as practicable, each appointed member of the authority shall enter upon his or her duties.

(5)~~(4)~~(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, and the ~~such~~ engineers~~,~~ and ~~such~~ employees that~~, permanent or temporary, as~~ it requires. The authority ~~may require and~~ may determine the qualifications and fix the compensation of such persons, firms, or corporations, and may

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employ a fiscal agent or agents;~~, provided,~~ however, ~~that~~ the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees the ~~such of its~~ power ~~as~~ it deems ~~shall deem~~ necessary to carry out the purposes of this part~~, subject always to the supervision and control of the authority~~. Members of the authority may be removed from ~~their~~ office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(b) Members of the authority are ~~shall be~~ entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but may not ~~they shall~~ draw ~~no~~ salaries or other compensation.

Section 60. Section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)(a) The authority created and established under ~~by the provisions of~~ this part is ~~hereby~~ granted and has ~~shall have~~ the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor~~,~~ the Central Florida ~~Orlando-Orange County~~ Expressway System, hereinafter referred to as "system." Except as otherwise specifically provided by law, including paragraph (2)(n), the area served by the authority shall be within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties.

(b) ~~It is the express intention of this part that said authority,~~ In the construction of the Central Florida ~~said~~

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~~Orlando-Orange County~~ Expressway System, the authority may ~~shall be authorized to~~ construct any extensions, additions, or improvements to the ~~said~~ system or appurtenant facilities, including all necessary approaches, roads, bridges, ~~and~~ avenues of access, rapid transit, trams, fixed guideways, thoroughfares, and boulevards with any ~~such~~ changes, modifications, or revisions of the ~~said~~ project which are ~~as shall be~~ deemed desirable and proper.

(c) Notwithstanding any other provision of this part to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without the prior consent of the secretary of the department, construct an extension, addition, or improvement to the expressway system in Lake County.

(2) The authority ~~is hereby granted, and shall have and~~ may exercise all powers necessary, appurtenant, convenient, or incidental to the implementation ~~carrying out~~ of the stated ~~aforesaid~~ purposes, including, but not ~~without being~~ limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire by donation or otherwise, purchase, hold, lease as lessee, and use any franchise or any~~,~~ property, real, personal, ~~or~~ mixed, or tangible or intangible, or any options ~~thereof~~ in its own name or in conjunction with others, or interest in those options ~~therein~~, necessary or desirable to carry ~~for carrying~~ out the purposes of the authority, and to

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sell, lease as lessor, transfer, and dispose of any property or interest in the property ~~therein~~ at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 99 ~~40~~ years, as ~~either~~ lessee or lessor, in order to carry out the right to lease as specified ~~set forth~~ in this part.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years, or until any bonds secured by a pledge of rentals pursuant to the agreement ~~thereunder~~, and any refundings pursuant to the agreement ~~thereof~~, are fully paid as to both principal and interest, whichever is longer. The authority is a party to a lease-

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

And the title is amended as follows:

Delete line 326

and insert:

years, the term of a lease

730310

576-04144A-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to the Department of Transportation; repealing s. 11.45(3)(m), F.S., relating to the authority of the Auditor General to conduct audits of transportation corporations under the Florida Transportation Corporation Act; amending s. 20.23, F.S.; requiring the Transportation Commission to also monitor authorities created under ch. 345, F.S., relating to the Florida Regional Transportation Finance Authority Act; amending s. 110.205, F.S.; changing a title to the State Freight and Logistics Administrator from the State Public Transportation and Modal Administrator, which is an exempt position not covered under career service; amending s. 311.22, F.S.; establishing the Department of Transportation as the agency responsible for administering the section, instead of the Florida Seaport Transportation and Economic Development Council; providing for the future repeal of the section; repealing s. 316.530(3), F.S., relating to load limits for certain towed vehicles; amending s. 316.545, F.S.; increasing the weight amount used for penalty calculations; conforming terminology; amending s. 331.360, F.S.; reordering provisions; providing for a spaceport system plan; providing funding for space transportation projects from the State Transportation Trust Fund; requiring

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Space Florida to provide the Department of Transportation with specific project information and to demonstrate transportation and aerospace benefits; specifying the information to be provided; providing funding criteria; amending s. 332.007, F.S.; authorizing the Department of Transportation to fund strategic airport investments; providing criteria; amending s. 334.044, F.S.; prohibiting the department from entering into a lease-purchase agreement with certain transportation authorities after a specified time; providing an exception from the requirement to purchase all plant materials from Florida commercial nursery stock when prohibited by applicable federal law or regulation; amending s. 335.06, F.S.; revising the responsibilities of the Department of Transportation, a county, or a municipality to improve or maintain a road that provides access to property within the state park system; amending s. 337.11, F.S.; removing the requirement that a contractor provide a notarized affidavit as proof of registration; amending s. 337.14, F.S.; revising the criteria for bidding certain construction contracts to require a proposed budget estimate if a contract is more than a specified amount; amending s. 337.168, F.S.; providing that a document that reveals the identity of a person who has requested or received certain information before a certain time is a public record; amending s. 337.25, F.S.; authorizing the Department of Transportation to use auction services

in the conveyance of certain property or leasehold interests; revising certain inventory requirements; revising provisions and providing criteria for the department to dispose of certain excess property; providing such criteria for the disposition of donated property, property used for a public purpose, or property acquired to provide replacement housing for certain displaced persons; providing value offsets for property that requires significant maintenance costs or exposes the department to significant liability; providing procedures for the sale of property to abutting property owners; deleting provisions to conform to changes made by the act; providing monetary restrictions and criteria for the conveyance of certain leasehold interests; providing exceptions to restrictions for leases entered into for a public purpose; providing criteria for the preparation of estimates of value prepared by the department; providing that the requirements of s. 73.013, F.S., relating to eminent domain, are not modified; amending s. 337.251, F.S.; revising criteria for leasing particular department property; increasing the time the department must accept proposals for lease after a notice is published; authorizing the department to establish an application fee by rule; providing criteria for the fee; providing criteria that the lease must meet; amending s. 338.161, F.S.; authorizing the department to enter into agreements with owners of public or private transportation

facilities under which the department uses its electronic toll collection and video billing systems to collect for the owner certain charges for use of the owners' transportation facilities; amending s. 338.165, F.S.; removing the Beeline-East Expressway and the Navarre Bridge from the list of facilities that have toll revenues to secure their bonds; amending s. 338.26, F.S.; revising the uses of fees that are generated from tolls to include the design and construction of a fire station that may be used by certain local governments in accordance with a specified memorandum; removing authority of a district to issue bonds or notes; amending s. 339.175, F.S.; revising the criteria that qualify a local government for participation in a metropolitan planning organization; revising the criteria to determine voting membership of a metropolitan planning organization; providing that each metropolitan planning organization shall review its membership and reapportion it as necessary; providing criteria; relocating the requirement that the Governor review and apportion the voting membership among the various governmental entities within the metropolitan planning area; amending s. 339.2821, F.S.; authorizing Enterprise Florida, Inc., to be a consultant to the Department of Transportation for consideration of expenditures associated with and contracts for transportation projects; revising the requirements for economic development transportation project contracts

between the department and a governmental entity; repealing the Florida Transportation Corporation Act; repealing s. 339.401, F.S., relating to the short title; repealing s. 339.402, F.S., relating to definitions; repealing s. 339.403, F.S., relating to legislative findings and purpose; repealing s. 339.404, F.S., relating to authorization of corporations; repealing s. 339.405, F.S., relating to type and structure of the corporation and income; repealing s. 339.406, F.S., relating to contracts between the department and the corporation; repealing s. 339.407, F.S., relating to articles of incorporation; repealing s. 339.408, F.S., relating to the board of directors and advisory directors; repealing s. 339.409, F.S., relating to bylaws; repealing s. 339.410, F.S., relating to notice of meetings and open records; repealing s. 339.411, F.S., relating to the amendment of articles; repealing s. 339.412, F.S., relating to the powers of the corporation; repealing s. 339.414, F.S., relating to use of state property; repealing s. 339.415, F.S., relating to exemptions from taxation; repealing s. 339.416, F.S., relating to the authority to alter or dissolve corporations; repealing s. 339.417, F.S., relating to the dissolution of a corporation upon the completion of purposes; repealing s. 339.418, F.S., relating to transfer of funds and property upon dissolution; repealing s. 339.419, F.S., relating to department rules; repealing s. 339.420, F.S., relating

to construction; repealing s. 339.421, F.S., relating to issuance of debt; amending s. 339.55, F.S.; adding spaceports to the list of facility types for which the state-funded infrastructure bank may lend capital costs or provide credit enhancements; amending s. 341.031, F.S.; revising the definition of the term "intercity bus service"; amending s. 341.053, F.S.; revising the types of eligible projects and criteria of the intermodal development program; amending s. 343.80, F.S.; renaming the Northwest Florida Transportation Corridor Authority Law as the Northwest Florida Regional Transportation Finance Authority Law; amending s. 343.805, F.S., defining "Northwest Florida Regional Transportation Finance Authority System" or "system"; deleting definitions of "U.S. 98 corridor" and "U.S. 98 corridor system"; amending s. 343.81, F.S.; renaming the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority; revising the composition of the governing board of the authority from eight to five voting members, two from Okaloosa County and one each from Walton, Bay, and Gulf Counties; removing from the governing body of the authority voting members from Escambia, Santa Rosa, Franklin, and Wakulla Counties; revising quorum requirements and the number of votes necessary for any action by the authority; removing the authority's authorization to establish a technical advisory committee and related provisions; amending s. 343.82,

F.S.; authorizing the authority to acquire, hold, construct, improve, maintain, operate, own, and lease the Northwest Florida Regional Transportation Finance Authority System; removing references to intended improvement of mobility along the U.S. 98 corridor and to the Santa Rosa Sound; removing direction to the authority to adopt a corridor master plan, to annually update and present the plan, to undertake projects or other improvements in the plan, and to request certain funding and technical assistance; conforming terminology; removing a prohibition against the authority imposing tolls or other charges; providing the authority may dispose of property which the authority and the Department of Transportation have determined is not needed for the system; removing the authority's authorization to enter into lease-purchase agreements with the department; amending s. 343.83, F.S.; conforming terminology; amending s. 343.835, F.S.; making conforming changes; replacing a reference to facilities "constructed" by the authority to facilities "owned or provided"; amending s. 343.84, F.S.; providing that the department is the agent of the authority for the purpose of constructing, operating, and maintaining system facilities; providing for alternative appointment of a specified local agency as construction agent with the consent and approval of the department; providing for reimbursement from revenues of the system of costs incurred by the department to operate and maintain the

system; providing that the department has no independent obligation to operate and maintain the system; providing the authority remains obligated as to operate and maintain its system; directing the authority to establish and collect tolls and other charges for the authority's facilities; amending s. 343.85, F.S.; conforming terminology; repealing s. 343.875, F.S., removing the authority's authorization to enter into public-private partnership agreements; removing project criteria; removing department authorization to use state resources to participate in projects; removing authorization to request proposals and to receive unsolicited proposals, removing related notice provisions, and removing procedural provisions related to consideration of such proposals; removing authorization for the public-private entity to impose tolls or fares, to exercise its powers, including eminent domain, and to adopt rules; amending s. 343.89, F.S.; conforming terminology; amending s. 343.922, F.S.; removing reference to advances from the Toll Facilities Revolving Trust Fund as a source of funding for certain projects by an authority; creating ch. 345, F.S., relating to the Florida Regional Transportation Finance Authority; creating s. 345.0001, F.S.; providing a short title; creating s. 345.0002, F.S.; providing definitions; creating s. 345.0003, F.S.; authorizing counties to form a regional transportation finance authority that can construct, maintain, or operate transportation

projects in a region of the state; providing for governance of the authority; creating s. 345.0004, F.S.; providing for the powers and duties of a regional transportation finance authority; limiting an authority's power with respect to an existing system; prohibiting an authority from pledging the credit or taxing power of the state or any political subdivision or agency of the state; requiring that an authority comply with certain reporting and documentation requirements; creating s. 345.0005, F.S.; authorizing the authority to issue bonds; providing that the issued bonds must meet certain requirements; providing that the resolution that authorizes the issuance of bonds meet certain requirements; authorizing an authority to enter into security agreements for issued bonds with a bank or trust company; providing that the issued bonds are negotiable instruments and have certain qualities; providing that a resolution authorizing the issuance of bonds and pledging of revenues of the system must contain certain requirements; prohibiting the use or pledge of state funds to pay principal or interest of an authority's bonds; creating s. 345.0006, F.S.; providing for the rights and remedies granted to certain bondholders; providing the actions a trustee may take on behalf of the bondholders; providing for the appointment of a receiver; providing for the authority of the receiver; providing limitations to the receiver's authority; creating s. 345.0007, F.S.; providing that the

Department of Transportation is the agent of each authority for specified purposes; providing for the administration and management of projects by the department; providing limits on the department as an agent; providing for the fiscal responsibilities of the authority; creating s. 345.0008, F.S.; authorizing the department to provide for or commit its resources for an authority project or system, included in the 10-year Strategic Intermodal Plan, if approved by the Legislature; prohibiting the department from requesting legislative approval of a project unless certain conditions are met; providing for payment of expenses incurred by the department on behalf of an authority; requiring the department to receive a share of the revenue from the authority; providing calculations for disbursement of revenues; creating s. 345.0009, F.S.; authorizing the authority to acquire private or public property and property rights for a project or plan; authorizing the authority to exercise the right of eminent domain; providing for the rights and liabilities and remedial actions relating to property acquired for a transportation project or corridor; creating s. 345.0010, F.S.; providing for contracts between governmental entities and an authority; creating s. 345.0011, F.S.; providing that the state will not limit or alter the vested rights of a bondholder with regard to any issued bonds or rights relating to the bonds under certain conditions; creating s. 345.0012, F.S.; relieving the authority

from the obligation of paying certain taxes or assessments for property acquired or used for certain public purposes or for revenues received relating to the issuance of bonds; providing exceptions; creating s. 345.0013, F.S.; providing that the bonds or obligations issued are legal investments of specified entities; creating s. 345.0014, F.S.; providing applicability; creating s. 345.0015, F.S.; creating the Santa Rosa-Escambia Regional Transportation Finance Authority; creating s. 345.0016, F.S.; creating the Suncoast Regional Transportation Finance Authority; providing for the transfer of the governance and control of the Mid-Bay Bridge Authority System to the Northwest Florida Transportation Finance Authority; providing for the disposition of bonds, the protection of the bondholders, the effect on the rights and obligations under a contract or the bonds, and the revenues associated with the bonds; amending ss. 348.751 and 348.752, F.S.; renaming the Orlando-Orange County Expressway System as the "Central Florida Expressway System"; revising definitions; making technical changes; amending s. 348.753, F.S.; creating the Central Florida Expressway Authority; providing for the transfer of governance and control, legal rights and powers, responsibilities, terms, and obligations to the authority; providing conditions for the transfer; revising the composition of the governing body of the authority; providing for appointment of officers of the authority; revising

quorum and voting requirements; conforming terminology and making technical changes; amending s. 348.754, F.S.; providing that the area served by the authority is within the geopolitical boundaries of Orange, Seminole, Lake, and Osceola Counties; requiring the authority to have prior consent from the Secretary of the Department of Transportation to construct an extension, addition, or improvement to the expressway system in Lake County; extending, to 99 years from 40 years, the term of a lease or lease-purchase agreement; limiting the authority's authority to enter into a lease-purchase agreement; limiting the use of certain toll-revenues; providing exceptions; removing the requirement that the route of a project must be approved by a municipality before the right-of-way can be acquired; requiring that the authority encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities; removing the authority and criteria for an authority to waive payment and performance bonds for certain public works projects that are awarded pursuant to an economic development program; conforming terminology and making technical changes; amending ss. 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, and 348.756, F.S.; conforming terminology and making technical changes; amending s. 348.757, F.S.; providing that upon termination of the lease-purchase agreement of the former Orlando-Orange County Expressway System, title in fee simple to the

system will be retained by the authority; conforming terminology and making technical changes; amending ss. 348.758, 348.759, 348.760, 348.761, 348.765, and 369.317, F.S.; conforming terminology and making technical changes; amending s. 369.324, F.S.; revising the membership of the Wekiva River Basin Commission; conforming terminology; providing criteria for the transfer of the Osceola County Expressway System to the Central Florida Expressway Authority; providing for the repeal of part V of ch. 348, F.S., when the Osceola County Expressway System is transferred to the Central Florida Expressway Authority; requiring the Central Florida Expressway Authority to reimburse other governmental entities for obligations related to the Osceola County Expressway System; providing for reimbursement after payment of other obligations; amending s. 373.4137, F.S.; providing legislative intent that mitigation be implemented in a manner that promotes efficiency, timeliness, and cost-effectiveness in project delivery; revising the criteria of the environmental impact inventory; revising the criteria for mitigation of projected impacts identified in the environmental impact inventory; requiring the Department of Transportation to include funding for environmental mitigation for its projects in its work program; revising the process and criteria for the payment by the department or participating transportation authorities of mitigation implemented by water management districts or the

Department of Environmental Protection; revising the requirements for the payment to a water management district or the Department of Environmental Protection of the costs of mitigation planning and implementation of the mitigation required by a permit; revising the payment criteria for preparing and implementing mitigation plans adopted by water management districts for transportation impacts based on the environmental impact inventory; adding federal requirements for the development of a mitigation plan; providing for transportation projects in the environmental mitigation plan for which mitigation has not been specified; revising a water management district's responsibilities relating to a mitigation plan; amending s. 373.618, F.S.; revising the outdoor advertisement exemption criteria for a public information system; amending s. 341.052, F.S.; prohibiting an eligible public transit provider from using public transit block grant funds to pursue or promote the levying of new or additional taxes through public referenda; requiring the amount of the provider's grant to be reduced by any amount so spent; defining the term "public funds" for purposes of the prohibition; providing effective dates.

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

Section 1. Paragraph (m) of subsection (3) of section 11.45, Florida Statutes, is repealed.


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576-04144A-13

Section 2. Paragraph (b) of subsection (2) and subsection (3) of section 20.23, Florida Statutes, are amended, and present subsections (4) through (7) of that subsection are renumbered as subsections (3) through (6), to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(2)

(b) The commission shall ~~have the primary functions to~~:

1. Recommend major transportation policies for the Governor's approval, and assure that approved policies and any revisions ~~thereto~~ are properly executed.

2. Periodically review the status of the state transportation system including highway, transit, rail, seaport, intermodal development, and aviation components of the system and recommend improvements therein to the Governor and the Legislature.

3. Perform an in-depth evaluation of the annual department budget request, the Florida Transportation Plan, and the tentative work program for compliance with all applicable laws and established departmental policies. Except as specifically provided in s. 339.135(4)(c)2., (d), and (f), the commission may not consider individual construction projects, but shall consider methods of accomplishing the goals of the department in the most effective, efficient, and businesslike manner.

4. Monitor the financial status of the department on a regular basis to assure that the department is managing revenue and bond proceeds responsibly and in accordance with law and established policy.


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5. Monitor on at least a quarterly basis, the efficiency, productivity, and management of the department, using performance and production standards developed by the commission pursuant to s. 334.045.

6. Perform an in-depth evaluation of the factors causing disruption of project schedules in the adopted work program and recommend to the Legislature and the Governor methods to eliminate or reduce the disruptive effects of these factors.

7. Recommend to the Governor and the Legislature improvements to the department's organization in order to streamline and optimize the efficiency of the department. In reviewing the department's organization, the commission shall determine if the current district organizational structure is responsive to Florida's changing economic and demographic development patterns. The initial report by the commission must be delivered to the Governor and Legislature by December 15, 2000, and each year thereafter, as appropriate. The commission may retain ~~such~~ experts that ~~as~~ are reasonably necessary to effectuate this subparagraph, and the department shall pay the expenses of the ~~such~~ experts.

8. Monitor the efficiency, productivity, and management of the authorities created under chapters 345, 348, and 349, including any authority formed using the provisions of part I of chapter 348, and any authority formed under chapter 343 ~~which is not monitored under subsection (3)~~. The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

~~(3) There is created the Florida Statewide Passenger Rail Commission.~~

~~(a)1. The commission shall consist of nine voting members appointed as follows:~~

~~a. Three members shall be appointed by the Governor, one of whom must have a background in the area of environmental concerns, one of whom must have a legislative background, and one of whom must have a general business background.~~

~~b. Three members shall be appointed by the President of the Senate, one of whom must have a background in civil engineering, one of whom must have a background in transportation construction, and one of whom must have a general business background.~~

~~c. Three members shall be appointed by the Speaker of the House of Representatives, one of whom must have a legal background, one of whom must have a background in financial matters, and one of whom must have a general business background.~~

~~2. The initial term of each member appointed by the Governor shall be for 4 years. The initial term of each member appointed by the President of the Senate shall be for 3 years. The initial term of each member appointed by the Speaker of the House of Representatives shall be for 2 years. Succeeding terms for all members shall be for 4 years.~~

~~3. A vacancy occurring during a term shall be filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. An appointment to fill a vacancy shall be made within 60 days after the occurrence of the vacancy.~~

~~4. The commission shall elect one of its members as chair of the commission. The chair shall hold office at the will of the commission. Five members of the commission shall constitute a quorum, and the vote of five members shall be necessary for any action taken by the commission. The commission may meet upon the constitution of a quorum. A vacancy in the commission does not impair the right of a quorum to exercise all rights and perform all duties of the commission.~~

~~5. The members of the commission are not entitled to compensation but are entitled to reimbursement for travel and other necessary expenses as provided in s. 112.061.~~

~~(b) The commission shall have the primary functions of:~~

~~1. Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.~~

~~2. Advising the department on policies and strategies used in planning, designing, building, operating, financing, and maintaining a coordinated statewide system of passenger rail services.~~

~~3. Evaluating passenger rail policies and providing advice and recommendations to the Legislature on passenger rail operations in the state.~~

~~(c) The commission or a member of the commission may not enter into the day-to-day operation of the department or a monitored authority and is specifically prohibited from taking part in:~~

~~1. The awarding of contracts.~~

~~2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the commission may recommend to the secretary standards and policies governing the procedure for selection and prequalification of consultants and contractors.~~

~~3. The selection of a route for a specific project.~~

~~4. The specific location of a transportation facility.~~

~~5. The acquisition of rights-of-way.~~

~~6. The employment, promotion, demotion, suspension, transfer, or discharge of any department personnel.~~

~~7. The granting, denial, suspension, or revocation of any license or permit issued by the department.~~

~~(d) The commission is assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control and direction of the department except that reasonable expenses of the commission~~

~~shall be subject to approval by the Secretary of Transportation. The department shall provide administrative support and service to the commission.~~

Section 3. Paragraphs (j) and (m) of subsection (2) of section 110.205, Florida Statutes, are amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(j) The appointed secretaries and the State Surgeon General, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; the directors of all divisions and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors, district administrators, deputy district administrators, the Director of Central Operations Services of the Department of Children and Family Services, the State Transportation Development Administrator, State Freight and Logistics ~~Public Transportation and Modal~~ Administrator, district secretaries, district directors of transportation development, transportation operations, transportation support, and the managers of the offices specified in s. 20.23(3)(b) ~~20.23(4)(b)~~, of the Department of Transportation. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules of the Senior Management Service; and the county health department directors and county health

department administrators of the Department of Health.

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Family Services that are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections that are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator.

3. Positions in the Department of Transportation that are assigned primary duties of serving as regional toll managers and managers of offices, as defined in s. 20.23(3)(b) and (4)(c) ~~20.23(4)(b) and (5)(c)~~.

4. Positions in the Department of Environmental Protection that are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health that are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in

accordance with the rules established for the Selected Exempt Service.

Section 4. Section 311.22, Florida Statutes, is amended to read:

311.22 Additional authorization for funding certain dredging projects.—

(1) The Department of Transportation ~~Florida Seaport Transportation and Economic Development Council~~ shall establish a program to fund dredging projects in counties having a population of fewer than 300,000 according to the last official census. Funds made available under this program may be used to fund approved projects for the dredging or deepening of channels, turning basins, or harbors on a 25-percent local matching basis with any port authority, as such term is defined in s. 315.02(2), which complies with the permitting requirements in part IV of chapter 373 and the local financial management and reporting provisions of part III of chapter 218.

(2) The department ~~council~~ shall adopt rules for evaluating the projects that may be funded pursuant to this section. The rules must provide criteria for evaluating the economic benefit of the project. The rules must include the creation of an administrative review process by the department ~~council~~ which is similar to the process described in s. 311.09(5)-(11), and provide for a review by the ~~Department of Transportation and the~~ Department of Economic Opportunity of all projects submitted for funding under this section.

(3) This section expires on July 1, 2018.

Section 5. Subsection (3) of section 316.530, Florida Statutes, is repealed.

Section 6. Subsection (3) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(3) Any person who violates the overloading provisions of this chapter shall be conclusively presumed to have damaged the highways of this state by reason of such overloading, which damage is hereby fixed as follows:

(a) If ~~When~~ the excess weight is 200 pounds or less than the maximum ~~herein~~ provided by this chapter, the penalty is ~~shall be~~ $10;

(b) Five cents per pound for each pound of weight in excess of the maximum ~~herein~~ provided in this chapter if ~~when~~ the excess weight exceeds 200 pounds. However, if ~~whenever~~ the gross weight of the vehicle or combination of vehicles does not exceed the maximum allowable gross weight, the maximum fine for the first 600 pounds of unlawful axle weight is ~~shall be~~ $10;

(c) For a vehicle equipped with fully functional idle-reduction technology, any penalty shall be calculated by reducing the actual gross vehicle weight or the internal bridge weight by the certified weight of the idle-reduction technology or by 550 ~~400~~ pounds, whichever is less. The vehicle operator must present written certification of the weight of the idle-reduction technology and must demonstrate or certify that the idle-reduction technology is fully functional at all times. This calculation is not allowed for vehicles described in s. 316.535(6);

(d) An apportioned motor vehicle, as defined in s. 320.01, operating on the highways of this state without being properly

licensed and registered shall be subject to the penalties as ~~herein~~ provided in this section; and

(e) Vehicles operating on the highways of this state from nonmember International Registration Plan jurisdictions which are not in compliance with the provisions of s. 316.605 shall be subject to the penalties as ~~herein~~ provided in this section.

Section 7. Section 331.360, Florida Statutes, is reordered and amended to read:

331.360 ~~Joint participation agreement or assistance;~~ Spaceport system ~~master~~ plan.—

(2)~~(1)~~ ~~It shall be the duty, function, and responsibility of~~ The department shall ~~of Transportation to~~ promote the further development and improvement of aerospace transportation facilities; to address intermodal requirements and impacts of the launch ranges, spaceports, and other space transportation facilities; to assist in the development of joint-use facilities and technology that support aviation and aerospace operations; to coordinate and cooperate in the development of spaceport infrastructure and related transportation facilities contained in the Strategic Intermodal System Plan; to encourage, where appropriate, the cooperation and integration of airports and spaceports in order to meet transportation-related needs; and to facilitate and promote cooperative efforts between federal and state government entities to improve space transportation capacity and efficiency. In carrying out this duty and responsibility, the department may assist and advise, cooperate with, and coordinate with federal, state, local, or private organizations and individuals. The department may administratively house its space transportation responsibilities

within an existing division or office.

(3) ~~(2)~~ Notwithstanding any other provision of law, the department ~~of Transportation~~ may enter into an ~~a joint participation~~ agreement with, or otherwise assist, Space Florida as necessary to effectuate the provisions of this chapter and may allocate funds for such purposes in its 5-year work program. However, the department may not fund the administrative or operational costs of Space Florida.

(1) ~~(3)~~ Space Florida shall develop a spaceport system ~~master~~ plan that identifies statewide spaceport goals and the need for expansion and modernization of space transportation facilities within spaceport territories as defined in s. 331.303. The plan must ~~shall~~ contain recommended projects that ~~to~~ meet current and future commercial, national, and state space transportation requirements. Space Florida shall submit the plan to each ~~any~~ appropriate metropolitan planning organization for review of intermodal impacts. Space Florida shall submit the spaceport system ~~master~~ plan to the department ~~of Transportation~~, which may include those portions of the system plan which are relevant to the Department of Transportation's mission ~~and such plan may be included~~ within the department's 5-year work program of qualifying projects ~~aerospace discretionary capacity improvement under subsection (4)~~. The plan must ~~shall~~ identify appropriate funding levels for each project ~~and include recommendations on appropriate sources of revenue that may be developed to contribute to the State Transportation Trust Fund~~.

(4) (a) Beginning in fiscal year 2013-2014, a minimum of $15 million annually is authorized to be made available from the State Transportation Trust Fund to fund space transportation

projects. The funds for this initiative shall be from the funds dedicated to public transportation projects pursuant to s. 206.46(3).

(b) Before executing an agreement, Space Florida must provide project-specific information to the department in order to demonstrate that the project includes transportation and aerospace benefits. The project-specific information must include, but need not be limited to:

1. The description, characteristics, and scope of the project.

2. The funding sources for and costs of the project.

3. The financing considerations that emphasize federal, local, and private participation.

4. A financial feasibility and risk analysis, including a description of the efforts to protect the state's investment and to ensure that project goals are realized.

5. A demonstration that the project will encourage, enhance, or create economic benefits for the state.

(c) The department may fund up to 50 percent of eligible project costs. If the project meets the following criteria, the department may fund up to 100 percent of eligible project costs. The project must:

1. Provide important access and on-spaceport capacity improvements;

2. Provide capital improvements to strategically position the state to maximize opportunities in the aerospace industry or foster growth and development of a sustainable and world-leading aerospace industry in the state;

3. Meet state goals of an integrated intermodal

transportation system; and

4. Demonstrate the feasibility and availability of matching funds through federal, local, or private partners ~~Subject to the availability of appropriated funds, the department may participate in the capital cost of eligible spaceport discretionary capacity improvement projects. The annual legislative budget request shall be based on the proposed funding requested for approved spaceport discretionary capacity improvement projects~~.

Section 8. Subsection (11) is added to section 332.007, Florida Statutes, to read:

332.007 Administration and financing of aviation and airport programs and projects; state plan.—

(11) The department may fund strategic airport investment projects at up to 100 percent of the project's cost if all the following criteria are met:

(a) Important access and on-airport capacity improvements are provided.

(b) Capital improvements that strategically position the state to maximize opportunities in international trade, logistics, and the aviation industry are provided.

(c) Goals of an integrated intermodal transportation system for the state are achieved.

(d) Feasibility and availability of matching funds through federal, local, or private partners are demonstrated.

Section 9. Subsections (16) and (26) of section 334.044, Florida Statutes, are amended to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(16) To plan, acquire, lease, construct, maintain, and operate toll facilities; to authorize the issuance and refunding of bonds; and to fix and collect tolls or other charges for travel on any such facilities. Effective July 1, 2013, and notwithstanding any other law to the contrary, the department may not enter into a lease-purchase agreement with an expressway authority, regional transportation authority, or other entity. This provision does not invalidate a lease-purchase agreement authorized under chapter 348 or chapter 2000-411, Laws of Florida, and existing as of July 1, 2013, and does not limit the department's authority under s. 334.30.

(26) To provide for the enhancement of environmental benefits, including air and water quality; to prevent roadside erosion; to conserve the natural roadside growth and scenery; and to provide for the implementation and maintenance of roadside conservation, enhancement, and stabilization programs. No less than 1.5 percent of the amount contracted for construction projects shall be allocated by the department on a statewide basis for the purchase of plant materials. Department districts may not expend funds for landscaping in connection with any project that is limited to resurfacing existing lanes unless the expenditure has been approved by the department's secretary or the secretary's designee. To the greatest extent practical, a minimum of 50 percent of the funds allocated under this subsection shall be allocated for large plant materials and the remaining funds for other plant materials. Except as prohibited by applicable federal law or regulation, all plant materials shall be purchased from Florida commercial nursery stock in this state on a uniform competitive bid basis. The

department shall develop grades and standards for landscaping materials purchased through this process. To accomplish these activities, the department may contract with nonprofit organizations having the primary purpose of developing youth employment opportunities.

Section 10. Section 335.06, Florida Statutes, is amended to read:

335.06 Access roads to the state park system.—A ~~Any~~ road that ~~which~~ provides access to property within the state park system must ~~shall~~ be maintained by the department if the road is a part of the State Highway System and may be improved and maintained by the department if the road is part of a county road system or city street system. If the department does not maintain a county or city road that is a part of the county road system or the city street system and that provides access to the state park system, the road must ~~or shall~~ be maintained by the appropriate county or municipality ~~if the road is a part of the county road system or the city street system~~.

Section 11. Subsection (13) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(13) Each contract let by the department for the performance of road or bridge construction or maintenance work shall require ~~contain a provision requiring the contractor to provide proof to the department, in the form of a notarized affidavit from the contractor, that~~ all motor vehicles that the

contractor ~~he or she~~ operates or causes to be operated in this state to be ~~are~~ registered in compliance with chapter 320.

Section 12. Subsection (1) of section 337.14, Florida Statutes, is amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) A ~~Any~~ person who desires ~~desiring~~ to bid for the performance of any construction contract with a proposed budget estimate in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must ~~shall~~ address the qualification of a person ~~persons~~ to bid on construction contracts with a proposed budget estimate that is in excess of $250,000 and must ~~shall~~ include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification. The department may limit the dollar amount of any contract upon which a person is qualified to bid or the aggregate total dollar volume of contracts such person may ~~is allowed to~~ have under contract at any one time. Each applicant who seeks ~~seeking~~ qualification to bid on construction contracts with a proposed budget estimate in excess of $250,000 must ~~shall~~ furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must ~~shall~~ be accompanied by the latest annual financial statement of the applicant completed within the last 12 months. If the


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application or the annual financial statement shows the financial condition of the applicant more than 4 months before ~~prior to~~ the date on which the application is received by the department, ~~then~~ an interim financial statement must be submitted and be accompanied by an updated application. The interim financial statement must cover the period from the end date of the annual statement and must show the financial condition of the applicant no more than 4 months before ~~prior to~~ the date the interim financial statement is received by the department. However, upon request by the applicant, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period provided pursuant to ~~under~~ this subsection must ~~shall~~ be considered timely. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant. An applicant desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from the provisions of s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.


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Section 13. Subsection (2) of section 337.168, Florida Statutes, is amended to read:

337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.—

(2) A document that reveals ~~revealing~~ the identity of a person who has ~~persons who have~~ requested or obtained a bid package, plan ~~packages, plans~~, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period that ~~which~~ begins 2 working days before ~~prior to~~ the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department before the 2 working days before the deadline for obtaining bid packages, plans, or specifications remains a public record subject to the provisions of s. 119.07(1).

Section 14. Section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(1)(a) The department may purchase, lease, exchange, or otherwise acquire any land, property interests, or buildings or other improvements, including personal property within such buildings or on such lands, necessary to secure or utilize transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, in a rail corridor, or in a transportation corridor designated by the department. Such

property shall be held in the name of the state.

(b) The department may accept donations of any land or buildings or other improvements, including personal property within such buildings or on such lands with or without such conditions, reservations, or reverter provisions as are acceptable to the department. Such donations may be used as transportation rights-of-way or to secure or utilize transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in a transportation corridor designated by the department.

(c) When lands, buildings, or other improvements are needed for transportation purposes, but are held by a federal, state, or local governmental entity and utilized for public purposes other than transportation, the department may compensate the entity for such properties by providing functionally equivalent replacement facilities. The providing of replacement facilities under this subsection may only be undertaken with the agreement of the governmental entity affected.

(d) The department may contract pursuant to s. 287.055 for auction services used in the conveyance of real or personal property or the conveyance of leasehold interests under the provisions of subsections (4) and (5). The contract may allow for the contractor to retain a portion of the proceeds as compensation for the contractor's services.

(2) A complete inventory shall be made of all real or personal property immediately upon possession or acquisition. Such inventory shall include a statement of the location or site of each piece of realty, structure, or severable item ~~an~~

~~itemized listing of all appliances, fixtures, and other severable items; a statement of the location or site of each piece of realty, structure, or severable item; and the serial number assigned to each~~. Copies of each inventory shall be filed in the district office in which the property is located. Such inventory shall be carried forward to show the final disposition of each item of property, both real and personal.

(3) The inventory of real property which was acquired by the state after December 31, 1988, which has been owned by the state for 10 or more years, and which is not within a transportation corridor or within the right-of-way of a transportation facility shall be evaluated to determine the necessity for retaining the property. If the property is not needed for the construction, operation, and maintenance of a transportation facility, or is not located within a transportation corridor, the department may dispose of the property pursuant to subsection (4).

(4) The department may convey ~~sell~~, in the name of the state, any land, building, or other property, real or personal, which was acquired under the provisions of subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. ~~With the exception of any parcel governed by paragraph (c), paragraph (d), paragraph (f), paragraph (g), or paragraph (i), the department shall afford first right of refusal to the local government in the jurisdiction of which the parcel is situated.~~ When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its

best interest, with due advertisement for property valued by the department at greater than $10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in conveyances transacted under paragraph (a), paragraph (c), or paragraph (e). ~~in the following manner:~~

(a) If the ~~value of the~~ property has been donated to the state for transportation purposes and a facility has not been constructed for a period of at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives ~~is $10,000 or less as determined by department estimate, the department may negotiate the sale~~.

(b) If ~~the value of~~ the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity ~~exceeds $10,000 as determined by department estimate, such property may be sold to the highest bidder through receipt of sealed competitive bids, after due advertisement, or by public auction held at the site of the improvement which is being sold~~.

(c) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation,

the state shall receive no less than its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for no less than the department's current estimate of value~~, in the discretion of the department, public sale would be inequitable, properties may be sold by negotiation to the owner holding title to the property abutting the property to be sold, provided such sale is at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which shall be paid by the owner of the abutting land. If negotiations do not result in the sale of the property to the owner of the abutting land and the property is sold to someone else, the cost of the independent appraisal shall be borne by the purchaser; and the owner of the abutting land shall have the cost of the appraisal refunded to him or her. If, however, no purchase takes place, the owner of the abutting land shall forfeit the sum paid by him or her for the independent appraisal. If, due to action of the department, the property is removed from eligibility for sale, the cost of any appraisal prepared shall be refunded to the owner of the abutting land~~.

(d) If the department determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero ~~property acquired for use~~

~~as a borrow pit is no longer needed, the department may sell such property to the owner of the parcel of abutting land from which the borrow pit was originally acquired, provided the sale is at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which shall be paid by the owner of such abutting land~~.

(e) If~~,~~ in the discretion of the department, a sale to anyone other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value. If the department begins the process for disposing of the property on its own initiative, either by negotiation under the provisions of paragraph (a), paragraph (c), or paragraph (d), ~~or paragraph (i),~~ or by receipt of sealed competitive bids or public auction under the provisions of paragraph (b) ~~or paragraph (i)~~, a department staff appraiser may determine the fair market value of the property by an appraisal.

~~(f) Any property which was acquired by a county or by the department using constitutional gas tax funds for the purpose of a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system and which is no longer used or needed by the department may be conveyed without consideration to that county. The county may then sell such surplus property upon receipt of competitive bids in the same manner prescribed in this section.~~

~~(g) If a property has been donated to the state for transportation purposes and the facility has not been constructed for a period of at least 5 years and no plans have been prepared for the construction of such facility and the~~

~~property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.~~

~~(h) If property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.~~

~~(i) If property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive no less than its investment in such properties or fair market value, whichever is lower. It is expressly intended that this benefit be extended only to those persons actually displaced by such project. Dispositions to any other persons must be for fair market value.~~

~~(j) If the department determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 5 years to offset the market value in establishing a value for disposal of the property, even if that value is zero.~~

(5) The department may convey a leasehold interest for commercial or other purposes, in the name of the state, to any land, building, or other property, real or personal, which was acquired under the provisions of subsection (1). However, a lease may not be entered into at a price less than the department's current estimate of value.

(a) A lease may be through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest ~~The department may negotiate such a lease at the prevailing market value with the owner from whom the property was acquired; with the holders of leasehold estates existing at the time of the department's acquisition; or, if public bidding would be inequitable, with the owner holding title to privately owned abutting property, if reasonable notice is provided to all other owners of abutting property~~. The department may allow an outdoor advertising sign to remain on the property acquired, or be relocated on department property, and such sign shall not be considered a nonconforming sign pursuant to chapter 479.

(b) If, in the discretion of the department, a lease to a person other than an abutting property owner or tenant with a leasehold interest in the abutting property would be inequitable, the property may be leased to the abutting owner or tenant for no less than the department's current estimate of value ~~All other leases shall be by competitive bid~~.

(c) No lease signed pursuant to paragraph (a) ~~or paragraph (b)~~ shall be for a period of more than 5 years; however, the department may renegotiate or extend such a lease for an additional term of 5 years as the department deems appropriate ~~without rebidding~~.

(d) Each lease shall provide that, unless otherwise directed by the lessor, any improvements made to the property during the term of the lease shall be removed at the lessee's expense.

(e) If property is to be used for a public purpose,

~~including a fair, art show, or other educational, cultural, or fundraising activity,~~ the property may be leased without consideration to a governmental entity ~~or school board~~. A lease for a public purpose is exempt from the term limits in paragraph (c).

(f) Paragraphs (c) and (e) ~~(d)~~ do not apply to leases entered into pursuant to s. 260.0161(3), except as provided in such a lease.

(g) No lease executed under this subsection may be utilized by the lessee to establish the ~~4 years'~~ standing required by s. 73.071(3)(b) if the business had not been established for the specified number of ~~4~~ years on the date title passed to the department.

(h) The department may enter into a long-term lease without compensation with a public port listed in s. 403.021(9)(b) for rail corridors used for the operation of a short-line railroad to the port.

(6) Nothing in this chapter prevents the joint use of right-of-way for alternative modes of transportation; provided that the joint use does not impair the integrity and safety of the transportation facility.

(7) The department's estimate of value, required by subsections (4) and (5), shall be prepared in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property exceeds $50,000, as determined by the department estimate, the sale or lease must be at a negotiated price not less than the estimate of value as determined by an appraisal prepared in accordance with department procedures, guidelines, and rules for valuation of

real property, the cost of which shall be paid by the party seeking the purchase or lease of the property ~~appraisal required by paragraphs (4)(c) and (d) shall be prepared in accordance with department guidelines and rules by an independent appraiser who has been certified by the department. If federal funds were used in the acquisition of the property, the appraisal shall also be subject to the approval of the Federal Highway Administration~~.

(8) A "due advertisement" under this section is an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held.

(9) The department, with the approval of the Chief Financial Officer, is authorized to disburse state funds for real estate closings in a manner consistent with good business practices and in a manner minimizing costs and risks to the state.

(10) The department is authorized to purchase title insurance in those instances where it is determined that such insurance is necessary to protect the public's investment in property being acquired for transportation purposes. The department shall adopt procedures to be followed in making the determination to purchase title insurance for a particular parcel or group of parcels which, at a minimum, shall set forth criteria which the parcels must meet.

(11) This section does not modify the requirements of s. 73.013.

Section 15. Subsection (2) of section 337.251, Florida

Statutes, is amended to read:

337.251 Lease of property for joint public-private development and areas above or below department property.—

(2) The department may request proposals for the lease of such property or, if the department receives a proposal for ~~to negotiate~~ a lease of a particular department property that the department desires to consider, the department must ~~it shall~~ publish a notice in a newspaper of general circulation at least once a week for 2 weeks, stating that it has received the proposal and will accept, for 120 ~~60~~ days after the date of publication, other proposals for lease of the particular property ~~use of the space~~. A copy of the notice must be mailed to each local government in the affected area. The department shall, by rule, establish an application fee for the submission of proposals pursuant to this section. The fee must be sufficient to pay the anticipated costs of evaluating the proposals. The department may engage the services of private consultants to assist in the evaluation. Before approval, the department must determine that the proposed lease:

(a) Is in the public's best interest;

(b) Does not require state funds to be used; and

(c) Has adequate safeguards in place to ensure that no additional costs are borne and no service disruptions are experienced by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

Section 16. Subsection (5) of section 338.161, Florida Statutes, is amended to read:

338.161 Authority of department or toll agencies to

advertise and promote electronic toll collection; expanded uses of electronic toll collection system; authority of department to collect tolls, fares, and fees for private and public entities.—

(5) If the department finds that it can increase nontoll revenues or add convenience or other value for its customers, and if a public or private transportation facility owner agrees that its facility will become interoperable with the department's electronic toll collection and video billing systems, the department may ~~is authorized to~~ enter into an agreement with the owner of such facility under which the department uses ~~private or public entities for the department's use of~~ its electronic toll collection and video billing systems to collect and enforce for the owner tolls, fares, administrative fees, and other applicable charges due ~~imposed~~ in connection with use of the owner's facility ~~transportation facilities of the private or public entities that become interoperable with the department's electronic toll collection system~~. The department may modify its rules regarding toll collection procedures and the imposition of administrative charges to be applicable to toll facilities that are not part of the turnpike system or otherwise owned by the department. This subsection may not be construed to limit the authority of the department under any other provision of law or under any agreement entered into before ~~prior to~~ July 1, 2012.

Section 17. Subsection (4) of section 338.165, Florida Statutes, is amended to read:

338.165 Continuation of tolls.—

(4) Notwithstanding any other law to the contrary, pursuant to s. 11, Art. VII of the State Constitution, and subject to the

requirements of subsection (2), the Department of Transportation may request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, ~~the Beeline-East Expressway, the Navarre Bridge,~~ and the Pinellas Bayway to fund transportation projects located within the county or counties in which the revenue-producing project is located and contained in the adopted work program of the department.

Section 18. Subsections (3) and (4) of section 338.26, Florida Statutes, are amended to read:

338.26 Alligator Alley toll road.—

(3) Fees generated from tolls shall be deposited in the State Transportation Trust Fund, and any amount of funds generated annually in excess of that required to reimburse outstanding contractual obligations, to operate and maintain the highway and toll facilities, including reconstruction and restoration, to pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994, and to design and construct ~~develop and operate~~ a fire station at mile marker 63 on Alligator Alley, which may be used by Collier County or other appropriate local governmental entity to provide fire, rescue, and emergency management services ~~to the adjacent counties~~ along Alligator Alley, may be transferred to the Everglades Fund of the South Florida Water Management District in accordance with the memorandum of understanding of June 30, 1997, between the district and the department. The South Florida Water Management District shall deposit funds for projects

undertaken pursuant to s. 373.4592 in the Everglades Trust Fund pursuant to s. 373.45926(4)(a). Any funds remaining in the Everglades Fund may be used for environmental projects to restore the natural values of the Everglades, subject to compliance with any applicable federal laws and regulations. Projects must ~~shall~~ be limited to:

(a) Highway redesign to allow for improved sheet flow of water across the southern Everglades.

(b) Water conveyance projects to enable more water resources to reach Florida Bay to replenish marine estuary functions.

(c) Engineering design plans for wastewater treatment facilities as recommended in the Water Quality Protection Program Document for the Florida Keys National Marine Sanctuary.

(d) Acquisition of lands to move STA 3/4 out of the Toe of the Boot, provided such lands are located within 1 mile of the northern border of STA 3/4.

(e) Other Everglades Construction Projects as described in the February 15, 1994, conceptual design document.

~~(4) The district may issue revenue bonds or notes under s. 373.584 and pledge the revenue from the transfers from the Alligator Alley toll revenues as security for such bonds or notes. The proceeds from such revenue bonds or notes shall be used for environmental projects; at least 50 percent of said proceeds must be used for projects that benefit Florida Bay, as described in this section subject to resolutions approving such activity by the Board of Trustees of the Internal Improvement Trust Fund and the governing board of the South Florida Water Management District and the remaining proceeds must be used for~~

~~restoration activities in the Everglades Protection Area.~~

Section 19. Subsections (2) through (4) of section 339.175, Florida Statutes, are amended to read:

339.175 Metropolitan planning organization.—

(2) DESIGNATION.—

(a)1. An M.P.O. shall be designated for each urbanized area of the state; however, this does not require that an individual M.P.O. be designated for each such area. The M.P.O. ~~Such~~ designation shall be accomplished by agreement between the Governor and units of general-purpose local government that together represent ~~representing~~ at least 75 percent of the population, including the largest incorporated municipality, based on population, ~~of the urbanized area; however, the unit of general-purpose local government that represents the central city or cities within the M.P.O. jurisdiction,~~ as named ~~defined~~ by the United States Bureau of the Census~~, must be a party to such agreement~~.

2. To the extent possible, only one M.P.O. shall be designated for each urbanized area or group of contiguous urbanized areas. More than one M.P.O. may be designated within an existing urbanized area only if the Governor and the existing M.P.O. determine that the size and complexity of the existing urbanized area makes the designation of more than one M.P.O. for the area appropriate.

(b) Each M.P.O. designated in a manner prescribed by Title 23 of the United States Code shall be created and operated under the provisions of this section pursuant to an interlocal agreement entered into pursuant to s. 163.01. The signatories to the interlocal agreement shall be the department and the

governmental entities designated by the Governor for membership on the M.P.O. Each M.P.O. shall be considered separate from the state or the governing body of a local government that is represented on the governing board of the M.P.O. or that is a signatory to the interlocal agreement creating the M.P.O. and shall have such powers and privileges that are provided under s. 163.01. If there is a conflict between this section and s. 163.01, this section prevails.

(c) The jurisdictional boundaries of an M.P.O. shall be determined by agreement between the Governor and the applicable M.P.O. The boundaries must include at least the metropolitan planning area, which is the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period, and may encompass the entire metropolitan statistical area or the consolidated metropolitan statistical area.

(d) In the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, 42 U.S.C. ss. 7401 et seq., the boundaries of the metropolitan planning area in existence as of the date of enactment of this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in this section. If more than one M.P.O. has authority within a metropolitan area or an area that is designated as a nonattainment area, each M.P.O. shall consult with other M.P.O.'s designated for such area and with the state in the coordination of plans and programs required by this section.

(e) The governing body of the M.P.O. shall designate, at a

minimum, a chair, vice chair, and agency clerk. The chair and vice chair shall be selected from among the member delegates comprising the governing board. The agency clerk shall be charged with the responsibility of preparing meeting minutes and maintaining agency records. The clerk shall be a member of the M.P.O. governing board, an employee of the M.P.O., or other natural person.

Each M.P.O. required under this section must be fully operative no later than 6 months following its designation.

(3) VOTING MEMBERSHIP.—

(a) The voting membership of an M.P.O. shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio ~~basis by the Governor~~, based on an agreement among the affected units of general-purpose local government and the Governor as required by federal ~~rules and~~ regulations. The voting membership of an M.P.O. that is redesignated after the effective date of this act as a result of the expansion of the M.P.O. to include a new urbanized area or the consolidation of two or more M.P.O.'s may consist of no more than 25 members. The Governor, in accordance with 23 U.S.C. s. 134, may also provide for M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area that do not have members on the M.P.O. County commission members shall compose not less than one-third of the M.P.O. membership, except for an M.P.O. with more than 15 members located in a county with a 5-member county commission or an M.P.O. with 19 members located in a county with

no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All voting members shall be elected officials of general-purpose local governments, except that an M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of Space Florida. As used in this section, the term "elected officials of a general-purpose local government" excludes ~~shall exclude~~ constitutional officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(b) In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are performing transportation functions that are not under the jurisdiction of a general-purpose local government represented on the M.P.O., they may ~~shall~~ be provided voting membership on the M.P.O. In all other M.P.O.'s where transportation authorities or agencies are to be represented by elected officials from general-purpose local governments, the M.P.O. shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

(c) Any other provision of this section to the contrary

notwithstanding, a chartered county with a population of more than ~~over~~ 1 million ~~population~~ may elect to reapportion the membership of an M.P.O. whose jurisdiction is wholly within the county. The charter county may exercise the provisions of this paragraph if:

1. The M.P.O. approves the reapportionment plan by a three-fourths vote of its membership;

2. The M.P.O. and the charter county determine that the reapportionment plan is needed to fulfill specific goals and policies applicable to that metropolitan planning area; and

3. The charter county determines the reapportionment plan otherwise complies with all federal requirements pertaining to M.P.O. membership.

A ~~Any~~ charter county that elects to exercise the provisions of this paragraph shall notify the Governor in writing.

(d) Any other provision of this section to the contrary notwithstanding, a ~~any~~ county chartered under s. 6(e), Art. VIII of the State Constitution may elect to have its county commission serve as the M.P.O., if the M.P.O. jurisdiction is wholly contained within the county. A ~~Any~~ charter county that elects to exercise the provisions of this paragraph shall so notify the Governor in writing. Upon receipt of the ~~such~~ notification, the Governor must designate the county commission as the M.P.O. The Governor must appoint four additional voting members to the M.P.O., one of whom must be an elected official representing a municipality within the county, one of whom must be an expressway authority member, one of whom must be a person who does not hold elected public office and who resides in the

unincorporated portion of the county, and one of whom must be a school board member.

(4) APPORTIONMENT.—

(a) Each M.P.O. in the state shall review the composition of its membership in conjunction with the decennial census, as prepared by the United States Department of Commerce, Bureau of the Census, and, with the agreement of the affected units of general-purpose local government and the Governor, reapportion the membership as necessary to comply with subsection (3) ~~The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the applicable M.P.O. among the various governmental entities within the area~~.

(b) At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local government serving on an M.P.O. shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members who may vote at any M.P.O. meeting that an alternate member attends in place of a regular member. The method must ~~shall~~ be set forth as a part of the interlocal agreement describing the M.P.O.'s membership or in the M.P.O.'s operating procedures and bylaws. The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting advisers to the M.P.O. governing board. Additional nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint

nonvoting representatives of various multimodal forms of transportation not otherwise represented by voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations located within the jurisdictional boundaries of the M.P.O. upon the request of the aforesaid major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but may not vote or be members of the governing board. ~~The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and reapportion it as necessary to comply with subsection (3).~~

(c) ~~(b)~~ Except for members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (3)(a), the members of an M.P.O. shall serve 4-year terms. Members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (3)(a) may serve terms of up to 4 years as further provided in the interlocal agreement described in paragraph (2)(b). The membership of a member who is a public official automatically terminates upon the member's leaving his or her elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the entity's governing board represented by the member. A vacancy shall be filled by the original appointing entity. A member may be reappointed for one or more additional 4-year terms.

(d) ~~(c)~~ If a governmental entity fails to fill an assigned appointment to an M.P.O. within 60 days after notification by the Governor of its duty to appoint, that appointment must ~~shall~~ be made by the Governor from the eligible representatives of that governmental entity.

Section 20. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 339.2821, Florida Statutes, are amended to read:

339.2821 Economic development transportation projects.—

(1)(a) The department, in consultation with the Department of Economic Opportunity and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body for the direct costs of transportation projects. The Department of Economic Opportunity and the Department of Environmental Protection may formally review and comment on recommended transportation projects, although the department has final approval authority for any project authorized under this section.

(4) A contract between the department and a governmental body for a transportation project must:

(a) Specify that the transportation project is for the construction of a new or expanding business and specify the number of full-time permanent jobs that will result from the project.

(b) Identify the governmental body and require that the governmental body award the construction of the particular transportation project to the lowest and best bidder in accordance with applicable state and federal statutes or rules unless the transportation project can be constructed using

existing local governmental employees within the contract period specified by the department.

(c) Require that the governmental body provide the department with ~~quarterly~~ progress reports. Each ~~quarterly~~ progress report must contain:

1. A narrative description of the work completed and whether the work is proceeding according to the transportation project schedule;

2. A description of each change order executed by the governmental body;

3. A budget summary detailing planned expenditures compared to actual expenditures; and

4. The identity of each small or minority business used as a contractor or subcontractor.

(d) Require that the governmental body make and maintain records in accordance with accepted governmental accounting principles and practices for each progress payment made for work performed in connection with the transportation project, each change order executed by the governmental body, and each payment made pursuant to a change order. The records are subject to financial audit as required by law.

(e) Require that the governmental body, upon completion and acceptance of the transportation project, certify to the department that the transportation project has been completed in compliance with the terms and conditions of the contract between the department and the governmental body and meets the minimum construction standards established in accordance with s. 336.045.

(f) Specify that ~~the department transfer~~ funds will not be

transferred to the governmental body unless construction has begun on the facility of the ~~not more often than quarterly, upon receipt of a request for funds from the governmental body and consistent with the needs of the transportation project. The governmental body shall expend funds received from the department in a timely manner. The department may not transfer funds unless construction has begun on the facility of a~~ business on whose behalf the award was made. If construction of the transportation project does not begin within 4 years after the date of the initial grant award, the grant award is terminated ~~A contract totaling less than $200,000 is exempt from the transfer requirement~~.

(g) Require that funds be used only on a transportation project that has been properly reviewed and approved in accordance with the criteria set forth in this section.

(h) Require that the governing board of the governmental body adopt a resolution accepting future maintenance and other attendant costs occurring after completion of the transportation project if the transportation project is constructed on a county or municipal system.

(5) For purposes of this section, Space Florida may serve as the governmental body or as the contracting agency for a ~~transportation~~ project within a spaceport territory as defined by s. 331.304.

Section 21. Section 339.401, Florida Statutes, is repealed.

Section 22. Section 339.402, Florida Statutes, is repealed.

Section 23. Section 339.403, Florida Statutes, is repealed.

Section 24. Section 339.404, Florida Statutes, is repealed.

Section 25. Section 339.405, Florida Statutes, is repealed.

Section 26. Section 339.406, Florida Statutes, is repealed.

Section 27. Section 339.407, Florida Statutes, is repealed.

Section 28. Section 339.408, Florida Statutes, is repealed.

Section 29. Section 339.409, Florida Statutes, is repealed.

Section 30. Section 339.410, Florida Statutes, is repealed.

Section 31. Section 339.411, Florida Statutes, is repealed.

Section 32. Section 339.412, Florida Statutes, is repealed.

Section 33. Section 339.414, Florida Statutes, is repealed.

Section 34. Section 339.415, Florida Statutes, is repealed.

Section 35. Section 339.416, Florida Statutes, is repealed.

Section 36. Section 339.417, Florida Statutes, is repealed.

Section 37. Section 339.418, Florida Statutes, is repealed.

Section 38. Section 339.419, Florida Statutes, is repealed.

Section 39. Section 339.420, Florida Statutes, is repealed.

Section 40. Section 339.421, Florida Statutes, is repealed.

Section 41. Paragraphs (a) and (c) of subsection (2) and paragraph (i) of subsection (7) of section 339.55, Florida Statutes, are amended to read:

339.55 State-funded infrastructure bank.—

(2) The bank may lend capital costs or provide credit enhancements for:

(a) A transportation facility project that is on the State Highway System or that provides for increased mobility on the state's transportation system or provides intermodal connectivity with airports, seaports, spaceports, rail facilities, and other transportation terminals, pursuant to s. 341.053, for the movement of people and goods.

(c)1. Emergency loans for damages incurred to public-use commercial deepwater seaports, public-use airports, public-use

spaceports, and other public-use transit and intermodal facilities that are within an area that is part of an official state declaration of emergency pursuant to chapter 252 and all other applicable laws. Such loans:

a. May not exceed 24 months in duration except in extreme circumstances, for which the Secretary of Transportation may grant up to 36 months upon making written findings specifying the conditions requiring a 36-month term.

b. Require application from the recipient to the department that includes documentation of damage claims filed with the Federal Emergency Management Agency or an applicable insurance carrier and documentation of the recipient's overall financial condition.

c. Are subject to approval by the Secretary of Transportation and the Legislative Budget Commission.

2. Loans provided under this paragraph must be repaid upon receipt by the recipient of eligible program funding for damages in accordance with the claims filed with the Federal Emergency Management Agency or an applicable insurance carrier, but no later than the duration of the loan.

(7) The department may consider, but is not limited to, the following criteria for evaluation of projects for assistance from the bank:

(i) The extent to which the project will provide for connectivity between the State Highway System and airports, seaports, spaceports, rail facilities, and other transportation terminals and intermodal options pursuant to s. 341.053 for the increased accessibility and movement of people and goods.

Section 42. Subsection (11) of section 341.031, Florida

Statutes, is amended to read:

341.031 Definitions relating to Florida Public Transit Act.—As used in ss. 341.011-341.061, the term:

(11) "Intercity bus service" means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available~~; maintains scheduled information in the National Official Bus Guide; and provides package express service incidental to passenger transportation~~.

Section 43. Section 341.053, Florida Statutes, is amended to read:

341.053 Intermodal Development Program; administration; eligible projects; limitations.—

(1) There is created within the Department of Transportation an Intermodal Development Program to provide for major capital investments in fixed-guideway transportation systems, access to seaports, airports, spaceports, and other transportation terminals, providing for the construction of intermodal or multimodal terminals; and to plan or fund construction of airport, spaceport, seaport, transit, and rail projects that ~~otherwise~~ facilitate the intermodal or multimodal movement of people and goods.

(2) The Intermodal Development Program shall be used for projects that support statewide goals as outlined in the Florida Transportation Plan, the Strategic Intermodal System Plan, the Freight Mobility and Trade Plan, or the appropriate department

modal plan ~~In recognition of the department's role in the economic development of this state, the department shall develop a proposed intermodal development plan to connect Florida's airports, deepwater seaports, rail systems serving both passenger and freight, and major intermodal connectors to the Strategic Intermodal System highway corridors as the primary system for the movement of people and freight in this state in order to make the intermodal development plan a fully integrated and interconnected system. The intermodal development plan must:~~

~~(a) Define and assess the state's freight intermodal network, including airports, seaports, rail lines and terminals, intercity bus lines and terminals, and connecting highways.~~

~~(b) Prioritize statewide infrastructure investments, including the acceleration of current projects, which are found by the Freight Stakeholders Task Force to be priority projects for the efficient movement of people and freight.~~

~~(c) Be developed in a manner that will assure maximum use of existing facilities and optimum integration and coordination of the various modes of transportation, including both government-owned and privately owned resources, in the most cost-effective manner possible.~~

(3) The Intermodal Development Program shall be administered by the department.

(4) The department shall review funding requests from a rail authority created pursuant to chapter 343. The department may include projects of the authorities, including planning and design, in the tentative work program.

(5) ~~No single transportation authority operating a fixed-guideway transportation system, or single fixed-guideway~~

~~transportation system not administered by a transportation authority, receiving funds under the Intermodal Development Program shall receive more than 33 1/3 percent of the total intermodal development funds appropriated between July 1, 1990, and June 30, 2015. In determining the distribution of funds under the Intermodal Development Program in any fiscal year, the department shall assume that future appropriation levels will be equal to the current appropriation level.~~

~~(6)~~ The department may ~~is authorized to~~ fund projects within the Intermodal Development Program, which are consistent, to the maximum extent feasible, with approved local government comprehensive plans of the units of local government in which the project is located. Projects that are eligible for funding under this program include planning studies, major capital investments in public rail and fixed-guideway transportation or freight facilities and systems which provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between seaports, airports, spaceports, intermodal logistics centers, and other transportation terminals; construction of intermodal or multimodal terminals, including projects on airports, spaceports, intermodal logistics centers, or seaports which assist in the movement or transfer of people or goods; development and construction of dedicated bus lanes; and projects which otherwise facilitate the intermodal or multimodal movement of people and goods.

Section 44. Section 343.80, Florida Statutes, is amended to read:

343.80 Short title.—This part may be cited as the "Northwest Florida Regional Transportation Finance ~~Corridor~~

Authority Law."

Section 45. Section 343.805, Florida Statutes, is amended to read:

343.805 Definitions.—As used in this part, the term:

(1) "Agency of the state" means the state and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Authority" means the body politic and corporate and agency of the state created by this part.

(3) "Bonds" means the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue pursuant to this part.

(4) "Department" means the Department of Transportation existing under chapters 334-339.

(5) "Federal agency" means the United States, the President of the United States, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(6) "Limited access expressway" or "expressway" means a street or highway especially designed for through traffic and over, from, or to which a person does not have the right of easement, use, or access except in accordance with the rules adopted and established by the authority for the use of such facility. Such highway or street may be a parkway, from which trucks, buses, and other commercial vehicles are excluded, or it may be a freeway open to use by all customary forms of street and highway traffic.

(7) "Members" means the governing body of the authority, and the term "member" means one of the individuals constituting such governing body.

(8) "Northwest Florida Regional Transportation Finance Authority System" or "system" means any and all expressways and appurtenant facilities thereto owned by the Authority, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressway or expressways.

(9) ~~(8)~~ "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution, or any successor thereto.

~~(9) "U.S. 98 corridor" means U.S. Highway 98 and any feeder roads, reliever roads, connector roads, bridges, and other transportation appurtenances, existing or constructed in the future, that support U.S. Highway 98 in Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, and Wakulla Counties.~~

~~(10) "U.S. 98 corridor system" means any and all expressways and appurtenant facilities, including, but not limited to, all approaches, roads, bridges, and avenues of access for the expressways that are either built by the authority or whose ownership is transferred to the authority by other governmental or private entities.~~

Terms importing singular number include the plural number in each case and vice versa, and terms importing persons include firms and corporations.

Section 46. Section 343.81, Florida Statutes, is amended to read:

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~~Corridor~~ Authority.—

(1) There is created and established a body politic and corporate, an agency of the state, to be known as the Northwest Florida Regional Transportation Finance ~~Corridor~~ Authority, hereinafter referred to as "the authority."

(2)(a) The governing body of the authority shall consist of five ~~eight~~ voting members, two from Okaloosa County and one each from ~~Escambia, Santa Rosa~~, Walton, ~~Okaloosa,~~ Bay, and Gulf~~, Franklin, and Wakulla~~ Counties, appointed by the Governor to a 4-year term. The appointees shall be residents of their respective counties and may not hold an elected office. Upon the effective date of his or her appointment, or as soon thereafter as practicable, each appointed member of the authority shall enter upon his or her duties. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Any member of the authority shall be eligible for reappointment. Members of the authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(b) The district secretary of the Department of Transportation serving Northwest Florida shall serve as an ex officio, nonvoting member.

(3)(a) The authority shall elect one of its members as chair and shall also elect a secretary and a treasurer who may or may not be members of the authority. The chair, secretary, and treasurer shall hold such offices at the will of the authority.

(b) Three ~~Five~~ members of the authority shall constitute a


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quorum, and the vote of at least three ~~Five~~ members shall be necessary for any action taken by the authority. A vacancy in the authority does not impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(c) The authority shall meet at least quarterly but may meet more frequently upon the call of the chair. The authority should alternate the locations of its meetings among the seven counties.

(4) Members of the authority shall serve without compensation but shall be entitled to receive from the authority their travel expenses and per diem incurred in connection with the business of the authority, as provided in s. 112.061.

(5) The authority may employ an executive director, an executive secretary, its own counsel and legal staff, technical experts, engineers, and such employees, permanent or temporary, as it may require. The authority shall determine the qualifications and fix the compensation of such persons, firms, or corporations and may employ a fiscal agent or agents; however, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees its power as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority.

~~(6) The authority may establish technical advisory committees to provide guidance and advice on corridor-related issues. The authority shall establish the size, composition, and focus of any technical advisory committee created. A member~~

~~appointed to a technical advisory committee shall serve without compensation but shall be entitled to per diem or travel expenses, as provided in s. 112.061.~~

Section 47. Section 343.82, Florida Statutes, is amended to read:

343.82 Purposes and powers.—

(1) The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Northwest Florida Transportation Finance Authority System ~~The primary purpose of the authority is to improve mobility on the U.S. 98 corridor in Northwest Florida to enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development along the corridor, and implement transportation projects to alleviate current or anticipated traffic congestion~~.

(2)(a) The authority, in the construction of the Northwest Florida Regional Transportation Finance Authority System, is authorized to construct any feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities ~~that are intended to improve mobility along the U.S. 98 corridor~~. The transportation improvement projects may also include all necessary approaches, roads, bridges, and avenues of access that are desirable and proper with the concurrence, where applicable, of the department if the project is to be part of the State Highway System or the respective county or municipal governing boards. Any transportation facilities constructed by the authority may be tolled.

(b) Notwithstanding any special act to the contrary, the

authority shall plan for and study the feasibility of constructing, operating, and maintaining a bridge or bridges spanning Choctawhatchee Bay ~~or Santa Rosa Sound, or both,~~ and access roads to such bridge or bridges, including studying the environmental and economic feasibility of such bridge or bridges and access roads, and such other transportation facilities that become part of such bridge system. The authority may construct, operate, and maintain the bridge system if the authority determines that the bridge system project is feasible and consistent with the authority's primary purpose and master plan.

~~(3)(a) The authority shall develop and adopt a corridor master plan no later than July 1, 2007. The goals and objectives of the master plan are to identify areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation need to be improved; evaluate the economic development potential of the corridor and consider strategies to develop that potential; develop methods of building partnerships with local governments, other state and federal entities, the private sector business community, and the public in support of corridor improvements; and to identify projects that will accomplish these goals and objectives.~~

~~(b) After its adoption, the master plan shall be updated annually before July 1 of each year.~~

~~(c) The authority shall present the original master plan and updates to the governing bodies of the counties within the corridor and to the legislative delegation members representing those counties within 90 days after adoption.~~

~~(d) The authority may undertake projects or other improvements in the master plan in phases as particular projects~~

~~or segments thereof become feasible, as determined by the authority. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans, advances from the Toll Facilities Revolving Trust Fund, and from any other sources.~~

(3) ~~(4)~~ The authority is granted and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(a) To acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor transportation facilities ~~within the U.S. 98 corridor~~.

(b) To borrow money and to make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "revenue bonds" of the authority, for the purpose of financing all or part of the Northwest Florida Regional Transportation Finance Authority System ~~mobility improvements within the U.S. 98 corridor~~, as well as the appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access authorized by this part, the bonds to mature not exceeding 40 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges.

(c) To fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and

facilities of the Northwest Florida Regional Transportation Finance Authority ~~Corridor~~ System, which rates, fees, rentals, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part; however, such right and power may be assigned or delegated by the authority to the department. ~~The authority may not impose tolls or other charges on existing highways and other transportation facilities within the corridor.~~

(d) To acquire by donation or otherwise, purchase, hold, lease as lessee, and use any franchise, property, real, personal, or mixed, tangible or intangible, or any options thereof in its own name or in conjunction with others, or interest therein, necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by the authority, which the authority and the department have determined is not needed for the construction, operation, and maintenance of the system ~~it~~.

(e) To sue and be sued, implead and be impleaded, complain, and defend in all courts.

(f) To adopt, use, and alter at will a corporate seal.

(g) To enter into and make leases.

~~(h) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.~~

(h) ~~(i)~~ To make contracts of every name and nature, including, but not limited to, partnerships providing for

participation in ownership and revenues, and to execute all instruments necessary or convenient for the carrying on of its business.

(i) ~~(j)~~ Without limitation of the foregoing, to borrow money and accept grants from and to enter into contracts, leases, or other transactions with any federal agency, the state, any agency of the state, or any other public body of the state.

(j) ~~(k)~~ To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(k) ~~(l)~~ To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority.

(l) ~~(m)~~ To enter into partnership and other agreements respecting ownership and revenue participation in order to facilitate financing and constructing any project or portions thereof.

(m) ~~(n)~~ To participate in agreements with private entities and to receive private contributions.

(n) ~~(o)~~ To contract with the department or with a private entity for the operation of traditional and electronic toll collection facilities ~~along the U.S. 98 corridor~~.

(o) ~~(p)~~ To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(p) ~~(q)~~ To construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards and to construct, repair, replace, operate, install, and maintain electronic toll payment systems thereon, with all necessary and

incidental powers to accomplish the foregoing.

(4) ~~(5)~~ The authority does not have power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

Section 48. Section 343.83, Florida Statutes, is amended to read:

343.83 Improvements, bond financing authority.—Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature approves bond financing by the Northwest Florida Transportation Finance ~~Corridor~~ Authority for improvements to toll collection facilities, interchanges to the legislatively approved system, and any other facility appurtenant, necessary, or incidental to the approved system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to s. 343.835(1)(a) or (b) whether currently issued or issued in the future or by a combination of such bonds.

Section 49. Subsections (2) and (3) of section 343.835, Florida Statutes, is amended to read:

343.835 Bonds of the authority.—

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions that are part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates,

fees, rentals, or other charges or receipts of the authority~~,~~ ~~derived by the authority for the U.S. 98 corridor improvements~~.

(b) The completion, improvement, operation, extension, maintenance, repair, or lease of the system, and the duties of the authority and others with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities owned or provided ~~constructed~~ by the authority.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust, or indenture securing the bonds or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The authority may employ fiscal agents as provided by this part or the State Board of Administration may, upon request of the authority, act as fiscal agent for the authority in the issuance of any bonds that are issued pursuant to this part, and the State Board of Administration may, upon request of the authority, take over the management, control, administration, custody, and payment of any or all debt services or funds or assets now or hereafter available for any bonds issued pursuant to this part. The authority may enter into any deeds of trust,

indentures, or other agreements with its fiscal agent, or with any bank or trust company within or without the state, as security for such bonds and may, under such agreements, sign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority. Such deed of trust, indenture, or other agreement may contain such provisions as are customary in such instruments or, as the authority authorizes, including, but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair, and lease of the system ~~U.S. 98 corridor improvements~~ and the duties of the authority and others with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of the bonds.

Section 50. Section 343.84, Florida Statutes, is amended to read:

343.84 Department to construct, operate, and maintain facilities ~~may be appointed agent of authority for construction.~~

(1) The department is the agent of ~~may be appointed by~~ the authority ~~as its agent~~ for the purpose of constructing improvements and extensions to the system and for the completion thereof. ~~In such event,~~ The authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto, shall


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request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the system, and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor. The department shall proceed with such construction and use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges. The authority may alternatively, with the consent and approval of the department, elect to appoint a local agency certified by the department to administer federal aid projects in accordance with federal law as the authority's agent for the purpose of performing each phase of a project.

(2) Notwithstanding the provisions of subsection (1), the department is the agent of the authority for the purpose of operating and maintaining the system. The department shall operate and maintain the system, and the costs incurred by the department for operation and maintenance shall be reimbursed from revenues of the system. The appointment of the department as agent for the authority does not create an independent obligation of the department to operate and maintain the system. The authority shall remain obligated as principal to operate and maintain its system, and, except as otherwise provided by the lease-purchase agreement between the department and the Mid-Bay Bridge Authority in connection with its issuance of bonds, the authority's bondholders do not have an independent right to compel the department to operate and maintain any part of the authority's system.


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(3) The authority shall fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the authority's facilities, as otherwise provided in this part.

Section 51. Subsection (1) of section 343.85, Florida Statutes, is amended to read:

343.85 Acquisition of lands and property.—

(1) For the purposes of this part, the Northwest Florida Regional Transportation Finance ~~Corridor~~ Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any purpose of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities ~~within the U.S. 98 transportation corridor designated by the authority~~; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority may condemn any material and property necessary for such purposes.

Section 52. Section 343.875, Florida Statutes, is repealed.

Section 53. Subsection (3) of section 343.89, Florida Statutes, is amended to read:

343.89 Complete and additional statutory authority.—

(3) This part does not preclude the department from

acquiring, holding, constructing, improving, maintaining, operating, or owning tolled or nontolled facilities funded and constructed from nonauthority sources that are part of the State Highway System within the geographical boundaries of the Northwest Florida Regional Transportation Finance ~~Corridor~~ Authority.

Section 54. Subsection (4) of section 343.922, Florida Statutes, is amended to read:

343.922 Powers and duties.—

(4) The authority may undertake projects or other improvements in the master plan in phases as particular projects or segments become feasible, as determined by the authority. The authority shall coordinate project planning, development, and implementation with the applicable local governments. The authority's projects that are transportation oriented shall be consistent to the maximum extent feasible with the adopted local government comprehensive plans at the time they are funded for construction. Authority projects that are not transportation oriented and meet the definition of development pursuant to s. 380.04 shall be consistent with the local comprehensive plans. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans~~, advances from the Toll Facilities Revolving Trust Fund,~~ and funding and technical assistance from any other source.

Section 55. Chapter 345, Florida Statutes, consisting of sections 345.0001, 345.0002, 345.0003, 345.0004, 345.0005, 345.0006, 345.0007, 345.0008, 345.0009, 345.0010, 345.0011,

345.0012, 345.0013, 345.0014, 345.0015, and 345.0016, is created to read:

345.0001 Short title.—This act may be cited as the "Florida Regional Transportation Finance Authority Act."

345.0002 Definitions.—As used in this chapter, the term:

(1) "Agency of the state" means the state and any department of, or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Area served" means the geographical area of the counties for which an authority is established.

(3) "Authority" means a regional transportation finance authority, a body politic and corporate, and an agency of the state, established pursuant to the Florida Regional Transportation Finance Authority Act.

(4) "Bonds" means the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in temporary or definitive form, which an authority may issue pursuant to this act.

(5) "Department" means the Department of Transportation of Florida and any successor thereto.

(6) "Division" means the Division of Bond Finance of the State Board of Administration.

(7) "Federal agency" means the United States, the President of the United States, and any department of, or any bureau, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(8) "Members" means the governing body of an authority, and the term "member" means one of the individuals constituting such

governing body.

(9) "Regional system" or "system" means, generally, a modern tolled highway system of roads, bridges, causeways, and tunnels within any area of the authority, with access limited or unlimited as an authority may determine, and the buildings and structures and appurtenances and facilities related to the system, including all approaches, streets, roads, bridges, and avenues of access for the system.

(10) "Revenues" means the tolls, revenues, rates, fees, charges, receipts, rentals, contributions, and other income derived from or in connection with the operation or ownership of a regional system, including the proceeds of any use and occupancy insurance on any portion of the system but excluding state funds available to an authority and any other municipal or county funds available to an authority under an agreement with a municipality or county.

345.0003 Regional transportation finance authority; formation; membership.—

(1) A county, or two or more contiguous counties, may, after the approval of the Legislature, form a regional transportation finance authority for the purposes of financing, constructing, maintaining, and operating transportation projects in a region of this state. An authority shall be governed in accordance with the provisions of this chapter. An authority may not be created without the approval of the Legislature and the approval of the county commission of each county that will be a part of the authority. An authority may not be created to serve a particular area of this state as provided by this subsection if a regional transportation finance authority has been created

and is operating within all or a portion of the same area served pursuant to an act of the Legislature. Each authority shall be the only authority created and operating pursuant to this chapter within the area served by the authority.

(2) The governing body of an authority shall consist of a board of voting members as follows:

(a) The county commission of each county in the area served by the authority shall each appoint a member who must be a resident of the county from which he or she is appointed. The county commission of each county with a total population of more than 250,000 shall appoint a second member who must be a resident of the county. If possible, the member must represent the business and civic interests of the community.

(b) The Governor shall appoint an equal number of members to the board as those appointed by the county commissions. The members appointed by the Governor must be residents of the area served by the authority.

(c) The secretary of the Department of Transportation shall appoint one of the district secretaries, or his or her designee, for the districts within which the area served by the authority is located.

(3) The term of office of each member shall be for 4 years or until his or her successor is appointed and qualified.

(4) A member may not hold an elected office.

(5) A vacancy occurring in the governing body before the expiration of the member's term shall be filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term.

(6) Each member, before entering upon his or her official duties, must take and subscribe to an oath before an official authorized by law to administer oaths that he or she will honestly, faithfully, and impartially perform the duties devolving upon him or her in office as a member of the governing body of the authority and that he or she will not neglect any duties imposed upon him or her by this chapter.

(7) A member of an authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(8) The members of the authority shall designate one of its members as chair.

(9) The members of the authority shall serve without compensation, but shall be entitled to reimbursement for per diem and other expenses in accordance with s. 112.061 while in performance of their duties.

(10) A majority of the members of the authority constitutes a quorum, and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting become effective without publication, posting, or any further action of the authority.

345.0004 Powers and duties.—

(1)(a) An authority created and established, or governed, by the Florida Regional Transportation Finance Authority Act shall plan, develop, finance, construct, reconstruct, improve, own, operate, and maintain a regional system in the area served by the authority.

(b) An authority may not exercise the powers in paragraph (a) with respect to an existing system for transporting people

and goods by any means that is owned by another entity without the consent of that entity. If an authority acquires, purchases, or inherits an existing entity, the authority shall also inherit and assume all rights, assets, appropriations, privileges, and obligations of the existing entity.

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the purposes of this section, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts in its own name.

(b) To adopt and use a corporate seal.

(c) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(d) To acquire, purchase, hold, lease as a lessee, and use any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority.

(e) To sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by the authority, which the authority and the department have determined is not needed for the construction, operation, and maintenance of the system, including air rights.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the use of any system owned or operated by the authority, which rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this act; however, such right and power may be assigned or

delegated by the authority to the department.

(g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, in temporary or definitive form, for the purpose of financing all or part of the improvement of the authority's system and appurtenant facilities, including the approaches, streets, roads, bridges, and avenues of access for the system and for any other purpose authorized by this chapter, the bonds to mature in not exceeding 30 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of its revenues, rates, fees, rentals, or other charges, including municipal or county funds received by the authority pursuant to the terms of an agreement between the authority and a municipality or county; and, in general, to provide for the security of the bonds and the rights and remedies of the holders of the bonds; however, municipal or county funds may not be pledged for the construction of a project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the governing board of the municipality or county, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when the pledge of funds is in effect. An authority shall reimburse a municipality or county for sums expended from municipal or county funds used for the payment of the bond obligations.

(h) To make contracts of every name and nature, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute each instrument necessary or convenient for the conduct of its business.

(i) Without limitation of the foregoing, to cooperate with, to borrow money and accept grants from, and to enter into contracts or other transactions with any federal agency, the state, or any agency or any other public body of the state.

(j) To employ an executive director, attorney, staff, and consultants. Upon the request of an authority, the department shall furnish the services of a department employee to act as the executive director of the authority.

(k) To accept funds or other property from private donations.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this act or any other law.

(3) An authority does not have the power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof. Obligations of the authority may not be deemed to be obligations of the state or of any other political subdivision or agency thereof. The state or any political subdivision or agency thereof, except the authority, is not liable for the payment of the principal of or interest on such obligations.

(4) An authority has no power, other than by consent of the affected county or an affected municipality, to enter into an agreement that would legally prohibit the construction of a road by the county or the municipality.

(5) An authority formed pursuant to this chapter shall comply with the statutory requirements of general application which relate to the filing of a report or documentation required

by law, including the requirements of ss. 189.4085, 189.415, 189.417, and 189.418.

345.0005 Bonds.—

(1)(a) Bonds may be issued on behalf of an authority pursuant to the State Bond Act.

(b) An authority may also issue bonds in such principal amount as is necessary, in the opinion of the authority, to provide sufficient moneys for achieving its corporate purposes, including construction, reconstruction, improvement, extension, and repair of the system, the cost of acquisition of all real property, interest on bonds during construction and for a reasonable period thereafter, and establishment of reserves to secure bonds.

(2)(a) Bonds issued by an authority pursuant to paragraph (1)(a) or paragraph (1)(b) must be authorized by resolution of the members of the authority and must bear such date or dates; mature at such time or times, not exceeding 30 years after their respective dates; bear interest at such rate or rates, not exceeding the maximum rate fixed by general law for authorities; be in such denominations; be in such form, either coupon or fully registered; carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption; and be entitled to such priorities of lien on the revenues and other available moneys as such resolution or any resolution subsequent to the bonds' issuance may provide.

(b) Bonds issued pursuant to paragraph (1)(a) or paragraph (1)(b) must be sold at public sale in the same manner provided in the State Bond Act. Pending the preparation of definitive

bonds, temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(3) A resolution that authorizes any bonds may contain provisions that must be part of the contract with the holders of the bonds, as to:

(a) The pledging of all or any part of the revenues, available municipal or county funds, or other charges or receipts of the authority derived from the regional system.

(b) The construction, reconstruction, improvement, extension, repair, maintenance, and operation of the system, or any part or parts of the system, and the duties and obligations of the authority with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter issued, or of any loan or grant by any federal agency or the state or any political subdivision of the state may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing, and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the system or any part of the system.

(e) The setting aside of reserves or of sinking funds and the regulation and disposition of the reserves or sinking funds.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any deed of trust or indenture securing the bonds, or under which the bonds may be issued.

(h) Any other or additional matters, of like or different character, which in any way affect the security or protection of

the bonds.

(4) The authority may enter into any deeds of trust, indentures, or other agreements with any bank or trust company within or without the state, as security for such bonds, and may, under such agreements, assign and pledge any of the revenues and other available moneys, including any available municipal or county funds, pursuant to the terms of this chapter. The deed of trust, indenture, or other agreement may contain provisions that are customary in such instruments or that the authority may authorize, including, but without limitation, provisions that:

(a) Pledge any part of the revenues or other moneys lawfully available therefor.

(b) Apply funds and safeguard funds on hand or on deposit.

(c) Provide for the rights and remedies of the trustee and the holders of the bonds.

(d) Provide for the terms and provisions of the bonds or for resolutions authorizing the issuance of the bonds.

(e) Provide for any other or additional matters, of like or different character, which affect the security or protection of the bonds.

(5) Any bonds issued pursuant to this act are negotiable instruments and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) A resolution that authorizes the issuance of authority bonds and pledges the revenues of the system must require that revenues of the system be periodically deposited into appropriate accounts in such sums as are sufficient to pay the

costs of operation and maintenance of the system for the current fiscal year as set forth in the annual budget of the authority and to reimburse the department for any unreimbursed costs of operation and maintenance of the system from prior fiscal years before revenues of the system are deposited into accounts for the payment of interest or principal owing or that may become owing on such bonds.

(7) State funds may not be used or pledged to pay the principal or interest of any authority bonds, and all such bonds must contain a statement on their face to this effect.

345.0006 Remedies of bondholders.—

(1) The rights and the remedies granted to authority bondholders under this chapter are in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or indenture providing for the issuance of bonds, or by any deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If an authority defaults in the payment of the principal of or interest on any of the bonds issued pursuant to this chapter after such principal of or interest on the bonds becomes due, whether at maturity or upon call for redemption, as provided in the resolution or indenture, and such default continues for 30 days, or in the event that the authority fails or refuses to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes of the default provided that the holders of 25 percent

in aggregate principal amount of the bonds then outstanding first gave written notice of their intention to appoint a trustee, to the authority and to the department.

(2) The trustee, and any trustee under any deed of trust, indenture, or other agreement, may, and upon written request of the holders of 25 percent, or such other percentages specified in any deed of trust, indenture, or other agreement, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his, her, or its own name:

(a) By mandamus or other suit, action, or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) Bring suit upon the bonds.

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders.

(d) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

(3) A trustee, if appointed pursuant to this section or acting under a deed of trust, indenture, or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver.

The receiver may enter upon and take possession of the system or the facilities or any part or parts of the system, the revenues and other pledged moneys, for and on behalf of and in the name of, the authority and the bondholders. The receiver may collect and receive all revenues and other pledged moneys in the same manner as the authority might do. The receiver shall deposit all such revenues and moneys in a separate account and apply all such revenues and moneys remaining after allowance for payment of all costs of operation and maintenance of the system in such manner as the court directs. In a suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court must be a first charge on any revenues after payment of the costs of operation and maintenance of the system. The trustee also has all other powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) This section or any other section of this chapter does not authorize a receiver appointed pursuant to this section for the purpose of operating and maintaining the system or any facilities or parts thereof to sell, assign, mortgage, or otherwise dispose of any of the assets belonging to the authority. The powers of such receiver are limited to the operation and maintenance of the system, or any facility or parts thereof and to the collection and application of revenues and other moneys due the authority, in the name and for and on behalf of the authority and the bondholders. A holder of bonds

or any trustee does not have the right in any suit, action, or proceeding, at law or in equity, to compel a receiver, or a receiver may not be authorized or a court may not direct a receiver to, sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

345.0007 Department to construct, operate, and maintain facilities.—

(1) The department is the agent of each authority for the purpose of performing all phases of a project, including, but not limited to, constructing improvements and extensions to the system. The authority shall provide to the department complete copies of the documents, agreements, resolutions, contracts, and instruments that relate to the project and shall request that the department perform the construction work, including the planning, surveying, design, and actual construction of the completion, extensions, and improvements to the system. After the issuance of bonds to finance construction of an improvement or addition to the system, the authority shall transfer to the credit of an account of the department in the State Treasury the necessary funds for construction. The department shall proceed with construction and use the funds for the purpose authorized and as otherwise provided by law for construction of roads and bridges. An authority may alternatively, with the consent and approval of the department, elect to appoint a local agency certified by the department to administer federal aid projects in accordance with federal law as the authority's agent for the purpose of performing each phase of a project.

(2) Notwithstanding the provisions of subsection (1), the department is the agent of each authority for the purpose of

operating and maintaining the system. The department shall operate and maintain the system, and the costs incurred by the department for operation and maintenance shall be reimbursed from revenues of the system. The appointment of the department as agent for each authority does not create an independent obligation of the department to operate and maintain a system. Each authority shall remain obligated as principal to operate and maintain its system, and an authority's bondholders do not have an independent right to compel the department to operate or maintain the authority's system.

(3) Each authority shall fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the authority's facilities, as otherwise provided in this chapter.

345.0008 Department contributions to authority projects.—

(1) The department may, at the request of an authority, provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, or construction of an authority project included in the 10-year Strategic Intermodal Plan, subject to appropriation by the Legislature. The department shall separately include each such authority project in its work program, through amendment if necessary. The department may not request legislative approval of acquisition or construction of a proposed authority project unless the estimated net revenues of the proposed project will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of the 12th year of operation and to pay at least 100 percent of the debt service on the bonds by the end of the 30th year of operation.

(2) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies pursuant to subsection (1).

(3) An obligation or expense incurred by the department under this section is a part of the cost of the authority project for which the obligation or expense was incurred. The department may require money contributed by the department under this section to be repaid from tolls of the project on which the money was spent, other revenue of the authority, or other sources of funds.

(4) The department shall receive from an authority a share of the authority's net revenues equal to the ratio of the department's total contributions to the authority under this section to the sum of: the department's total contributions under this section; contributions by any local government to the cost of revenue producing authority projects; and the sale proceeds of authority bonds after payment of costs of issuance. For the purpose of this subsection, net revenues are gross revenues of an authority after payment of debt service, administrative expenses, operations and maintenance expenses, and all reserves required to be established under any resolution under which authority bonds are issued.

345.0009 Acquisition of lands and property.—

(1) For the purposes of this chapter, an authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, condemnation by eminent domain proceedings, or transfer from another political subdivision of the state, as the authority may deem necessary for any of the purposes of this

chapter, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the system or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. Each authority shall also have the power to condemn any material and property necessary for such purposes.

(2) An authority shall exercise the right of eminent domain conferred under this section in the manner provided by law.

(3) If an authority acquires property for a transportation facility or in a transportation corridor, it is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property or affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. An authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

345.0010 Cooperation with other units, boards, agencies,

and individuals.—A county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in, or of, the state may make and enter into a contract, lease, conveyance, partnership, or other agreement with an authority within the provisions and purposes of this chapter. Each authority may make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any federal agency, corporation, and individual, to carry out the purposes of this chapter.

345.0011 Covenant of the state.—The state pledges to, and agrees with, any person, firm, or corporation, or federal or state agency subscribing to, or acquiring the bonds to be issued by an authority for the purposes of this chapter that the state will not limit or alter the rights vested by this chapter in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the rights vested in the authority and the department affect the rights of the holders of bonds issued pursuant to this chapter. The state further pledges to, and agrees with, the United States that if a federal agency constructs or contributes any funds for the completion, extension, or improvement of the system, or any parts of the system, the state will not alter or limit the rights and powers of the authority and the department in any manner that is inconsistent with the continued maintenance and operation of the system or the completion, extension, or improvement of the system, or which would be inconsistent with the due performance

of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers granted in this section, so long as the powers are necessary or desirable to carry out the purposes of this chapter and the purposes of the United States in the completion, extension, or improvement of the system, or any part of the system.

345.0012 Exemption from taxation.—The authority created under this chapter is for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and because the authority will be performing essential governmental functions pursuant to this chapter, the authority is not required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it, and the bonds issued by the authority, their transfer and the income from their issuance, including any profits made on the sale of the bonds, shall be free from taxation by the state or by any political subdivision, taxing agency, or instrumentality of the state. The exemption granted by this section does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

345.0013 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this chapter are legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds and are also securities

eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law to the contrary.

345.0014 Applicability.—

(1) The powers conferred by this chapter are in addition to the powers conferred by other law and do not repeal the provisions of any other general or special law or local ordinance, but supplement such other laws in the exercise of the powers provided in this chapter, and provide a complete method for the exercise of the powers granted in this chapter. The extension and improvement of a system, and the issuance of bonds pursuant to this chapter to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this chapter without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821, and approval of any bonds issued under this act by the qualified electors or qualified electors who are freeholders in the state or in any political subdivision of the state is not required for the issuance of such bonds pursuant to this chapter.

(2) This act does not repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration, but supersedes any other law that is inconsistent with the provisions of this chapter, including, but not limited to, s. 215.821.

345.0015 Santa Rosa-Escambia Regional Transportation Finance Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Santa Rosa-Escambia Regional Transportation Finance Authority, hereinafter referred to as the "authority."

(2) The area served by the authority shall be Escambia and Santa Rosa Counties.

(3) The purposes and powers of the authority are as identified in the Florida Regional Transportation Finance Authority Act for the area served by the authority, and the authority operates in the manner provided by the Florida Regional Transportation Finance Authority Act.

345.0016 Suncoast Regional Transportation Finance Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Suncoast Regional Transportation Finance Authority, hereinafter referred to as the "authority."

(2) The area served by the authority shall be Citrus, Levy, Marion, and Alachua Counties.

(3) The purposes and powers of the authority are as identified in the Florida Regional Transportation Finance Authority Act for the area served by the authority, and the authority operates in the manner provided by the Florida Regional Transportation Finance Authority Act.

Section 56. Transfer to the Northwest Florida Regional Transportation Finance Authority.—The governance and control of the Mid-Bay Bridge Authority System, created pursuant to chapter 2000-411, Laws of Florida, is transferred to the Northwest Florida Regional Transportation Finance Authority.

(1) The assets, facilities, tangible and intangible property and any rights in such property, and any other legal rights of the Mid-Bay Bridge Authority, including the bridge system operated by the authority, are transferred to the Northwest Florida Regional Transportation Finance Authority. All powers of the Mid-Bay Bridge Authority shall succeed to the Northwest Florida Regional Transportation Finance Authority, and the operations and maintenance of the bridge system shall be under the control of the Northwest Florida Regional Transportation Finance Authority, pursuant to this section. Revenues collected on the bridge system may be considered Northwest Florida Regional Transportation Finance Authority revenues, and the Mid-Bay Bridge may be considered part of the authority system, if bonds of the Mid-Bay Bridge Authority are not outstanding. The Northwest Florida Regional Transportation Finance Authority also assumes all liability for bonds of the Mid-Bay Bridge Authority pursuant to the provisions of subsection (2). The Northwest Florida Regional Transportation Finance Authority may review other contracts, financial obligations, and contractual obligations and liabilities of the Mid-Bay Bridge Authority and may assume legal liability for the obligations that are determined to be necessary for the continued operation of the bridge system.

(2) The transfer pursuant to this section is subject to the terms and covenants provided for the protection of the holders of the Mid-Bay Bridge Authority bonds in the lease-purchase agreement and the resolutions adopted in connection with the issuance of the bonds. Further, the transfer does not impair the terms of the contract between the Mid-Bay Bridge Authority and

the bondholders, does not act to the detriment of the bondholders, and does not diminish the security for the bonds. After the transfer, until the bonds of the Mid-Bay Bridge Authority are fully defeased or paid in full, the department shall operate and maintain the bridge system and any other facilities of the authority in accordance with the terms, conditions, and covenants contained in the bond resolutions and lease-purchase agreement securing the bonds of the bridge authority. The Department of Transportation, as the agent of the Northwest Florida Regional Transportation Finance Authority, shall collect toll revenues and apply them to the payment of debt service as provided in the bond resolution securing the bonds. The Northwest Florida Regional Transportation Finance Authority shall expressly assume all obligations relating to the bonds to ensure that the transfer will have no adverse impact on the security for the bonds of the Mid-Bay Bridge Authority. The transfer does not make the obligation to pay the principal and interest on the bonds a general liability of the Northwest Florida Regional Transportation Finance Authority or pledge the authority system revenues to payment of the Mid-Bay Bridge Authority bonds. Revenues that are generated by the bridge system and other facilities of the Mid-Bay Bridge Authority and that were pledged by the Mid-Bay Bridge Authority to the payment of the bonds remain subject to the pledge for the benefit of the bondholders. The transfer does not modify or eliminate any prior obligation of the Department of Transportation to pay certain costs of the bridge system from sources other than revenues of the bridge system. With regard to the bridge authority's current long-term debt of $9.5 million due to the department as of June

30, 2012, and to the extent permitted by the bond resolutions and lease-purchase agreement securing the bonds, the Northwest Florida Regional Transportation Finance Authority shall make payment annually to the State Transportation Trust Fund, for the purpose of repaying the Mid-Bay Bridge Authority's long-term debt due to the department, from any bridge system revenues obtained under this section which remain after the payment of the costs of operations, maintenance, renewal, and replacement of the bridge system; the payment of current debt service; and other payments required in relation to the bonds. The Northwest Florida Regional Transportation Finance Authority shall make the annual payments, not to exceed $1 million per year, to the State Transportation Trust Fund until all remaining authority long-term debt due to the department has been repaid.

(3) Any remaining toll revenue from the facilities of the Mid-Bay Bridge Authority collected by the Northwest Florida Regional Transportation Finance Authority after meeting the requirements of subsections (1) and (2) shall be used for the construction, maintenance, or improvement of any toll facility of the Northwest Florida Transportation Finance Authority within the county or counties in which the revenue was collected.

Section 57. Section 348.751, Florida Statutes, is amended to read:

348.751 Short title.—This part ~~shall be known and~~ may be cited as the "Central Florida ~~Orlando-Orange County~~ Expressway Authority Law."

Section 58. Section 348.752, Florida Statutes, is amended to read:

348.752 Definitions.—As used in this chapter ~~The following~~

~~terms, whenever used or referred to in this law, shall have the following meanings, except in those instances where the context clearly indicates otherwise~~:

(1) The term "agency of the state" means ~~and includes~~ the state and any department of, or corporation, agency, or instrumentality ~~heretofore or hereafter~~ created, designated, or established by, the state.

(2) The term "authority" means the body politic and corporate, and agency of the state created by this part.

(3) The term "bonds" means ~~and includes~~ the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue pursuant to this part.

(4) The term "Central Florida Expressway Authority" means the body politic and corporate, and agency of the state created by this chapter ~~The term "city" means the City of Orlando~~.

(5) The term "Central Florida Expressway System" means any expressway and appurtenant facilities, including all approaches, roads, bridges, and avenues for the expressway and any rapid transit, trams, or fixed guideways located within the right-of-way of an expressway ~~The term "county" means the County of Orange~~.

(6) The term "department" means the Department of Transportation ~~existing under chapters 334-339~~.

(7) The term "expressway" has the same meaning ~~is the same~~ as limited access expressway.

(8) The term "federal agency" means and includes the United States, the President of the United States, and any department of, or corporation, agency, or instrumentality ~~heretofore or~~

~~hereafter~~ created, designated, or established by, the United States.

(9) The term "lease-purchase agreement" means the lease-purchase agreements that ~~which~~ the authority is authorized ~~pursuant to this part~~ to enter into with the Department of Transportation pursuant to this part.

(10) The term "limited access expressway" means a street or highway specifically ~~especially~~ designed for through traffic, and over, from, or to which, a ~~no~~ person does not ~~shall~~ have the right of easement, use, or access except in accordance with the rules of ~~and regulations promulgated and established by~~ the authority governing its use ~~for the use of such facility~~. Such highways or streets may be parkways that do not allow traffic by~~, from which~~ trucks, buses, and other commercial vehicles ~~shall be excluded~~, or ~~they may be~~ freeways open to use by all customary forms of street and highway traffic.

(11) The term ~~"members" means the governing body of the authority, and the term~~ "member" means an individual who serves on the ~~one of the individuals constituting such~~ governing body of the authority.

(12) The term "Orange County gasoline tax funds" means ~~all~~ the revenue derived from the 80-percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Orange County under ~~the provisions of~~ s. 9, Art. XII of the State Constitution, after deducting ~~deduction only of~~ any amounts of said gasoline tax funds previously ~~heretofore~~ pledged by the department or the county for outstanding obligations.

~~(13) The term "Orlando-Orange County Expressway System" means any and all expressways and appurtenant facilities~~

~~thereto, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressway or expressways.~~

(13)~~(14)~~ The term "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution, or any successor ~~thereto~~.

(14) The term "transportation facilities" means and includes the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance, and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations granted in this part.

~~(15) Words importing singular number include the plural number in each case and vice versa, and words importing persons include firms and corporations.~~

Section 59. Section 348.753, Florida Statutes, is amended to read:

348.753 Central Florida ~~Orlando-Orange County~~ Expressway Authority.—

(1) There is ~~hereby~~ created and established a body politic and corporate, an agency of the state, to be known as the Central Florida ~~Orlando-Orange County~~ Expressway Authority.~~,~~ ~~hereinafter referred to as "authority."~~

(2)(a) Effective July 1, 2014, the Central Florida Expressway Authority shall assume the governance and control of

the Orlando-Orange County Expressway Authority System, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property. Any rights in such property, and other legal rights of the authority, are transferred to the Central Florida Expressway Authority. The powers, responsibilities, and obligations of the Orlando-Orange County Expressway Authority shall succeed to and be assumed by the Central Florida Expressway Authority on July 1, 2014.

(b) The transfer pursuant to this subsection is subject to the terms and covenants provided for the protection of the holders of the Orlando-Orange County Expressway Authority bonds in the lease-purchase agreement and the resolutions adopted in connection with the issuance of the bonds. Further, the transfer does not impair the terms of the contract between the Orlando-Orange County Expressway Authority and the bondholders, does not act to the detriment of the bondholders, and does not diminish the security for the bonds. After the transfer, the Central Florida Expressway Authority shall operate and maintain the expressway system and any other facilities of the Orlando-Orange County Expressway Authority in accordance with the terms, conditions, and covenants contained in the bond resolutions and lease-purchase agreement securing the bonds of the authority. The Central Florida Expressway Authority shall collect toll revenues and apply them to the payment of debt service as provided in the bond resolution securing the bonds, and shall expressly assumes all obligations relating to the bonds to ensure that the transfer will have no adverse impact on the security for the bonds. The transfer does not make the obligation to pay the principal and interest on the bonds a

general liability of the Central Florida Expressway Authority or pledge additional expressway system revenues to payment of the bonds. Revenues that are generated by the expressway system and other facilities of the Central Florida Expressway Authority which were pledged by the Orlando-Orange County Expressway Authority to payment of the bonds will remain subject to the pledge for the benefit of the bondholders. The transfer does not modify or eliminate any prior obligation of the department to pay certain costs of the expressway system from sources other than revenues of the expressway system.

(3) ~~(2)~~ The governing body of the authority shall consist of 11 ~~five~~ members. The chairs of the boards of the county commissions of Seminole, Lake, and Osceola Counties shall each appoint one member, who may be a commission member or chair. The Governor shall appoint six citizen members. Of the Governor's appointments, two ~~Three~~ members must ~~shall~~ be citizens of Orange County, one member each must be a citizen of Seminole, Lake, and Osceola Counties, and one member may be a citizen of any of the identified counties ~~who shall be appointed by the Governor~~. The 10th ~~fourth~~ member must ~~shall~~ be~~, ex officio,~~ the Mayor of ~~chair of the County Commissioners of~~ Orange County. The 11th member must be the Mayor of the City of Orlando. The executive director of Florida Turnpike Enterprise shall serve as a nonvoting advisor to the governing body of the authority~~, and the fifth member shall be, ex officio, the district secretary of the Department of Transportation serving in the district that contains Orange County~~. ~~The term of~~ Each ~~appointed~~ member appointed by the Governor shall serve ~~be~~ for 4 years. Each county-appointed member shall serve for 2 years. Standing board

members shall complete their terms. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term must ~~shall~~ be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but, except as provided in this subsection, a ~~no~~ person who is an officer or employee of a municipality or ~~any city or of Orange~~ county may not ~~in any other capacity shall~~ be an appointed member of the authority. Any member of the authority is ~~shall be~~ eligible for reappointment.

(4)~~(3)~~(a) The authority shall elect one of its members as chair of the authority. The authority shall also elect one of its members as vice chair, one of its members as ~~a~~ secretary, and one of its members as ~~a~~ treasurer ~~who may or may not be members of the authority~~. The chair, vice chair, secretary, and treasurer shall hold such offices at the will of the authority. Five ~~Three~~ members of the authority ~~shall~~ constitute a quorum, and the vote of five ~~three~~ members is ~~shall be~~ necessary for any action taken by the authority. A ~~No~~ vacancy in the authority does not ~~shall~~ impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(b) Upon the effective date of his or her appointment, or as soon thereafter as practicable, each appointed member of the authority shall enter upon his or her duties.

(5)~~(4)~~(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, and the ~~such~~ engineers~~,~~ and ~~such~~ employees

that~~, permanent or temporary, as~~ it requires. The authority ~~may require and~~ may determine the qualifications and fix the compensation of such persons, firms, or corporations, and may employ a fiscal agent or agents~~;, provided,~~ however, ~~that~~ the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees the ~~such of its~~ power ~~as~~ it deems ~~shall deem~~ necessary to carry out the purposes of this part~~, subject always to the supervision and control of the authority~~. Members of the authority may be removed from ~~their~~ office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(b) Members of the authority are ~~shall be~~ entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but may not ~~they shall~~ draw ~~no~~ salaries or other compensation.

Section 60. Section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)(a) The authority created and established under ~~by the provisions of~~ this part is ~~hereby~~ granted and has ~~shall have~~ the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor~~,~~ the Central Florida ~~Orlando-Orange County~~ Expressway System, hereinafter referred to as "system." Except as otherwise specifically provided by law, including paragraph (2)(n), the area served by the authority shall be within the geographical boundaries of Orange, Seminole,

Lake, and Osceola Counties.

(b) ~~It is the express intention of this part that said authority,~~ In the construction of the Central Florida ~~said Orlando-Orange County~~ Expressway System, the authority may ~~shall be authorized to~~ construct any extensions, additions, or improvements to the ~~said~~ system or appurtenant facilities, including all necessary approaches, roads, bridges, ~~and~~ avenues of access, rapid transit, trams, fixed guideways, thoroughfares, and boulevards with any ~~such~~ changes, modifications, or revisions of the ~~said~~ project which are ~~as shall be~~ deemed desirable and proper.

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without the prior consent of the secretary of the department, construct an extension, addition, or improvement to the expressway system in Lake County.

(2) The authority ~~is hereby granted, and shall have and~~ may exercise all powers necessary, appurtenant, convenient, or incidental to the implementation ~~carrying out~~ of the stated ~~aforesaid~~ purposes, including, but not ~~without being~~ limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire by donation or otherwise, purchase, hold, lease as lessee, and use any franchise or any~~,~~ property, real, personal, ~~or~~ mixed, or tangible or intangible, or any options

~~thereof~~ in its own name or in conjunction with others, or interest in those options ~~therein~~, necessary or desirable to carry ~~for carrying~~ out the purposes of the authority, and to sell, lease as lessor, transfer, and dispose of any property or interest in the property ~~therein~~ at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 99 ~~40~~ years, as ~~either~~ lessee or lessor, in order to carry out the right to lease as specified ~~set forth~~ in this part.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 99 ~~40~~ years, or until any bonds secured by a pledge of rentals pursuant to the agreement ~~thereunder~~, and any refundings pursuant to the agreement ~~thereof~~, are fully paid as to both principal and interest, whichever is longer. The authority is a party to a lease-purchase agreement between the department and the authority dated December 23, 1985, as supplemented by a first supplement to the lease-purchase agreement dated November 25, 1986, and a second supplement to the lease-purchase agreement dated October 27, 1988. The authority may not enter into other lease-purchase agreements with the department and may not amend the existing agreement in a manner that expands or increases the department's obligations unless the department determines that the agreement or amendment is necessary to permit the refunding of bonds issued before July 1, 2012.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of the Central Florida ~~Orlando-Orange County~~ Expressway System~~,~~ which must ~~rates, fees, rentals and other charges shall~~ always be sufficient to comply with any covenants made with the holders

of any bonds issued pursuant to this part; ~~provided,~~ however, ~~that~~ such right and power may be assigned or delegated~~,~~ by the authority~~,~~ to the department. Toll revenues attributable to an increase in the toll rates charged on or after July 1, 2014, for the use of a facility or portion of a facility may not be used to construct or expand a different facility unless a two-thirds majority of the members of the authority votes to approve such use. This requirement does not apply if, and to the extent that:

1. Application of the requirement would violate any covenant established in a resolution or trust indenture under which bonds were issued by the Orlando-Orange County Expressway Authority on or before July 1, 2014; or

2. Application of the requirement would cause the authority to be unable to meet its obligations under the terms of the memorandum of understanding between the authority and the department as ratified by the Orlando-Orange County Expressway Authority board on February 22, 2012.

Notwithstanding s. 338.165, and except as otherwise prohibited by this part, to the extent revenues of the expressway system exceed amounts required to comply with any covenants made with the holders of bonds issued pursuant to this part, revenues may be used for purposes enumerated in subsection (6), if the expenditures are consistent with the metropolitan planning organization's adopted long-range plan.

(g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, ~~hereinafter in this chapter sometimes called "bonds" of the authority,~~ for

the purpose of financing all or part of the improvement or extension of the Central Florida ~~Orlando-Orange County~~ Expressway System, and appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access for the Central Florida ~~said Orlando-Orange County~~ Expressway System and for any other purpose authorized by this part, ~~said bonds to mature in not exceeding 40 years from the date of the issuance thereof,~~ and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges, including all or any portion of the Orange County gasoline tax funds received by the authority pursuant to ~~the terms of~~ any lease-purchase agreement between the authority and the department; and in general to provide for the security of the ~~said~~ bonds and the rights and remedies of the holders thereof. ~~Provided,~~ However, ~~that~~ no portion of the Orange County gasoline tax funds may ~~shall~~ be pledged for the construction of any project for which a toll is to be charged unless the anticipated toll is ~~tolls are~~ reasonably estimated by the board of county commissioners, at the date of its resolution pledging the ~~said~~ funds, to be sufficient to cover the principal and interest of such obligations during the period when the ~~said~~ pledge of funds is ~~shall be~~ in effect. The bonds issued under this paragraph must mature not more than 40 years after their issue date.

1. The authority shall reimburse Orange County for any sums expended from the ~~said~~ gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed must ~~shall~~ be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any

obligations of the authority.

2. If, pursuant to this section, ~~In the event~~ the authority funds ~~shall determine to fund~~ or refunds ~~refund~~ any bonds previously ~~theretofore~~ issued by the ~~said~~ authority~~,~~ or the ~~by said~~ commission before the bonds mature ~~as aforesaid prior to the maturity thereof~~, the proceeds of such funding or refunding must ~~bonds shall~~, pending the prior redemption of these ~~the~~ bonds ~~to be funded or refunded~~, be invested in direct obligations of the United States~~, and it is the express intention of this part that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this part~~.

(h) To make contracts ~~of every name and nature~~, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute all instruments necessary or convenient for conducting ~~the carrying on of~~ its business.

(i) Notwithstanding paragraphs (a)-(h), ~~Without limitation of the foregoing,~~ to borrow money and accept grants from, and to enter into contracts, leases, or other transactions with any federal agency, the state, any agency of the state, the County of Orange, the City of Orlando, or with any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under both chapters 73 and 74.

(k) To pledge, hypothecate, or otherwise encumber ~~all or~~ any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as security for ~~all or~~ any of

the obligations of the authority.

(l) To enter into partnership and other agreements respecting ownership and revenue participation in order to facilitate financing and constructing the Western Beltway, or portions thereof.

(m) To do everything ~~all acts and things~~ necessary or convenient for the conduct of its business and the general welfare of the authority, in order to comply with ~~carry out the powers granted to it by~~ this part or any other law.

(n) With the consent of the county within whose jurisdiction the following activities occur, the authority shall have the right to construct, operate, and maintain roads, bridges, avenues of access, transportation facilities, thoroughfares, and boulevards outside the jurisdictional boundaries of Orange, Seminole, Lake, and Osceola Counties ~~County~~, together with the right to construct, repair, replace, operate, install, and maintain electronic toll payment systems thereon~~, with all necessary and incidental powers to accomplish the foregoing~~.

(3) The authority does not ~~shall~~ have the ~~no~~ power ~~at any time or in any manner~~ to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including any city and any county ~~the City of Orlando and the County of Orange~~, nor may ~~nor shall~~ any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor may ~~nor shall~~ the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

~~(4) Anything in this part to the contrary notwithstanding, acquisition of right-of-way for a project of the authority which is within the boundaries of any municipality in Orange County shall not be begun unless and until the route of said project within said municipality has been given prior approval by the governing body of said municipality.~~

(4)~~(5)~~ The authority has ~~shall have~~ no power other than by consent of an affected ~~Orange~~ county or any affected city, to enter into any agreement which would legally prohibit the construction of a ~~any~~ road by the respective county or city ~~Orange County or by any city within Orange County~~.

(5) The authority shall encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities.

(6)~~(a)~~ The authority may, within the right-of-way of the expressway system, finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of an intermodal facility or facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system ~~Notwithstanding s. 255.05, the Orlando-Orange County Expressway Authority may waive payment and performance bonds on construction contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs on a public building or public work that has a cost of $500,000 or less and when the project is awarded pursuant to an economic development program for the encouragement of local small businesses that has been adopted by the governing body of the Orlando-Orange County Expressway~~

~~Authority pursuant to a resolution or policy~~.

~~(b) The authority's adopted criteria for participation in the economic development program for local small businesses requires that a participant:~~

~~1. Be an independent business.~~

~~2. Be principally domiciled in the Orange County Standard Metropolitan Statistical Area.~~

~~3. Employ 25 or fewer full-time employees.~~

~~4. Have gross annual sales averaging $3 million or less over the immediately preceding 3 calendar years with regard to any construction element of the program.~~

~~5. Be accepted as a participant in the Orlando-Orange County Expressway Authority's microcontracts program or such other small business program as may be hereinafter enacted by the Orlando-Orange County Expressway Authority.~~

~~6. Participate in an educational curriculum or technical assistance program for business development that will assist the small business in becoming eligible for bonding.~~

~~(c) The authority's adopted procedures for waiving payment and performance bonds on projects with values not less than $200,000 and not exceeding $500,000 shall provide that payment and performance bonds may only be waived on projects that have been set aside to be competitively bid on by participants in an economic development program for local small businesses. The authority's executive director or his or her designee shall determine whether specific construction projects are suitable for:~~

~~1. Bidding under the authority's microcontracts program by registered local small businesses; and~~

~~2. Waiver of the payment and performance bond.~~

~~The decision of the authority's executive director or deputy executive director to waive the payment and performance bond shall be based upon his or her investigation and conclusion that there exists sufficient competition so that the authority receives a fair price and does not undertake any unusual risk with respect to such project.~~

~~(d) For any contract for which a payment and performance bond has been waived pursuant to the authority set forth in this section, the Orlando-Orange County Expressway Authority shall pay all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract to the same extent and upon the same conditions that a surety on the payment bond under s. 255.05 would have been obligated to pay such persons if the payment and performance bond had not been waived. The authority shall record notice of this obligation in the manner and location that surety bonds are recorded. The notice shall include the information describing the contract that s. 255.05(1) requires be stated on the front page of the bond. Notwithstanding that s. 255.05(9) generally applies when a performance and payment bond is required, s. 255.05(9) shall apply under this subsection to any contract on which performance or payment bonds are waived and any claim to payment under this subsection shall be treated as a contract claim pursuant to s. 255.05(9).~~

~~(c) A small business that has been the successful bidder on six projects for which the payment and performance bond was waived by the authority pursuant to paragraph (a) shall be~~

~~ineligible to bid on additional projects for which the payment and performance bond is to be waived. The local small business may continue to participate in other elements of the economic development program for local small businesses as long as it is eligible.~~

~~(f) The authority shall conduct bond eligibility training for businesses qualifying for bond waiver under this subsection to encourage and promote bond eligibility for such businesses.~~

~~(g) The authority shall prepare a biennial report on the activities undertaken pursuant to this subsection to be submitted to the Orange County legislative delegation. The initial report shall be due December 31, 2010.~~

Section 61. Section 348.7543, Florida Statutes, is amended to read:

348.7543 Improvements, bond financing authority for.—Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature ~~hereby~~ approves for bond financing by the Central Florida ~~Orlando-Orange County~~ Expressway Authority improvements to toll collection facilities, interchanges to the legislatively approved expressway system, and any other facility appurtenant, necessary, or incidental to the approved system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to s. 348.755(1)(a) or (b) whether currently issued or issued in the future, or by a combination of such bonds.

Section 62. Section 348.7544, Florida Statutes, is amended to read:

348.7544 Northwest Beltway Part A, construction authorized;


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financing.—Notwithstanding s. 338.2275, the Central Florida ~~Orlando-Orange County~~ Expressway Authority may ~~is hereby authorized to~~ construct, finance, operate, own, and maintain that portion of the Western Beltway known as the Northwest Beltway Part A, extending from Florida's Turnpike near Ocoee north to U.S. 441 near Apopka, as part of the authority's 20-year capital projects plan. This project may be financed with any funds available to the authority for such purpose or revenue bonds issued by the Division of Bond Finance of the State Board of Administration on behalf of the authority pursuant to s. 11, Art. VII of the State Constitution and the State Bond Act, ss. 215.57-215.83.

Section 63. Section 348.7545, Florida Statutes, is amended to read:

348.7545 Western Beltway Part C, construction authorized; financing.—Notwithstanding s. 338.2275, the Central Florida ~~Orlando-Orange County~~ Expressway Authority may ~~is authorized to~~ exercise its condemnation powers, construct, finance, operate, own, and maintain that portion of the Western Beltway known as the Western Beltway Part C, extending from Florida's Turnpike near Ocoee in Orange County southerly through Orange and Osceola Counties to an interchange with I-4 near the Osceola-Polk County line, as part of the authority's 20-year capital projects plan. This project may be financed with any funds available to the authority for such purpose or revenue bonds issued by the Division of Bond Finance of the State Board of Administration on behalf of the authority pursuant to s. 11, Art. VII of the State Constitution and the State Bond Act, ss. 215.57-215.83. This project may be refinanced with bonds issued by the authority


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pursuant to s. 348.755(1)(d).

Section 64. Section 348.7546, Florida Statutes, is amended to read:

348.7546 Wekiva Parkway, construction authorized; financing.—

(1) The Central Florida ~~Orlando-Orange County~~ Expressway Authority may ~~is authorized to~~ exercise its condemnation powers and ~~to~~ construct, finance, operate, own, and maintain those portions of the Wekiva Parkway which are identified by agreement between the authority and the department and which are included as part of the authority's long-range capital improvement plan. The "Wekiva Parkway" means any limited access highway or expressway constructed between State Road 429 and Interstate 4 specifically incorporating the corridor alignment recommended by Recommendation 2 of the Wekiva River Basin Area Task Force final report dated January 15, 2003, and the recommendations of the SR 429 Working Group, which were adopted January 16, 2004. This project may be financed with any funds available to the authority for such purpose or revenue bonds issued by the authority under s. 11, Art. VII of the State Constitution and s. 348.755(1)(b). This section does not invalidate the exercise by the authority of its condemnation powers or the acquisition of any property for the Wekiva Parkway before July 1, 2012.

(2) Notwithstanding any other provision of law ~~to the contrary~~, in order to ensure that funds are available to the department for its portion of the Wekiva Parkway, beginning July 1, 2012, the authority shall repay the expenditures by the department for costs of operation and maintenance of the Central Florida ~~Orlando-Orange County~~ Expressway System in accordance

with the terms of the memorandum of understanding between the authority and the department as ratified by the authority board on February 22, 2012, which requires the authority to pay the department $10 million on July 1, 2012, and $20 million on each successive July 1 until the department has been fully reimbursed for all costs of the Central Florida ~~Orlando-Orange County~~ Expressway System which were paid, advanced, or reimbursed to the authority by the department, with a final payment in the amount of the balance remaining. Notwithstanding any other law ~~to the contrary~~, the funds paid to the department pursuant to this subsection must ~~shall~~ be allocated by the department for construction of the Wekiva Parkway.

(3) The department's obligation to construct its portions of the Wekiva Parkway is contingent upon the timely payment by the authority of the annual payments required of the authority and receipt of all required environmental permits and approvals by the Federal Government.

Section 65. Section 348.7547, Florida Statutes, is amended to read:

348.7547 Maitland Boulevard Extension and Northwest Beltway Part A Realignment construction authorized; financing.—Notwithstanding s. 338.2275, the Central Florida ~~Orlando-Orange County~~ Expressway Authority may ~~is hereby authorized to~~ exercise its condemnation powers, construct, finance, operate, own, and maintain the portion of State Road 414 known as the Maitland Boulevard Extension and the realigned portion of the Northwest Beltway Part A as part of the authority's long-range capital improvement plan. The Maitland Boulevard Extension extends ~~will extend~~ from the current terminus of State Road 414 at U.S. 441

west to State Road 429 in west Orange County. The realigned portion of the Northwest Beltway Part A runs ~~will run~~ from the point at or near where the Maitland Boulevard Extension connects ~~will connect~~ with State Road 429 and proceeds ~~will proceed~~ to the west and then north resulting in the northern terminus of State Road 429 moving farther west before reconnecting with U.S. 441. However, under no circumstances may ~~shall~~ the realignment of the Northwest Beltway Part A conflict with or contradict ~~with~~ the alignment of the Wekiva Parkway as defined in s. 348.7546. This project may be financed with any funds available to the authority for such purpose or revenue bonds issued by the authority under s. 11, Art. VII of the State Constitution and s. 348.755(1)(b).

Section 66. Subsections (2) and (3) of section 348.755, Florida Statutes, are amended to read:

348.755 Bonds of the authority.—

(2) Any ~~such~~ resolution that authorizes ~~or resolutions authorizing~~ any bonds issued under this section ~~hereunder~~ may contain provisions that must ~~which shall~~ be part of the contract with the holders of such bonds, relating ~~as~~ to:

(a) The pledging of ~~all or~~ any part of the revenues, rates, fees, rentals, ~~(~~including ~~all or~~ any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, or any part thereof~~)~~, or other charges or receipts of the authority, derived by the authority, from the Central Florida ~~Orlando-Orange County~~ Expressway System.

(b) The completion, improvement, operation, extension, maintenance, repair, lease or lease-purchase agreement of the

~~said~~ system, and the duties of the authority and others, including the department~~, with reference thereto~~.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the Central Florida ~~Orlando-Orange County~~ Expressway System or any part thereof.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The authority may employ fiscal agents as provided by this part or the State Board of Administration of Florida may upon request of the authority act as fiscal agent for the authority in the issuance of any bonds that ~~which~~ may be issued pursuant to this part, and the State Board of Administration may upon request of the authority take over the management, control, administration, custody, and payment of any ~~or all~~ debt services or funds or assets now or hereafter available for any bonds issued pursuant to this part. The authority may enter into any deeds of trust, indentures or other agreements with its fiscal agent, or with any bank or trust company within or without the

state, as security for such bonds, and may, under such agreements, sign and pledge ~~all or~~ any of the revenues, rates, fees, rentals or other charges or receipts of the authority, including ~~all or~~ any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department~~, thereunder~~. Such deed of trust, indenture, or other agreement may contain such provisions as are customary in such instruments, or, as the authority may authorize, including but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair, and lease of, or lease-purchase agreement relating to the Central Florida ~~Orlando-Orange County~~ Expressway System, and the duties of the authority and others including the department, with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of same.

Section 67. Subsections (3) and (4) of section 348.756, Florida Statutes, are amended to read:

348.756 Remedies of the bondholders.—

(3) When a ~~Any~~ trustee is ~~when~~ appointed pursuant to subsection (1) ~~as aforesaid~~, or is acting under a deed of trust, indenture, or other agreement, and whether or not all bonds have been declared due and payable, the trustee is ~~shall be~~ entitled ~~as of right~~ to the appointment of a receiver, who may enter upon

and take possession of the Central Florida ~~Orlando-Orange County~~ Expressway System or the facilities or any part of the system or facilities ~~or parts thereof~~, the rates, fees, rentals, or other revenues, charges, or receipts that ~~from which~~ are, or may be, applicable to the payment of the bonds so in default, and subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department operate and maintain the same, for and on behalf of and in the name of, the authority, the department, and the bondholders, and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the department might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court directs ~~shall direct~~. In any suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and the ~~said~~ receiver, if any, and all costs and disbursements allowed by the court must ~~shall~~ be a first charge on any rates, fees, rentals, or other charges, revenues, or receipts, derived from the Central Florida ~~Orlando-Orange County~~ Expressway System, or the facilities or services or any part of the system or facilities ~~or parts thereof~~, including payments under any such lease-purchase agreement ~~as aforesaid~~ which ~~said~~ rates, fees, rentals, or other charges, revenues, or receipts ~~shall or~~ may be applicable to the payment of the bonds that are ~~so~~ in default. The ~~Such~~ trustee has ~~shall, in addition to the foregoing, have and possess~~ all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section ~~herein~~ or incident to the representation of the bondholders in the enforcement and

protection of their rights.

(4) ~~Nothing in~~ This section or any other section of this part does not ~~shall~~ authorize any receiver appointed ~~pursuant hereto~~ for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, of operating and maintaining the Central Florida ~~Orlando-Orange County~~ Expressway System or any facilities or part of the system or facilities ~~or parts thereof~~, to sell, assign, mortgage, or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. ~~It is the intention of this part to limit~~ The powers of the ~~such~~ receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, are limited to the operation and maintenance of the Central Florida ~~Orlando-Orange County~~ Expressway System, or any facility, or part ~~or parts~~ thereof, as the court may direct, in the name and for and on behalf of the authority, the department, and the bondholders, and no holder of bonds on the authority nor any trustee, has ~~shall ever have~~ the right in any suit, action, or proceeding at law or in equity, to compel a receiver, nor may ~~shall~~ any receiver be authorized or any court be empowered to direct the receiver to sell, assign, mortgage, or otherwise dispose of any assets ~~of whatever kind or character~~ belonging to the authority.

Section 68. Subsections (1) through (7) of section 348.757, Florida Statutes, are amended to read:

348.757 Lease-purchase agreement.—

(1) ~~In order to effectuate the purposes of this part and as authorized by this part,~~ The authority may enter into a lease-

purchase agreement with the department relating to and covering the former Orlando-Orange County Expressway System.

(2) The ~~Such~~ lease-purchase agreement must ~~shall~~ provide for the leasing of the former Orlando-Orange County Expressway System, by the authority, as lessor, to the department, as lessee, must ~~shall~~ prescribe the term of such lease and the rentals to be paid ~~thereunder~~, and must ~~shall~~ provide that upon the completion of the faithful performance ~~thereunder~~ and the termination of the ~~such~~ lease-purchase agreement, title in fee simple absolute to the former Orlando-Orange County Expressway System as then constituted shall be transferred in accordance with law by the authority, to the state and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) The ~~Such~~ lease-purchase agreement may include ~~such~~ other provisions, agreements, and covenants that ~~as~~ the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under, and for the purposes of, this part, the completion, extension, improvement, operation, and maintenance of the former Orlando-Orange County Expressway System and the expenses and the cost of operation of the ~~said~~ authority, the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities of the system ~~thereof~~, the application of federal or state grants or aid that ~~which~~ may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance of the former Orlando-Orange County ~~Orlando~~ Expressway System,

which the authority is ~~hereby~~ authorized to accept and apply to such purposes, the enforcement of payment and collection of rentals and any other terms, provisions, or covenants necessary, incidental, or appurtenant to the making of and full performance under the ~~such~~ lease-purchase agreement.

(4) The department as lessee under the ~~such~~ lease-purchase agreement, may ~~is hereby authorized to~~ pay as rentals under the agreement ~~thereunder~~ any rates, fees, charges, funds, moneys, receipts, or income accruing to the department from the operation of the former Orlando-Orange County Expressway System and the Orange County gasoline tax funds and may also pay as rentals any appropriations received by the department pursuant to any act of the Legislature of the state heretofore or hereafter enacted; ~~provided,~~ however, this part or the ~~that nothing herein nor in such~~ lease-purchase agreement is not intended to and does not ~~nor shall this part or such lease-purchase agreement~~ require the making or continuance of such appropriations, and ~~nor shall~~ any holder of bonds issued pursuant to this part does not ~~ever~~ have any right to compel the making or continuance of such appropriations.

(5) A ~~No~~ pledge of the ~~said~~ Orange County gasoline tax funds as rentals under a ~~such~~ lease-purchase agreement may not ~~shall~~ be made without the consent of the County of Orange evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in Orange County. The ~~Said~~ resolution, among other things, must ~~shall~~ provide that any excess of the ~~said~~ pledged

gasoline tax funds which is not required for debt service or reserves for the ~~such~~ debt service for any bonds issued by the ~~said~~ authority shall be returned annually to the department for distribution to Orange County as provided by law. Before making any application for a ~~such~~ pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Orange County planning and zoning commission for its comments and recommendations.

(6) The ~~Said~~ department may ~~shall have power to~~ covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal, and replacement of the ~~said~~ system, and any part of the cost of completing the ~~said~~ system to the extent that the proceeds of bonds issued ~~therefor~~ are insufficient, from sources other than the revenues derived from the operation of the ~~said~~ system and the ~~said~~ Orange County gasoline tax funds. The ~~said~~ department may also agree to make such other payments from any moneys available to the ~~said~~ commission, the ~~said~~ county, or the ~~said~~ city in connection with the construction or completion of the ~~said~~ system as shall be deemed by the ~~said~~ department to be fair and proper under any ~~such~~ covenants ~~heretofore or hereafter~~ entered into.

(7) The ~~said~~ system must ~~shall~~ be a part of the state road system and the ~~said~~ department may ~~is hereby authorized~~, upon the request of the authority, ~~to~~ expend out of any funds available for the purpose the ~~such~~ moneys, and ~~to~~ use ~~such of~~ its engineering and other forces, as may be necessary ~~and desirable in the judgment of said department~~, for the operation of the ~~said~~ authority and for traffic surveys, borings, surveys,

preparation of plans and specifications, estimates of cost, and other preliminary engineering and other studies; provided, however, that the aggregate amount of moneys expended for the ~~said~~ purposes by the ~~said~~ department do ~~shall~~ not exceed the sum of $375,000.

Section 69. Section 348.758, Florida Statutes, is amended to read:

348.758 Appointment of department as ~~may be appointed~~ agent of authority for construction.—The department may be appointed by the ~~said~~ authority as its agent for the purpose of constructing improvements and extensions to the Central Florida ~~Orlando-Orange County~~ Expressway System and for its ~~the~~ completion ~~thereof~~. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto and shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the Central Florida ~~Orlando-Orange County~~ Expressway System and shall transfer to the credit of an account of the department in the State Treasury ~~of the state~~ the necessary funds, ~~therefor~~ and the department may ~~shall thereupon be authorized, empowered and directed to~~ proceed with such construction and ~~to~~ use the ~~said~~ funds for such purpose in the same manner that it is ~~now~~ authorized to use the funds ~~otherwise provided by law~~ for the ~~its use in~~ construction of roads and bridges.

Section 70. Section 348.759, Florida Statutes, is amended to read:

348.759 Acquisition of lands and property.—

(1) For the purposes of this part, the Central Florida ~~Orlando-Orange County~~ Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority deems ~~may deem~~ necessary for any of the purposes of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the Central Florida ~~Orlando-Orange County~~ Expressway System or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority may ~~shall also have the power to~~ condemn any material and property necessary for such purposes.

(2) The ~~right of eminent domain herein conferred shall be exercised by the~~ authority shall exercise the right of eminent domain in the manner provided by law.

(3) When the authority acquires property for a transportation facility or in a transportation corridor, it is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property and ~~nor~~ does not ~~it~~ affect the liability of any

governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Section 71. Section 348.760, Florida Statutes, is amended to read:

348.760 Cooperation with other units, boards, agencies, and individuals.—A ~~Express authority and power is hereby given and granted any~~ county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, commission, or individual in, or of, the state may ~~to~~ make and enter into with the authority, contracts, leases, conveyances, partnerships, or other agreements pursuant to ~~within the provisions and purposes of~~ this part. The authority may ~~is hereby expressly authorized to~~ make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any ~~and all~~ federal agencies, corporations, and individuals, for the purpose of carrying out the provisions of this part ~~or with the consent of the Seminole County Expressway Authority, for the purpose of carrying out and implementing part VIII of this chapter~~.

Section 72. Section 348.761, Florida Statutes, is amended to read:

348.761 Covenant of the state.—The state pledges ~~does hereby pledge~~ to, and agrees, with any person, firm or corporation, or federal or state agency subscribing to, or

acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights that are ~~hereby~~ vested in the authority and the department until all issued bonds and interest ~~at any time issued, together with the interest thereon,~~ are fully paid and discharged insofar as the pledge ~~same~~ affects the rights of the holders of bonds issued pursuant to this part ~~hereunder~~. The state does further pledge to, and agree, with the United States that in the event any federal agency constructs or contributes ~~shall construct or contribute~~ any funds for the completion, extension, or improvement of the Central Florida ~~Orlando-Orange County~~ Expressway System, or any part or portion of the system ~~thereof~~, the state will not alter or limit the rights and powers of the authority and the department in any manner that ~~which~~ would be inconsistent with the continued maintenance and operation of the Central Florida ~~Orlando-Orange County~~ Expressway System or the completion, extension, or improvement of the system ~~thereof~~, or that ~~which~~ would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers ~~herein~~ granted in this part, so long as the powers are ~~same shall be~~ necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension, or improvement of the Central Florida ~~Orlando-Orange County~~ Expressway System, or any part of the system ~~or portion thereof~~.

Section 73. Section 348.765, Florida Statutes, is amended to read:

348.765 This part complete and additional authority.—

(1) The powers conferred by this part are ~~shall be~~ in addition and supplemental to the existing powers of the ~~said~~ board and the department, and this part may ~~shall~~ not be construed as repealing any of the provisions, of any other law, general, special, or local, but to supersede such other laws in the exercise of the powers provided in this part, and to provide a complete method for the exercise of the powers granted in this part. The extension and improvement of the Central Florida ~~said Orlando-Orange County~~ Expressway System, and the issuance of bonds pursuant to this part ~~hereunder~~ to finance all or part of the cost of the system ~~thereof~~, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in the ~~said~~ County of Orange, or in the ~~said~~ City of Orlando, or in any other political subdivision of the state, is ~~shall be~~ required for the issuance of such bonds pursuant to this part.

(2) This part does ~~shall~~ not ~~be deemed to~~ repeal, rescind, or modify any other law ~~or laws~~ relating to the ~~said~~ State Board of Administration, the ~~said~~ Department of Transportation, or the Division of Bond Finance of the State Board of Administration, but supersedes any ~~shall be deemed to and shall supersede such other~~ law that is ~~or laws as are~~ inconsistent with the provisions of this part, including, but not limited to, s. 215.821.

Section 74. Subsections (6) and (7) of section 369.317, Florida Statutes, are amended to read:

369.317 Wekiva Parkway.—

(6) The Central Florida ~~Orlando-Orange County~~ Expressway Authority is hereby granted the authority to act as a third-party acquisition agent, pursuant to s. 259.041 on behalf of the Board of Trustees or chapter 373 on behalf of the governing board of the St. Johns River Water Management District, for the acquisition of all necessary lands, property and all interests in property identified herein, including fee simple or less-than-fee simple interests. The lands subject to this authority are identified in paragraph 10.a., State of Florida, Office of the Governor, Executive Order 03-112 of July 1, 2003, and in Recommendation 16 of the Wekiva Basin Area Task Force created by Executive Order 2002-259, such lands otherwise known as Neighborhood Lakes, a 1,587+/-acre parcel located in Orange and Lake Counties within Sections 27, 28, 33, and 34 of Township 19 South, Range 28 East, and Sections 3, 4, 5, and 9 of Township 20 South, Range 28 East; Seminole Woods/Swamp, a 5,353+/-acre parcel located in Lake County within Section 37, Township 19 South, Range 28 East; New Garden Coal; a 1,605+/-acre parcel in Lake County within Sections 23, 25, 26, 35, and 36, Township 19 South, Range 28 East; Pine Plantation, a 617+/-acre tract consisting of eight individual parcels within the Apopka City limits. The Department of Transportation, the Department of Environmental Protection, the St. Johns River Water Management District, and other land acquisition entities shall participate and cooperate in providing information and support to the third-party acquisition agent. The land acquisition process authorized

by this paragraph shall begin no later than December 31, 2004. Acquisition of the properties identified as Neighborhood Lakes, Pine Plantation, and New Garden Coal, or approval as a mitigation bank shall be concluded no later than December 31, 2010. Department of Transportation and Central Florida ~~Orlando-Orange County~~ Expressway Authority funds expended to purchase an interest in those lands identified in this subsection shall be eligible as environmental mitigation for road construction related impacts in the Wekiva Study Area. If any of the lands identified in this subsection are used as environmental mitigation for road-construction-related impacts incurred by the Department of Transportation or Central Florida ~~Orlando-Orange County~~ Expressway Authority, or for other impacts incurred by other entities, within the Wekiva Study Area or within the Wekiva parkway alignment corridor, and if the mitigation offsets these impacts, the St. Johns River Water Management District and the Department of Environmental Protection shall consider the activity regulated under part IV of chapter 373 to meet the cumulative impact requirements of s. 373.414(8)(a).

(a) Acquisition of the land described in this section is required to provide right-of-way for the Wekiva Parkway, a limited access roadway linking State Road 429 to Interstate 4, an essential component in meeting regional transportation needs to provide regional connectivity, improve safety, accommodate projected population and economic growth, and satisfy critical transportation requirements caused by increased traffic volume growth and travel demands.

(b) Acquisition of the lands described in this section is also required to protect the surface water and groundwater

resources of Lake, Orange, and Seminole counties, otherwise known as the Wekiva Study Area, including recharge within the springshed that provides for the Wekiva River system. Protection of this area is crucial to the long term viability of the Wekiva River and springs and the central Florida region's water supply. Acquisition of the lands described in this section is also necessary to alleviate pressure from growth and development affecting the surface and groundwater resources within the recharge area.

(c) Lands acquired pursuant to this section that are needed for transportation facilities for the Wekiva Parkway shall be determined not necessary for conservation purposes pursuant to ss. 253.034(6) and 373.089(5) and shall be transferred to or retained by the Central Florida ~~Orlando-Orange County~~ Expressway Authority or the Department of Transportation upon reimbursement of the full purchase price and acquisition costs.

(7) The Department of Transportation, the Department of Environmental Protection, the St. Johns River Water Management District, Central Florida ~~Orlando-Orange County~~ Expressway Authority, and other land acquisition entities shall cooperate and establish funding responsibilities and partnerships by agreement to the extent funds are available to the various entities. Properties acquired with Florida Forever funds shall be in accordance with s. 259.041 or chapter 373. The Central Florida ~~Orlando-Orange County~~ Expressway Authority shall acquire land in accordance with this section of law to the extent funds are available from the various funding partners, but shall not be required nor assumed to fund the land acquisition beyond the agreement and funding provided by the various land acquisition

entities.

Section 75. Subsection (1) of section 369.324, Florida Statutes, is amended to read:

369.324 Wekiva River Basin Commission.—

(1) The Wekiva River Basin Commission is created to monitor and ensure the implementation of the recommendations of the Wekiva River Basin Coordinating Committee for the Wekiva Study Area. The East Central Florida Regional Planning Council shall provide staff support to the commission with funding assistance from the Department of Economic Opportunity. The commission shall be comprised of a total of 18 ~~19~~ members appointed by the Governor, 9 of whom shall be voting members and 9 ~~10~~ shall be ad hoc nonvoting members. The voting members shall include:

(a) One member of each of the Boards of County Commissioners for Lake, Orange, and Seminole Counties.

(b) One municipal elected official to serve as a representative of the municipalities located within the Wekiva Study Area of Lake County.

(c) One municipal elected official to serve as a representative of the municipalities located within the Wekiva Study Area of Orange County.

(d) One municipal elected official to serve as a representative of the municipalities located within the Wekiva Study Area of Seminole County.

(e) One citizen representing an environmental or conservation organization, one citizen representing a local property owner, a land developer, or an agricultural entity, and one at-large citizen who shall serve as chair of the council.

(f) The ad hoc nonvoting members shall include one

representative from each of the following entities:

1. St. Johns River Management District.

2. Department of Economic Opportunity.

3. Department of Environmental Protection.

4. Department of Health.

5. Department of Agriculture and Consumer Services.

6. Fish and Wildlife Conservation Commission.

7. Department of Transportation.

8. MetroPlan Orlando.

9. Central Florida ~~Orlando-Orange County~~ Expressway Authority.

~~10. Seminole County Expressway Authority.~~

Section 76. (1) Effective upon the completion of construction of the Poinciana Parkway, a limited access facility of approximately 9 miles in length in Osceola County with its northwestern terminus at the intersection of County Road 54 and US 17/US 92 and its southeastern terminus at the current intersection of Rhododendron and Cypress Parkway, described in the Osceola County Expressway Authority May 8, 2012, Master Plan, all powers, governance, and control of the Osceola County Expressway System, created pursuant to part V, chapter 348, Florida Statutes, is transferred to the Central Florida Expressway Authority, and the assets, liabilities, facilities, tangible and intangible property and any rights in the property, and any other legal rights of the Osceola County Expressway Authority are transferred to the Central Florida Expressway Authority. The effective date of such transfer shall be extended until completion of construction of such portions of the Southport Connector Expressway, the Northeast Connector

Expressway, such portions of the Poinciana Parkway to connect to State Road 429, and the Osceola Parkway Extension, as each is described in the Osceola County Expressway Authority May 8, 2012, Master Plan, which are included in any design contract executed by the Osceola County Expressway Authority before July 1, 2019. Part V of chapter 348, Florida Statutes, consisting of ss. 348.9950-348.9961, is repealed on the same date that the Osceola County Expressway System is transferred to the Central Florida Expressway Authority.

(2) The Central Florida Expressway Authority shall also reimburse any and all obligations of any other governmental entities with respect to the Osceola County Expressway System, including any obligations of Osceola County with respect to operations and maintenance of the Osceola County Expressway System and any loan repayment obligations, including repayment obligations with respect to State Infrastructure Bank loans. Such reimbursement shall be made from revenues available for such purpose after payment of all amounts required:

(a) Otherwise by law;

(b) By the terms of any resolution authorizing the issuance of bonds by the authority, the Orlando-Orange County Expressway Authority, or the Osceola County Expressway Authority;

(c) By the terms of any resolution under which bonds are issued by Osceola County for the purpose of constructing improvements to the Osceola County Expressway System; and

(d) By the terms of the memorandum of understanding between the Orlando-Orange County Expressway Authority and the department as ratified by the board of the Orlando-Orange County Expressway Authority on February 22, 2012.

Section 77. Section 373.4137, Florida Statutes, is amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the use of mitigation banks and any other mitigation options that satisfy state and federal requirements in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in the program, shall submit to the water management districts a list of its projects in the adopted work program and an environmental impact inventory of habitat impacts and the anticipated amount of mitigation needed to offset impacts as described in paragraph (b). The environmental impact inventory must be based on ~~habitats addressed in~~ the rules adopted

pursuant to this part, ~~and~~ s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, and ~~which may be impacted by~~ the Department of Transportation's ~~its~~ plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts and the anticipated amount of mitigation needed for ~~of~~ any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory must ~~shall~~ include a description of ~~these~~ habitat impacts, including ~~their~~ location, acreage, and type; the anticipated amount of mitigation needed based on the functional loss as determined through the Uniform Mitigation Assessment Method (UMAM) adopted in Chapter 62-345, F.A.C.; identification of the proposed mitigation option; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list of threatened species, endangered species, and species of special concern affected by the proposed project.

(c) Before projects are identified for inclusion in a water management district mitigation plan as described in subsection (4), the Department of Transportation must consider using credits from a permitted mitigation bank. The Department of Transportation must consider availability of suitable and sufficient mitigation bank credits within the transportation

project's area, ability to satisfy commitments to regulatory and resource agencies, availability of suitable and sufficient mitigation purchased or developed through this section, ability to complete existing water management district or Department of Environmental Protection suitable mitigation sites initiated with Department of Transportation mitigation funds, and ability to satisfy state and federal requirements including long-term maintenance and liability.

(3)(a) To implement the mitigation option ~~fund development and implementation of the mitigation plan for the projected impacts~~ identified in the environmental impact inventory described in subsection (2), the Department of Transportation may purchase credits for current and future use directly from a mitigation bank; purchase mitigation services through the water management districts or the Department of Environmental Protection; conduct its own mitigation; or use other mitigation options that meet state and federal requirements. ~~shall identify funds quarterly in an escrow account within the State Transportation Trust Fund for the environmental mitigation phase of projects budgeted by~~ Funding for the identified mitigation option as described in the environmental impact inventory must be included in the Department of Transportation's work program developed pursuant to s. 339.135 ~~for the current fiscal year~~. ~~The escrow account shall be maintained by the Department of Transportation for the benefit of the water management districts. Any interest earnings from the escrow account shall remain with the Department of Transportation.~~ The amount programmed each year by the Department of Transportation and participating transportation authorities established pursuant to

chapter 348 or chapter 349 must correspond to an estimated cost per credit of $150,000 multiplied by the projected number of credits identified in the environmental impact inventory described in subsection (2). This estimated cost per credit will be adjusted every 2 years by the Department of Transportation based on the average cost per UMAM credit paid through this section.

(b) Each transportation authority established pursuant to chapter 348 or chapter 349 that chooses to participate in this program shall create an escrow account within its financial structure and deposit funds in the account to pay for the environmental mitigation phase of projects budgeted for the current fiscal year. The escrow account shall be maintained by the authority for the benefit of the water management districts. Any interest earnings from the escrow account shall remain with the authority.

(c) For mitigation implemented by the water management district or the Department of Environmental Protection, as appropriate, the amount paid each year must be based on mitigation services provided by the water management districts or Department of Environmental Protection pursuant to an approved water management district plan, as described in subsection (4). ~~Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d),~~ The water management districts or the Department of Environmental Protection, as appropriate, may request payment ~~a transfer of funds from an escrow account~~ no sooner than 30 days before the date the funds are needed to pay for activities associated with development or implementation of ~~the~~ permitted

mitigation meeting the requirements pursuant to this part, 33 U.S.C. s. 1344, and 33 C.F.R. s. 332, in the approved mitigation plan described in subsection (4) for the current fiscal year.~~,~~ ~~including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions and is not admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996.~~ Each quarter, the projected amount of mitigation must ~~acreage of impact shall~~ be reconciled with the actual amount of mitigation needed for ~~acreage of impact of~~ projects as permitted, including permit modifications, pursuant

to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's programming ~~transfer~~ of funds shall be adjusted ~~accordingly~~ to reflect the mitigation ~~acreage of impacts~~ as permitted. ~~The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified for or maintained in an escrow account for the benefit of a water management district may be released if the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs.~~ If the water management district excludes a project from an approved water management district mitigation plan, cannot timely permit a mitigation site to offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or if the proposed mitigation does not meet state and federal requirements, the Department of Transportation may use the associated funds for the purchase of mitigation bank credits or any other mitigation option that satisfies state and federal requirements. Upon final ~~disbursement of the final maintenance and monitoring~~ payment for mitigation of a transportation project as permitted, the obligation of the Department of Transportation or the participating transportation authority is satisfied and the water management district or the Department of Environmental

Protection, as appropriate, will have continuing responsibility for the mitigation project.~~, the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.~~

(d) Beginning with the March 2014 water management district mitigation plans, ~~in the 2005-2006 fiscal year,~~ each water management district or the Department of Environmental Protection, as appropriate, shall invoice the Department of Transportation for mitigation services to offset only the impacts of a Department of Transportation project identified in the environmental impact inventory, including planning, design, construction, maintenance and monitoring, and other costs necessary to meet requirements pursuant to this section, 33 U.S.C. s. 1344, and 33 C.F.R. s. 332 ~~be paid a lump-sum amount of $75,000 per acre, adjusted as provided under paragraph (c), for federally funded transportation projects that are included on the environmental impact inventory and that have an approved mitigation plan. Beginning in the 2009-2010 fiscal year, each water management district shall be paid a lump-sum amount of $75,000 per acre, adjusted as provided under paragraph (c), for federally funded and nonfederally funded transportation projects that have an approved mitigation plan. All mitigation costs, including, but not limited to, the costs of preparing conceptual plans and the costs of design, construction, staff support, future maintenance, and monitoring the mitigated acres shall be funded through these lump-sum amounts.~~ If the water management

district identifies the use of mitigation bank credits to offset a Department of Transportation impact, the water management district shall exclude that purchase from the mitigation plan, and the Department of Transportation must purchase the bank credits.

(e) For mitigation activities occurring on existing water management district or Department of Environmental Protection mitigation sites initiated with Department of Transportation mitigation funds before July 1, 2013, the water management district or Department of Environmental Protection shall invoice the Department of Transportation or a participating transportation authority at a cost per acre of $75,000 multiplied by the projected acres of impact as identified in the environmental impact inventory. The cost per acre must be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. When implementing the mitigation activities necessary to offset the permitted impacts as provided in the approved mitigation plan, the water management district shall maintain records of the costs incurred in implementing the mitigation. The records must include, but are not limited to, costs for planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. s. 332.

(f) For purposes of preparing and implementing the mitigation plans to be adopted by the water management districts

on or before March 1, 2013, for impacts based on the July 1, 2012, environmental impact inventory, the funds identified in the Department of Transportation's work program or participating transportation authorities' escrow accounts must correspond to a cost per acre of $75,000 multiplied by the project acres of impact as identified in the environmental impact inventory. The cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Payment as provided under this paragraph is limited to those mitigation activities that are identified in the first year of the 2013 mitigation plan and for which the transportation project is permitted and is in the Department of Transportation's adopted work program, or equivalent for a transportation authority. When implementing the mitigation activities necessary to offset the permitted impacts as provided in the approved mitigation plan, the water management district shall maintain records of the costs incurred in implementing the mitigation. The records must include, but are not limited to, costs for planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. s. 332. To the extent moneys paid to a water management district by the Department of Transportation or a participating transportation authority exceed the amount expended by the water management districts in implementing the mitigation to offset the permitted

impacts, these funds must be refunded to the Department of Transportation or participating transportation authority. This paragraph expires June 30, 2014.

(4) Before March 1 of each year, each water management district shall develop a mitigation plan to offset only the impacts of transportation projects in the environmental impact inventory for which a water management district is implementing mitigation that meets the requirements of this section, 33 U.S.C. s. 1344, and 33 C.F.R. s. 332. The water management-district mitigation plan must be developed~~,~~ in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks~~, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344~~. In developing such plans, the water management districts shall use sound ecosystem management practices to address significant water resource needs and consider ~~shall focus on~~ activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration, or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that the activities comply with the mitigation requirements adopted under this part, ~~and~~ 33 U.S.C. s. 1344, and 33 C.F.R. s. 332. The

water management district mitigation plan must identify each site where the water management district will mitigate for a transportation project. For each mitigation site, the water management district shall provide the scope of the mitigation services, provide the functional gain as determined through the UMAM per Chapter 62-345, F.A.C., describe how the mitigation offsets the impacts of each transportation project as permitted, and provide a schedule for the mitigation services. The water management districts shall maintain records of costs incurred and payments received for providing these services. Records must include, but are not limited to, planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. s. 332. To the extent monies paid to a water management district by the Department of Transportation or a participating transportation authority exceed the amount expended by the water management districts in providing the mitigation services to offset the permitted transportation project impacts, these monies must be refunded to the Department of Transportation or participating transportation authority ~~In determining the activities to be included in the plans, the districts shall consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include the purchase as a part of the mitigation plan when the purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option~~. The mitigation plan shall be

submitted to the water management district governing board, or its designee, for review and approval. At least 14 days before approval by the governing board, the water management district shall provide a copy of the draft mitigation plan to the Department of Environmental Protection and any person who has requested a copy. Subsequent to governing board approval, the mitigation plan must be submitted to the Department of Environmental Protection for approval. The plan may not be implemented until it is submitted to and approved, in part or in its entirety, by the Department of Environmental Protection.

~~(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options and other factors such as time saved, liability for success of the mitigation, and long-term maintenance.~~

(a) ~~(b)~~ Specific projects may be excluded from the mitigation plan, in whole or in part, and are not subject to this section upon the election of the Department of Transportation, a transportation authority if applicable, or the appropriate water management district. The Department of Transportation or a participating transportation authority may not exclude a transportation project from the mitigation plan when mitigation is scheduled for implementation by the water management district in the current fiscal year, except when the transportation project is removed from the Department of Transportation's work program or transportation authority funding plan, the mitigation cannot be timely permitted to

offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or the proposed mitigation does not meet state and federal requirements. If a project is removed from the work program or the mitigation plan, costs expended by the water management district prior to removal are eligible for reimbursement by the Department of Transportation or participating transportation authority.

(b) ~~(c)~~ When determining which projects to include in or exclude from the mitigation plan, the Department of Transportation shall investigate using credits from a permitted mitigation bank before those projects are submitted for inclusion in a water management district mitigation ~~the~~ plan. ~~The investigation shall consider the cost-effectiveness of mitigation bank credits, including, but not limited to, factors such as time saved, transfer of liability for success of the mitigation, and long-term maintenance.~~ The Department of Transportation shall exclude a project from the mitigation plan if the investigation undertaken pursuant to this paragraph results in the conclusion that the use of credits from a permitted mitigation bank promotes efficiency, timeliness in project delivery, cost-effectiveness, and transfer of liability for success and long-term maintenance.

(5) The water management district shall ensure that mitigation requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. s. 332 are met for the impacts identified in the environmental impact inventory for which the water management district will implement mitigation described in subsection (2), by implementation of the approved mitigation plan described in

subsection (4) to the extent funding is provided by the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349, if applicable. In developing and implementing the mitigation plan, the water management district shall comply with federal permitting requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. s. 332. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements upon notice and coordination with the Department of Transportation or participating transportation authority.

(6) The water management district mitigation plans shall be updated annually to reflect the most current Department of Transportation work program and project list of a transportation authority established pursuant to chapter 348 or chapter 349, if applicable, and may be amended throughout the year to anticipate schedule changes or additional projects which may arise. Before amending the mitigation plan to include new projects, the Department of Transportation shall consider mitigation banks and other available mitigation options that meet state and federal requirements. Each update and amendment of the mitigation plan shall be submitted to the governing board of the water management district or its designee for approval. However, such approval shall not be applicable to a deviation as described in subsection (5).

(7) Upon approval by the governing board of the water management district and the Department of Environmental Protection ~~or its designee~~, the mitigation plan shall be deemed to satisfy the mitigation requirements under this part for

impacts specifically identified in the environmental impact inventory described in subsection (2) and any other mitigation requirements imposed by local, regional, and state agencies for these same impacts. The approval of the governing board of the water management district ~~or its designee~~ and the Department of Environmental Protection shall authorize the activities proposed in the mitigation plan, and no other state, regional, or local permit or approval shall be necessary.

(8) This section shall not be construed to eliminate the need for the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 to comply with the requirement to implement practicable design modifications, including realignment of transportation projects, to reduce or eliminate the impacts of its transportation projects on wetlands and other surface waters as required by rules adopted pursuant to this part, or to diminish the authority under this part to regulate other impacts, including water quantity or water quality impacts, or impacts regulated under this part that are not identified in the environmental impact inventory described in subsection (2).

~~(9) The process for environmental mitigation for the impact of transportation projects under this section shall be available to an expressway, bridge, or transportation authority established under chapter 348 or chapter 349. Use of this process may be initiated by an authority depositing the requisite funds into an escrow account set up by the authority and filing an environmental impact inventory with the appropriate water management district. An authority that initiates the environmental mitigation process established by~~

~~this section shall comply with subsection (6) by timely providing the appropriate water management district with the requisite work program information. A water management district may draw down funds from the escrow account as provided in this section.~~

Section 78. Section 373.618, Florida Statutes, is amended to read:

373.618 Public service warnings, alerts, and announcements.—The Legislature believes it is in the public interest that each ~~all~~ water management district ~~districts~~ created pursuant to s. 373.069 own, acquire, develop, construct, operate, and manage public information systems. Public information systems may be located on property owned by the water management district, upon terms and conditions approved by the water management district, and must display messages to the general public concerning water management services, activities, events, and sponsors, as well as other public service announcements, including watering restrictions, severe weather reports, amber alerts, and other essential information needed by the public. Local government review or approval is not required for a public information system owned or hereafter acquired, developed, or constructed by the water management district on its own property. A public information system is exempt from the requirements of chapter 479; however, a public information system that is subject to the Highway Beautification Act of 1965 must be approved by the Department of Transportation and the Federal Highway Administration if required by federal law and federal regulation under the agreement between the state and the United States Department of Transportation, and federal

regulations enforced by the Department of Transportation under s. 479.02(1). Water management district funds may not be used to pay the cost to acquire, develop, construct, operate, or manage a public information system. Any necessary funds for a public information system shall be paid for and collected from private sponsors who may display commercial messages.

Section 79. Subsection (3) of section 341.052, Florida Statutes, is amended to read:

341.052 Public transit block grant program; administration; eligible projects; limitation.—

(3) The following limitations shall apply to the use of public transit block grant program funds:

(a) State participation in eligible capital projects shall be limited to 50 percent of the nonfederal share of such project costs.

(b) State participation in eligible public transit operating costs may not exceed 50 percent of such costs or an amount equal to the total revenue, excluding farebox, charter, and advertising revenue and federal funds, received by the provider for operating costs, whichever amount is less.

(c) No eligible public transit provider shall use public transit block grant funds to supplant local tax revenues made available to such provider for operations in the previous year; however, the Secretary of Transportation may waive this provision for public transit providers located in a county recovering from a state of emergency declared pursuant to part I of chapter 252.

(d) Notwithstanding any law to the contrary, no eligible public transit provider shall use public transit block grant

funds in pursuit of strategies or actions leading to or promoting the levying of new or additional taxes through public referenda. To the extent that a public transit provider uses other public funds in pursuit of strategies or actions leading to or promoting the levying of new or additional taxes through public referenda, the amount of the provider's grant must be reduced by the same amount. As used in this paragraph, the term "public funds" means all moneys under the jurisdiction or control of a federal agency, the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof for any public purpose.

(e) The state may not give any county more than 39 percent of the funds available for distribution under this section or more than the amount that local revenue sources provide to that transit system.

Section 80. Except as otherwise expressly provided in this act, this act shall take effect upon becoming law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1132
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Community Affairs Committee; and Senator Brandes
SUBJECT:	Department of Transportation
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/7 amendments**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	Price	Martin	ATD	**Fav/CS**
4.		Hansen	AP	**Fav/CS**
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 1132 makes a number of revisions to statutes addressing the functions and responsibilities of the Florida Department of Transportation (FDOT or department) and various transportation issues.

The bill contains several issues that will impact state revenues, most of which have an indeterminate or negligible fiscal impact. Please see Section V.

The bill:

- Extends the Florida Transportation Commission's oversight of expressway and bridge authorities to regional transportation finance authorities created under a new ch. 345, F.S., and repeals provisions relating to the Florida Statewide Passenger Rail Commission.
- Establishes the FDOT as the agency responsible for administering the small county dredging program and sunsets the program on July 1, 2018.

- Authorizes attachment of a forklift to the rear of the cargo bed of a straight truck if the overall combined length of the vehicle and the forklift does not exceed 50 feet.
- Provides funding for space transportation projects from the State Transportation Trust Fund (STTF).
- Authorizes the FDOT to fund up to 100 percent of the cost of strategic airport investment projects under specified conditions.
- Prohibits the FDOT from entering into any lease-purchase agreement with any expressway authority, regional transportation authority, or other entity and preserves existing lease-purchase agreements.
- Directs the FDOT to enter into an interlocal agreement with the City of Miami for a five-year pilot program under which the city assumes street cleaning, landscaping, and maintenance responsibilities of the right-of-way of a certain portion of Brickell Avenue and directs the Florida Transportation Commission to conduct a study to evaluate the effectiveness and benefits of the pilot program.
- Authorizes the FDOT to improve and maintain a city or county road that is part of the city or county road system and which maintains access to a state park;
- Authorizes a county to receive solicited and unsolicited proposals from a private entity to construct, extend, or improve a county road and to enter into public-private partnership agreements for such a project.
- Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way.
- Amends the process that the FDOT must follow relating to proposals to enter into a lease of the FDOT property for joint public-private development or commercial development.
- Revises provisions relating to the uses of fees generated from certain tolls to include the design and construction of a fire station; revises provisions relating to the transfer of certain excess revenues; and removes authority of a water management district to issue bonds or notes which pledge excess toll revenues.
- Revises provisions relating to metropolitan planning organization (MPO) designation to conform language to federal law, provides a cap on the number of voting members of an MPO re-designated as specified, provides that certain authorities or agencies in metropolitan areas may be provided voting membership on the MPO, and makes editorial changes to eliminate redundancy and provide clarity.
- Authorizes Enterprise Florida, Inc., to be a consultant to the FDOT for consideration of expenditures associated with and contracts for economic development transportation projects and revises the requirements for those project contracts between the FDOT and a governmental entity.
- Repeals the Transportation Corporation Act and other obsolete provisions related to the Act.
- Includes projects that provide intermodal connectivity with spaceports as eligible for loans from the State-funded Infrastructure Bank.
- Expands eligibility of intercity bus companies to compete for federal and state program funding.
- Revises the types of eligible projects and criteria of the Intermodal Development Program.
- Renames and reconfigures the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority and revises related provisions.

- Creates the Florida Regional Transportation Finance Authority Act in a new chapter 345, F.S., authorizing counties to form a regional tollway authority that can construct, maintain, and operate transportation projects in a region of the state.
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- Creates the Santa Rosa-Escambia Regional Transportation Finance Authority and the Suncoast Regional Transportation Finance Authority.
- Provides for the transfer of the governance and control of the Mid-Bay Bridge Authority System to the Northwest Florida Regional Transportation Finance Authority.
- Renames and reconfigures the Orlando-Orange County Expressway Authority as the Central Florida Expressway Authority and revises related provisions.
- Transfers all powers, governance, and control of the Osceola County Expressway System to the Central Florida Expressway Authority upon completion of construction of the Poinciana Parkway, with provision for extension of the transfer date, and repeals part V of chapter 348, F.S., on the same date that the Osceola County Expressway System is transferred to the Central Florida Expressway Authority.
- Revises provisions relating to mitigation of the environmental impacts of transportation projects.
- Requires public information systems located on water management district property to be approved by the FDOT and the Federal Highway Administration if approval is required by federal law.
- Prohibits the use of public block grant funds to pursue or promote the levy of new or additional taxes through public referenda.
- Repeals obsolete language, clarifies ambiguous language, and makes editorial, grammatical, and conforming changes.
- Requires the Florida Transportation Commission to conduct a study of the potential for the state to obtain revenue from parking meters or other parking time-limit devices within or along the right-of-way limits of a state road.
- Makes it unlawful for any used tire retailer to sell unsafe used tires for the purpose of mounting on a vehicle.
- Provides effective dates.

This bill amends the following sections of the Florida Statutes: 20.23, 110.205, 311.22, 316.515, 316.545, 331.360, 334.044, 335.0415, 335.06, 337.11, 337.14, 337.168, 337.25, 337.251, 338.161, 338.165, 338.26, 339.175, 339.2821, 339.55, 341.031, 341.053, 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.84, 343.85, 343.875, 343.89, 343.922, 343.922, 348.751, 348.752, 348.753, 348.754, 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, 348.756, 348.757, 348.758, 348.759, 348.760, 348.761, 348.765, 369.317, 369.324, 373.4137, 373.618, and 341.052.

The bill repeals the following sections of the Florida Statutes: 11.45(3)(m), 316.530(3), 339.401, 339.402, 339.403, 339.404, 339.405, 339.406, 339.407, 339.408, 339.409, 339.410, 339.411, 339.412, 339.414, 339.415, 339.416, 339.417, 339.418, 339.419, 339.420, 339.421.

The bill creates the following sections of the Florida Statutes: 332.007(11), 336.71, and chapter 345, consisting of the following sections of the Florida Statutes: 345.0001, 345.0002, 345.0003,

345.0004, 345.0005, 345.0006, 345.0007, 345.0008, 345.0009, 345.0010, 345.0011, 345.0012, 345.0013, 345.0014, 345.0015, and 345.0016.

II. Present Situation:

Florida Transportation Corporation Act and Related Audit Authority

Sections 339.401 through 339.421, F.S., create the "Florida Transportation Corporation Act." This act was created in 1988[1] to allow certain nonprofit corporations authorized by the FDOT to act on FDOT's behalf in assisting with project planning and design, assembling right-of-way and financial support, and generally promoting projects included in the FDOT's adopted five-year work program. The act contains various statutory provisions related to the formation, operation, and dissolution of these corporations.

Among the specific activities of transportation corporations authorized under the act are:

- Acquiring, holding, investing, and administering property and transferring title to the FDOT for project development;
- Performing preliminary and final alignment studies;
- Receiving contributions of land for right-of-way and case donations to be applied to the purchase of right-of-way or design and construction projects; and,
- Making official presentations to groups concerning the project and issuing press releases and promotional materials.

Florida transportation corporations cannot issue bonds and are not empowered to enter into construction contracts or to undertake construction. They are enabled to otherwise borrow money or accept donations to help defray expenses or needs associated with the corporation or a particular transportation project.

According to the FDOT, after a limited number of inquiries immediately following passage of the act, the FDOT has received no further requests for information or other indications of interest in the act, and the provisions of the act have never been used. As a result, the Auditor General's authority to audit corporations acting on behalf of the FDOT in s. 11.45(3)(m), F.S., has never been exercised, and the provisions of Fla. Admin. Code Rule Chapter 14-35, which implement the act, have never been applied.

Overlapping Responsibility for Passenger Rail Systems

Florida Transportation Commission

The Florida Transportation Commission (FTC) has long been charged with periodically reviewing the status of the state transportation system, including rail and other component modes, and with recommending system improvements to the Governor and the Legislature. Beginning in 2007, the Legislature also directed the FTC in s. 20.23(2)(b)8., F.S., to:

[1] s. 3, ch. 88-271, Laws of Florida.

> Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, F.S.,[2] including any authority formed using the provisions of part I of ch. 348, F.S., and any authority formed under ch. 343, F.S., which is not monitored under subsection (3). The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

The only publicly funded passenger rail system in the state (Tri-Rail) then and now existing is operated by the South Florida Regional Transportation Authority, which is established in ch. 343, F.S.

Florida Statewide Passenger Rail Commission (FSPRC)

In 2009, the Florida Legislature provided a statutory framework for enhancing the consideration of passenger rail as a modal choice in the development and operation of Florida's transportation network.[3] The Legislature created the Florida Rail Enterprise, modeled after the Florida Turnpike Enterprise, to coordinate the development and operation of passenger rail services statewide, and established the FSPRC to monitor, advise, and review publicly-funded passenger rail systems.[4]

Specifically, and similar to the duty of the FTC, the Legislature charged the FSPRC in s. 20.23(3)(b)1., F.S., with the function of:

> Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapters 343, 349, or 163, F.S., if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

[2] Chapter 343, F.S., entities include the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Area Regional Transportation Authority. Chapter 348, F.S., entities include the Miami-Dade Expressway Authority, the Tampa-Hillsborough County Expressway Authority, the Orlando-Orange County Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority. Chapter 349, F.S., establishes the Jacksonville Transportation Authority.

[3] Chapter 2011-271, L.O.F.

[4] The first phase (31 miles) of a commuter rail project, SunRail, – an eventual 61-mile stretch of existing rail freight tracks through Orange, Seminole, Volusia and Osceola counties and the City of Orlando -- is under construction, and service could begin as early as 2014.

State Public Transportation and Modal Administrator

Recognizing the significant role played by freight mobility as an economic driver for the state, the FDOT recently created an Office of Freight, Logistics, and Passenger Operations, and the 2012 Legislature directed the FDOT to develop a Freight Mobility and Trade Plan to assist in making freight mobility investments that contribute to the economic growth of the state.[5] As part of its focus on freight and intermodal issues, the FDOT requested approval from the Department of Management Services (DMS) to change the title of an existing Senior Management Service class position, from State Public Transportation and Modal Administrator, to State Freight and Logistics Administrator.[6] The DMS approved the requested change on September 2, 2011.

Small County Dredging Program

The Small County Dredging Program was created by the Legislature in 2005 assist in financing certain dredging improvements at small ports in counties with a population of less than 300,000 persons based on the last official United States Census, but which were not eligible for existing Florida Seaport Transportation and Economic Development (FSTED) funding.[7] Under the program, funding is authorized for dredging or deepening of channels, turning basins, or harbors on a 25-percent local matching basis with any port authority[8] that meets environmental permitting and other specified criteria. There are at least seven entities meeting the definition of "port authority" in counties with less than 300,000 population: the Panama City Port Authority; the Citrus County Port Authority; the Port St. Joe Port Authority; the Hernando County Port Authority; the Ocean, Highway, and Port Authority (Nassau County); the Putnam County Port Authority; and the St. Lucie County Port Authority.

The program was initially funded with a $5 million appropriation to the State Transportation Trust Fund to provide a 50-percent state match. An additional $9.2 million was provided in the 2006-2007 General Appropriations Acts to provide a 75-percent state match. No further funding has been provided to the program.

Straight Truck Maximum Length Limits

Current s. 316.515(3)(a), F.S., currently limits a straight truck (*e.g., concrete mixers, garbage trucks, etc.)* to 40 feet in extreme overall dimension, exclusive of certain safety and energy conservation devices. According to an FDOT analysis,[9] 29 states in the nation also adhere to a 40-foot maximum straight truck length, while nine of the twelve states who are members of the Southeastern Association of State Highway and Transportation Officials (SASHTO) have the same maximum length of 40 feet.

[5] Chapter 2012-174, L.O.F.
[6] Section 110.205(2)(j), F.S.
[7] Section 311.22, F.S.
[8] Defined in s. 315.02(2), F.S., to mean any port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law.
[9] *Review of Straight Truck Maximum Length Limits*, FDOT Traffic Engineering and Operation s Office, February 14, 2008. On file in the Senate Transportation Committee.

In its analysis of the turning movements and maneuverability of straight trucks, the study notes:

> "Wheel base will affect the turning capability of straight trucks as they mix with the traffic stream and perform turning maneuvers. Another consideration is rear overhang. Although an increase in maximum extreme length could be achieved by not adding to the wheel base, increasing rear overhang could itself create safety issues for traffic in adjacent lanes as the truck turns and the overhang encroaches into adjacent lanes. Increase in vehicle length could affect the ability of vehicles to stay within their lanes on curves and to negotiate intersections and freeway interchanges. Longer lengths would increase difficulty maneuvering in urban areas because of the greater vehicle lengths, and potential delays at intersections and other locations caused by the larger off tracking."

Further, the study concludes:

> "Many of the states that do allow straight truck lengths over 40 feet are rural west or mid-western states where traffic volumes are low and gaps are prevalent. Due to increasing congestion in Florida, maneuvering a straight truck in excess of 40 feet may provide unwanted side effects and disruptions to traffic. Currently, it can be observed at some intersections that vehicles at the stop bar must back up to allow a long straight truck to make its turn. In addition, long straight trucks can routinely be seen taking a portion of an adjacent lane in order to perform their turning maneuvers. In congested areas, these types of maneuvers can be troublesome."

Finally, the study recommends:

> "In the absence of conclusive data that longer straight trucks in the Florida traffic environment pose no adverse effects, the current 40 foot standard should be retained. The majority of the trips made by straight trucks are generally local trips requiring many turning maneuvers in combination with mixed traffic. Maintaining maximum length consistency with the majority of our SASHTO partners is also recommended."

Wrecker Permits/Disabled Vehicles

Current s. 316.515(8), F.S., allows wreckers to tow disabled vehicles when the combination of wrecker and towed vehicle are over legal weight, provided that the wrecker is operating under a special use permit. This provision was passed during the 1997 session. During the same session, s. 316.550(5), F.S., was passed to authorize the FDOT to issue such overweight permits.[10] However, s. 316.530(3), F.S., (originally passed as s. 316.205(3) in 1976) which allows wreckers to tow disabled vehicles when the combination of wrecker and towed vehicle are over the legal weight without a special use permit, was inadvertently overlooked and still remains in current law, despite the direct conflict with subsequently passed legislation.

As the 1997 changes rendered the provisions of s. 316.530(3), F.S., obsolete, the last-passed provisions of s. 316.515(8), F.S., and s. 316.550(5), F.S., have been enforced since that time.

[10] These changes are consistent with federal law, specifically 23 U.S.C. 127(a) and 23 C.F.R. 658.17, which authorize states to permit nondivisible loads and vehicles (defined to include emergency response vehicles) exceeding maximum weight limits upon the issuance of special permits in accordance with state law.

Commercial Motor Vehicles/Auxiliary Power Units

Section 756 of the Energy Policy Act of 2005, "Idle Reduction and Energy Conservation Deployment Program," amended 23 U.S.C. 127(a)(12) to allow for a national 400-pound exemption on the maximum weight limit on the interstate system for the additional weight of idling reduction technology ("auxiliary power units" or "APUs")[11] on heavy-duty vehicles. Section 316.545(3)(c), F.S., was created by the 2010 Legislature to provide for a 400-pound reduction in the gross weight of commercial motor vehicles equipped with idling reduction technology when calculating a penalty for exceeding maximum weight limits. The reauthorized Federal-aid highway program, Moving Ahead for Progress in the 21st Century (MAP-21) further amended 23 U.S.C. 127(a)(12) to increase from 400 to 550 pounds the allowable exemption for additional weight of APUs.

Space Transportation Facilities

The FDOT and Space Florida are currently authorized to enter into a joint participation agreement to effectuate the provisions of ch. 331, F.S., and the FDOT is authorized to allocate funds for such purposes in its five-year work program. The FDOT is prohibited from funding the administrative or operational costs of Space Florida.

Space Florida is required to develop a spaceport master plan for expansion and modernization of space transportation facilities within defined spaceport territories, containing recommended projects, and is required to submit the plan to the FDOT. The FDOT may include the plan within the FDOT's five-year work program of qualifying aerospace discretionary capacity improvement projects and is authorized to participate in the capital cost of eligible spaceport discretionary capacity improvement projects, subject to the availability of appropriated funds. The plan is required to identify appropriate funding levels and include recommendations on appropriate sources of revenue that may be developed to contribute to the STTF. The FDOT's annual LBR must be based on the proposed funding requested for approved spaceport discretionary capacity improvement projects.[12]

The FDOT Adopted Work Program included $16 million for spaceport projects in both Fiscal Year 2011-2012 and Fiscal Year 2012-2013. The FDOT Final Tentative Work Program for Fiscal Years 2014-2018 includes $20 million for Space Florida transportation projects in each of the five years.[13]

[11] An APU is a portable, truck-mounted system that can provide climate control and power for trucks without idling, keeping drivers comfortable during resting periods while reducing negative economic impact (fuel costs) and environmental impact (greenhouse gases and other pollutants, as well as noise).

[12] "Spaceport discretionary capacity improvement projects" is defined in s. 331.303(21), F.S., to mean capacity improvements that enhance space transportation capacity at spaceports that have had one or more orbital or suborbital flights during the previous calendar year or have an agreement in writing for installation of one or more regularly scheduled orbital or suborbital flights upon the commitment of funds for stipulated spaceport capital improvements.

[13] FDOT email, February 7, 2013, on file in the Senate Transportation Committee.

State Aviation Program

Section 332.007, F.S., requires the FDOT to prepare and continuously update an aviation and airport work program that separately identifies development projects and discretionary capacity improvement projects. Subject to the availability of appropriated funds, FDOT is authorized to participate in the capital cost of eligible public airport and aviation development projects,[14] unless otherwise directed as specified, at percentage rates that vary depending on factors such as available federal funding. The FDOT is also authorized, subject to the availability of appropriated funds in addition to aviation fuel tax revenues, to participate in the capital cost of eligible public airport and aviation discretionary capacity improvement projects,[15] again at percentage rates that vary. The FDOT notes that the Legislature created a Strategic Investment Initiative within its Seaport Office during the 2012 Legislative Session and that the FDOT does not have a similar investment initiative or authority for the Aviation Program.

Toll Authorities/Lease-Purchase Agreements

In addition to the FDOT, various authorities are currently operating toll facilities and collecting and reinvesting toll revenues. Aside from Florida's Turnpike Enterprise (which is part of the FDOT), most, but not all, of the toll authorities are established under ch. 348, F.S., entitled "Expressway and Bridge Authorities." Various sections of ch. 348, F.S., provide the toll authorities the ability to enter into lease-purchase agreements with the FDOT. In addition to authorities created under ch. 348, F.S., two transportation authorities are authorized under ch. 343, F.S., to enter into lease-purchase agreements with the FDOT, and a bridge authority established by special act of the Legislature is similarly authorized. The FDOT has entered into lease-purchase agreements with some, but not all, of these authorities.

The FDOT is authorized to enter these agreements by s. 334.044, F.S. Additionally, s. 339.08(1)(g), F.S., allows the FDOT to lend or pay a portion of the operation and maintenance (O&M) and capital costs of any revenue-producing transportation project located on the SHS or that is demonstrated to relieve traffic congestion on the SHS. The FDOT pays such costs using funds from the STTF.

In a typical lease-purchase agreement between the FDOT and a toll authority, the FDOT, as lessee, agrees to pay the O&M (which usually includes replacement and renewal, or the R&R) costs of the associated toll facility. Upon completion of the lease-purchase agreement, ownership of the facility would be transferred to the State and the FDOT would retain all revenues collected, as well as the O&M responsibility.

As required by existing agreements, the FDOT paid $9.2 million in the O&M expenses in FY 2011-2012 and an additional $32.8 million in the R&R expenses, periodic maintenance, and toll equipment capital costs, on behalf of the authorities. These funds accrue to an authority's long-term debt owed to the FDOT. When the O&M and the R&R expenses are not reimbursed by the toll authority on a current basis, *e.g.*, monthly or annually, the STTF monetary advances are

[14] In short, defined in s. 332.004(4), F.S., as "…any activity associated with the design, construction, purchase, improvement, or repair of a public-use airport or portion thereof…."
[15] Defined in s. 332.004(5), F.S., as "…capacity improvements … which enhance intercontinental capacity at [specified] airports…."

added to the authority's long-term debt due to the FDOT. As of June 30, 2012, debt owed to FDOT from various toll authorities for expenses paid totaled approximately $419.7 million.

Roadside Enhancement and Maintenance Requirements

The FDOT is responsible for enhancing environment benefits, preventing roadside erosion, conserving natural roadside growth and scenery, and providing for the implementation and maintenance of roadside conservation, enhancement, and stabilization programs.[16] The FDOT is required to purchase all plant materials from Florida commercial nursery stock on a uniform competitive basis. This provision conflicts with federal requirements that specify a state transportation department cannot require the use of materials produced in state or restrict the use of materials produced out of state.[17] Failure to comply with federal requirements for purchases of plant material for roadside landscaping may subject the FDOT to a significant federal funds penalty, generally 10 percent of annual highway constructions funds.[18]

State Highway System Maintenance

The FDOT is currently authorized to enter into contracts with counties and municipalities to perform routine maintenance work on the State Highway System within the appropriate boundaries.[19] Each county or municipality that completes the work to the standards of the contract as agreed to by the FDOT is entitled to receive payment or reimbursement from the FDOT.

Access to State Park Roads

Section 335.06, F.S., currently requires the FDOT to maintain any road that is part of the State Highway System and provides access to property within the state park system. Local governments are required to maintain roads that are part of the county road or city street system.

Public-private Agreements for Transportation Facilities

The FDOT currently has a public-private partnership program in place.[20] The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.[21]

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that the FDOT determines to be in the public's best interest.[22]

[16] *See* s. 334.044(26), F.S.
[17] See 23 C.F.R. s. 635.409.
[18] *See* 23 U.S.C. s. 131(b).
[19] Section 335.055, F.S,
[20] *See* s. 334.30, F.S.
[21] Section 334.30, F.S.
[22] Section 334.30(3), F.S.

Current law allows the FDOT to advance projects programmed in the adopted five-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.[23] In accomplishing this, the FDOT may use state resources to participate in funding and financing the project as provided for under the FDOT's enabling legislation for projects on the State Highway System.[24]

The FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.[25] If the FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Register and a newspaper of general circulation stating that the FDOT has received the proposal and it will accept other proposals for the same project.[26] In addition, the FDOT requires an initial payment of $50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.[27]

Current law governing the FDOT's public-private agreements provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.[28] The FDOT may request proposals from private entities for public-private transportation projects.[29] The partnerships must be qualified by the FDOT as part of the procurement process outlined in the procurement documents.[30] These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.[31] The FDOT must rank the proposals in the order of preference.[32]

The FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, the FDOT must terminate negotiations and move to the second-ranked firm; and, if unsuccessful again, the FDOT must move to the third-ranked firm.[33] The FDOT must provide independent analyses of the proposed public-private partnership that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.[34]

Current law authorizes FDOT to use innovative finance techniques associated with public-private partnerships, including federal loans, commercial bank loans, and hedges against

[23] Section 334.30(1), F.S.
[24] *Id.*
[25] *Id.*
[26] Section 334.30(6)(a), F.S.
[27] *See* Fla. Admin. Code R. 14-107.0011.
[28] *See* s. 287.055, F.S.
[29] Section 334.30(6)(a), F.S.
[30] Section 334.30(6)(b), F.S.
[31] Section 334.30(6)(c).
[32] *See* s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.
[33] Section 334.30(6)(d), F.S.
[34] Section 334.30(6)(e), F.S.

inflation from commercial banks or other private sources.[35] Public-private partnership agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years. In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund public-private partnership projects.[36]

Vehicle Registration/FDOT Contractors

Section 320.02(1), F.S., provides that every owner or person in charge of a motor vehicle operated or driven on the roads of this state shall register the vehicle in this state, except as otherwise provided. Section 320.37, F.S., provides that the registration requirement (and license plate display requirements) does not apply to a motor vehicle owned by a nonresident if the nonresident has complied with the registration law of the foreign country, state, territory, or federal district of the owner's residence. However, s. 320.38, F.S., provides that if a nonresident accepts employment or engages in any trade, profession, or occupation in this state, the nonresident must register his or her motor vehicle in this state within 10 days after beginning such employment.

Section 337.11(13), F.S., requires each road or bridge construction or maintenance contract let by the FDOT to contain a provision requiring the contractor to provide proof to the FDOT, in the form of a notarized affidavit from the contractor, that all motor vehicles that he or she operates or causes to be operated in this state are registered in compliance with ch. 320, F.S.

Transportation Projects/Prequalification/Bidding

Section 337.14(1), F.S., requires that persons "…desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified…." Section 337.14(2), F.S., provides: "Certification shall be necessary in order to bid on a road, bridge, or public transportation construction contract of more than $250,000." The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "…with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."

This language could be interpreted as being tied to a bid amount, *i.e.*, so long as the *bid* is not in excess of $250,000, a person would not be required to first be certified prior to bidding. The FDOT's bid solicitation notices, however, currently advise: "A prequalified contractor must have a current certificate of qualification in accordance with Rule Chapter 14-22, F.A.C., on the date of the letting to bid on construction projects over $250,000 as established by the Department's budget." Consequently, persons seeking to bid on construction contracts in excess of $250,000 are currently required to be qualified on the date of the letting.

For comparison, revisions to s. 337.14(1), F.S., during the last legislative session with respect to financial statements submitted in connection with the performance of construction contracts of

[35] Section 334.30(7), F.S.
[36] Section 334.30(12), F.S.

less than $1 million expressly tied that submission to proposed budget estimates, rather than to the bid amount.

Public Records/Identities of Potential Bidders

Section 337.168(2), F.S., currently provides that a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins 2 working days prior to the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. The FDOT maintains a website that posts a list of persons who have requested or obtained bid packages, plans, or specifications for a given project.[37] The list is removed from the website two working days prior to the deadline for obtaining bid packages, plans, or specifications.

The Florida Transportation Builders' Association advises that small contractors need and rely on access to the identities of potential bidders that are not made exempt under s. 337.168(2), F.S., for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for the FDOT projects.

Disposal and Lease of Real and Personal Property

The FDOT is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings or other improvements necessary for rights-of-way for existing or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in an FDOT designated rail or transportation corridor. The FDOT may also accept donations of land, building, or other improvements for transportation rights-of-way and may compensate an entity by providing replacement facilities when the land, building, or other improvements are needed for transportation purposes but are held by a federal, state, or local governmental entity and used for public purposes other than transportation.[38]

The FDOT is required to conduct a complete inventory of all real or personal property immediately upon acquisition, including an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or site of each piece of realty, structure, or severable item, and the serial number assigned to each.[39] The FDOT must evaluate the inventory of real property which has been owned for at least 10 years and which is not within a transportation corridor or the right-of-way of a transportation facility. If the property is not located within a transportation corridor or is not needed for a transportation facility, FDOT is authorized to dispose of the property.[40] According to the FDOT, 85 percent of its currently-owned surplus property is valued at under $50,000.

[37] http://www.dot.state.fl.us/cc-admin/Letting_Project_Info.shtm: Retrieved March 1, 2013. To access a list, click on a letting date in the near future under "2013 Lettings" and then choose "Proposal Holders" under "Important Letting Documents."
[38] Section 337.25(1), F.S.
[39] Section 337.25(2), F.S.
[40] Section 337.25(3), F.S.

Sale of Property

The FDOT is authorized to sell any land, building, or other real or personal property it acquired if the FDOT determines the property is not needed for a transportation facility.[41] The FDOT is required to first offer the property ("first right of refusal") to the local government in whose jurisdiction the property is located, with the following exceptions:

- If in the FDOT's discretion, public sale would be inequitable, the sale of the property may be negotiated, at no less than fair market value as determined by an independent appraisal, with the owner holding title to abutting property.[42]
- Property acquired for use as a borrow pit may be sold at no less than fair market value to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed.[43]
- Property acquired by a county or the FDOT using constitutional gas tax funds for right of way or borrow pit may be conveyed to a county without consideration if the property is no longer used or needed by the FDOT, and the county may sell the property on receipt of competitive bids.[44]
- Property donated to the state for transportation purposes, on which a facility as not been constructed for at least 5 years, and for which no plans for construction of a facility have been prepared, and that is not located on a transportation corridor, may be re-conveyed to the original donor of the property by a governmental entity[45]
- Property which was originally acquired for persons displaced by transportation projects provided the state receives no less than its investment in the properties, or fair market value, whichever is lower. The FDOT may negotiate the sale of property as replacement housing only to persons actually displaced by a project. Dispositions to any other person must be for fair market value. [46]

Once the FDOT determines the property is not needed for a transportation facility and has extended and received rejection of required first rights of refusal, FDOT is also authorized to:

- Negotiate the sale of property if its value is $10,000 or less as determined by FDOT estimate;[47]
- Sell the property to the highest bidder through "due advertisement" of receipt of sealed competitive bids or by public auction if its value exceeds $10,000 as determined by the FDOT estimate;[48]
- Determine the fair market value of property through appraisal conducted by an FDOT appraiser, if the FDOT begins the process for disposing of property on its own initiative,

[41] Section 337.25(4), F.S.
[42] Section 337.25(4)(c), F.S.
[43] Section 337.25(4)(d), F.S.
[44] Section 337.25(4)(f), F.S.
[45] Section 337.25(4)(g), F.S.
[46] Section 337.25(4)(i), F.S.
[47] Section 337.25(4)(a), F.S.
[48] Section 337.25(4)(b), F.S.

either by authorized negotiation or by authorized receipt of sealed competitive bids or public auction;[49]
- Convey the property without consideration to a governmental entity if the property is to be used for a public purpose;[50] and
- Use the projected maintenance costs of the property over the next five years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if the FDOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks.[51]

Lease of Property

The FDOT is further authorized to convey a leasehold interest for commercial or other purposes to any acquired land, building, or other property, real or personal, subject to the following:[52] the FDOT may negotiate a lease at the prevailing market value with the owner from whom the property was acquired, with the holders of leasehold estates existing at the time of the FDOT's acquisition, or, if public bidding would be inequitable, with the owner of privately owned abutting property, after reasonable notice to all other abutting property owners.[53] All other leases must be by competitive bid,[54] and limited to five years; however the FDOT may renegotiate a lease for an additional five year term without rebidding. Each lease must require that any improvements made to the property during the lease term be removed at the lessee's expense.[55] Property that is to be used for a public purpose, including a fair, art show, or other educational, cultural , or fundraising activity may be leased at no cost to a governmental entity or school board.[56]If property is to be used for a public purpose, including a fair, art show, or other educational, cultural, or fundraising activity, the property may be leased without consideration to a governmental entity or school board. The FDOT may enter into a long-term lease agreement without compensation with certain public ports for rail corridors used in the operation of a short-line railroad to the port.[57]

The appraisals currently required under s. 337.25(4)(c) and (d), F.S., must be prepared in accordance with the FDOT guidelines and rules by an independent appraiser certified by the FDOT. When "due advertisement" is required, an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held satisfies the requirement.[58]

Unsolicited Lease Proposals

Section 337.251, F.S., *Lease of property for joint public-private development and areas above or below department property*, authorizes the FDOT to request proposals for the lease of the FDOT

[49] Section 337.25(4)(e), F.S.
[50] Section 337.25(4)(h), F.S.
[51] Section 337.25(4)(j), F.S.
[52] Section 337.25(5), F.S.
[53] Section 337.25(5)(a), F.S.
[54] Section 337.25(5)(b), F.S.
[55] Section 337.25(5)(d), F.S.
[56] Section 337.25(5)(e), F.S.
[57] Section 337.25(5)(h), F.S.
[58] Section 337.25(8), F.S.

property for joint public-private development or commercial development. The FDOT may also receive and consider unsolicited proposals for such uses. If the FDOT receives an unsolicited proposal to negotiate a lease, the FDOT must publish a notice in a newspaper of general circulation at least once a week for two weeks, stating that it has received the proposal and will accept, for 60 days after the date of publication, other proposals for use of the space. The FDOT must also mail a copy of the notice to each local government in the affected area.

Any unsolicited lease proposal must be selected based on competitive bidding, and the FDOT is authorized to consider such factors as the value of property exchanges, the cost of construction, and other recurring costs for the benefit of the FDOT by the lessee in lieu of direct revenue to the FDOT if such other factors are of equal value including innovative proposals to involve minority businesses. Before entering into any lease, the FDOT must determine that the property subject to the lease has a permanent transportation use related to the FDOT responsibilities, has the potential for such future transportation uses, or constitutes airspace or subsurface rights attached to property having such uses, and is therefore not available for sale as surplus property.

Section 334.30, F.S., *Public-private transportation facilities*, authorizes the FDOT to lease certain toll facilities through public-private partnerships and also authorizes the FDOT to receive unsolicited proposals. That section directs the FDOT to establish by rule an application fee sufficient to pay the costs of evaluating a proposal. The FDOT is further authorized to engage the services of private consultants to assist in the evaluation.

Unlike s. 337.251, F.S., before approving a proposal, the FDOT must determine that the proposed project is in the public's best interest; would not require state funds to be used unless the project is on the SHS; would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the FDOT; would have adequate safeguards in place to ensure that the department or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and would be owned by the FDOT upon completion or termination of the agreement.[59] In addition, before awarding a contract for lease of an existing toll facility through a public-private partnership, the FDOT is required to provide an independent analysis of the proposed lease that demonstrates the cost-effectiveness and overall public benefit.

If the FDOT receives an unsolicited proposal for a lease through a public-private partnership, the FDOT must publish a notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for two weeks stating that the FDOT has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose. The FDOT must also mail a copy of the notice to each local government in the affected area.

Toll Collection/Interoperable Facilities

During the 2012 Legislative Session, the Legislature passed both HB 599 and SB 1998, and both contained language relating to the FDOT authority to enter into agreements with public or

[59] The ownership requirement in s. 334.30, F.S., would not, of course, apply to a lease arrangement under s. 337.251, F.S.

private transportation facility owners (whose systems become interoperable with the FDOT's systems) for the use of the FDOT systems to collect and enforce for the owner tolls, fares, administrative fees, and other applicable charges due in connection with use of the owner's facility. The language, however, is not identical. Part of the last-passed version of the language contained in HB 599 is potentially ambiguous, leading to more than one possible interpretation, and part of needed language that passed in HB 599 was not included in SB 1998. Section 338.161, F.S., now reflects four different history notes highlighting the differences between the two 2012 bills.

Beeline-East Expressway and Navarre Bridge

Section 338.165(4), F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the FDOT's adopted work program. The Beeline-East Expressway (renamed the Beachline East Expressway) became part of the Turnpike Enterprise on July 1, 2012, pursuant to ch. 2012-128, L.O.F.[60] The Navarre Bridge is now county-owned and no longer used for toll revenue. The references to each facility in s. 338.165(4), F.S., are now obsolete.

Alligator Alley Excess Revenues

Section 338.26, F.S., provides that any excess revenues from Alligator Alley, after facility operation and maintenance, contractual obligations, reconstruction and restoration, and the development and operation of a fire station at mile marker 63,[61] *may* be transferred to the South Florida Water Management District (SFWMD) Everglades Fund for specified projects.

The FDOT advises that operation of the fire station is expected to begin in FY 2013-2014; and the FDOT finance plan, based on projections provided to the FDOT, contains the following funding for operation of the fire station:[62]

FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2018-19
$1,200,000	$1,242,000	$1,285,470	$1,330,461	$1,377,028

With respect to transfers to the SFWMD, the FDOT and the SFWMD entered into a memorandum of understanding on June 30, 1997,[63] under which the FDOT agreed to a schedule of payments to the SFWMD totaling $63,589,000. The FDOT expects to be able to meet its obligations under the current payment schedule by Fiscal Year 2016 as follows:[64]

[60] See s. 338.165(10), F.S.
[61] The FDOT indicates that the fire station is currently under construction, and construction is funded by the FDOT. The FDOT notes that another fire station is located on the Alley in Broward County. Broward County provided the funding for construction of that station and provides the funding for its operation.
[62] The FDOT email, March 1, 2013, on file in the Senate Transportation Committee.
[63] On file in the Senate Transportation Committee.
[64] The FDOT email, March 1, 2013, on file in the Senate Transportation Committee.

FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
$4,400,000	$5,000,000	$8,000,000	$7,064,000

The agreement further provides that prior to its expiration, the FDOT and the SFWMD will renegotiate the terms, conditions, and duration of the agreement, taking into account toll revenues from the Alley, future costs to operate and maintain the Alley, reconstruction and restoration activities of the Alley, the transportation funding needs of Broward and Collier counties pursuant to s. 338.165(2), F.S.,[65] and the continuing costs of the Everglades restoration projects.

Metropolitan Planning Organizations/Designation/Membership

Based on census data, the U.S. Bureau of the Census designates urbanized areas throughout the state. Federal law and rule (23 U.S.C. 134 and 23 C.F.R 450 Part C) require a metropolitan planning organization (MPO) to be designated for each urbanized area[66] or group of contiguous urbanized areas. In addition, federal law and rules specify the requirements for a MPO transportation planning and programming activities. These requirements are updated after each federal transportation reauthorization bill enacted by Congress. State law also includes provisions governing MPO activities. Section 339.175, F.S., paraphrases or restates some key federal requirements. In addition, state law includes provisions that go beyond the federal requirements. For example, federal requirements regarding MPO membership are very general, while state law is more specific.

Section 339.175(2)(a)2., F.S., currently provides that designation of an MPO be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area; however, the unit of general-purpose local government that represents the central city or cities within the MPO jurisdiction, as defined by the United State Bureau of the Census, must be a party to such agreement. This language has been superseded by revisions to 23 U.S.C. 134(d) and 23 C.F.R. 450.310(b), which now require designation to be accomplished by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

An existing MPO may be re-designated by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the existing population in the area served, including the largest incorporated city.[67] Re-designation of an MPO is required whenever the existing MPO proposes to make a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general-purpose local government served by the MPO, and the State; or a

[65] That section requires that if a revenue-producing project is on the State Highway System, any remaining toll revenue after discharge of indebtedness related to such project must be used for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the revenue-producing project is located.
[66] An urbanized area is defined by the U.S. Bureau of the Census and has a population of 50,000 or more.
[67] 23 C.F.R. 450.301(h) (2012).

substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under the MPO bylaws.[68]

Current law does not authorize more than 19 members on an MPO in cases when the MPO is re-designated as a result of the expansion of an MPO to include a new urbanized area or the consolidation of two or more MPOs, even if the membership is already at 19 members.

Economic Development Transportation Projects

Florida has a number of economic development incentive programs used to recruit industry to Florida, or to persuade existing businesses to expand their operations. One such incentive exists in what is commonly referred to as the Road Fund, which is funded by the STTF and used to assist local government in paying for highway or other transportation infrastructure improvements that will benefit a relocating or expanding company. The amount appropriated for this transfer varies from year to year. The Legislature in 2012 repealed s. 288.063, F.S., in which the Road Fund was statutorily placed, and created s. 339.2821, F.S. The revisions did not change the purpose of the Road Fund but simply moved oversight of the fund from the DEO to the FDOT.[69]

The FDOT, in consultation with the DEO, is authorized under the new section to make and approve expenditures and contract with the appropriate government body for the direct costs of transportation projects. Current law specifies that as part of the contractual agreement between the FDOT and a governmental body, that the FDOT may only transfer funds on a quarterly basis, the governmental body must expend funds received in a timely manner, and the FDOT may only transfer funds after construction has begun on the facility of a business on whose behalf the award was made.

State-Funded Infrastructure Bank/Spaceports

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB), which provides loans to government units and private entities to help fund transportation projects. The loans are repaid from revenues generated by the project, such as a toll road or other pledged resources. The repayments are then re-loaned to fund new transportation projects. A SIB loan may lend capital costs or provide credit enhancements for a transportation facility project on the SHS or for a project which provides intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals. Loans from the SIB may bear interest at or below market interest rates, as determined by the FDOT. Repayment of any SIB loan must begin no later than 5 years after the project has been complete or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.

[68] 23 C.F.R. 450.301(k) (2012).
[69] Budget Committee Final Analysis of SB 1998: http://www.flsenate.gov/Session/Bill/2012/1998/Analyses/M6TO2qtoNCs60=PL=Y=PL=DT9BT2bnWNo=%7C11/Public/Bills/1900-1999/1998/Analysis/s1998z2.TEDAS.PDF.

Intercity Bus Service/Funding Eligibility

The Federal Transit Administration's Intercity Bus Program (49 U.S.C. 5311(f)), is administered by the FDOT. Its purpose is to support and maintain intercity bus services, in order to preserve service through rural areas of the state. The FDOT provides matching funds as required by s. 339.135(4), F.S. Florida's statutory definition of "intercity bus service" is more restrictive than the federal definition, which limits the number of companies competing for funding.

Section 341.031(11), F.S., defines "intercity bus service" as regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available; maintains schedule information in the National Official Bus Guide; and provides package express service incidental to passenger transportation. Greyhound Bus Lines is currently the only private, for-profit company operating intercity bus services in Florida that meets the statutory definition to receive federal and state intercity bus program funding, as it is the only company in Florida that maintains schedule information in the National Official Bus Guide and provides package express service incidental to passenger transportation.

Intermodal Development Program

Section 341.053, F.S., was originally enacted in 1990 to create the Intermodal Development Program administered by the FDOT to provide for major capital investments in fixed-guideway transportation systems, access to seaports, airports and other transportation terminals, and to assist in the development of dedicated bus lanes. The Legislature in 1999 added direction to the FDOT to develop a proposed intermodal development plan to connect Florida's airports, deepwater seaports, rail systems serving both passenger and freight, and major intermodal connectors to the Florida Intrastate Highway System facilities as the primary system for the movement of people and freight in this state.

Section 341.053(6), F.S., currently authorizes the FDOT to fund projects including major capital investments in public rail and fixed-guideway transportation facilities and systems which provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between seaports, airports, and other transportation terminals; construction of intermodal or multimodal terminals; development and construction of dedicated bus lanes; and projects which otherwise facilitate the intermodal or multimodal movement of people and goods.

Toll Facilities Revolving Trust Fund/Obsolete References

The Legislature repealed s. 338.251, F.S., during the 2012 Legislative Session.[70] That section created the Toll Facilities Revolving Trust Fund, which was a loan program created to develop and enhance the financial feasibility of revenue-producing road projects undertaken by local governmental entities and the Turnpike Enterprise. Two references to the now repealed trust fund remain in statute.

[70] Ch. 2012-128, L.O.F.

Currently Established Toll Authorities

Aside from the FDOT and Florida's Turnpike Enterprise, a number of authorities exist in Florida that operate toll facilities and collect and reinvest toll revenues.[71]

Miami-Dade Expressway Authority

The Miami-Dade Expressway Authority (MDX) governing body consists of 13 voting members. The Miami-Dade County Commission appoints seven members, the Governor appoints five members, and the FDOT district six secretary is the *ex-officio* member of the Board. Except for the secretary, all members must be residents of Miami-Dade County and each serves a four-year term and may be reappointed.[72]

The MDX currently oversees, operates and maintains five tolled expressways constituting approximately 34 centerline-miles and 220 lane-miles of roadway in Miami-Dade County: Dolphin Expressway (SR 836); Airport Expressway (SR 112); Don Shula Expressway (SR 874); Gratigny Parkway (SR 924) and Snapper Creek Expressway (SR 878). MDX reported toll and fee revenue of $121.9 million (net of $2.8 million of allowance) in Fiscal Year (FY) 2011 based on 220 million transactions.[73] The FTC report indicates that approximately $45.5 million in outstanding debt ($6 million in loans from the now-repealed Toll Facilities Revolving Trust Fund and $39.5 million in loans from the State Infrastructure Bank) is due to FDOT as of June 30, 2011.[74]

Tampa-Hillsborough County Expressway Authority

The Tampa-Hillsborough County Expressway Authority (THEA) governing body consists of seven members, four of which are appointed by the Governor and serve four-year terms. The City of Tampa mayor, a member of the Board of County Commissioners selected by the board, and the FDOT's district seven secretary are *ex-officio* members.[75]

The THEA owns the four-lane Selmon Expressway, which is a 15-mile limited access toll road crossing the City of Tampa from Gandy Boulevard in south Tampa, through downtown Tampa and east to I-75 and Brandon. The FTC report indicates that beginning in Fiscal Year 2001, the THEA has reimbursed the FDOT for annual O&M expenses pursuant to the adopted budget and that only renewal and replacement costs continue to be added to long-term debt. As of June 30, 2011, the THEA owes the FDOT approximately $200.7 million for the O&M, renewal and replacement expense advances, and other FDOT loans.[76]

[71] The Mid-Bay Bridge Authority is also included among these authorities.
[72] s. 348.0003, F.S.
[73] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 22.
[74] Id.
[75] Section 348.52, F.S.
[76] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 73.

Tampa Bay Area Regional Transportation Authority

The Tampa Bay Area Regional Transportation Authority (TBARTA) is an agency of the state whose purposes are to improve mobility and expand multimodal transportation options for passengers and freight throughout the seven-county Tampa Bay region.[77] The TBARTA's governing body consists of 16 members: one elected official appointed by the respective County Commissions from Citrus, Hernando, Hillsborough, Pasco, Pinellas, Manatee and Sarasota counties; one member appointed by the West Central Florida Metropolitan Planning Organization Chairs Coordinating Committee who must be a chair of one of the six Metropolitan Planning Organizations in the region; two members who are the mayor or the mayor's designee of the largest municipality within the area served by the Pinellas Suncoast Transit Authority and the Hillsborough Area Transit Authority; one member who is the mayor or the mayor's designee of the largest municipality within Manatee or Sarasota County, providing that the membership rotates every two years; four members who are business representatives appointed by the Governor, each of whom must reside in one of the seven counties of the TBARTA; and one non-voting member who is the secretary of one of the FDOT districts within the seven-county area appointed by the FDOT secretary.[78]

The TBARTA is not currently operating any facility. The FTC report indicates that "TBARTA is beginning to prioritize projects, develop financial strategies for implementation, coordinate the advancement of more detailed planning and environmental analysis for the prioritized projects, and continue public engagement and education efforts." The FTC report lists nine current TBARTA projects (evaluations and studies) funded by the FDOT.[79] The TBARTA also operates the TBARTA Commuter Services, which is a free, online ride-matching program enabling commuters to connect with each other to share rides and is engaging in additional activities, such as identifying opportunities for collaboration and consolidation with other entities in the region, strengthening existing partnerships and examining the potential for new ones, identify short-term solutions to traffic congestion, and continuing to look for process improvements and potential cost savings.[80]

The TBARTA and the FDOT entered into an agreement under which, in 2009, the FDOT advanced $500,000 from a $2 million appropriation to pay initial administrative expenses, and the 2009, 2010 and 2011 Legislatures re-appropriated unspent funds from the $2 million to the TBARTA; however, the 2011 appropriation was vetoed by the Governor.

Northwest Florida Transportation Corridor Authority

The Northwest Florida Transportation Corridor Authority (NFTCA) is an agency of the state with the primary purpose of improving mobility on the U.S. 98 corridor in Northwest Florida to enhance traveler safety, identify and develop hurricane routes, promote economic development along the corridor, and implement transportation projects to alleviate current or anticipated traffic congestion. The NFTCA is also authorized to issue bonds.[81] Eight voting members, one

[77] Section 343.922, F.S.
[78] Section 343.92, F.S.
[79] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 177.
[80] Id. at 179.
[81] Section 343.82, F.S.

each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin and Wakulla counties, are appointed by the Governor to serve four-year terms on the governing body. The FDOT's district three secretary serves an as *ex-officio*, non-voting member.[82]

The NFTCA is not currently operating any facility. The FTC report indicates:

> As part of the Master Plan update, NFTCA's general consultant (HDR) is conducting a business case analysis to help the Authority in selecting and planning transportation projects by assessing their respective economic benefits, developing an investment plan and proposing viable funding strategies. The business case analysis includes an extensive public outreach program involving regional planning councils in the eight-county geographic area covered by the NFTCA and a series of workshops involving other key stakeholders in the region.[83]

The NFTCA currently operates under an agreement that uses federal earmark funds for administrative expenses, professional services, and regional transportation planning.[84]

Mid-Bay Bridge Authority

The 1986 Legislature created the Mid-Bay Bridge Authority [85] as the governing body of an independent special district in Okaloosa County for the purpose of planning, constructing, operating, and maintaining a bridge over the Choctawhatchee Bay. The Mid-Bay Bridge Authority operates the tolled, 3.6-mile long Mid-Bay Bridge across the Choctawhatchee Bay and approaches (SR 293) on the northern and southern sides of the bridge. The facility, which connects SR 20 with U.S. 98 east of Destin, is a link between Interstate 10 and U.S. 98 and provides a more direct route for tourists and residents between northern and southern Okaloosa and Walton Counties.[86]

The FDOT, under the provisions of a lease-purchase agreement with the Mid-Bay Bridge Authority, maintains and operates the existing bridge and remits all of the tolls collected to the authority as lease payments. The term of the lease runs concurrently with the bonds issued by the Mid-Bay Bridge Authority, and when the bonds are matured and fully paid, the FDOT will own the bridge. As of June 30, 2012, the Mid-Bay Bridge Authority's long-term debt obligation to the FDOT for operations and maintenance pursuant to the existing agreement was $9.5 million. In accordance with bond covenants, this liability is payable from excess toll revenues, after debt service obligations have been met.

The Florida Turnpike Enterprise provides toll plaza operations for the Mid-Bay Bridge Authority. For the fiscal year ending September 2012, toll revenues amounted to $15,765,967. Earned investment income from Revenue and Reserve Funds of $1,395,789, plus $30,886 from

[82] Section 343.81, F.S.
[83] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 160.
[84] Id.
[85] Re-created by special act, ch. 2000-411.
[86] Senate Issue Brief 2012-208, *Cost Effectiveness of Regional Expressway and Bridge Authorities,* (September 2011).

SunPass collections, raised total revenue to $17,192,642.[87] Florida law reflects no state entity charged with monitoring the efficiency, productivity, and management of the Mid-Bay Bridge Authority, unlike other regional transportation, expressway and bridge authorities.

Santa Rosa Bay Bridge Authority

The Santa Rosa Bay Bridge Authority (SRBBA) governing body consists of seven members. The Governor and the Board of County Commissioners each appoint three members, and the FDOT district three secretary is an ex-officio member of the Board. Except for the secretary, all members are required to be permanent residents of Santa Rosa County at all times during their term of office.[88]

The SRBBA owns the Garcon Point Bridge, a 3.5-mile tolled bridge that spans Pensacola/East Bay between Garcon Point (south of Milton) and Redfish Point (between Gulf Breeze and Navarre) in southwest Santa Rosa County.[89] Florida's Turnpike Enterprise provides toll operations for the SRBBA, and the FDOT's district three performs maintenance functions on the bridge. Because toll revenues are insufficient to pay both debt service on outstanding bonds and O&M expenses, the costs of the O&M are recorded as debt owed to FDOT. The FTC report indicates that the SRBBA also has outstanding loans from the Toll Facilities Revolving Trust Fund, and the balance of these liabilities on June 30, 2011, was $24.7 million.[90]

Orlando-Orange County Expressway Authority

The Orlando-Orange County Expressway Authority (OOCEA) governing body consists of five members. The Governor appoints three members who are citizens of Orange County and who serve four-year terms and may be reappointed. The Orange County mayor and the FDOT's district five secretary are the two ex-officio members of the Board.[91]

The OOCEA currently owns and operates 105 centerline miles of roadway in Orange County: 22 miles of the Spessard L. Holland East-West Expressway (SR 408), 23 miles of the Martin Andersen Beachline Expressway (SR 528), 33 miles of the Central Florida GreeneWay (SR 417), 22 miles of the Daniel Webster Western Beltway (SR 429) and 5 miles of the John Land Apopka Expressway (SR 414). OOCEA reported toll revenue of $260 million in FY 2011 based on 296 million transactions.[92] The FTC report indicates that approximately $270 million in outstanding debt ($221 million in advances for O&M expenses, $14 million in advances for completion of the East-West Expressway, and $34.8 million in loans from the State Infrastructure Bank) is due to FDOT as of June 30, 2011.[93]

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[87] *Traffic Engineers' Annual Report for Fiscal Year 2012*, prepared by URS for Mid-Bay Bridge Authority: http://www.mid-bay.com/pdfs/FY2012-Annual-Report.pdf. Retrieved February 23, 2013.
[88] Section 348.967, F.S.
[89] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, pp. 57-58.
[90] Id.
[91] s. 348.753, F.S.
[92] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 38.
[93] Id. at 39.

In addition, the OOCEA will independently finance, build, own and manage certain portions of the Wekiva Parkway and, pursuant to direction in SB 1998 (2012), the OOCEA will repay the FDOT for costs of operation and maintenance of the OOCEA system; the FDOT's obligation to pay any cost of operation, maintenance, repair, or rehabilitation of the OOCEA system terminates as specified; and ownership of the system remains with the OOCEA.

Osceola County Expressway Authority

Created in 2010, the Osceola County Expressway Authority (OCX) governing body consists of six members. Five members, one of which must be a member of a racial or ethnic minority, must be residents of Osceola County. Three of the five are appointed by the governing body of the county and the remaining two are appointed by the Governor. The FDOT's district five secretary serves as an *ex-officio*, non-voting member.[94]

The OCX is not currently operating any facility and has no funding or staff. Staff assistance and other support have been provided by Osceola County. The OCX has developed a Master Plan that includes construction of four proposed tolled expressways: Poinciana Parkway, Southport Connector Expressway, Northeast Connector Expressway, and Osceola Parkway Extension.[95]

Wekiva River Basin Commission

The Wekiva River Basin Commission is charged with monitoring and ensuring the implementation of the recommendations of the Wekiva river Basin Coordinating Committee for the Wekiva Study Area. The commission is comprised of 19 voting members, 9 of whom are voting members, and nine of whom are ad hoc nonvoting members. A representative of the previously repealed Seminole County Expressway Authority remains in statute as an ad hoc nonvoting member.

Environmental Mitigation for Transportation Projects

Pursuant to s. 373.4137, F.S., the FDOT and participating transportation authorities offset adverse environmental impacts of transportation projects through the use of mitigation banks and other mitigation options, including the payment of funds to the Water Management Districts (WMD) to develop and implement mitigation plans. The mitigation plan is developed by the WMDs and is ultimately approved by the Department of Environmental Protection (DEP). The ability to exclude a project from the mitigation plan is provided to the FDOT, a participating transportation authority, or a WMD.

In 2012, HB 599 modified s. 373.413, F.S., to reflect that adverse impacts may be offset by the use of mitigation banks or the payment of funds to develop and implement mitigation plans. The mitigation plan is based on an environmental impact inventory that is created by the FDOT and reflects habitats that would be adversely impacted by transportation projects listed in the next three years of the FDOT's tentative work program. The FDOT provides funding in its work program to the DEP or the WMDs for its mitigation requirements. To fund the programs, the

[94] Section 348.9952, F.S.
[95] FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2011 Report*, p. 165.

statute directs the FDOT and the authorities to pay $75,000 per impacted acre, adjusted by a calculation using the Consumer Product Index (CPI).[96]

Pursuant to s. 373.4137, F.S., mitigation plans developed by the WMDs must consider water resource needs and focus on activities in wetlands and surface waters, including preservation, restoration and enhancement, as well as control of invasive and exotic vegetation. The WMDs must also consider the purchase of credits from public and private mitigation banks if the purchase provides equal benefit to water resources and is the most cost effective option. Before transportation projects are added to the WMDs mitigation plans, the FDOT must consider if using mitigation bank credits will be more cost-effective and efficient. The WMD mitigation plans are updated annually to reflect the most recent FDOT work program and transportation authority project list and may be amended throughout the year. The mitigation plans are submitted to the governing board of the WMD or its designee for approval, and to the DEP for final approval.[97]

The FDOT and the participating expressway authorities are required to transfer funds each year to pay for mitigation of the projected impact acreage resulting from projects identified in the inventory. The projected impact acreage and costs are reconciled quarterly with the actual impact acreage, and the costs and balances are adjusted.[98]

Section 373.4137, F.S., provides for exclusion of specific transportation projects from the mitigation plan at the discretion of the FDOT, participating transportation authorities, and the WMDs.

Public Information Systems

Pursuant to s. 373.618, F.S., public information systems may be located on WMD property, provided certain terms and conditions are met. The systems must display messages to the general public concerning water management services, activities, events, watering restrictions, severe weather reports, amber alerts, and other essential public information. The law prohibits the use of WMDs funds to acquire, develop, construct, operate, or manage a public information system. Commercial messages are to be paid for by private sponsors.

Section 479.02, F.S., requires the FDOT to regulate the size, height, lighting, and spacing of signs on the interstate highway system in accordance with state and federal regulations. A permit and annual fee are required by any individual that proposes to erect, operate, use, or maintain any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system. Certain signs do not require a permit as long as the signs are in compliance with the provisions in s. 479.11(4)-(8), F.S.

Section 479.16, F.S, specifies that signs owned by a municipality or county that contain messages related to any commercial enterprise, a commercial sponsor of an event, personal messages, or political messages, are not considered information regarding government services.

[96] *See* s. 373.4137 F.S.
[97] *Id*.
[98] *Id*.

The FDOT may potentially be subject to an annual loss of 10 percent of federal highway funding if these signs are located within a "controlled area."[99]

Expenditures by Local Governments

Under current law, a county, municipality, school district, or other political subdivision of the state, and any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of the state, or a person acting on such entity's behalf, is prohibited from spending or authorizing expenditure of any moneys under the jurisdiction or control of such entity for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state questions, that is subject to a vote of the electors. The prohibition does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information, nor does it preclude an elected official of the local government from expressing an opinion on any issue.

Parking Meters/Permits/Revenues

Existing throughout the state today within the right-of-way limits of state roads under the FDOT's jurisdiction are parking meters or other parking time-limit devices whose revenue is collected and used by the local jurisdictions that installed the devices. Parking meters and other parking time-limit devices facilitate commerce by ensuring that parking spaces turn over at regular intervals, and provide convenient customer access to abutting businesses. The FDOT has no rule or statewide procedure for issuance of permits for parking time-limit devices installed within the right-of-way limits of state roads under the FDOT's jurisdiction. The FDOT does not receive any portion of this revenue and reports the number and location of these existing devices is unknown. Costs incurred by the local jurisdictions to purchase, install, and maintain the existing devices are unknown, as are costs incurred to enforce time limits reflected on the devices. Some local governments may have issued bonds secured by revenues from parking meters.

Used Tires

For purposes of environmental control under chapter 403, F.S., current Florida law defines a "waste tire" to mean a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term includes, but is not limited to, used tires and processed tires, It does not include solid rubber tires and tires that are inseparable from the rim.[100] A "used tire" is currently defined to mean a waste tire which has a minimum tread depth of 3/32 inch or greater and is suitable for use on a motor vehicle.[101]

[99] "Controlled area" means 660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system outside an urban area. *See* s. 479.01, F.S.
[100] Section 403.717(1)(d), F.S.
[101] Section 403.717(1)(k), F.S.

According to one estimate, approximately 10 percent of tires sold in the U.S. annually are used tires.[102] Used tires are generally less expensive for the consumer and provide a greater profit margin for the retailer.[103] Although federal regulations require tire manufacturers to mark each new tire with a tire identification number that indicates the week and year the tire was manufactured,[104] used tires are not subject to any federal standards.[105] Similarly, the sale of used tires is not regulated in Florida.

While there is no state regulation of the sale of used tires, the Rubber Manufacturers Association (RMA) has issued a tire industry service bulletin that lists conditions under which a used tire should never be installed on a vehicle.[106] The bulletin's stated purpose is to "address the potential risk associated with the installation of used tires that have uncertain or unknown history of use, maintenance or storage conditions. Such tires may have damage that could eventually lead to tire failure. This bulletin pertains to used tires installed as replacement tires or as equipped on a used vehicle." RMA does not recommend installation of used tires that exhibit any of the characteristics contained in the service bulletin. Among those characteristics is, "Inadequate tread depth for continued service (i.e. nearly worn out). Tires with a tread depth of 2/32" or less at any point on the tire are worn out."

Given that the threshold for being worn out is 2/32 or 1/16" of tread depth or less, a tire sold with a tread depth, for example, at the threshold – assuming all other conditions of the tire do not raise safety issues -- could be unsafe within an extremely short period of time. That assumption, however, has been called into question. According to one report:

> "There are several good reasons to avoid used tires. One is age. Acknowledgement is growing among the industry, researchers and government agencies that aged tires—regardless of their visual appearance and tread depth—can pose a significant threat to safety. The used tire market remains an unknown and unregulated source of aged tires. Tires age in a way that often cannot be detected visually. Oxidation of the internal components causes tires to deteriorate from the inside out. A tire that can appear new on the outside can be compromised internally as the material and chemical properties of the tire have changed significantly, increasing the risk of catastrophic tread/belt separation. Think of those old rubber bands in your desk—when new and fresh they are very elastic, as they age the rubber properties change. Stretching will result in cracking and they break much easier and more quickly then when they were new. Yet, age does not automatically disqualify a tire from the used tire market. Often—but not always—used tires are older than new tires and stored, before sale, in conditions that may contribute to rapid deterioration.

[102] Safety Research & Strategies, *Used Tires: A Booming Business with Hidden Dangers*, 2007, *available at* http://www.safetyresearch.net/Library/Used_Tires.htm (last visited April 3, 2013).
[103] *Supra* note 1.
[104] 49 CFR §571.139.
[105] Ronald Montoya, *How Old – and Dangerous – Are Your Tires?* (Nov. 18, 2011) *available at* http://www.edmunds.com/car-care/how-old-and-dangerous-are-your-tires.html (last visited April 3, 2013).
[106] Rubber Manufacturers Association, Passenger and Light Truck Used Tires, *available at* http://www.rma.org/tire_safety/tire _maintenance_and_safety/used_tires (last visited April 3, 2013).

> "The way used tires are collected, processed, stored, and selected for sale also raises concerns. More often than not, the provenance of a used tire is unknown. Used tires enter the market from many points ranging from tire service center scrap heap to salvage yards to Craigslist. However, the bulk of the used tire market is supported by large multi-state recyclers who do little more than give each tire a visual inspection to determine that tread depth is adequate and wholesale them back into the market. If a tire has at least 2/32nds of an inch of tread left and no glaring visual defect it's resold—and often cleaned and even painted black to make it appear new."[107]

III. Effect of Proposed Changes:

Section 1 repeals s. 11.45(3)(m), F.S., which contains the Auditor General's power to audit transportation corporations authorized under the Florida Transportation Corporation Act, in connection with sections 21 through 40 of the bill, which repeal the never-used act. This change will also enable the repeal of an unused administrative rule.

Section 2 amends s. 20.23, F.S., to require the FTC to monitor the efficiency, productivity, and management of regional transportation finance authorities created under a new ch. 345, F.S., and to repeal the Florida Statewide Passenger Rail Commission. Overlapping oversight of publicly-funded passenger rail systems is eliminated and remains solely with the FTC.

Section 3 amends s. 110.205(2), F.S., to change the title of the FDOT's State Public Transportation and Modal Administrator to State Freight and Logistics Administrator.

Section 4 amends s. 311.22, F.S., relating to small county dredging projects, to establish FDOT, rather than FSTED, as the agency responsible for administering any additional funding for dredging projects in counties having a population of fewer than 300,000 according to the last official census and sunsets the program on July 1, 2018.

Section 5 amends s. 316.515(3)(a), F.S., to authorize a forklift to be attached to the rear of the cargo bed of a straight truck if the overall combined length of the vehicle and the forklift does not exceed 45 feet.

Section 6 repeals s. 316.530(3), F.S., to remove obsolete language authorizing wreckers to tow disabled vehicles when the combination of wrecker and towed vehicle are over the legal weight without a special use permit.

Section 7 amends s. 316.545(3)(c), F.S., to increase from 400 to 550 pounds the authorized maximum gross vehicle weight to compensate for the additional weight of auxiliary power units (or idle-reduction technology) installed on commercial motor vehicles, as authorized by recent federal law.

[107] See *supra* note 102.

Section 8 amends s. 331.360, F.S., to require Space Florida to develop a spaceport system plan which contains recommendations for projects that meet current and future commercial, national and state space transportation requirements; and to submit the plan to the FDOT which may include portions of the system plan in the department's 5 year work program.

Beginning in Fiscal Year 2013-2014, the FDOT is authorized to make available from the STTF a minimum of $15 million annually from funds dedicated to public transportation projects[108] to fund space transportation projects. Project specific criteria must be provided by Space Florida to demonstrate that the project includes transportation and aerospace benefits. The FDOT may fund up to 50 percent of eligible project costs.

FDOT is authorized to fund up to 100 percent of eligible costs if the project provides important access and on-spaceport capacity improvements, capital improvements which will position the state to maximize opportunities of a sustainable and world-leading aerospace industry, meets state goals of an integrated intermodal transportation system, and demonstrates the feasibility of available matching funds.

Section 9 creates s. 332.007(11), F.S., to authorize the FDOT to fund, at up to 100 percent of the project's cost, strategic airport investment projects which provide important access and on-airport capacity improvements, capital improvements which will position the state to maximize opportunities in international trade, logistics, and the aviation industry, meet state goals of an integrated intermodal transportation system, and demonstrate the feasibility of available matching funds.

Section 10 amends s. 334.044(16), F.S., to prohibit the FDOT from entering into any lease-purchase agreement with any expressway authority, regional transportation authority or other entity effective July 1, 2013. These provisions have no effect on the existing lease-purchase agreements. This section of the bill also amends subsection (26) of s. 334.044, F.S., to provide that the FDOT purchase all plant materials from Florida commercial nursery stock in this state on a uniform competitive bid basis, except as prohibited by applicable federal law or regulation. This revision will ensure compliance with federal regulation and avoid a potential federal funds penalty.

Section 11 amends s. 335.0415, F.S., to direct the FDOT to enter into an interlocal agreement with the City of Miami providing for the city to be responsible for street cleaning, landscaping, and maintenance of the right-of-way of a certain portion of State Road 5/Brickell Avenue/Biscayne Boulevard for a five-year period. The agreement must contain performance measures in accordance with applicable FDOT standards, require the city to meet or exceed the measures as a condition of payment for the work, and hold the FDOT harmless from any liability arising out of the transferred responsibilities. The Florida Transportation Commission is also directed to conduct a study to evaluate the effectiveness and benefits of the pilot program.

Section 12 amends s. 335.06, F.S., to allow but not require the FDOT to improve and maintain a road that is part of a county road system or city street system. If the FDOT does not maintain a

[108] Section 206.46(3), F.S.

county or city road that provides access to the state park system, the road must be maintained by the appropriate county or municipality.

Section 13 creates 336.71, F.S., to authorize county that receives solicited or unsolicited proposals from a private entity seeking to construct, extend, or improve a county road, enter into an agreement with the private entity for completion of the road construction project. The agreement may provide for payment to the private entity from public funds if the county conducts a noticed[109] public hearing and finds that the project:

- Is in the best interest of the public.
- Would only use county funds for portions of the project that will be part of the county road system.
- Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and residents of the state.
- Upon completion, would be a part of the county road system owned by the county.
- Would result in a financial benefit to the public by completing the subject project at a cost to the public significantly lower than if the project were constructed by the county suing the normal procurement process.[110]

If the specified process is followed, the project and agreement are exempt from s. 255.20, F.S., relating to local bids and contracts for public construction works.

Section 14 amends s. 337.11(13), F.S., to require each road or bridge construction contract or maintenance contract let by FDOT to require all motor vehicles operated by the contractor in this state to be registered in compliance with ch. 320, F.S., eliminating the requirement of proof to the FDOT in the form a notarized affidavit from the contractor.

Section 15 amends s. 337.14(1), F.S., to clarify that any person desiring to bid for the performance of any construction contract *with a proposed budget estimate* in excess of $250,000 must first be certified as qualified prior to bidding in accordance with Rule Chapter 14-22, F.A.C. No change in current practice results, the revisions simply provide internal statute consistency and consistency between statute and rule.

Section 16 amends s. 337.168(2), F.S., to clarify an existing public records exemption by which the identity of a person who has requested or obtained from FDOT, a bid package, plan, or specifications pertaining to any project to be let by FDOT remains a public record until two days prior to the deadline for obtaining the materials.

Section 17 amends s. 337.25, F.S., to revise the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way and to authorize the FDOT to contract for auction services used in the conveyance of real or personal property or leasehold

[109] Published at least 14 days before the meeting with identification of the project, the estimated cost of the project, and a statement that the purpose of the meeting is to consider whether it is in the public's best interest to enter into an agreement.
[110] The financial benefit analysis must be supported by a cost estimate of a professional engineer and must be made available to the public at least 14 days before the public meeting and placed in the record for that meeting.

interests and to authorize such contracts to allow the contractor to retain a portion of the proceeds as compensation.

The FDOT is authorized to "convey", rather than "sell" land, buildings, or other real or personal property after determining the property isn't needed for a transportation facility and to dispose of property through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the department's best interest. Due advertisement is required for property valued at more than $10,000, and no property may be sold at less than fair market value except as specified. The department is authorized, rather than required, to afford a right of first refusal to a political subdivision, or local government in which the parcel is located, except in conveyances when the property has been donated to the state for transportation purposes and a facility has not been constructed for at least 5 years, the property was originally required for replacement housing for persons displaced by transportation projects, or property which the FDOT has determined a sale to anyone other than the abutting land owner would be inequitable.

The FDOT is prohibited from conveying a leasehold interest at a price less than the department's current estimate of value and specifies that a lease may be created through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the best interest by the department. A lease shall not be for a period of more than 5 years, however, the department may extend the lease for an additional 5 years without rebidding.

The department is required to publish a notice when a proposal to lease property has been received, stating that a proposal has been received and that FDOT will accept other proposals for 120 days after the date of publication for lease of the property. The FDOT is authorized to establish, by rule, an application fee for the submission of the proposals.

The FDOT's estimate of value must be prepared in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property exceeds $50,000, the sale or lease must be negotiated at a price not less than the estimated value determined by the department.

This section does not modify the eminent domain requirement of s. 73.013, F.S.

Section 18 amends s. 337.251(2), F.S., to require a newspaper publication of 120 days for lease proposals, when the FDOT wishes to consider an unsolicited proposal for a lease of particular property. The FDOT is authorized to establish by rule an application fee for the submission of proposals, sufficient to pay the anticipated costs of evaluating the proposals. Further, the FDOT is required, prior to approval of any proposal, to determine that the proposed lease is in the public's best interest and meets specified criteria.

Section 19 amends s. 338.161(5), F.S., to replace the potentially ambiguous language regarding agreements for use of the FDOT toll collection systems that passed in HB 599 and SB 1998 during the 2012 Legislative Session, thereby avoiding any confusion that might result from ambiguous language or from statutory construction rules.

Section 20 amends s. 338.165(4), F.S., to remove obsolete references to the Beeline-East Expressway and the Navarre Bridge within the FDOT's authority to request issuance of bonds

secured by toll revenues from certain toll facilities, as the expressway and bridge are no longer owned by the FDOT.

Section 21 amends s. 338.26(3) and (4), F.S., to remove the obligations of Alligator Alley excess toll revenues to operate and maintain the fire station at mile marker 63, and limits the transfer of annual excess revenue to SFWMD to that which is agreed upon in the June 30, 1997 memorandum of understanding. The SFWMD's authority to issue bonds or notes which pledge the excess toll revenues from the transfer is eliminated.

Section 22 amends s. 339.175, F.S., to revise provisions relating to designation of MPOs to conform to changed federal terminology, and to provide that the voting membership of an MPO re-designated as a result of the expansion of an MPO to include a new urbanized area, or the consolidation of two or more MPOs, may consist of no more than 25 members.

Section 23 amends s. 339.2821, F.S., to include Enterprise Florida, Inc., as an FDOT consultant in making and approving economic development transportation project contracts. Provides authority for the FDOT to terminate a grant award if construction of the transportation project does not begin within four years after the date of the initial grant award; and expands the type of authorized transportation facility projects to include spaceports.

Sections 24 - 43 repeal ss. 339.401 through 339.421, the never-used Transportation Corporation Act, in connection with the related audit authority repeal in section 1 of the bill.

Section 44 amends s. 339.55, F.S., to include projects that provide intermodal connectivity with spaceports as eligible for loans from the State-funded Infrastructure Bank.

Section 45 amends s. 341.031(11), F.S., to expand eligibility for intercity bus companies to compete for federal and state program funding by removing from the definition of "intercity bus service" the requirements that the carrier maintain schedule information in the National Official Bus Guide and provides package express service incidental to passenger transportation.

Section 46 amends s. 341.053, F.S., to expand the Intermodal Development Program to include access to spaceports, and to further define the activities of the program to include planning and funding the construction of airport, spaceport, seaport, transit and rail projects that facilitate the intermodal or multimodal movement of people and goods.

Projects included in the Intermodal Development Program must support statewide goals as specified in the Florida Transportation Plan, the Strategic Intermodal System Plan, the Freight Mobility and Trade Plan, or other appropriate department modal plan. Eligible projects are expanded to include: planning studies; major capital investments in freight facilities and systems that provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between spaceports and intermodal logistics centers; and construction of intermodal or multimodal terminals, including projects on airports, spaceports, intermodal logistics centers or seaports which assist in the movement or transfer of people or goods.

Section 47 amends s. 343.80, F.S., to revise the short title of part III of ch. 343, F.S., from the Northwest Florida Transportation Corridor Authority Law to the Northwest Florida Regional Transportation Finance Authority Law.

Section 48 amends s. 343.805, F.S., to define the "Northwest Florida Regional Transportation Finance authority System" or "system" to mean any and all expressways and appurtenant facilities thereto owned by the authority, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressway or expressways.

Section 49 amends s. 343.81, F.S., to rename the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority. The bill also revises the composition of the governing board of the authority from eight to five voting members, with two members from Okaloosa County and one each from Walton, Bay, and Gulf Counties. Escambia, Santa Rosa, Franklin, and Walton Counties are removed from voting membership. The bill also revises quorum requirements for the governing board, providing that three, rather than five, members constitutes a quorum, and the vote of at least three members, rather than five, is necessary for any action taken by the authority. Authorization to establish technical advisory committees and related provisions are repealed. Note: the Santa Rosa-Escambia Regional Transportation Finance Authority serving Escambia and Santa Rosa Counties is created in section 55 of the bill, as is the Suncoast Regional Transportation Finance Authority, serving Citrus, Levy, Marion, and Alachua Counties.

Section 50 amends s. 343.82, F.S., granting the NWFTFA the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Northwest Florida Regional Transportation Finance Authority System, thereby expanding the authority's responsibility beyond the U.S. 98 corridor. The bill also removes direction to the current Corridor Authority to develop and annually update a specified corridor master plan, to undertake projects contained in the plan, and to request funding and technical assistance from the FDOT from specified sources. Further, the bill authorizes the NWFTFA to dispose of any property which the authority and the FDOT determine is not needed for the system. In addition, the bill conforms terminology by removing references limiting the authority to activities along the U.S. 98 corridor and eliminating reference to the Santa Rosa Sound

Section 51 amends s. 343.83, F.S., to change a reference to the Northwest Florida Transportation Corridor Authority to the Northwest Florida Regional Transportation Finance Authority.

Section 52 amends s. 343.835, F.S., to conform terminology by removing references to U.S. 98 corridor improvements. The bill also revises a reference to facilities "constructed" by the authority to those "owned or provided" by the authority, which is also a conforming change. in connection with the provisions of section 50 of the bill.

Section 53 amends s. 343.84, F.S., to provide that the FDOT is the agent of the authority for the purpose of constructing system improvements; and to alternatively allow the authority, with the FDOT's consent and approval, to appoint a local agency certified by the FDOT as the authority's agent to administer federal aid projects in accordance with federal law. The bill requires the FDOT to act as the agent of the authority for purposes of operating and maintaining the system and requires the authority to reimburse the FDOT for the costs incurred from system revenues.

The bill specifies that the authority remains obligated as principal to operate and maintain its system, and except as otherwise provided by the existing lease-purchase agreement between the FDOT and the Mid-Bay Bridge Authority in connection with its issuance of bonds, the authority's bondholders do not have a right to compel the FDOT to operate and maintain the system. The Mid-Bay Bridge Authority is transferred to the Northwest Florida Regional Transportation Finance Authority in section 56 of the bill. The bill also directs the authority to establish and collect tolls and other charges for the authority's facilities as specified.

Section 54 amends s. 343.85, F.S., to conform terminology.

Section 55 amends s. 343.875, F.S., to repeal the current Corridor Authority's power to receive or solicit proposals and enter into public-private partnership agreements and related provisions.

Section 56 amends s. 343.89, F.S, to conform terminology.

Section 57 amends s. 343.922(4), F.S., to remove a reference to the previously repealed Toll Facilities Revolving Trust Fund.

Section 58 creates ch. 345, F.S., to authorize the formation of regional transportation finance authorities, consisting of sections 345.0001 – 345.0016, F.S., and creates as agencies of the state, the following authorities:

- the Santa Rosa-Escambia Regional Transportation Finance Authority serving Escambia and Santa Rosa counties, and
- the Suncoast Regional Transportation Finance Authority serving Citrus, Levy, Marion, and Alachua counties.

This section authorizes a county, or two or more contiguous counties, to form a regional transportation finance authority for the purposes of financing, constructing, maintaining, and operating transportation projects in a region of this state, if approved by the Legislature and the county commission of each county that will be part of the authority, and specifies that there be only one authority created and operating within the area served by the authority. Other provisions include:

- The governance and powers and duties of the authority;
- The authority to issue bonds and provide for the rights and remedies of bondholders;
- Naming the FDOT as the agent of each authority for the purpose of performing all phases of a project, including constructing improvements and extensions to the system; and for the purpose of operating and maintaining the system;
- Requirements for FDOT participation in any potential regional transportation finance authority projects;
- Reimbursement to the FDOT for costs incurred for operating and maintaining the system from system revenues; and
- Exemption from certain taxation for an authority.

Section 59 transfers to the Northwest Florida Regional Transportation Finance Authority the governance and control of the Mid-Bay Bridge Authority, including the assets, facilities, tangible and intangible property and any rights in such property, and any other legal rights of the Mid-Bay Bridge Authority, including the bridge system operated by the authority. Activities relating to the Mid-Bay Bridge will be monitored under the Transportation Commission's existing oversight over entities created pursuant to ch. 343, F.S.

Section 60 amends s. 348.751, F.S., to change the short title of part III of ch. 348, F.S., from the "Orlando-Orange County Expressway Authority Law" to the "Central Florida Expressway Authority Law."

Section 61 amends s. 348.752, F.S., to define:

- "Central Florida Expressway Authority" (CFX) to mean the body politic and corporate and agency of the state;
- "Central Florida Expressway System," to mean a transportation facility, expressway, or appurtenant facility, and
- "Transportation facilities" to mean and include the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance, and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations granted in this part.

Research reveals no language elsewhere in ch. 348, F.S., that would include in any definition or in any other provision under current law the "administrative and other office space" of an expressway authority. This definition presumably would allow CFX to finance or even bond expenses for administrative and other office space.

This section of the bill also deletes the definitions of "city" and "county," revises various definitions to conform terminology to the renaming, and makes various other editorial and grammatical changes.

Section 62 amends s. 348.753, F.S., in which the OOCEA is created, to replace the OOCEA and:

- Create the Central Florida Expressway Authority (CFX), effective July 1, 2014;
- Require that CFX assume the governance and control of the OOCEA System, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property;
- Transfer any rights in such property and other OOCEA legal rights to CFX; and
- Provide that the powers, responsibilities, and obligations of the OOCEA shall succeed to and be assumed by CFX on July 1, 2014.

The bill also provides for eleven members of the CFX governing board as follows:

- Three members appointed by the chairs of the boards of county commissioners of Seminole, Lake, and Osceola Counties, which members may be a commission member or chair;
- Six citizen members appointed by the Governor, two of which must be Orange County citizens; one member each of which must be a citizen of Seminole, Lake, and Osceola Counties; and one member which may be a citizen of any of the identified counties;
- The tenth member must be the Orange County Mayor, and the eleventh member must be the City of Orlando Mayor; and
- The executive director of the Turnpike Enterprise serves as a nonvoting advisor to the governing board of the authority.

The Governor's appointees are to serve four-year terms; county-appointed members are to serve two-year terms; and currently standing OOCEA board members are to complete their terms. A person who is an officer or employee of a municipality or county may not be an appointed member, except as otherwise provided.

In addition, the bill provides for election of CFX officers, provides quorum and voting requirements, makes editorial and grammatical changes, and conforms terminology to the renaming.

Section 63 amends s. 348.754, F.S., setting forth purposes and powers, to:

- Provide, with specified exception, that the CFX area served is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties.
- Include in the authority to construct the Central Florida Expressway System rapid transit, trams, fixed guideways, thoroughfares, and boulevards.
- Prohibit CFX, without the prior consent of the FDOT secretary, from constructing an extension, addition, or improvement to the expressway system in Lake County, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT.
- Authorize CFX to enter into leases, as lessee or lessor, for terms not exceeding 99 years, rather than the 40 years to which the OOCEA is currently limited, to facilitate projects that will require leases of a longer term. For example, stakeholders involved in the All Aboard Florida passenger rail project desire a longer term.
- Authorize CFX to enter into lease-purchase agreements with the FDOT for terms not exceeding 99 years, or until any bonds secured by a pledge of rentals pursuant to the agreement and any refunding pursuant to the agreement are fully paid, whichever is longer.
- Deem CFX a party to the existing lease-purchase agreement with the FDOT.
- Prohibit CFX from entering into other lease-purchase agreements with the FDOT or from amending the existing agreement in a manner that expands or increases the FDOT's obligations unless the FDOT determines the agreement or amendment is necessary to permit the refunding of bonds issued before July 1, 2012.
- Prohibit use of toll revenues from an increase in the toll rates charged on July 1, 2014, to construct or expand a different facility absent a two-thirds majority vote of the members, with specified exceptions.

- Authorize use of revenues of the expressway system within the right-of-way of the system for certain purposes, if the expenditures are consistent with the MPO's adopted long-range plan and notwithstanding s. 338.165, F.S., relating to continuation of tolls.
- Provide that specified bonds must mature not more than 40 years after their issue date.
- Authorize CFX to construct, operate, and maintain transportation facilities (in addition to roads, bridges, avenues of access, thoroughfares, and boulevards, and electronic toll payment systems on such roads and bridges, etc., outside the boundaries of Seminole, Lake, and Osceola Counties (in addition to Orange County) with the consent of the county within whose jurisdiction the activities occur.
- Remove the municipal governing board approval of a project route currently required before acquisition of right-of-way for an OOCEA project within the boundaries of Orange County.
- Require CFX to encourage the inclusion of local-, small-, minority-, and women-owned business in its procurement and contracting opportunities.
- Authorize CFX, within the right-of-way of the system, to finance or refinance the planning, design, construction, extension, maintenance, etc., of an intermodal facility or facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system.
- Remove provisions authorizing the OOCEA to waive payment and performance bonds on certain construction contracts and related small business provisions.
- Make editorial and grammatical changes and conform terminology to the renaming.

Sections 64 – 70 amend ss. 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, and 348.756, F.S., relating to bond financing authority for improvements, construction and financing of the Northwest Beltway Part A, construction and financing of the Western Beltway Part C, construction and financing of the Wekiva Parkway, construction and financing of the Maitland Boulevard Extension and Northwest Beltway Part A realignment, bonds of the authority, and remedies of the bondholders, respectively, to make editorial and grammatical changes and conform terminology to the renaming.

Section 71 amends s. 348.757, F.S., relating to lease-purchase agreements with the FDOT, to insert references to the *former* OOCEA system, make editorial changes, and conform terminology to the renaming.

Sections 72 - 77amend ss. 348.758, 348.759, 348.760, 348.761, 348.765, and 369.317, F.S., relating to appointment of FDOT as construction agent for the authority; acquisition of lands and property; cooperation with other units, boards, agencies, and individuals; covenant of the state; complete and additional authority, and Wekiva Parkway, respectively, to make editorial and grammatical changes and conform terminology to the renaming.

Section 78 amends s. 369.324, F.S., to reduce the membership of the Wekiva River Basin Commission from 19 to 18 members appointed by the Governor, nine of whom remain as voting members, and reducing from ten to nine the number of ad hoc nonvoting members, removing the representative from the previously repealed Seminole County Expressway Authority.

Section 79, effective upon the completion of construction of the Poinciana Parkway, transfers all powers, governance, and control of the Osceola County Expressway System, and the assets,

liabilities, facilities, tangible and intangible property and any rights in the property, as well as any other legal rights, to CFX, with specified extension of the transfer date until completion of certain projects. This section of the bill also repeals part V, ch. 348, F.S., consisting of ss. 348.9950 – 348.9961, F.S., on the same date that the Osceola County Expressway System is transferred to CFX. This section also requires CFX to reimburse other governmental entities for obligations related to the Osceola County Expressway System.

Section 80 amends s. 373.4137, F.S., to provide that mitigation take place in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness. The bill requires the following for the development of environmental impact inventories for transportation projects proposed by the FDOT or a transportation authority:

- The FDOT must submit an environmental impact inventory of habitat impacts and the anticipated amount of mitigation needed to offset the impacts to the WMDs by July 1, and may include in the inventory the habitat impacts and the anticipated amount of mitigation needed for future projects; and
- The environmental impact inventory must include the proposed amount of mitigation needed based on the Uniform Mitigation Assessment Method (UMAM) and identification of the proposed mitigation option.

The bill requires FDOT to consider using credits from a permitted mitigation bank before projects are identified for inclusion in a WMD plan, taking into account state and federal requirements, maintenance, and liability.

The bill allows FDOT to implement the mitigation option identified in the environmental impact inventory by:

- Purchasing credits for current and future use directly from a mitigation bank;
- Purchasing mitigation services through the WMDs or the DEP;
- Conducting its own mitigation; or
- Using other mitigation options that meet state and federal requirements.

The bill requires funding for the identified mitigation option in the inventory to be included in FDOT's work program under s. 339.135, F.S., and requires and the amount programmed each year to correspond to an estimated cost of $150,000 per mitigation credit, multiplied by the projected number of credits identified in the inventory. The estimated cost per credit will be adjusted every two years by FDOT based on the average cost per UMAM credit.

The bill specifies that for mitigation implemented by the WMDs or the DEP, the amount paid each year must be based on mitigation services provided by the WMD or the DEP pursuant to an approved WMD mitigation plan. The WMDs or the DEP may request payment no sooner than 30 days before the date the funds are needed.

The bill requires that each quarter, the projected amount of mitigation must be reconciled with the actual amount of mitigation needed for projects as permitted. The programming of funds must be adjusted to reflect the mitigation as permitted.

FDOT may use the associated funds for the purchase of mitigation bank credits or any other mitigation option that satisfies the requirements, if the:

- WMD excludes a project from an approved WMD mitigation plan;
- WMD cannot timely permit a mitigation site to offset the impacts of an FDOT project identified in the inventory; or
- Proposed mitigation does not meet state and federal requirements.

The bill specifies that the WMD or the DEP, as appropriate, has continuing responsibility for the mitigation project upon final payment for mitigation and FDOT's or the participating transportation authority's obligation is satisfied.

The bill requires each WMD or the DEP to invoice the FDOT for mitigation services to offset only the impacts of an FDOT project identified in the inventory, beginning with the March 2014 WMD plans. If the WMD identifies the use of mitigation bank credits to offset an FDOT impact, the WMD must exclude that purchase from the mitigation plan and the FDOT must purchase the bank credits.

The bill requires that for mitigation activities occurring on existing WMD or DEP mitigation sites initiated with FDOT mitigation funds prior to July 1, 2013, the WMD or the DEP is required to invoice FDOT at $75,000 per acre multiplied by the projected acres of impact. The cost per acre must be adjusted by a calculation using the CPI.

The WMD must maintain records of the costs incurred including:

- Planning;
- Land acquisition;
- Design and construction;
- Staff support, long-term maintenance and monitoring of the mitigation site; and
- Other costs necessary to meet federal requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. s. 332.

The bill requires the funds identified in the FDOT's work program or participating transportation authorities' escrow accounts, for preparing and implementing the mitigation plans, adopted by the WMDs on or before March 1, 2013, to correspond to $75,000 per acre multiplied by the projected acres of impact, adjusted by the CPI. The WMD must maintain records of the costs incurred in implementing the mitigation. If monies paid to a WMD exceed the amount spent by the WMD to implement the mitigation, the funds must be refunded to FDOT or the participating transportation authority. This provision expires June 30, 2014.

The bill requires each WMD to develop a plan to offset only the impacts of transportation projects in the inventory for which a WMD is implementing mitigation. The WMD plan must identify the site where the WMD will mitigate, the scope of the mitigation activities at each mitigation site, and the functional gain at each mitigation site as determined using UMAM. The mitigation plan must be submitted to the WMD's governing board for review and approval. The bill requires that the WMD provide a copy of the draft mitigation plan to the DEP at least 14

days before governing board approval. The plan may not be implemented until it is subsequently approved by the DEP. The bill also requires the plan to describe how the mitigation offsets the impacts of each transportation project and provide a schedule for the mitigation services.

Section 81 amends s. 373.618, F.S., to provide that a public information system located on WMD property that is subject to the Highway Beautification Act of 1965 must be approved by the FDOT and the Federal Highway Administration, if such approval is required by federal law.

Section 82 amends s. 341.052, F.S., relating to the public transit block grant program, to prohibit a public transit provider from using public transit block grant funds to pursue or promote the levy of new or additional taxes through public referenda. It also reduces the amount of a provider's grant to the extent that a public transit provider so uses other public funds and defines the term "public funds" for purposes of the prohibition.

Section 83 directs the Florida Transportation Commission to conduct a study, of the potential for the state to obtain revenue from parking meters or other parking time-limit devices that regulate designated parking spaces located within right-of-way limits of a state road. Each city and county that receives revenue from parking meters or devices must provide the commission with a written inventory of the location of each meter or device and include information as to any pledge or commitment by the city or county of parking revenues to the payment of debt service on any bonds or other debt issued.

The commission must consider the information provided and develop policy recommendations regarding the manner and extent that such revenues may be allocated between the FDOT and the cities and counties, develop specific recommendations concerning the allocation of revenues generated by meters or devices installed before and after July 1, 2013.

Installation of any additional meters or devices that regulate designated parking spaces located within or along the right-of-way limits of a state road is prohibited from July 1, 2013, through July 1, 2014, excluding the installation of new meters or devices to replace meters or devices installed before July 1, 2013.

Section 84 makes it unlawful for any used tire retailer to sell unsafe used tires for the purpose of mounting on a vehicle as defined in s. 316.003, F.S. The bill excludes retailers who sell used tires for recapping. A used tire is considered unsafe if it:

- Is worn to 2/32 of an inch or less of tread depth;
- Has any damage that exposes the reinforcing plies of the tire;
- Has an improper repair, such as an improperly sealed puncture; a repair to the tread shoulder, belt edge, sidewall, or bead area; or a puncture repair larger than 1/4 of an inch;
- Has evidence that a temporary tire sealant has been used and there is no evidence of a subsequent proper repair;
- Has its identification number defaced or removed;
- Has inner liner or bead damage; or
- Has any indication of internal separation.

A person who violates these provisions commits an unfair and deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.

Section 85 provides that the bill takes effect upon becoming law, except as otherwise expressly provided.

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:

Section 6

The increased allowable weight of APUs decreases the potential fine for a commercial motor vehicle overweight violation by no more than $7.50.

Section 9

Motor fuel tax funds paid by citizens and businesses in a particular locality may be at less risk of diversion to a different area of the state in a manner contrary to the statutory allocation for those funds if the funds were expended by FDOT through its normal work program process, rather than through a lease-purchase agreement.

Section 17

Those wishing to submit proposals for lease of FDOT property that FDOT wishes to consider will be subject to an application fee sufficient to pay the anticipated cost of evaluating the proposal, to be established by FDOT rule. Opportunities for private consultant contracts with FDOT are authorized.

Section 45

Revision of the definition of "intercity bus service" allows companies other than Greyhound Bus Lines to compete for federal and state program funds.

C. Government Sector Impact:

Section 1

The FTC will incur additional expenditures associated with monitoring the regional transportation finance authorities. These expenses are expected to be absorbed within existing resources. However, the FTC notes that, depending on the number of authorities eventually established, additional FTE(s) may be needed to effectively conduct its responsibility.

Section 5

Removing the obsolete language regarding wrecker permits will avoid any negative impact to the state from a potential federal funds penalty for failure to comply with federal commercial motor vehicle requirements, as giving effect to the obsolete provisions would render the state noncompliant with federal law.

Section 6

The increased allowable weight of APUs decreases a potential fine by no more than $7.50.

Section 17

The FDOT's costs associated with evaluating lease proposals pursuant to s. 337.251, F.S., would presumably be covered by the application fee the FDOT is required to establish by rule, particularly if the fee includes the cost of private consultants the FDOT is authorized to engage to assist in its evaluations.

Section 21

The obligations of Alligator Alley toll revenues to operate a local fire station and of the FDOT to transfer excess toll revenues to the Everglades Restoration Fund beyond that which is agreed to in the Memorandum of Understanding between the FDOT and the SFWMD, are removed. A positive fiscal impact to the state is expected.

Section 11

The City of Miami will incur indeterminate expenses associated with its assumption of street cleaning, landscaping, and maintenance responsibilities of the right-of-way of a certain portion of Brickell Avenue.

Section 83

The Florida Transportation Commission will incur indeterminate expenses associated with the study relating to parking meters, and FDOT will incur indeterminate expenses associated with any expert expenses.

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/SB 1132 by Appropriations on April 23, 2013:
The committee substitute differs from the previous version of the bill as follows:

- Authorizes attachment of a forklift to the rear of the cargo bed of a straight truck if the overall combined length of the vehicle and the forklift does not exceed 50 feet;
- Directs the FDOT to enter into an interlocal agreement with the City of Miami for a five-year pilot program under which the city assumes street cleaning, landscaping, and maintenance responsibilities of the right-of-way of a certain portion of Brickell Avenue; and directs the Florida Transportation Commission to conduct a study to evaluate the effectiveness and benefits of the pilot program;
- Authorizes a county to receive solicited and unsolicited proposals from a private entity to construct, extend, or improve a county road and to enter into public-private partnership agreements for such a project;
- Revises language for the protection of the holders of any potential regional transportation finance authority bonds and imposes additional requirements for FDOT participation in any potential regional transportation finance authority projects.
- Requires the Florida Transportation Commission to conduct a study of the potential for the state to obtain revenue from any parking meters or other parking time-limit devices within or along the right-of-way limits of a state road.
- Makes it unlawful for any used tire retailer to sell unsafe used tires for the purpose of mounting on a vehicle.
- Removes all language relating to bus benches in the state road rights-of-way, local government noise mitigation regulations, aviation fuel tax revisions, and natural gas fuel taxation, and the FDOT's ancillary authority to undertake ancillary development in state-owned rail corridors.
- Renames and reconfigures the Northwest Florida Transportation Corridor Authority as the Northwest Florida Regional Transportation Finance Authority and revises related provisions;

- Renames and reconfigures the Orlando-Orange County Expressway Authority as the Central Florida Expressway Authority and revises related provisions. Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way;
- Prohibits the expenditure of public transit block grant funds to pursue or promote the levy of new or additional taxes through public referenda;
- Revises provisions relation to environmental mitigation for transportation projects, state park road maintenance, water management district public information systems, and the FDOT purchase of plant materials for roadside enhancement and maintenance;
- Authorizes the FDOT to administer the small county dredging program and sunsets the program on July 1, 2018;
- Repeals the Florida Transportation Corporation Act and related audit authority; and
- Makes technical and conforming changes.

CS by Community Affairs on March 20, 2013:
The committee substitute:

- Removes reference to the Mid-Bay Bridge Authority and inserts a reference to the new ch. 345, F.S., in s. 20.23, F.S. The bill also transfers the Mid-Bay Bridge Authority to the Okaloosa-Bay Regional Tollway Authority, which is governed by the provisions of the new ch. 345, F.S. The reference to the new ch. 345, F.S., subjects the Okaloosa-Bay Regional Tollway Authority, and any other regional tollway authority created in the bill or subsequently created under provisions in the new ch. 345, F.S., to oversight and monitoring by the Florida Transportation Commission, as are various other expressway, road and bridge, and regional transportation authorities. The amendment also strikes a phrase referencing subsection (3), which subsection establishes the Florida Statewide Passenger Rail Commission, as the bill also repeals the Florida Statewide Passenger Rail Commission.
- Provides that the $15 million minimum annual funding authorized to be made available from the State Transportation Trust Fund for space transportation projects shall be from the funds dedicated to public transportation projects pursuant to s. 206.46(3), F.S.
- Removes from the bill provisions for the "Spaceport Investment Program," which required allocation of $5 million annually, for up to 30 years, for the purpose of funding any spaceport project identified in the FDOT's Adopted Work Program; and authorized the revenues to be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or other forms of indebtedness issued by Space Florida, or used to purchase credit support to permit such borrowings.
- Removes from the bill authorization for installation of parking meters or other time-limit devices within the right-of-way limits of a state road if permitted by the FDOT; removes direction requiring each county and municipality to promptly remit to the FDOT 50 percent of the revenue generated from the fees collected by a parking meter or other time-limit device installed or already existing within the right-of-way limits of a state road under the FDOT's jurisdiction; and removes the requirements that

funds received by the FDOT to be deposited into the STTF and used in accordance with s. 339.08, F.S.

- Adds to the bill the provisions of CS/SB 579, establishing a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning in 2019, eliminating the current decal program for vehicles powered by alternative fuels, and repealing the Local Alternative Fuel User Fee Clearing Trust Fund.
- Adds to the bill the revised bus bench and bus shelter language shifting liability from the cities and counties to the private owner installers of bus benches and bus shelters within the right-of-way of the SHS.
- Makes technical changes.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Brandes

578-02811A-13 20131132c1

A bill to be entitled

An act relating to the Department of Transportation; amending s. 20.23, F.S.; requiring the Transportation Commission to also monitor ch. 345, F.S., relating to the Florida Regional Tollway Authority; deleting provisions relating to the Florida Statewide Passenger Rail Commission; amending s. 110.205, F.S.; changing to the State Freight and Logistics Administrator from the State Public Transportation and Modal Administrator, which is an exempt position not covered under career service; creating s. 163.3176, F.S.; providing legislative intent; requiring that a local government ensure that noise compatible land-use planning is used in its jurisdiction; providing guidelines; providing for the sharing of related costs of construction if a local government does not comply with the noise mitigation requirements; requiring that local governments consult with the Department of Transportation and the Department of Economic Opportunity in the formulation of noise mitigation requirements; amending s. 206.86, F.S.; deleting definitions for the terms “alternative fuel” and “natural gasoline”; amending s. 206.87, F.S.; conforming a cross-reference; repealing s. 206.877, F.S., relating to the annual decal fee program for motor vehicles powered by alternative fuels; repealing s. 206.89, F.S., relating to the requirements for alternative fuel retailer licenses; amending s. 206.91, F.S.; making grammatical and technical

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changes; providing a directive to the Division of Law Revision and Information; amending s. 206.9825, F.S.; revising the criteria that certain air carriers must meet to qualify for an exemption to the aviation fuel tax; providing remedies for failure by an air carrier to meet the standards; authorizing terminal suppliers and wholesalers to receive a credit, or apply, for a refund of aviation fuel tax previously paid; conforming terminology; authorizing the Department of Revenue to adopt rules; creating s. 206.9951, F.S.; providing definitions; creating s. 206.9952, F.S.; establishing requirements for natural gas fuel retailer licenses; providing penalties for certain licensure violations; creating s. 206.9955, F.S.; providing calculations for a motor fuel equivalent gallon; providing for the levy of the natural gas fuel tax; authorizing the Department of Revenue to adopt rules; creating s. 206.996, F.S.; establishing requirements for monthly reports of natural gas fuel retailers; providing that reports are made under the penalties of perjury; allowing natural gas fuel retailers to seek a deduction of the tax levied under specified conditions; creating s. 206.9965, F.S.; providing exemptions and refunds from the natural gas fuel tax; transferring, renumbering, and amending s.206.879, F.S; revising provisions relating to the State Alternative Fuel User Fee Clearing Trust Fund; terminating the Local Alternative Fuel User Fee Clearing Trust Fund within the Department of Revenue;

prescribing procedures for the termination of the trust fund; creating s. 206.998, F.S.; providing for the applicability of specified sections of parts I and II of ch. 206, F.S.; amending s. 212.055, F.S.; conforming a cross-reference; amending s. 212.08, F.S.; providing an exemption from taxes for natural gas fuel under certain circumstances; repealing s. 316.530(3), F.S., relating to load limits for certain towed vehicles; amending s. 316.545, F.S.; increasing the weight amount used for penalty calculations; conforming terminology; amending s. 331.360, F.S.; reordering provisions; providing for a spaceport system plan; providing funding for space transportation projects from the State Transportation Trust Fund; requiring Space Florida to provide the Department of Transportation with specific project information and to demonstrate transportation and aerospace benefits; specifying the information to be provided; providing funding criteria; providing criteria for the Spaceport Investment Program; providing for funding; amending s. 332.007, F.S.; authorizing the Department of Transportation to fund strategic airport investments; providing criteria; amending s. 334.044, F.S.; prohibiting the department from entering into a lease-purchase agreement with certain transportation authorities after a specified time; amending s. 337.11, F.S.; removing the requirement that a contractor provide a notarized affidavit as proof of registration; amending s.

337.14, F.S.; revising the criteria for bidding certain construction contracts to require a proposed budget estimate if a contract is more than a specified amount; amending s. 337.168, F.S.; providing that a document that reveals the identity of a person who has requested or received certain information before a certain time is a public record; amending s. 337.251, F.S.; revising criteria for leasing particular department property; increasing the time the department must accept proposals for lease after a notice is published; authorizing the department to establish an application fee by rule; providing criteria for the fee; providing criteria that the lease must meet; amending s. 337.408, F.S.; providing that persons who install a transit shelter or bus bench on certain right-of-ways are responsible for ensuring that the bench or transit shelter complies with applicable laws and rules; providing for the disposition of a bench or transit shelter that is not in compliance with applicable laws or rules; requiring owners of a bench or transit shelter to provide the department with a written inventory of locations; requiring the owner of a bench or transit shelter to maintain a liability insurance policy naming the department as an additional insured; specifying requirements for the policy; providing criteria for notice of modification, cancellation, or nonrenewal of an insurance policy; providing exceptions; requiring each county or municipality to remit certain revenue

to the department; amending s. 338.161, F.S.; authorizing the department to enter into agreements with owners of public or private transportation facilities rather than entities that use the department's electronic toll collection and video billing systems to collect certain charges; amending s. 338.165, F.S.; removing the Beeline-East Expressway and the Navarre Bridge from the list of facilities that have toll revenues to secure their bonds; amending s. 338.26, F.S.; revising the uses of fees that are generated from tolls to include the design and construction of a fire station that may be used by certain local governments in accordance with a specified memorandum; removing authority of a district to issue bonds or notes; amending s. 339.175, F.S.; revising the criteria that qualify a local government for participation in a metropolitan planning organization; revising the criteria to determine voting membership of a metropolitan planning organization; providing that each metropolitan planning organization shall review its membership and reapportion it as necessary; providing criteria; removing the requirement that the Governor review and apportion the voting membership among the various governmental entities within the metropolitan planning area; amending s. 339.2821, F.S.; authorizing Enterprise Florida, Inc., to be a consultant to the Department of Transportation for consideration of expenditures associated with and contracts for

transportation projects; revising the requirements for economic development transportation project contracts between the department and a governmental entity; amending s. 339.55, F.S.; adding spaceports to the list of facility types for which the state-funded infrastructure bank may lend capital costs or provide credit enhancements; amending s. 341.031, F.S.; revising the definition of the term "intercity bus service"; amending s. 341.053, F.S.; revising the types of eligible projects and criteria of the intermodal development program; amending s. 341.302, F.S.; authorizing the Department of Transportation to undertake ancillary development for appropriate revenue sources to be used for state-owned rail corridors; amending ss. 343.82 and 343.922, F.S.; removing reference to advances from the Toll Facilities Revolving Trust Fund as a source of funding for certain projects by an authority; creating ch. 345, F.S., relating to the Florida Regional Tollway Authority; creating s. 345.0001, F.S.; providing a short title; creating s. 345.0002, F.S.; providing definitions; creating s. 345.0003, F.S.; authorizing counties to form a regional tollway authority that can construct, maintain, or operate transportation projects in a region of the state; providing for governance of the authority; creating s. 345.0004, F.S.; providing for the powers and duties of a regional tollway authority; limiting an authority's power with respect to an existing system; prohibiting

an authority from pledging the credit or taxing power of the state or any political subdivision or agency of the state; requiring that an authority comply with certain reporting and documentation requirements; creating s. 345.0005, F.S.; authorizing the authority to issue bonds; providing that the issued bonds must meet certain requirements; providing that the resolution that authorizes the issuance of bonds meet certain requirements; authorizing an authority to enter into security agreements for issued bonds with a bank or trust company; providing that the issued bonds are negotiable instruments and have certain qualities; providing that a resolution authorizing the issuance of bonds and pledging of revenues of the system must contain certain requirements; prohibiting the use or pledge of state funds to pay principal or interest of an authority's bonds; creating s. 345.0006, F.S.; providing for the rights and remedies granted to certain bondholders; providing the actions a trustee may take on behalf of the bondholders; providing for the appointment of a receiver; providing for the authority of the receiver; providing limitations to the receiver's authority; creating s. 345.0007, F.S.; providing that the Department of Transportation is the agent of each authority for specified purposes; providing for the administration and management of projects by the department; providing limits on the department as an agent; providing for the fiscal responsibilities of the authority; creating s.

345.0008, F.S.; authorizing the department to provide for or commit its resources for an authority project or system, if approved by the Legislature; providing for payment of expenses incurred by the department on behalf of an authority; requiring the department to receive a share of the revenue from the authority; providing calculations for disbursement of revenues; creating s. 345.0009, F.S.; authorizing the authority to acquire private or public property and property rights for a project or plan; authorizing the authority to exercise the right of eminent domain; providing for the rights and liabilities and remedial actions relating to property acquired for a transportation project or corridor; creating s. 345.0010, F.S.; providing for contracts between governmental entities and an authority; creating s. 345.0011, F.S.; providing that the state will not limit or alter the vested rights of a bondholder with regard to any issued bonds or rights relating to the bonds under certain conditions; creating s. 345.0012, F.S.; relieving the authority from the obligation of paying certain taxes or assessments for property acquired or used for certain public purposes or for revenues received relating to the issuance of bonds; providing exceptions; creating s. 345.0013, F.S.; providing that the bonds or obligations issued are legal investments of specified entities; creating s. 345.0014, F.S.; providing applicability; creating s. 345.0015, F.S.; creating the Northwest Florida

Regional Tollway Authority; creating s. 345.0016, F.S.; creating the Okaloosa-Bay Regional Tollway Authority; creating s. 345.0017, F.S.; creating the Suncoast Regional Tollway Authority; providing for the transfer of the governance and control of the Mid-Bay Bridge Authority System to the Okaloosa-Bay Regional Tollway Authority; providing for the disposition of bonds, the protection of the bondholders, the effect on the rights and obligations under a contract or the bonds, and the revenues associated with the bonds; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) and subsection (3) of section 20.23, Florida Statutes, are amended, and present subsections (4) through (7) of that subsection are renumbered as subsections (3) through (6), to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(2)

(b) The commission shall ~~have the primary functions to~~:

1. Recommend major transportation policies for the Governor’s approval, and assure that approved policies and any revisions ~~thereto~~ are properly executed.

2. Periodically review the status of the state transportation system including highway, transit, rail, seaport, intermodal development, and aviation components of the system

and recommend improvements therein to the Governor and the Legislature.

3. Perform an in-depth evaluation of the annual department budget request, the Florida Transportation Plan, and the tentative work program for compliance with all applicable laws and established departmental policies. Except as specifically provided in s. 339.135(4)(c)2., (d), and (f), the commission may not consider individual construction projects, but shall consider methods of accomplishing the goals of the department in the most effective, efficient, and businesslike manner.

4. Monitor the financial status of the department on a regular basis to assure that the department is managing revenue and bond proceeds responsibly and in accordance with law and established policy.

5. Monitor on at least a quarterly basis, the efficiency, productivity, and management of the department, using performance and production standards developed by the commission pursuant to s. 334.045.

6. Perform an in-depth evaluation of the factors causing disruption of project schedules in the adopted work program and recommend to the Legislature and the Governor methods to eliminate or reduce the disruptive effects of these factors.

7. Recommend to the Governor and the Legislature improvements to the department’s organization in order to streamline and optimize the efficiency of the department. In reviewing the department’s organization, the commission shall determine if the current district organizational structure is responsive to Florida’s changing economic and demographic development patterns. The initial report by the commission must

be delivered to the Governor and Legislature by December 15, 2000, and each year thereafter, as appropriate. The commission may retain ~~such~~ experts that ~~as~~ are reasonably necessary to effectuate this subparagraph, and the department shall pay the expenses of the ~~such~~ experts.

8. Monitor the efficiency, productivity, and management of the authorities created under chapters 345, 348, and 349, including any authority formed using the provisions of part I of chapter 348, and any authority formed under chapter 343 ~~which is not monitored under subsection (3)~~. The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

~~(3) There is created the Florida Statewide Passenger Rail Commission.~~

~~(a)1. The commission shall consist of nine voting members appointed as follows:~~

~~a. Three members shall be appointed by the Governor, one of whom must have a background in the area of environmental concerns, one of whom must have a legislative background, and one of whom must have a general business background.~~

~~b. Three members shall be appointed by the President of the Senate, one of whom must have a background in civil engineering, one of whom must have a background in transportation construction, and one of whom must have a general business background.~~

~~c. Three members shall be appointed by the Speaker of the House of Representatives, one of whom must have a legal~~

~~background, one of whom must have a background in financial matters, and one of whom must have a general business background.~~

~~2. The initial term of each member appointed by the Governor shall be for 4 years. The initial term of each member appointed by the President of the Senate shall be for 3 years. The initial term of each member appointed by the Speaker of the House of Representatives shall be for 2 years. Succeeding terms for all members shall be for 4 years.~~

~~3. A vacancy occurring during a term shall be filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. An appointment to fill a vacancy shall be made within 60 days after the occurrence of the vacancy.~~

~~4. The commission shall elect one of its members as chair of the commission. The chair shall hold office at the will of the commission. Five members of the commission shall constitute a quorum, and the vote of five members shall be necessary for any action taken by the commission. The commission may meet upon the constitution of a quorum. A vacancy in the commission does not impair the right of a quorum to exercise all rights and perform all duties of the commission.~~

~~5. The members of the commission are not entitled to compensation but are entitled to reimbursement for travel and other necessary expenses as provided in s. 112.061.~~

~~(b) The commission shall have the primary functions of:~~

~~1. Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under~~

~~chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.~~

~~2. Advising the department on policies and strategies used in planning, designing, building, operating, financing, and maintaining a coordinated statewide system of passenger rail services.~~

~~3. Evaluating passenger rail policies and providing advice and recommendations to the Legislature on passenger rail operations in the state.~~

~~(c) The commission or a member of the commission may not enter into the day-to-day operation of the department or a monitored authority and is specifically prohibited from taking part in:~~

~~1. The awarding of contracts.~~

~~2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the commission may recommend to the secretary standards~~

~~and policies governing the procedure for selection and prequalification of consultants and contractors.~~

~~3. The selection of a route for a specific project.~~

~~4. The specific location of a transportation facility.~~

~~5. The acquisition of rights of way.~~

~~6. The employment, promotion, demotion, suspension, transfer, or discharge of any department personnel.~~

~~7. The granting, denial, suspension, or revocation of any license or permit issued by the department.~~

~~(d) The commission is assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control and direction of the department except that reasonable expenses of the commission shall be subject to approval by the Secretary of Transportation. The department shall provide administrative support and service to the commission.~~

Section 2. Paragraphs (j) and (m) of subsection (2) of section 110.205, Florida Statutes, are amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(j) The appointed secretaries and the State Surgeon General, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; the directors of all divisions and those positions determined by the department to have managerial responsibilities

comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors, district administrators, deputy district administrators, the Director of Central Operations Services of the Department of Children and Family Services, the State Transportation Development Administrator, State Freight and Logistics ~~Public Transportation and Modal~~ Administrator, district secretaries, district directors of transportation development, transportation operations, transportation support, and the managers of the offices specified in s. 20.23(3)(b) ~~20.23(4)(b)~~, of the Department of Transportation. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules of the Senior Management Service; and the county health department directors and county health department administrators of the Department of Health.

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Family Services that are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections that are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator.

3. Positions in the Department of Transportation that are assigned primary duties of serving as regional toll managers and managers of offices, as defined in s. 20.23(3)(b) and (4)(c) ~~20.23(4)(b) and (5)(c)~~.

4. Positions in the Department of Environmental Protection that are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health that are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt Service.

Section 3. Section 163.3176, Florida Statutes, is created to read:

163.3176 Legislative findings; noise mitigation requirements in development plans for land abutting the right-of-way of a limited access facility; compliance required of local governments.—

(1) The Legislature finds that incompatible residential development of land adjacent to the rights-of-way of limited access facilities and the failure to provide protections related to noise abatement have not been in the best interest of the public welfare or the economic health of the state. The Legislature finds that the costs of transportation projects are significantly increased by the added expense of required noise

abatement and by the delay of other potential and needed transportation projects. The Legislature finds that limited access facilities generate traffic noise due to the high speed and high volumes of vehicular traffic on these important highways. The Legislature finds that important state interests, including, but not limited to, the protection of future residential property owners, will be served by ensuring that local governments have land development ordinances that promote residential land-use planning and development that is noise compatible with adjacent limited access facilities, and by avoiding future noise abatement problems and the related state expense to provide noise mitigation for residential dwellings constructed after notice of a planned limited access facility is made public. Additionally, the Legislature finds that, with future potential population growth and the resulting need for future capacity improvements to limited access facilities, noise compatible residential land-use planning must take into consideration an evaluation of future impacts of traffic noise on proposed residential developments that are adjacent to limited access facilities.

(2) Each local government shall ensure that noise compatible land-use planning is used in its jurisdictions in the development of land for residential use which is adjacent to right-of-way acquired for a limited access facility. The measures must include the incorporation of federal and state noise mitigation standards and guidelines in all local government land development regulations and be reflected in and carried out in the local government comprehensive plans, amendments of adopted comprehensive plans, zoning plans,

subdivision plat approvals, development permits, and building permits. Each local government shall ensure that residential development proposed adjacent to a limited access facility is planned and constructed in conformance with all noise mitigation standards, guidelines, and regulations. A local government shall share equally with the Department of Transportation all related costs of construction if the local government does not comply with this section and, as a result, the department is required to construct a noise wall or other noise mitigation in connection with a road improvement project.

(3) A local government shall consult with the Department of Economic Opportunity and the department, as needed, in the formulation and establishment of adequate noise mitigation requirements in the respective land development regulations as mandated in this section. A local government shall adopt land development regulations that are consistent with this section, as soon as practicable, but not later than July 1, 2014.

Section 4. Section 206.86, Florida Statutes, is amended to read:

206.86 Definitions.—As used in this part:

(1) "Diesel fuel" means all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle.

(2) "Taxable diesel fuel" or "fuel" means any diesel fuel not held in bulk storage at a terminal ~~and~~ which has not been dyed for exempt use in accordance with Internal Revenue Code requirements.

(3) "User" includes any person who uses diesel fuels within

this state for the propulsion of a motor vehicle on the public highways of this state, even though the motor is also used for a purpose other than the propulsion of the vehicle.

~~(4) "Alternative fuel" means any liquefied petroleum gas product or compressed natural gas product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas or compressed natural gas.~~

~~(5) "Natural gasoline" is a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.~~

(4)~~(6)~~ "Removal" means any physical transfer of diesel fuel and any use of diesel fuel other than as a material in the production of diesel fuel.

(5)~~(7)~~ "Blender" means any person who ~~that~~ produces blended diesel fuel outside the bulk transfer/terminal system.

(6)~~(8)~~ "Colorless marker" means material that is not perceptible to the senses until the diesel fuel into which it is introduced is subjected to a scientific test.

(7)~~(9)~~ "Dyed diesel fuel" means diesel fuel that is dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service requirements for high sulfur diesel fuel or low sulfur diesel fuel.

(8)~~(10)~~ "Ultimate vendor" means a licensee that sells undyed diesel fuel to the United States or its departments or agencies in bulk lots of not less than 500 gallons in each

delivery or to the user of the diesel fuel for use on a farm for farming purposes.

(9)~~(11)~~ "Local government user of diesel fuel" means any county, municipality, or school district licensed by the department to use untaxed diesel fuel in motor vehicles.

(10)~~(12)~~ "Mass transit system" means any licensed local transportation company providing local bus service that is open to the public and that travels regular routes.

(11)~~(13)~~ "Diesel fuel registrant" means anyone required by this chapter to be licensed to remit diesel fuel taxes, including, but not limited to, terminal suppliers, importers, local government users of diesel fuel, and mass transit systems.

(12)~~(14)~~ "Biodiesel" means any product made from nonpetroleum-based oils or fats which is suitable for use in diesel-powered engines. Biodiesel is also referred to as alkyl esters.

(13)~~(15)~~ "Biodiesel manufacturer" means those industrial plants, regardless of capacity, where organic products are used in the production of biodiesel. This includes businesses that process or blend organic products that are marketed as biodiesel.

Section 5. Paragraph (a) of subsection (1) of section 206.87, Florida Statutes, is amended to read:

206.87 Levy of tax.—

(1)(a) An excise tax of 4 cents per gallon is ~~hereby~~ imposed upon each net gallon of diesel fuel subject to the tax under subsection (2)~~, except alternative fuels which are subject to the fee imposed by s. 206.877~~.

Section 6. Section 206.877, Florida Statutes, is repealed.

Section 7. Section 206.89, Florida Statutes, is repealed.

Section 8. Subsection (1) of section 206.91, Florida Statutes, is amended to read:

206.91 Tax reports; computation and payment of tax.—

(1) For the purpose of determining the amount of taxes imposed by s. 206.87, each diesel fuel registrant shall, not later than the 20th day of each calendar month, mail to the department, on forms prescribed by the department, monthly reports that provide ~~which shall show such~~ information on inventories, purchases, nontaxable disposals, and taxable sales in gallons of diesel fuel ~~and alternative fuel,~~ for the preceding calendar month ~~as may be~~ required by the department. However, if the 20th day falls on a Saturday, a Sunday, or a federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. The reports must include, ~~shall contain~~ or be verified by, a written declaration stating that they are ~~such report is~~ made under the penalties of perjury. The diesel fuel registrant shall deduct from the amount of taxes shown by the report to be payable an amount equivalent to .67 percent of the taxes on diesel fuel imposed by s. 206.87(1)(a) and (e), which deduction is ~~hereby~~ allowed to the diesel fuel registrant on account of services and expenses in complying with the provisions of this part. The allowance on taxable gallons of diesel fuel sold to persons licensed under this chapter is not ~~shall not be~~ deductible unless the diesel fuel registrant has allowed 50 percent of the allowance provided by this section to a purchaser with a valid wholesaler or terminal supplier license. This allowance is not ~~shall not be~~ deductible unless payment of the taxes is made on or before the

20th day of the month as ~~herein~~ required in this subsection. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ authorize a deduction from the constitutional fuel tax or fuel sales tax.

Section 9. Subsection (1) of section 206.9825, Florida Statutes, is amended to read:

206.9825 Aviation fuel tax.—

(1)(a) Except as otherwise provided in this part, an excise tax of 6.9 cents per gallon of aviation fuel is imposed upon every gallon of aviation fuel sold in this state, or brought into this state for use, upon which such tax has not been paid or the payment thereof has not been lawfully assumed by some person handling the same in this state. Fuel taxed pursuant to this part shall not be subject to the taxes imposed by ss. 206.41(1)(d), (e), and (f) and 206.87(1)(b), (c), and (d).

(b) Any ~~licensed wholesaler or terminal supplier that delivers aviation fuel to an~~ air carrier that offers ~~offering~~ transcontinental jet service and that has, within the preceding 5-year period from January 1 of the year the exemption is being applied for, increased its ~~that, after January 1, 1996, increases the air carrier's~~ Florida workforce by more than 1,000 ~~1000~~ percent and by 250 or more full-time equivalent employee positions as provided in reports that must be filed pursuant to s. 443.163, may purchase ~~receive a credit or refund as the ultimate vendor of the~~ aviation fuel exempt from ~~for~~ the 6.9 cents per gallon tax imposed by this part from terminal suppliers and wholesalers, provided that the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored. To qualify for the exemption, an air

carrier must submit a written request to the department stating that it meets the requirements of this paragraph. The exemption under this paragraph expires on December 31 of the year it was granted. The exemption is not allowed for any period before the effective date of the air carrier exemption letter issued by the department. To renew the exemption, the air carrier must submit a written request to the department stating that it meets the requirements of this paragraph. Terminal suppliers and wholesalers may receive a credit or may apply for a refund, as the ultimate vendor of the 6.9 cents per gallon aviation fuel tax previously paid, within 1 year after the date the right to the refund has accrued ~~excise tax previously paid, provided that the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored~~. In calculating the new or additional Florida full-time equivalent employee positions, any full-time equivalent employee positions of parent or subsidiary corporations which existed before the preceding 5-year period from January 1 of the year the application for exemption or renewal is being applied for, may ~~January 1, 1996, shall~~ not be counted toward reaching the Florida employment increase thresholds. The refund allowed under this paragraph is in furtherance of the goals and policies of the State Comprehensive Plan set forth in s. 187.201(16)(a), (b)1., 2., (17)(a), (b)1., 4., (19)(a), (b)5., (21)(a), (b)1., 2., 4., 7., 9., and 12.

(c) If, during the 1-year period in which the exemption is in place ~~before July 1, 2001~~, the air carrier fails to maintain the increase in its Florida workforce by more than 1,000 percent and by 250 or more full-time equivalent employees ~~number of~~

~~full-time equivalent employee positions created or added to the air carrier's Florida workforce falls below 250~~, the exemption granted pursuant to this section does ~~shall~~ not apply during the period in which the air carrier was no longer qualified to receive the exemption ~~has fewer than the 250 additional employees~~.

(d) The exemption taken by credit or refund pursuant to paragraph (b) applies ~~shall apply~~ only under the terms and conditions set forth in this paragraph ~~therein~~. If any part of the ~~that~~ paragraph is judicially declared to be unconstitutional or invalid, the validity of any provisions taxing aviation fuel is ~~shall~~ not ~~be~~ affected and all fuel exempted pursuant to paragraph (b) shall be subject to tax as if the exemption was never enacted. Each ~~Every~~ person who benefits ~~benefiting~~ from the ~~such~~ exemption is ~~shall be~~ liable for and must make payment of all taxes for which a credit or refund was granted.

(e) The department may adopt rules to administer this subsection.

Section 10. The Division of Law Revision and Information is requested to create part V of chapter 206, Florida Statutes, consisting of ss. 206.9951-206.998, entitled "NATURAL GAS FUEL."

Section 11. Section 206.9951, Florida Statutes, is created to read:

206.9951 Definitions.—As used in this part, the term:

(1) "Motor fuel equivalent gallon" means the volume of natural gas fuel it takes to equal the energy content of 1 gallon of motor fuel.

(2) "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof

used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. The term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.

(3) "Natural gas fuel retailer" means any person who sells natural gas fuel for use in a motor vehicle as defined in s. 206.01(23).

(4) "Natural gasoline" is a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.

(5) "Person" means a natural person, corporation, copartnership, firm, company, agency, or association; a state agency; a federal agency; or a political subdivision of the state.

Section 12. Section 206.9952, Florida Statutes, is created to read:

206.9952 Application for license as a natural gas fuel retailer.—

(1) It is unlawful for any person to engage in business as a natural gas fuel retailer within this state unless he or she is the holder of a valid license issued by the department to engage in such business.

(2) A person who has facilities for placing natural gas fuel into the supply system of an internal combustion engine fueled by individual portable containers of 10 gallons or less

is not required to be licensed as a natural gas fuel retailer, provided that the fuel is only used for exempt purposes.

(3)(a) Any person who acts as a natural gas retailer and does not hold a valid natural gas fuel retailer license shall pay a penalty of $200 for each month of operation without a license. This paragraph expires December 31, 2018.

(b) Effective January 1, 2019, any person who acts as a natural gas fuel retailer and does not hold a valid natural gas fuel retailer license shall pay a penalty of 25 percent of the tax assessed on the total purchases made during the unlicensed period.

(4) To procure a natural gas fuel retailer license, a person shall file an application and a bond with the department on a form prescribed by the department. The department may not issue a license upon the receipt of any application unless it is accompanied by a bond.

(5) When a natural gas fuel retailer license application is filed by a person whose previous license was canceled for cause by the department or the department believes that such application was not filed in good faith or is filed by another person as a subterfuge for the actual person in interest whose previous license has been canceled, the department may, if evidence warrants, refuse to issue a license for such an application.

(6) Upon the department's issuance of a natural gas fuel retailer license, such license remains in effect so long as the natural gas fuel retailer is in compliance with the requirements of this part.

(7) Such license may not be assigned and is valid only for

the natural gas fuel retailer in whose name the license is issued. The license shall be displayed conspicuously by the natural gas fuel retailer in the principal place of business for which the license was issued.

(8) With the exception of a state or federal agency or a political subdivision licensed under this chapter, each person, as defined in this part, who operates as a natural gas fuel retailer shall report monthly to the department and pay a tax on all natural gas fuel purchases beginning January 1, 2019.

(9) The license application requires a license fee of $5. Each license shall be renewed annually by submitting a reapplication and the license fee to the department. The license fee shall be paid to the department for deposit into the General Revenue Fund.

Section 13. Section 206.9955, Florida Statutes, is created to read:

206.9955 Levy of natural gas fuel tax.—

(1) The motor fuel equivalent gallon means the following for:

(a) Compressed natural gas gallon: 5.66 pounds, or per each 126.67 cubic feet.

(b) Liquefied natural gas gallon: 6.22 pounds.

(c) Liquefied petroleum gas gallon: 1.35 gallons.

(2) Effective January 1, 2019, the following taxes shall be imposed:

(a) An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.

(b) An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as

the "ninth-cent fuel tax."

(c) An additional tax of 6 cents on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."

(d) An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the "State Comprehensive Enhanced Transportation System Tax," at a rate determined pursuant to this paragraph. Each calendar year, the department shall determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established tax rate of 7.1 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

(e)1. An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel for the privilege of selling natural gas fuel and is designated as the "fuel sales tax." Each calendar year, the department shall determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The tax rate is calculated by adjusting the initially established tax rate of 12.9 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

2. The department is authorized to adopt rules and publish forms to administer this paragraph.

(3) Unless otherwise provided by this chapter, the taxes

specified in subsection (2) are imposed on natural gas fuel when it is placed into the fuel supply tank of a motor vehicle as defined in s. 206.01(23). The person liable for payment of the taxes imposed by this section is the person selling the fuel to the end user, for use in the fuel supply tank of a motor vehicle as defined in s. 206.01(23).

Section 14. Section 206.996, Florida Statutes, is created to read:

206.996 Monthly reports by natural gas fuel retailers; deductions.—

(1) For the purpose of determining the amount of taxes imposed by s. 206.9955, each natural gas fuel retailer shall file beginning February 2019, and each month thereafter, no later than the 20th day of each month, monthly reports electronically with the department showing information on inventory, purchases, nontaxable disposals, and taxable sales in gallons of natural gas fuel for the preceding month. However, if the 20th day of the month falls on a Saturday, Sunday, or federal or state legal holiday, a return must be accepted if it is electronically filed on the next succeeding business day. The reports must include, or be verified by, a written declaration stating that such report is made under the penalties of perjury. The natural gas fuel retailer shall deduct from the amount of taxes shown by the report to be payable an amount equivalent to 0.67 percent of the taxes on natural gas fuel imposed by s. 206.9955(2)(a) and (e), which deduction is allowed to the natural gas fuel retailer to compensate it for services rendered and expenses incurred in complying with the requirements of this part. This allowance is not deductible unless payment of

applicable taxes is made on or before the 20th day of the month. This subsection may not be construed as authorizing a deduction from the constitutional fuel tax or the fuel sales tax.

(2) Upon the electronic filing of the monthly report, each natural gas fuel retailer shall pay the department the full amount of natural gas fuel taxes for the preceding month at the rate provided in s. 206.9955, less the amount allowed the natural gas fuel retailer for services and expenses as provided in subsection (1).

(3) The department may authorize a quarterly return and payment of taxes when the taxes remitted by the natural gas fuel retailer for the preceding quarter did not exceed $100, and the department may authorize a semiannual return and payment of taxes when the taxes remitted by the natural gas fuel retailer for the preceding 6 months did not exceed $200.

(4) In addition to the allowance authorized by subsection (1), every natural gas fuel retailer is entitled to a deduction of 1.1 percent of the taxes imposed under s. 206.9955(2)(b) and (c), on account of services and expenses incurred due to compliance with the requirements of this part. This allowance may not be deductible unless payment of the tax is made on or before the 20th day of the month.

Section 15. Section 206.9965, Florida Statutes, is created to read:

206.9965 Exemptions and refunds; natural gas fuel retailers.—Natural gas fuel may be purchased from natural gas fuel retailers exempt from the tax imposed by this part when used or purchased for the following:

(1) Exclusive use by the United States or its departments

or agencies. Exclusive use by the United States or its departments and agencies means the consumption by the United States or its departments or agencies of the natural gas fuel in a motor vehicle as defined in s. 206.01(23).

(2) Use for agricultural purposes as defined in s. 206.41(4)(c).

(3) Uses as provided in s. 206.874(3).

(4) Used to propel motor vehicles operated by state and local government agencies.

(5) Individual use resulting from residential refueling devices located at a person's primary residence.

(6) Purchases of natural gas fuel between licensed natural gas fuel retailers. A natural gas fuel retailer that sells tax-paid natural gas fuel to another natural gas fuel retailer may take a credit on its monthly return or may file a claim for refund with the Chief Financial Officer pursuant to s. 215.26. All sales of natural gas fuel between natural gas fuel retailers must be documented on invoices or other evidence of the sale of such fuel and the seller shall retain a copy of the purchaser's natural gas fuel retailer license.

Section 16. Section 206.879, Florida Statutes, is transferred and renumbered as section 206.997, Florida Statutes, and amended to read:

206.997 ~~206.879~~ State and local alternative fuel user fee clearing trust funds; distribution.—

~~(1)~~ Notwithstanding the provisions of s. 206.875, the revenues from the natural gas fuel tax imposed by s. 206.9955 ~~state alternative fuel fees imposed by s. 206.877~~ shall be deposited into the State Alternative Fuel User Fee Clearing

Trust Fund, which is hereby created. After deducting the service charges provided in s. 215.20, the proceeds in this trust fund shall be distributed as follows: one-half of the proceeds in calendar year 2019 and ~~one-fifth of the proceeds in calendar year 1991, one-third of the proceeds in calendar year 1992, three-sevenths of the proceeds in calendar year 1993, and one-half of the proceeds in each calendar year~~ thereafter shall be transferred to the State Transportation Trust Fund; the remainder shall be distributed as follows: 50 percent shall be transferred to the State Board of Administration for distribution according to the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended; 25 percent shall be transferred to the Revenue Sharing Trust Fund for Municipalities; and the remaining 25 percent shall be distributed using the formula contained in s. 206.60(1).

~~(2) Notwithstanding the provisions of s. 206.875, the revenues from the local alternative fuel fees imposed in lieu of s. 206.87(1)(b) or (c) shall be deposited into The Local Alternative Fuel User Fee Clearing Trust Fund, which is hereby created. After deducting the service charges provided in s. 215.20, the proceeds in this trust fund shall be returned monthly to the appropriate county.~~

Section 17. (1) The Local Alternative Fuel User Fee Clearing Trust Fund within the Department of Revenue is terminated.

(2) The Department of Revenue shall pay any outstanding debts or obligations of the terminated fund as soon as practicable, and the Chief Financial Officer shall close out and remove the terminated fund from various state accounting systems

using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

Section 18. Section 206.998, Florida Statutes, is created to read:

206.998 Applicability of specified sections of parts I and II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026, 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07, 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25, 206.27, 206.28, 206.405, 206.406, 206.41, 206.413, 206.43, 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606, 206.608, and 206.61 of part I of this chapter and ss. 206.86, 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part II of this chapter shall, as far as lawful or practicable, be applicable to the tax levied and imposed and to the collection thereof as if fully set out in this part. However, any provision of any such section does not apply if it conflicts with any provision of this part.

Section 19. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the

procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire land for public recreation, conservation, or protection of natural resources; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds

issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation

shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or

energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into ~~in~~ a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 20. Subsection (4) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

(a) Also exempt are:

1. Water delivered to the purchaser through pipes or conduits or delivered for irrigation purposes. The sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment

facility regulated by the Department of Environmental Protection or the Department of Health, is exempt. This exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation or flavorings, except those added at a water treatment facility, have been added. Water that has been enhanced by the addition of minerals and that does not contain any added carbonation or flavorings is also exempt.

2. All fuels used by a public or private utility, including any municipal corporation or rural electric cooperative association, in the generation of electric power or energy for sale. Fuel other than motor fuel and diesel fuel is taxable as provided in this chapter with the exception of fuel expressly exempt herein. Natural gas fuel as defined in s. 206.9951(2) is exempt from the tax imposed by this chapter when placed into the fuel supply system of a motor vehicle. Motor fuels and diesel fuels are taxable as provided in chapter 206, with the exception of those motor fuels and diesel fuels used by railroad locomotives or vessels to transport persons or property in interstate or foreign commerce, which are taxable under this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's railroad locomotives or vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year of the carrier, such ratio to be determined at the close of the fiscal year of the carrier. However, during the fiscal year in which the carrier begins its initial operations in this state, the carrier's mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated

miles in this state to anticipated total miles for that year, and subsequently, additional tax shall be paid on the motor fuel and diesel fuels, or a refund may be applied for, on the basis of the actual ratio of the carrier's railroad locomotives' or vessels' miles in this state to its total miles for that year. This ratio shall be applied each month to the total Florida purchases made in this state of motor and diesel fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. The basis for imposition of any discretionary surtax shall be set forth in s. 212.054. Fuels used exclusively in intrastate commerce do not qualify for the proration of tax.

3. The transmission or wheeling of electricity.

(b) Alcoholic beverages and malt beverages are not exempt. The terms "alcoholic beverages" and "malt beverages" as used in this paragraph have the same meanings ascribed to them in ss. 561.01(4) and 563.01, respectively. It is determined by the Legislature that the classification of alcoholic beverages made in this paragraph for the purpose of extending the tax imposed by this chapter is reasonable and just, and it is intended that such tax be separate from, and in addition to, any other tax imposed on alcoholic beverages.

Section 21. Subsection (3) of section 316.530, Florida Statutes, is repealed.

Section 22. Subsection (3) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(3) Any person who violates the overloading provisions of

this chapter shall be conclusively presumed to have damaged the highways of this state by reason of such overloading, which damage is hereby fixed as follows:

(a) If ~~When~~ the excess weight is 200 pounds or less than the maximum ~~herein~~ provided by this chapter, the penalty is ~~shall be~~ $10;

(b) Five cents per pound for each pound of weight in excess of the maximum ~~herein~~ provided in this chapter if ~~when~~ the excess weight exceeds 200 pounds. However, if ~~whenever~~ the gross weight of the vehicle or combination of vehicles does not exceed the maximum allowable gross weight, the maximum fine for the first 600 pounds of unlawful axle weight is ~~shall be~~ $10;

(c) For a vehicle equipped with fully functional idle-reduction technology, any penalty shall be calculated by reducing the actual gross vehicle weight or the internal bridge weight by the certified weight of the idle-reduction technology or by 550 ~~400~~ pounds, whichever is less. The vehicle operator must present written certification of the weight of the idle-reduction technology and must demonstrate or certify that the idle-reduction technology is fully functional at all times. This calculation is not allowed for vehicles described in s. 316.535(6);

(d) An apportioned motor vehicle, as defined in s. 320.01, operating on the highways of this state without being properly licensed and registered shall be subject to the penalties as ~~herein~~ provided in this section; and

(e) Vehicles operating on the highways of this state from nonmember International Registration Plan jurisdictions which are not in compliance with the provisions of s. 316.605 shall be

subject to the penalties as ~~herein~~ provided in this section.

Section 23. Section 331.360, Florida Statutes, is reordered and amended to read:

331.360 ~~Joint participation agreement or assistance;~~ Spaceport system ~~master~~ plan.—

(2)~~(1) It shall be the duty, function, and responsibility of~~ The department shall ~~of Transportation to~~ promote the further development and improvement of aerospace transportation facilities; to address intermodal requirements and impacts of the launch ranges, spaceports, and other space transportation facilities; to assist in the development of joint-use facilities and technology that support aviation and aerospace operations; to coordinate and cooperate in the development of spaceport infrastructure and related transportation facilities contained in the Strategic Intermodal System Plan; to encourage, where appropriate, the cooperation and integration of airports and spaceports in order to meet transportation-related needs; and to facilitate and promote cooperative efforts between federal and state government entities to improve space transportation capacity and efficiency. In carrying out this duty and responsibility, the department may assist and advise, cooperate with, and coordinate with federal, state, local, or private organizations and individuals. The department may administratively house its space transportation responsibilities within an existing division or office.

(3)~~(2)~~ Notwithstanding any other provision of law, the department ~~of Transportation~~ may enter into an ~~a joint participation~~ agreement with, or otherwise assist, Space Florida as necessary to effectuate the provisions of this chapter and

may allocate funds for such purposes in its 5-year work program. However, the department may not fund the administrative or operational costs of Space Florida.

(1)~~(3)~~ Space Florida shall develop a spaceport system ~~master~~ plan that identifies statewide spaceport goals and the need for expansion and modernization of space transportation facilities within spaceport territories as defined in s. 331.303. The plan must ~~shall~~ contain recommended projects that ~~to~~ meet current and future commercial, national, and state space transportation requirements. Space Florida shall submit the plan to each ~~any~~ appropriate metropolitan planning organization for review of intermodal impacts. Space Florida shall submit the spaceport system ~~master~~ plan to the department ~~of Transportation~~, which may include those portions of the system plan which are relevant to the Department of Transportation's mission ~~and such plan may be included~~ within the department's 5-year work program of qualifying projects ~~aerospace discretionary capacity improvement under subsection (4)~~. The plan must ~~shall~~ identify appropriate funding levels for each project ~~and include recommendations on appropriate sources of revenue that may be developed to contribute to the State Transportation Trust Fund~~.

(4)(a) Beginning in fiscal year 2013-2014, a minimum of $15 million annually is authorized to be made available from the State Transportation Trust Fund to fund space transportation projects. The funds for this initiative shall be from the funds dedicated to public transportation projects pursuant to s. 206.46(3).

(b) Before executing an agreement, Space Florida must provide project-specific information to the department in order

to demonstrate that the project includes transportation and aerospace benefits. The project-specific information must include, but need not be limited to:

1. The description, characteristics, and scope of the project.

2. The funding sources for and costs of the project.

3. The financing considerations that emphasize federal, local, and private participation.

4. A financial feasibility and risk analysis, including a description of the efforts to protect the state's investment and to ensure that project goals are realized.

5. A demonstration that the project will encourage, enhance, or create economic benefits for the state.

(c) The department may fund up to 50 percent of eligible project costs. If the project meets the following criteria, the department may fund up to 100 percent of eligible project costs. The project must:

1. Provide important access and on-spaceport capacity improvements;

2. Provide capital improvements to strategically position the state to maximize opportunities in the aerospace industry or foster growth and development of a sustainable and world-leading aerospace industry in the state;

3. Meet state goals of an integrated intermodal transportation system; and

4. Demonstrate the feasibility and availability of matching funds through federal, local, or private partners ~~Subject to the availability of appropriated funds, the department may participate in the capital cost of eligible spaceport~~

~~discretionary capacity improvement projects. The annual legislative budget request shall be based on the proposed funding requested for approved spaceport discretionary capacity improvement projects~~.

Section 24. Subsection (11) is added to section 332.007, Florida Statutes, to read:

332.007 Administration and financing of aviation and airport programs and projects; state plan.—

(11) The department may fund strategic airport investment projects at up to 100 percent of the project's cost if all the following criteria are met:

(a) Important access and on-airport capacity improvements are provided.

(b) Capital improvements that strategically position the state to maximize opportunities in international trade, logistics, and the aviation industry are provided.

(c) Goals of an integrated intermodal transportation system for the state are achieved.

(d) Feasibility and availability of matching funds through federal, local, or private partners are demonstrated.

Section 25. Subsection (16) of section 334.044, Florida Statutes, is amended to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(16) To plan, acquire, lease, construct, maintain, and operate toll facilities; to authorize the issuance and refunding of bonds; and to fix and collect tolls or other charges for travel on any such facilities. Effective July 1, 2013, and notwithstanding any other law to the contrary, the department

may not enter into a lease-purchase agreement with an expressway authority, regional transportation authority, or other entity. This provision does not invalidate a lease-purchase agreement authorized under chapter 348 or chapter 2000-411, Laws of Florida, and existing as of July 1, 2013, and does not limit the department's authority under s. 334.30.

Section 26. Subsection (13) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(13) Each contract let by the department for the performance of road or bridge construction or maintenance work shall require ~~contain a provision requiring the contractor to provide proof to the department, in the form of a notarized affidavit from the contractor, that~~ all motor vehicles that the contractor ~~he or she~~ operates or causes to be operated in this state to be ~~are~~ registered in compliance with chapter 320.

Section 27. Subsection (1) of section 337.14, Florida Statutes, is amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) A ~~Any~~ person who desires ~~desiring~~ to bid for the performance of any construction contract with a proposed budget estimate in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must ~~shall~~ address the qualification of a

person ~~persons~~ to bid on construction contracts with a proposed budget estimate that is in excess of $250,000 and must ~~shall~~ include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification. The department may limit the dollar amount of any contract upon which a person is qualified to bid or the aggregate total dollar volume of contracts such person may ~~is allowed to~~ have under contract at any one time. Each applicant who seeks ~~seeking~~ qualification to bid on construction contracts with a proposed budget estimate in excess of $250,000 must ~~shall~~ furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must ~~shall~~ be accompanied by the latest annual financial statement of the applicant completed within the last 12 months. If the application or the annual financial statement shows the financial condition of the applicant more than 4 months before ~~prior to~~ the date on which the application is received by the department, ~~then~~ an interim financial statement must be submitted and be accompanied by an updated application. The interim financial statement must cover the period from the end date of the annual statement and must show the financial condition of the applicant no more than 4 months before ~~prior to~~ the date the interim financial statement is received by the department. However, upon request by the applicant, an application and accompanying annual or interim financial statement received by the department within 15 days after either

4-month period provided pursuant to ~~under~~ this subsection must ~~shall~~ be considered timely. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant. An applicant desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from the provisions of s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

Section 28. Subsection (2) of section 337.168, Florida Statutes, is amended to read:

337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.—

(2) A document that reveals ~~revealing~~ the identity of a person who has ~~persons who have~~ requested or obtained a bid package, plan ~~packages, plans~~, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period that ~~which~~ begins 2 working days before ~~prior to~~ the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of

a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department before the 2 working days before the deadline for obtaining bid packages, plans, or specifications remains a public record subject to the provisions of s. 119.07(1).

Section 29. Subsection (2) of section 337.251, Florida Statutes, is amended to read:

337.251 Lease of property for joint public-private development and areas above or below department property.—

(2) The department may request proposals for the lease of such property or, if the department receives a proposal for ~~to negotiate~~ a lease of a particular department property that the department desires to consider, the department must ~~it shall~~ publish a notice in a newspaper of general circulation at least once a week for 2 weeks, stating that it has received the proposal and will accept, for 120 ~~60~~ days after the date of publication, other proposals for lease of the particular property ~~use of the space~~. A copy of the notice must be mailed to each local government in the affected area. The department shall, by rule, establish an application fee for the submission of proposals pursuant to this section. The fee must be sufficient to pay the anticipated costs of evaluating the proposals. The department may engage the services of private consultants to assist in the evaluation. Before approval, the department must determine that the proposed lease:

(a) Is in the public's best interest;

(b) Does not require state funds to be used; and

(c) Has adequate safeguards in place to ensure that no additional costs are borne and no service disruptions are

experienced by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

Section 30. Subsection (1) of section 337.408, Florida Statutes, is amended to read:

337.408 Regulation of bus stops, benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights-of-way.—

(1)(a) Benches or transit shelters, including advertising displayed on benches or transit shelters, may be installed within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided that the ~~such~~ benches or transit shelters are for the comfort or convenience of the general public or are at designated stops on official bus routes and provided that written authorization has been given to a qualified private supplier of the ~~such~~ service by the municipal government within whose incorporated limits the ~~such~~ benches or transit shelters are installed or by the county government within whose unincorporated limits the ~~such~~ benches or transit shelters are installed. A municipality or county may authorize the installation, without public bid, of benches and transit shelters together with advertising displayed thereon within the right-of-way limits of the ~~such~~ roads. All installations must ~~shall~~ be in compliance with all applicable laws and rules, including, without limitation, the Americans with Disabilities Act. A person who installs or has installed a transit shelter or a bus bench ~~Municipalities and counties that authorize or have authorized a bench or transit shelter to be installed~~ within the right-of-way limits of any road on the

State Highway System is ~~shall be~~ responsible for ensuring that the bench or transit shelter complies with the ~~all~~ applicable laws and rules, including, without limitation, the Americans with Disabilities Act, or shall remove the bench or transit shelter. The department is not liable ~~shall have no liability~~ for any claims, losses, costs, charges, expenses, damages, liabilities, attorney fees, or court costs relating to the installation, removal, or relocation of any benches or transit shelters authorized by a municipality or county. If the department determines that a bench or transit shelter installation within the right-of-way limits of any road on the State Highway System does not comply with the applicable laws and rules, the owner of the bench or transit shelter shall remove the bench or transit shelter or bring the bench or shelter installation into compliance within 60 days after receiving notice from the department. If the bench or transit shelter is not removed, the department may, but is not required to, remove the bench or transit shelter and assess the cost of the removal against the owner of the bench or transit shelter.

(b) On or before December 31, 2013, each owner of a bench or transit shelter installed at any location within the right-of-way limits of any road on the State Highway System must provide to the department a written inventory of the location of each bench or transit shelter. On and after July 1, 2013, each owner of a new bench or transit shelter that will be installed within the right-of-way limits of any road on the State Highway System shall identify, in writing, the location of the new installation to the department before installing the bench or transit shelter. On or after January 1, 2014, the department

may, but is not required to, remove any unidentified bench or transit shelter within the right-of-way limits of any road on the State Highway System, and assess the cost of removal against the owner of the bench or transit shelter.

(c) On and after July 1, 2013 ~~2012~~, a municipality or county that authorizes a bench or transit shelter to be installed within the right-of-way limits of any road on the State Highway System must require the qualified private supplier, or any other person under contract to install the bench or transit shelter, to indemnify, defend, and hold harmless the department from any suits, actions, proceedings, claims, losses, costs, charges, expenses, damages, liabilities, attorney fees, and court costs relating to the installation, removal, or relocation of such installations, and to maintain liability insurance in the minimum amount of $1 million with supplemental liability insurance in the minimum amount of an additional $4 million. Each insurance policy must name the department as an additional insured and a certificate of insurance shall be furnished to the department before the installation of any bench or transit shelter, and annually after the initial installation. The certificate of insurance must provide that the policy may not be modified, cancelled, or non-renewed without providing to the department and to the municipality or county written notice 45 days before the modification, cancellation, or non-renewal. Each insurance policy must specifically include coverage for any alleged violation of applicable law, including, but not limited to, the Americans with Disabilities Act. The requirements of this paragraph do not apply to transit shelters installed by public

transit providers at designated stops on official transit routes ~~shall annually certify to the department in a notarized signed statement that this requirement has been met~~. ~~The certification shall include the name and address of each person responsible for indemnifying the department for an authorized installation.~~

(d) Municipalities and counties that have authorized the installation of benches or transit shelters within the right-of-way limits of any road on the State Highway System must remove or relocate, or cause the removal or relocation of, the installation at no cost to the department within 60 days after written notice by the department that the installation is unreasonably interfering in any way with the convenient, safe, or continuous use of or the maintenance, improvement, extension, or expansion of the State Highway System road.

(e) Any contract for the installation of benches or transit shelters or advertising on benches or transit shelters which was entered into before April 8, 1992, without public bidding is ratified and affirmed. The ~~Such~~ benches or transit shelters may not interfere with right-of-way preservation and maintenance.

(f) Any bench or transit shelter located on a sidewalk within the right-of-way limits of any road on the State Highway System or the county road system must ~~shall~~ be located so as to leave at least 36 inches of clearance for pedestrians and persons in wheelchairs. The ~~Such~~ clearance must ~~shall~~ be measured in a direction perpendicular to the centerline of the road.

Section 31. Subsection (5) of section 338.161, Florida Statutes, is amended to read:

338.161 Authority of department or toll agencies to

advertise and promote electronic toll collection; expanded uses of electronic toll collection system; authority of department to collect tolls, fares, and fees for private and public entities.—

(5) If the department finds that it can increase nontoll revenues or add convenience or other value for its customers, and if a public or private transportation facility owner agrees that its facility will become interoperable with the department's electronic toll collection and video billing systems, the department may ~~is authorized to~~ enter into an agreement with the owner of such facility under which the department uses ~~private or public entities for the department's use of~~ its electronic toll collection and video billing systems to collect and enforce for the owner tolls, fares, administrative fees, and other applicable charges due ~~imposed~~ in connection with use of the owner's facility ~~transportation facilities of the private or public entities that become interoperable with the department's electronic toll collection system~~. The department may modify its rules regarding toll collection procedures and the imposition of administrative charges to be applicable to toll facilities that are not part of the turnpike system or otherwise owned by the department. This subsection may not be construed to limit the authority of the department under any other provision of law or under any agreement entered into before ~~prior to~~ July 1, 2012.

Section 32. Subsection (4) of section 338.165, Florida Statutes, is amended to read:

338.165 Continuation of tolls.—

(4) Notwithstanding any other law to the contrary, pursuant to s. 11, Art. VII of the State Constitution, and subject to the

requirements of subsection (2), the Department of Transportation may request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, ~~the Beeline-East Expressway, the Navarre Bridge,~~ and the Pinellas Bayway to fund transportation projects located within the county or counties in which the revenue-producing project is located and contained in the adopted work program of the department.

Section 33. Subsections (3) and (4) of section 338.26, Florida Statutes, are amended to read:

338.26 Alligator Alley toll road.—

(3) Fees generated from tolls shall be deposited in the State Transportation Trust Fund, and any amount of funds generated annually in excess of that required to reimburse outstanding contractual obligations, to operate and maintain the highway and toll facilities, including reconstruction and restoration, to pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994, and to design and construct ~~develop and operate~~ a fire station at mile marker 63 on Alligator Alley, which may be used by Collier County or other appropriate local governmental entity to provide fire, rescue, and emergency management services ~~to the adjacent counties~~ along Alligator Alley, may be transferred to the Everglades Fund of the South Florida Water Management District in accordance with the memorandum of understanding of June 30, 1997, between the district and the department. The South Florida Water Management District shall deposit funds for projects

undertaken pursuant to s. 373.4592 in the Everglades Trust Fund pursuant to s. 373.45926(4)(a). Any funds remaining in the Everglades Fund may be used for environmental projects to restore the natural values of the Everglades, subject to compliance with any applicable federal laws and regulations. Projects must ~~shall~~ be limited to:

(a) Highway redesign to allow for improved sheet flow of water across the southern Everglades.

(b) Water conveyance projects to enable more water resources to reach Florida Bay to replenish marine estuary functions.

(c) Engineering design plans for wastewater treatment facilities as recommended in the Water Quality Protection Program Document for the Florida Keys National Marine Sanctuary.

(d) Acquisition of lands to move STA 3/4 out of the Toe of the Boot, provided such lands are located within 1 mile of the northern border of STA 3/4.

(e) Other Everglades Construction Projects as described in the February 15, 1994, conceptual design document.

~~(4) The district may issue revenue bonds or notes under s. 373.584 and pledge the revenue from the transfers from the Alligator Alley toll revenues as security for such bonds or notes. The proceeds from such revenue bonds or notes shall be used for environmental projects; at least 50 percent of said proceeds must be used for projects that benefit Florida Bay, as described in this section subject to resolutions approving such activity by the Board of Trustees of the Internal Improvement Trust Fund and the governing board of the South Florida Water Management District and the remaining proceeds must be used for~~

~~restoration activities in the Everglades Protection Area.~~

Section 34. Subsections (2) through (4) of section 339.175, Florida Statutes, are amended to read:

339.175 Metropolitan planning organization.—

(2) DESIGNATION.—

(a)1. An M.P.O. shall be designated for each urbanized area of the state; however, this does not require that an individual M.P.O. be designated for each such area. The M.P.O. ~~Such~~ designation shall be accomplished by agreement between the Governor and units of general-purpose local government that together represent ~~representing~~ at least 75 percent of the population, including the largest incorporated municipality, based on population, ~~of the urbanized area; however, the unit of general-purpose local government that represents the central city or cities within the M.P.O. jurisdiction,~~ as named ~~defined~~ by the United States Bureau of the Census~~, must be a party to such agreement~~.

2. To the extent possible, only one M.P.O. shall be designated for each urbanized area or group of contiguous urbanized areas. More than one M.P.O. may be designated within an existing urbanized area only if the Governor and the existing M.P.O. determine that the size and complexity of the existing urbanized area makes the designation of more than one M.P.O. for the area appropriate.

(b) Each M.P.O. designated in a manner prescribed by Title 23 of the United States Code shall be created and operated under the provisions of this section pursuant to an interlocal agreement entered into pursuant to s. 163.01. The signatories to the interlocal agreement shall be the department and the

governmental entities designated by the Governor for membership on the M.P.O. Each M.P.O. shall be considered separate from the state or the governing body of a local government that is represented on the governing board of the M.P.O. or that is a signatory to the interlocal agreement creating the M.P.O. and shall have such powers and privileges that are provided under s. 163.01. If there is a conflict between this section and s. 163.01, this section prevails.

(c) The jurisdictional boundaries of an M.P.O. shall be determined by agreement between the Governor and the applicable M.P.O. The boundaries must include at least the metropolitan planning area, which is the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period, and may encompass the entire metropolitan statistical area or the consolidated metropolitan statistical area.

(d) In the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, 42 U.S.C. ss. 7401 et seq., the boundaries of the metropolitan planning area in existence as of the date of enactment of this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in this section. If more than one M.P.O. has authority within a metropolitan area or an area that is designated as a nonattainment area, each M.P.O. shall consult with other M.P.O.'s designated for such area and with the state in the coordination of plans and programs required by this section.

(e) The governing body of the M.P.O. shall designate, at a

minimum, a chair, vice chair, and agency clerk. The chair and vice chair shall be selected from among the member delegates comprising the governing board. The agency clerk shall be charged with the responsibility of preparing meeting minutes and maintaining agency records. The clerk shall be a member of the M.P.O. governing board, an employee of the M.P.O., or other natural person.

Each M.P.O. required under this section must be fully operative no later than 6 months following its designation.

(3) VOTING MEMBERSHIP.—

(a) The voting membership of an M.P.O. shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio ~~basis by the Governor~~, based on an agreement among the affected units of general-purpose local government and the Governor as required by federal ~~rules and~~ regulations. The voting membership of an M.P.O. that is redesignated after the effective date of this act as a result of the expansion of the M.P.O. to include a new urbanized area or the consolidation of two or more M.P.O.'s within a single urbanized area may consist of no more than 25 members. The Governor, in accordance with 23 U.S.C. s. 134, may also provide for M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area that do not have members on the M.P.O. County commission members shall compose not less than one-third of the M.P.O. membership, except for an M.P.O. with more than 15 members located in a county with a 5-member county commission or an M.P.O. with 19 members

located in a county with no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All voting members shall be elected officials of general-purpose local governments, except that an M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of Space Florida. As used in this section, the term "elected officials of a general-purpose local government" excludes ~~shall exclude~~ constitutional officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(b) In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are performing transportation functions that are not under the jurisdiction of a general-purpose local government represented on the M.P.O., they may ~~shall~~ be provided voting membership on the M.P.O. In all other M.P.O.'s where transportation authorities or agencies are to be represented by elected officials from general-purpose local governments, the M.P.O. shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

(c) Any other provision of this section to the contrary

notwithstanding, a chartered county with a population of more than ~~over~~ 1 million ~~population~~ may elect to reapportion the membership of an M.P.O. whose jurisdiction is wholly within the county. The charter county may exercise the provisions of this paragraph if:

1. The M.P.O. approves the reapportionment plan by a three-fourths vote of its membership;

2. The M.P.O. and the charter county determine that the reapportionment plan is needed to fulfill specific goals and policies applicable to that metropolitan planning area; and

3. The charter county determines the reapportionment plan otherwise complies with all federal requirements pertaining to M.P.O. membership.

A ~~Any~~ charter county that elects to exercise the provisions of this paragraph shall notify the Governor in writing.

(d) Any other provision of this section to the contrary notwithstanding, a ~~any~~ county chartered under s. 6(e), Art. VIII of the State Constitution may elect to have its county commission serve as the M.P.O., if the M.P.O. jurisdiction is wholly contained within the county. A ~~Any~~ charter county that elects to exercise the provisions of this paragraph shall so notify the Governor in writing. Upon receipt of the ~~such~~ notification, the Governor must designate the county commission as the M.P.O. The Governor must appoint four additional voting members to the M.P.O., one of whom must be an elected official representing a municipality within the county, one of whom must be an expressway authority member, one of whom must be a person who does not hold elected public office and who resides in the

unincorporated portion of the county, and one of whom must be a school board member.

(4) APPORTIONMENT.—

(a) Each M.P.O. in the state shall review the composition of its membership in conjunction with the decennial census, as prepared by the United States Department of Commerce, Bureau of the Census, and, with the agreement of the affected units of general-purpose local government and the Governor, reapportion the membership as necessary to comply with subsection (3) ~~The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the applicable M.P.O. among the various governmental entities within the area~~.

(b) At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local government serving on an M.P.O. shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members who may vote at any M.P.O. meeting that an alternate member attends in place of a regular member. The method must ~~shall~~ be set forth as a part of the interlocal agreement describing the M.P.O.'s membership or in the M.P.O.'s operating procedures and bylaws. The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting advisers to the M.P.O. governing board. Additional nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint

nonvoting representatives of various multimodal forms of transportation not otherwise represented by voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations located within the jurisdictional boundaries of the M.P.O. upon the request of the aforesaid major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but may not vote or be members of the governing board. ~~The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and reapportion it as necessary to comply with subsection (3).~~

(c) ~~(b)~~ Except for members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (3)(a), the members of an M.P.O. shall serve 4-year terms. Members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (3)(a) may serve terms of up to 4 years as further provided in the interlocal agreement described in paragraph (2)(b). The membership of a member who is a public official automatically terminates upon the member's leaving his or her elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the entity's governing board represented by the member. A vacancy shall be filled by the original appointing entity. A member may be reappointed for one or more additional 4-year terms.

(d) ~~(c)~~ If a governmental entity fails to fill an assigned appointment to an M.P.O. within 60 days after notification by the Governor of its duty to appoint, that appointment must ~~shall~~ be made by the Governor from the eligible representatives of that governmental entity.

Section 35. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 339.2821, Florida Statutes, are amended to read:

339.2821 Economic development transportation projects.—

(1)(a) The department, in consultation with the Department of Economic Opportunity and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body for the direct costs of transportation projects. The Department of Economic Opportunity and the Department of Environmental Protection may formally review and comment on recommended transportation projects, although the department has final approval authority for any project authorized under this section.

(4) A contract between the department and a governmental body for a transportation project must:

(a) Specify that the transportation project is for the construction of a new or expanding business and specify the number of full-time permanent jobs that will result from the project.

(b) Identify the governmental body and require that the governmental body award the construction of the particular transportation project to the lowest and best bidder in accordance with applicable state and federal statutes or rules unless the transportation project can be constructed using

existing local governmental employees within the contract period specified by the department.

(c) Require that the governmental body provide the department with ~~quarterly~~ progress reports. Each ~~quarterly~~ progress report must contain:

1. A narrative description of the work completed and whether the work is proceeding according to the transportation project schedule;

2. A description of each change order executed by the governmental body;

3. A budget summary detailing planned expenditures compared to actual expenditures; and

4. The identity of each small or minority business used as a contractor or subcontractor.

(d) Require that the governmental body make and maintain records in accordance with accepted governmental accounting principles and practices for each progress payment made for work performed in connection with the transportation project, each change order executed by the governmental body, and each payment made pursuant to a change order. The records are subject to financial audit as required by law.

(e) Require that the governmental body, upon completion and acceptance of the transportation project, certify to the department that the transportation project has been completed in compliance with the terms and conditions of the contract between the department and the governmental body and meets the minimum construction standards established in accordance with s. 336.045.

(f) Specify that ~~the department transfer~~ funds will not be

transferred to the governmental body unless construction has begun on the facility of the ~~not more often than quarterly, upon receipt of a request for funds from the governmental body and consistent with the needs of the transportation project. The governmental body shall expend funds received from the department in a timely manner. The department may not transfer funds unless construction has begun on the facility of a~~ business on whose behalf the award was made. If construction of the transportation project does not begin within 4 years after the date of the initial grant award, the grant award is terminated ~~A contract totaling less than $200,000 is exempt from the transfer requirement~~.

(g) Require that funds be used only on a transportation project that has been properly reviewed and approved in accordance with the criteria set forth in this section.

(h) Require that the governing board of the governmental body adopt a resolution accepting future maintenance and other attendant costs occurring after completion of the transportation project if the transportation project is constructed on a county or municipal system.

(5) For purposes of this section, Space Florida may serve as the governmental body or as the contracting agency for a ~~transportation~~ project within a spaceport territory as defined by s. 331.304.

Section 36. Paragraphs (a) and (c) of subsection (2) and paragraph (i) of subsection (7) of section 339.55, Florida Statutes, are amended to read:

339.55 State-funded infrastructure bank.—

(2) The bank may lend capital costs or provide credit

enhancements for:

(a) A transportation facility project that is on the State Highway System or that provides for increased mobility on the state's transportation system or provides intermodal connectivity with airports, seaports, spaceports, rail facilities, and other transportation terminals, pursuant to s. 341.053, for the movement of people and goods.

(c)1. Emergency loans for damages incurred to public-use commercial deepwater seaports, public-use airports, public-use spaceports, and other public-use transit and intermodal facilities that are within an area that is part of an official state declaration of emergency pursuant to chapter 252 and all other applicable laws. Such loans:

a. May not exceed 24 months in duration except in extreme circumstances, for which the Secretary of Transportation may grant up to 36 months upon making written findings specifying the conditions requiring a 36-month term.

b. Require application from the recipient to the department that includes documentation of damage claims filed with the Federal Emergency Management Agency or an applicable insurance carrier and documentation of the recipient's overall financial condition.

c. Are subject to approval by the Secretary of Transportation and the Legislative Budget Commission.

2. Loans provided under this paragraph must be repaid upon receipt by the recipient of eligible program funding for damages in accordance with the claims filed with the Federal Emergency Management Agency or an applicable insurance carrier, but no later than the duration of the loan.

(7) The department may consider, but is not limited to, the following criteria for evaluation of projects for assistance from the bank:

(i) The extent to which the project will provide for connectivity between the State Highway System and airports, seaports, spaceports, rail facilities, and other transportation terminals and intermodal options pursuant to s. 341.053 for the increased accessibility and movement of people and goods.

Section 37. Subsection (11) of section 341.031, Florida Statutes, is amended to read:

341.031 Definitions relating to Florida Public Transit Act.—As used in ss. 341.011-341.061, the term:

(11) "Intercity bus service" means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available~~; maintains scheduled information in the National Official Bus Guide; and provides package express service incidental to passenger transportation~~.

Section 38. Section 341.053, Florida Statutes, is amended to read:

341.053 Intermodal Development Program; administration; eligible projects; limitations.—

(1) There is created within the Department of Transportation an Intermodal Development Program to provide for major capital investments in fixed-guideway transportation systems, access to seaports, airports, spaceports, and other

transportation terminals, providing for the construction of intermodal or multimodal terminals; and to plan or fund construction of airport, spaceport, seaport, transit, and rail projects that ~~otherwise~~ facilitate the intermodal or multimodal movement of people and goods.

(2) The Intermodal Development Program shall be used for projects that support statewide goals as outlined in the Florida Transportation Plan, the Strategic Intermodal System Plan, the Freight Mobility and Trade Plan, or the appropriate department modal plan ~~In recognition of the department's role in the economic development of this state, the department shall develop a proposed intermodal development plan to connect Florida's airports, deepwater seaports, rail systems serving both passenger and freight, and major intermodal connectors to the Strategic Intermodal System highway corridors as the primary system for the movement of people and freight in this state in order to make the intermodal development plan a fully integrated and interconnected system~~. ~~The intermodal development plan must:~~

~~(a) Define and assess the state's freight intermodal network, including airports, seaports, rail lines and terminals, intercity bus lines and terminals, and connecting highways.~~

~~(b) Prioritize statewide infrastructure investments, including the acceleration of current projects, which are found by the Freight Stakeholders Task Force to be priority projects for the efficient movement of people and freight.~~

~~(c) Be developed in a manner that will assure maximum use of existing facilities and optimum integration and coordination of the various modes of transportation, including both government-owned and privately owned resources, in the most~~

~~cost effective manner possible.~~

(3) The Intermodal Development Program shall be administered by the department.

(4) The department shall review funding requests from a rail authority created pursuant to chapter 343. The department may include projects of the authorities, including planning and design, in the tentative work program.

(5) ~~No single transportation authority operating a fixed-guideway transportation system, or single fixed guideway transportation system not administered by a transportation authority, receiving funds under the Intermodal Development Program shall receive more than 33 1/3 percent of the total intermodal development funds appropriated between July 1, 1990, and June 30, 2015. In determining the distribution of funds under the Intermodal Development Program in any fiscal year, the department shall assume that future appropriation levels will be equal to the current appropriation level.~~

~~(6)~~ The department may ~~is authorized to~~ fund projects within the Intermodal Development Program, which are consistent, to the maximum extent feasible, with approved local government comprehensive plans of the units of local government in which the project is located. Projects that are eligible for funding under this program include planning studies, major capital investments in public rail and fixed-guideway transportation or freight facilities and systems which provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between seaports, airports, spaceports, intermodal logistics centers, and other transportation terminals; construction of intermodal or multimodal terminals, including

projects on airports, spaceports, intermodal logistics centers, or seaports which assist in the movement or transfer of people or goods; development and construction of dedicated bus lanes; and projects which otherwise facilitate the intermodal or multimodal movement of people and goods.

Section 39. Subsection (17) of section 341.302, Florida Statutes, is amended to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities, including the rail enterprise and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the department shall:

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(a) Assume obligations pursuant to the following:

1.a. The department may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless the freight rail operator, or its successors, from whom the department has acquired a real property interest in the rail corridor, and that freight rail operator's officers, agents, and employees, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether

the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever; or

b. The department may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless National Railroad Passenger Corporation, or its successors, and officers, agents, and employees of National Railroad Passenger Corporation, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of National Railroad Passenger Corporation, its successors, or its officers, agents, and employees, or any other person or persons whomsoever.

2. The assumption of liability of the department by contract pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b. may not in any instance exceed the following parameters of allocation of risk:

a. The department may be solely responsible for any loss, injury, or damage to commuter rail passengers, or rail corridor invitees, or trespassers, regardless of circumstances or cause, subject to sub-subparagraph b. and subparagraphs 3., 4., 5., and 6.

b.(I) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify the freight operator for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

(II) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify National Railroad Passenger Corporation for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if National Railroad Passenger Corporation agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

3. If ~~When~~ only one train is involved in an incident, the department may be solely responsible for any loss, injury, or damage if the train is a department train or other train pursuant to subparagraph 4., but only if:

a. If ~~When~~ an incident occurs with only a freight train

involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees; or

b. If ~~When~~ an incident occurs with only a National Railroad Passenger Corporation train involved, including incidents with trespassers or at grade crossings, National Railroad Passenger Corporation is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees.

4. For the purposes of this subsection:

a. A ~~Any~~ train involved in an incident which ~~that~~ is not ~~neither~~ the department's train or ~~nor~~ the freight rail operator's train, hereinafter referred to in this subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and the freight rail operator only, but only if the department and the freight rail operator share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a freight rail operator train, and the allocation as between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train does ~~shall~~ not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

b. A ~~Any~~ train involved in an incident that is not ~~neither~~ the department's train or ~~nor~~ the National Railroad Passenger Corporation's train, hereinafter referred to in this subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and National Railroad Passenger Corporation only, but only if the department and National Railroad Passenger Corporation share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a National Railroad Passenger Corporation train, and the allocation as between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train does ~~shall~~ not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

5. If ~~When~~ more than one train is involved in an incident:

a.(I) If only a department train and freight rail operator's train, or only an other train as described in sub-subparagraph 4.a. and a freight rail operator's train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if the freight rail operator is responsible for its property and all of its people, and the department and the freight rail operator each share one-half responsibility as to trespassers or third parties

outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

(II) If only a department train and a National Railroad Passenger Corporation train, or only an other train as described in sub-subparagraph 4.b. and a National Railroad Passenger Corporation train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if National Railroad Passenger Corporation is responsible for its property and all of its people, all National Railroad Passenger Corporation's rail passengers, and the department and National Railroad Passenger Corporation each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

b.(I) If a department train, a freight rail operator train, and any other train are involved in an incident, the allocation of liability between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train does ~~shall~~ not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and the freight rail operator as to such

payment does ~~shall~~ not in any case reduce the freight rail operator's third-party-sharing allocation of one-half under this paragraph to less than one-third of the total third party liability; or

(II) If a department train, a National Railroad Passenger Corporation train, and any other train are involved in an incident, the allocation of liability between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train does ~~shall~~ not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and National Railroad Passenger Corporation as to such payment does ~~shall~~ not in any case reduce National Railroad Passenger Corporation's third-party-sharing allocation of one-half under this sub-subparagraph to less than one-third of the total third party liability.

6. Any such contractual duty to protect, defend, indemnify, and hold harmless such a freight rail operator or National Railroad Passenger Corporation shall expressly include a specific cap on the amount of the contractual duty, which amount may ~~shall~~ not exceed $200 million without prior legislative approval, and the department to purchase liability insurance and

establish a self-insurance retention fund in the amount of the specific cap established under this subparagraph, provided that:

a. A ~~No such~~ contractual duty may not ~~shall~~ in any case be effective or ~~nor~~ otherwise extend the department's liability in scope and effect beyond the contractual liability insurance and self-insurance retention fund required pursuant to this paragraph; and

b.(I) The freight rail operator's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of the freight rail operator.

(II) National Railroad Passenger Corporation's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of National Railroad Passenger Corporation.

(b) Purchase liability insurance, which amount may ~~shall~~ not exceed $200 million, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for the department, any freight rail operator as described in paragraph (a), National Railroad Passenger Corporation, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible may ~~shall~~ not exceed $10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may

provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of a rail corridor.

(c) Incur expenses for the purchase of advertisements, marketing, and promotional items.

(d) Undertake any ancillary development that the department determines to be appropriate as a source of revenue for the establishment, construction, operation, or maintenance of any rail corridor owned by the state. The ancillary development must be consistent, to the extent feasible, with applicable local government comprehensive plans and local land development regulations and otherwise be in compliance with ss. 341.302-341.303.

~~Neither~~ The assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; or ~~nor~~ the establishment of a self-insurance retention fund may not ~~shall~~ be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) do ~~shall~~ not apply to the purchase of any insurance under this subsection. The provisions of this subsection ~~shall~~ apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under

contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, must ~~shall~~ be pursuant to s. 287.057 and must ~~shall~~ include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, a ~~any such~~ contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

Section 40. Paragraph (d) of subsection (3) of section 343.82, Florida Statutes, is amended to read:

343.82 Purposes and powers.—

(3)

(d) The authority may undertake projects or other improvements in the master plan in phases as particular projects or segments thereof become feasible, as determined by the authority. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans~~, advances from the Toll Facilities Revolving Trust Fund,~~ and from any other sources.

Section 41. Subsection (4) of section 343.922, Florida Statutes, is amended to read:

343.922 Powers and duties.—

(4) The authority may undertake projects or other

improvements in the master plan in phases as particular projects or segments become feasible, as determined by the authority. The authority shall coordinate project planning, development, and implementation with the applicable local governments. The authority's projects that are transportation oriented shall be consistent to the maximum extent feasible with the adopted local government comprehensive plans at the time they are funded for construction. Authority projects that are not transportation oriented and meet the definition of development pursuant to s. 380.04 shall be consistent with the local comprehensive plans. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans~~, advances from the Toll Facilities Revolving Trust Fund,~~ and funding and technical assistance from any other source.

Section 42. Chapter 345, Florida Statutes, consisting of sections 345.0001, 345.0002, 345.0003, 345.0004, 345.0005, 345.0006, 345.0007, 345.0008, 345.0009, 345.0010, 345.0011, 345.0012, 345.0013, 345.0014, 345.0015, 345.0016, and 345.0017, is created to read:

345.0001 Short title.—This act may be cited as the "Florida Regional Tollway Authority Act."

345.0002 Definitions.—As used in this chapter, the term:

(1) "Agency of the state" means the state and any department of, or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Area served" means the geographical area of the

counties for which an authority is established.

(3) "Authority" means a regional tollway authority, a body politic and corporate, and an agency of the state, established pursuant to the Florida Regional Tollway Authority Act.

(4) "Bonds" means the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in temporary or definitive form, which an authority may issue pursuant to this act.

(5) "Department" means the Department of Transportation of Florida and any successor thereto.

(6) "Division" means the Division of Bond Finance of the State Board of Administration.

(7) "Federal agency" means the United States, the President of the United States, and any department of, or any bureau, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(8) "Members" means the governing body of an authority, and the term "member" means one of the individuals constituting such governing body.

(9) "Regional system" or "system" means, generally, a modern tolled highway system of roads, bridges, causeways, and tunnels within any area of the authority, with access limited or unlimited as an authority may determine, and the buildings and structures and appurtenances and facilities related to the system, including all approaches, streets, roads, bridges, and avenues of access for the system.

(10) "Revenues" means the tolls, revenues, rates, fees, charges, receipts, rentals, contributions, and other income derived from or in connection with the operation or ownership of

a regional system, including the proceeds of any use and occupancy insurance on any portion of the system but excluding state funds available to an authority and any other municipal or county funds available to an authority under an agreement with a municipality or county.

345.0003 Tollway authority; formation; membership.—

(1) A county, or two or more contiguous counties, may, after the approval of the Legislature, form a regional tollway authority for the purposes of constructing, maintaining, and operating transportation projects in a region of this state. An authority shall be governed in accordance with the provisions of this chapter. An authority may not be created without the approval of the Legislature and the approval of the county commission of each county that will be a part of the authority. An authority may not be created to serve a particular area of this state as provided by this subsection if a regional tollway authority has been created and is operating within all or a portion of the same area served pursuant to an act of the Legislature. Each authority shall be the only authority created and operating pursuant to this chapter within the area served by the authority.

(2) The governing body of an authority shall consist of a board of voting members as follows:

(a) The county commission of each county in the area served by the authority shall each appoint a member who must be a resident of the county from which he or she is appointed. If possible, the member must represent the business and civic interests of the community.

(b) The Governor shall appoint an equal number of members

to the board as those appointed by the county commissions. The members appointed by the Governor must be residents of the area served by the authority.

(c) The secretary of the Department of Transportation shall appoint one of the district secretaries, or his or her designee, for the districts within which the area served by the authority is located.

(3) The term of office of each member shall be for 4 years or until his or her successor is appointed and qualified.

(4) A member may not hold an elected office.

(5) A vacancy occurring in the governing body before the expiration of the member's term shall be filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term.

(6) Each member, before entering upon his or her official duties, must take and subscribe to an oath before an official authorized by law to administer oaths that he or she will honestly, faithfully, and impartially perform the duties devolving upon him or her in office as a member of the governing body of the authority and that he or she will not neglect any duties imposed upon him or her by this chapter.

(7) A member of an authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(8) The members of the authority shall designate one of its members as chair.

(9) The members of the authority shall serve without compensation, but shall be entitled to reimbursement for per

diem and other expenses in accordance with s. 112.061 while in performance of their duties.

(10) A majority of the members of the authority constitutes a quorum, and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting become effective without publication, posting, or any further action of the authority.

345.0004 Powers and duties.—

(1)(a) An authority created and established, or governed, by the Florida Regional Tollway Authority Act shall plan, develop, finance, construct, reconstruct, improve, own, operate, and maintain a regional system in the area served by the authority.

(b) An authority may not exercise the powers in paragraph (a) with respect to an existing system for transporting people and goods by any means that is owned by another entity without the consent of that entity. If an authority acquires, purchases, or inherits an existing entity, the authority shall also inherit and assume all rights, assets, appropriations, privileges, and obligations of the existing entity.

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the purposes of this section, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts in its own name.

(b) To adopt and use a corporate seal.

(c) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(d) To acquire, purchase, hold, lease as a lessee, and use any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority.

(e) To sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by the authority, including air rights.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the use of any system owned or operated by the authority, which rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this act; however, such right and power may be assigned or delegated by the authority to the department.

(g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, in temporary or definitive form, for the purpose of financing all or part of the improvement of the authority's system and appurtenant facilities, including the approaches, streets, roads, bridges, and avenues of access for the system and for any other purpose authorized by this chapter, the bonds to mature in not exceeding 30 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of its revenues, rates, fees, rentals, or other charges, including municipal or county funds received by the authority pursuant to the terms of an agreement between the authority and a municipality or county; and, in general, to provide for the security of the bonds and the rights and remedies of the holders of the bonds; however, municipal or

county funds may not be pledged for the construction of a project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the governing board of the municipality or county, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when the pledge of funds is in effect.

1. An authority shall reimburse a municipality or county for sums expended from municipal or county funds used for the payment of the bond obligations.

2. If an authority determines to fund or refund any bonds issued by the authority before the maturity of the bonds, the proceeds of the funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States, and the outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this chapter.

(h) To make contracts of every name and nature, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute each instrument necessary or convenient for the conduct of its business.

(i) Without limitation of the foregoing, to cooperate with, to borrow money and accept grants from, and to enter into contracts or other transactions with any federal agency, the state, or any agency or any other public body of the state.

(j) To employ an executive director, attorney, staff, and consultants. Upon the request of an authority, the department shall furnish the services of a department employee to act as the executive director of the authority.

(k) To enter into joint development agreements.

(l) To accept funds or other property from private donations.

(m) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this act or any other law.

(3) An authority does not have the power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof. Obligations of the authority may not be deemed to be obligations of the state or of any other political subdivision or agency thereof. The state or any political subdivision or agency thereof, except the authority, is not liable for the payment of the principal of or interest on such obligations.

(4) An authority has no power, other than by consent of the affected county or an affected municipality, to enter into an agreement that would legally prohibit the construction of a road by the county or the municipality.

(5) An authority formed pursuant to this chapter shall comply with the statutory requirements of general application which relate to the filing of a report or documentation required by law, including the requirements of ss. 189.4085, 189.415, 189.417, and 189.418.

345.0005 Bonds.—

(1)(a) Bonds may be issued on behalf of an authority pursuant to the State Bond Act.

(b) An authority may also issue bonds in such principal amount as is necessary, in the opinion of the authority, to

provide sufficient moneys for achieving its corporate purposes, including construction, reconstruction, improvement, extension, repair, maintenance and operation of the system, the cost of acquisition of all real property, interest on bonds during construction and for a reasonable period thereafter, establishment of reserves to secure bonds, and other expenditures of the authority incident, and necessary or convenient, to carry out its corporate purposes and powers.

(2)(a) Bonds issued by an authority pursuant to paragraph (1)(a) or paragraph (1)(b) must be authorized by resolution of the members of the authority and must bear such date or dates; mature at such time or times, not exceeding 30 years after their respective dates; bear interest at such rate or rates, not exceeding the maximum rate fixed by general law for authorities; be in such denominations; be in such form, either coupon or fully registered; carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption; and be entitled to such priorities of lien on the revenues and other available moneys as such resolution or any resolution subsequent to the bonds' issuance may provide. The bonds must be executed by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds bear at least one signature that is manually executed on the bond. The coupons attached to the bonds must bear the facsimile signature or signatures of the officer or officers as shall be designated by the authority. The bonds must have the seal of the authority affixed, imprinted, reproduced, or lithographed thereon.

(b) Bonds issued pursuant to paragraph (1)(a) or paragraph (1)(b) must be sold at public sale in the same manner provided in the State Bond Act. Pending the preparation of definitive bonds, temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(3) A resolution that authorizes any bonds may contain provisions that must be part of the contract with the holders of the bonds, as to:

(a) The pledging of all or any part of the revenues, available municipal or county funds, or other charges or receipts of the authority derived from the regional system.

(b) The construction, reconstruction, improvement, extension, repair, maintenance, and operation of the system, or any part or parts of the system, and the duties and obligations of the authority with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter issued, or of any loan or grant by any federal agency or the state or any political subdivision of the state may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing, and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the system or any part of the system.

(e) The setting aside of reserves or of sinking funds and the regulation and disposition of the reserves or sinking funds.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any deed of trust or indenture securing the bonds, or under which the bonds may be

issued.

(h) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(4) The authority may enter into any deeds of trust, indentures, or other agreements with any bank or trust company within or without the state, as security for such bonds, and may, under such agreements, assign and pledge any of the revenues and other available moneys, including any available municipal or county funds, pursuant to the terms of this chapter. The deed of trust, indenture, or other agreement may contain provisions that are customary in such instruments or that the authority may authorize, including, but without limitation, provisions that:

(a) Pledge any part of the revenues or other moneys lawfully available therefor.

(b) Apply funds and safeguard funds on hand or on deposit.

(c) Provide for the rights and remedies of the trustee and the holders of the bonds.

(d) Provide for the terms and provisions of the bonds or for resolutions authorizing the issuance of the bonds.

(e) Provide for any other or additional matters, of like or different character, which affect the security or protection of the bonds.

(5) Any bonds issued pursuant to this act are negotiable instruments and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) A resolution that authorizes the issuance of authority

bonds and pledges the revenues of the system must require that revenues of the system be periodically deposited into appropriate accounts in such sums as are sufficient to pay the costs of operation and maintenance of the system for the current fiscal year as set forth in the annual budget of the authority and to reimburse the department for any unreimbursed costs of operation and maintenance of the system from prior fiscal years before revenues of the system are deposited into accounts for the payment of interest or principal owing or that may become owing on such bonds.

(7) State funds may not be used or pledged to pay the principal or interest of any authority bonds, and all such bonds must contain a statement on their face to this effect.

345.0006 Remedies of bondholders.—

(1) The rights and the remedies granted to authority bondholders under this chapter are in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or indenture providing for the issuance of bonds, or by any deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If an authority defaults in the payment of the principal of or interest on any of the bonds issued pursuant to this chapter after such principal of or interest on the bonds becomes due, whether at maturity or upon call for redemption, as provided in the resolution or indenture, and such default continues for 30 days, or in the event that the authority fails or refuses to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds

then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes of the default provided that the holders of 25 percent in aggregate principal amount of the bonds then outstanding first gave written notice of their intention to appoint a trustee, to the authority and to the department.

(2) The trustee, and any trustee under any deed of trust, indenture, or other agreement, may, and upon written request of the holders of 25 percent, or such other percentages specified in any deed of trust, indenture, or other agreement, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his, her, or its own name:

(a) By mandamus or other suit, action, or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) Bring suit upon the bonds.

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders.

(d) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

(3) A trustee, if appointed pursuant to this section or

acting under a deed of trust, indenture, or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver. The receiver may enter upon and take possession of the system or the facilities or any part or parts of the system, the revenues and other pledged moneys, for and on behalf of and in the name of, the authority and the bondholders. The receiver may collect and receive all revenues and other pledged moneys in the same manner as the authority might do. The receiver shall deposit all such revenues and moneys in a separate account and apply all such revenues and moneys remaining after allowance for payment of all costs of operation and maintenance of the system in such manner as the court directs. In a suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court must be a first charge on any revenues after payment of the costs of operation and maintenance of the system. The trustee also has all other powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) This section or any other section of this chapter does not authorize a receiver appointed pursuant to this section for the purpose of operating and maintaining the system or any facilities or parts thereof to sell, assign, mortgage, or otherwise dispose of any of the assets belonging to the authority. The powers of such receiver are limited to the operation and maintenance of the system, or any facility or

parts thereof and to the collection and application of revenues and other moneys due the authority, in the name and for and on behalf of the authority and the bondholders. A holder of bonds or any trustee does not have the right in any suit, action, or proceeding, at law or in equity, to compel a receiver, or a receiver may not be authorized or a court may not direct a receiver to, sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

345.0007 Department to construct, operate, and maintain facilities.—

(1) The department is the agent of each authority for the purpose of performing all phases of a project, including, but not limited to, constructing improvements and extensions to the system. The division and the authority shall provide to the department complete copies of the documents, agreements, resolutions, contracts, and instruments that relate to the project and shall request that the department perform the construction work, including the planning, surveying, design, and actual construction of the completion, extensions, and improvements to the system. After the issuance of bonds to finance construction of an improvement or addition to the system, the division and the authority shall transfer to the credit of an account of the department in the State Treasury the necessary funds for construction. The department shall proceed with construction and use the funds for the purpose authorized and as otherwise provided by law for construction of roads and bridges. An authority may alternatively, with the consent and approval of the department, elect to appoint a local agency certified by the department to administer federal aid projects

in accordance with federal law as the authority's agent for the purpose of performing each phase of a project.

(2) Notwithstanding the provisions of subsection (1), the department is the agent of each authority for the purpose of operating and maintaining the system. The department shall operate and maintain the system, and the costs incurred by the department for operation and maintenance shall be reimbursed from revenues of the system. The appointment of the department as agent for each authority does not create an independent obligation of the department to operate and maintain a system. Each authority shall remain obligated as principal to operate and maintain its system, and an authority's bondholders do not have an independent right to compel the department to operate or maintain the authority's system.

(3) Each authority shall fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the authority's facilities, as otherwise provided in this chapter.

345.0008 Department contributions to authority projects.—

(1) The department may, at the request of an authority, provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, or construction of an authority project or system, subject to appropriation by the Legislature.

(2) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies pursuant to subsection (1).

(3) An obligation or expense incurred by the department under this section is a part of the cost of the authority project for which the obligation or expense was incurred. The

department may require money contributed by the department under this section to be repaid from tolls of the project on which the money was spent, other revenue of the authority, or other sources of funds.

(4) The department shall receive from an authority a share of the authority's net revenues equal to the ratio of the department's total contributions to the authority under this section to the sum of: the department's total contributions under this section; contributions by any local government to the cost of revenue producing authority projects; and the sale proceeds of authority bonds after payment of costs of issuance. For the purpose of this subsection, net revenues are gross revenues of an authority after payment of debt service, administrative expenses, operations and maintenance expenses, and all reserves required to be established under any resolution under which authority bonds are issued.

345.0009 Acquisition of lands and property.—

(1) For the purposes of this chapter, an authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, condemnation by eminent domain proceedings, or transfer from another political subdivision of the state, as the authority may deem necessary for any of the purposes of this chapter, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility

facilities; for existing, proposed, or anticipated transportation facilities on the system or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. Each authority shall also have the power to condemn any material and property necessary for such purposes.

(2) An authority shall exercise the right of eminent domain conferred under this section in the manner provided by law.

(3) If an authority acquires property for a transportation facility or in a transportation corridor, it is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property or affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. An authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

345.0010 Cooperation with other units, boards, agencies, and individuals.—A county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in, or of, the state may make and enter into a contract, lease, conveyance, partnership, or other agreement with an authority within the provisions and purposes of this chapter. Each authority may make

and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any federal agency, corporation, and individual, to carry out the purposes of this chapter.

345.0011 Covenant of the state.—The state pledges to, and agrees with, any person, firm, or corporation, or federal or state agency subscribing to, or acquiring the bonds to be issued by an authority for the purposes of this chapter that the state will not limit or alter the rights vested by this chapter in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the rights vested in the authority and the department affect the rights of the holders of bonds issued pursuant to this chapter. The state further pledges to, and agrees with, the United States that if a federal agency constructs or contributes any funds for the completion, extension, or improvement of the system, or any parts of the system, the state will not alter or limit the rights and powers of the authority and the department in any manner that is inconsistent with the continued maintenance and operation of the system or the completion, extension, or improvement of the system, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers granted in this section, so long as the powers are necessary or desirable to carry out the purposes of this chapter and the purposes of the United States in the completion, extension, or improvement of the system, or

any part of the system.

345.0012 Exemption from taxation.—The authority created under this chapter is for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and because the authority will be performing essential governmental functions pursuant to this chapter, the authority is not required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it, and the bonds issued by the authority, their transfer and the income from their issuance, including any profits made on the sale of the bonds, shall be free from taxation by the state or by any political subdivision, taxing agency, or instrumentality of the state. The exemption granted by this section does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

345.0013 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this chapter are legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds and are also securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law to the contrary.

345.0014 Applicability.—

(1) The powers conferred by this chapter are in addition to the powers conferred by other law and do not repeal the

provisions of any other general or special law or local ordinance, but supplement such other laws in the exercise of the powers provided in this chapter, and provide a complete method for the exercise of the powers granted in this chapter. The extension and improvement of a system, and the issuance of bonds pursuant to this chapter to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this chapter without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821, and approval of any bonds issued under this act by the qualified electors or qualified electors who are freeholders in the state or in any political subdivision of the state is not required for the issuance of such bonds pursuant to this chapter.

(2) This act does not repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration, but supersedes any other law that is inconsistent with the provisions of this chapter, including, but not limited to, s. 215.821.

345.0015 Northwest Florida Regional Tollway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Northwest Florida Regional Tollway Authority, hereinafter referred to as the "authority."

(2) The area served by the authority shall be Escambia and Santa Rosa Counties.

(3) The purposes and powers of the authority are as

identified in the Florida Regional Tollway Authority Act for the area served by the authority, and the authority operates in the manner provided by the Florida Regional Tollway Authority Act.

345.0016 Okaloosa-Bay Regional Tollway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Okaloosa-Bay Regional Tollway Authority, hereinafter referred to as the "authority."

(2) The area served by the authority shall be Okaloosa, Walton, and Bay Counties.

(3) The purposes and powers of the authority are as identified in the Florida Regional Tollway Authority Act for the area served by the authority, and the authority operates in the manner provided by the Florida Regional Tollway Authority Act.

345.0017 Suncoast Regional Tollway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Suncoast Regional Tollway Authority, hereinafter referred to as the "authority."

(2) The area served by the authority shall be Citrus, Levy, Marion, and Alachua Counties.

(3) The purposes and powers of the authority are as identified in the Florida Regional Tollway Authority Act for the area served by the authority, and the authority operates in the manner provided by the Florida Regional Tollway Authority Act.

Section 43. Transfer to the Okaloosa-Bay Regional Tollway Authority.—The governance and control of the Mid-Bay Bridge Authority System, created pursuant to chapter 2000-411, Laws of Florida, is transferred to the Okaloosa-Bay Regional Tollway

Authority.

(1) The assets, facilities, tangible and intangible property and any rights in such property, and any other legal rights of the bridge authority, including the bridge system operated by the authority, are transferred to the regional tollway authority. All powers of the bridge authority shall succeed to the regional tollway authority, and the operations and maintenance of the bridge system shall be under the control of the regional tollway authority, pursuant to this section. Revenues collected on the bridge system may be considered regional tollway authority revenues, and the Mid-Bay Bridge may be considered part of the regional tollway authority system, if bonds of the bridge authority are not outstanding. The regional tollway authority also assumes all liability for bonds of the bridge authority pursuant to the provisions of subsection (2). The regional tollway authority may review other contracts, financial obligations, and contractual obligations and liabilities of the bridge authority and may assume legal liability for the obligations that are determined to be necessary for the continued operation of the bridge system.

(2) The transfer pursuant to this section is subject to the terms and covenants provided for the protection of the holders of the Mid-Bay Bridge Authority bonds in the lease-purchase agreement and the resolutions adopted in connection with the issuance of the bonds. Further, the transfer does not impair the terms of the contract between the bridge authority and the bondholders, does not act to the detriment of the bondholders, and does not diminish the security for the bonds. After the transfer, until the bonds of the bridge authority are fully

defeased or paid in full, the department shall operate and maintain the bridge system and any other facilities of the authority in accordance with the terms, conditions, and covenants contained in the bond resolutions and lease-purchase agreement securing the bonds of the bridge authority. The Department of Transportation, as the agent of the regional tollway authority, shall collect toll revenues and apply them to the payment of debt service as provided in the bond resolution securing the bonds. The regional tollway authority shall expressly assume all obligations relating to the bonds to ensure that the transfer will have no adverse impact on the security for the bonds of the bridge authority. The transfer does not make the obligation to pay the principal and interest on the bonds a general liability of the regional tollway authority or pledge the regional tollway authority system revenues to payment of the bridge authority bonds. Revenues that are generated by the bridge system and other facilities of the bridge authority and that were pledged by the bridge authority to the payment of the bonds remain subject to the pledge for the benefit of the bondholders. The transfer does not modify or eliminate any prior obligation of the Department of Transportation to pay certain costs of the bridge system from sources other than revenues of the bridge system. With regard to the bridge authority's current long-term debt of $16.1 million due to the department as of June 30, 2011, and to the extent permitted by the bond resolutions and lease-purchase agreement securing the bonds, the regional tollway authority shall make payment annually to the State Transportation Trust Fund, for the purpose of repaying the bridge authority's long-term debt due to the department, from

any bridge system revenues obtained under this section which remain after the payment of the costs of operations, maintenance, renewal, and replacement of the bridge system; the payment of current debt service; and other payments required in relation to the bonds. The regional tollway authority shall make the annual payments, not to exceed $1 million per year, to the State Transportation Trust Fund until all remaining authority long-term debt due to the department has been repaid.

(3) Any remaining toll revenue from the facilities of the Mid-Bay Bridge Authority collected by the Okaloosa-Bay Regional Tollway Authority after meeting the requirements of subsections (1) and (2) shall be used for the construction, maintenance, or improvement of any toll facility of the Okaloosa-Bay Regional Tollway Authority within the county or counties in which the revenue was collected.

Section 44. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic County Road Provisions

Bill Number 1132 *(if applicable)*

Name Eric Poole

Amendment Barcode 499346 *(if applicable)*

Job Title Asst. Leg Dir

Address 100 Monroe St.
Street

Phone 9224300

Tallahassee FL
City *State* *Zip*

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Assoc. Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Public Private Partnerships Bill Number 1132

Name Mark Anderson Amendment Barcode 499346
(if applicable) *(if applicable)*

Job Title

Address 121 N. Monroe Phone 320-6659
Street
Tallahassee, FL 32301 E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Nassau County

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/17
Meeting Date

Topic High Speed Rail

Bill Number 1132 *(if applicable)*

Name Eric Poole

Amendment Barcode 632806 *(if applicable)*

Job Title Asst. Leg Dir

Address 100 Monroe *Street*

Phone 9779300

E-mail

Tall *City* *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Assoc. Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Unsafe Used Tires

Bill Number SB1132 *(if applicable)*

Name Bay Coles

Amendment Barcode 676670 *(if applicable)*

Job Title Govt Affairs Representative

Address _____
Street

Phone _____

_____
City *State* *Zip*

E-mail _____

Speaking: ☐ For ☑ Against ☐ Information

Representing LKQ Corporation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13
Meeting Date

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

Topic Transportation

Bill Number 1132 *(if applicable)*

Name Leticia Adams

Amendment Barcode *(if applicable)*

Job Title Policy Director

Address *Street*

Phone 8505446866

Tall FL 32301
City *State* *Zip*

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Monticello Amendment - Tires Bill Number SB 1132 *(if applicable)*

Name Richard Gentry Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2305 BRAEBURN CIR Phone 251-1837
Street

Tallahassee FL 32309 E-mail _____
City *State* *Zip*

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

Representing Rubber Manufacturers Assn.

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic FDOT

Bill Number 1132 *(if applicable)*

Name Stan Forron

Amendment Barcode *(if applicable)*

Job Title

Address 1580 Waldo Palmer Lane
Street
Tallahassee FL 32304
City *State* *Zip*

Phone 352-317-5311

E-mail sforron@spaceflorida.gov

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

Representing Space Florida

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

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

I respectfully request that **Senate Bill #1132,** relating to Department of Transportation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

SENATE APPROPRIATIONS
RECEIVED
13 APR 11 PM 3:26
CHAIRMAN
STAFF DIR. STAFF

Cc: Mike Hansen

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/SB 1190
INTRODUCER:	Appropriations Committee and Senator Brandes
SUBJECT:	Agricultural Lands
DATE:	April 25, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Halley	AG	**Favorable**
2.	Hinton	Uchino	EP	**Favorable**
3.	Babin	Diez-Arguelles	AFT	**Favorable**
4.	Babin	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1190 amends section 163.3162(3), Florida Statues, to prohibit all governmental entities, except water management districts and water control districts, from enforcing regulations on certain bona fide farming operations when the activity is already regulated by the state or federal government. In addition, the bill prohibits governmental entities from charging fees on bona fide agricultural activities of bona fide farm operations if the agricultural activities are regulated by the state or federal government.

The bill limits an exemption from the Florida Building Code for nonresidential farm buildings, farm fences and farm signs to those located on land used for bona fide agricultural purposes.

The Revenue Estimating Conference determined that section 1 of this bill will reduce local revenue by an insignificant amount. Staff estimates that section 2 of this bill will increase local revenue by an indeterminate amount.

This bill substantially amends sections 163.3162 and 604.50, Florida Statutes.

II. Present Situation:

Local Regulations and Fees.
In 2003 the Legislature created s. 163.3162, F.S., which sets forth legislative findings that emphasize the importance of agriculture to the health, safety, and welfare of the people of the state.[1] The intent of the act is to protect reasonable agricultural activities conducted on farm lands from duplicative regulation.[2] Prior to the passage of this legislation, some counties enacted regulations that duplicated –and in some cases were more restrictive than–regulations already implemented through best management practices or an existing governmental regulatory program.

Until 2011, s. 163.3162, F.S., only prohibited new county regulations. In 2011, the Legislature amended s. 163.3162, F.S., to also prohibit enforcement of existing county measures.[3]

Currently, the prohibition on duplicative regulations applies only to counties. However, some agricultural associations have reported that municipalities are now starting to adopt ordinances and regulations that duplicate existing regulatory requirements.[4]

The Florida Building Code
The Florida Building Code contains laws and rules that govern the design, construction, repair and demolition of buildings and structures in Florida.[5]

Florida exempts nonresidential farm buildings, farm fences, and farm signs from the requirements of the Florida Building Code, as well as any county or municipal code or fee.[6]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to amend the definition of "governmental entity" to exclude water management districts (WMDs).[7]

The bill prohibits any "governmental entity," from adopting or enforcing a regulation limiting an activity of a bona fide farm operation on land classified as agricultural, if such activity is regulated by:

- The Florida Department of Environmental Protection (DEP);
- The Florida Department of Agriculture and Consumer Services (DACS);
- A WMD as part of a statewide or regional program; or

[1] Section 163.3162(1), F.S.
[2] *Id.*
[3] Chapter 2011-7, Laws of Florida. This legislation began as CS/HB 7103(2010) , which was vetoed by the Governor in 2010. In 2011, the veto was overridden by the Legislature.
[4] Conversation between staff with the Committee on Environmental Preservation and Conservation and Cindy Littlejohn, Chair of the Florida Agricultural Association (Apr. 1, 2013).
[5] Section 553.73(1)(a), F.S.
[6] Section 604.50, F.S. The exemption does not apply for provisions implementing local, state or federal floodplain management regulations.
[7] Section 163.3162(2)(d), F.S.

- The United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.[8]

The bill also prohibits governmental entities from charging a fee on bona fide agricultural activities that are regulated as described above.

Section 2 limits the exemption from the Florida Building Code for nonresidential farm buildings, farm fences, and farm signs to only nonresidential farm buildings, farm fences, and farm signs located on lands used for bona fide agricultural purposes. "Bona fide agricultural purposes" are defined to have the same meaning as provided in s. 193.461(3)(b), F.S. Section 193.461(3)(b), F.S., defines bona fide agricultural purposes to mean good faith commercial use of the land.

Section 3 provides that this act shall take effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill prohibits governmental entities from charging fees on certain agricultural activities occurring on agricultural lands. This could have a negative, but indeterminate, fiscal impact on local government revenues and, therefore, may implicate the mandate provision of Article VII, section 18 of the Florida Constitution. The March 1, 2013, Revenue Estimating Conference (REC) estimated that section 1 of this bill will result in a negative but insignificant impact on local governments.[9] Staff estimates that section 2 of this bill will have a positive but indeterminate impact on local governments. Because it is estimated to have an insignificant fiscal impact, the bill is exempted from the local mandate requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill prohibits governmental entities from charging a fee on bona fide agricultural activities which are regulated by certain agencies of the state or federal government.

[8] Section 163.3162(3)(a), F.S.
[9] Office of Economic & Demographic Research, *Revenue Estimating Conference Impact Conference: 2013 Session Conference Table*, http://edr.state.fl.us/Content/conferences/revenueimpact/2013RevenueImpactSummary.xls (last visited Mar. 31, 2013).

B. Private Sector Impact:

Certain agricultural producers would be spared the expense associated with adhering to duplicative regulations or paying certain fees imposed by governmental entities in the state.

Owners of nonresidential farm buildings, farm fences and farm signs on noncommercial property will be subject to the Florida Building Code and county and municipal codes and fees.

C. Government Sector Impact:

The bill prohibits governmental entities from charging fees on certain agricultural activities occurring on agricultural lands.

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 Appropriations April 23, 2013:
The committee substitute limits the exemption from the Florida Building Code and local codes and fees for nonresidential farm buildings, farm fences and farm signs to those located on land used for bona fide agricultural purposes.

B. Amendments:

None.

543664

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 53 and 54
insert:

Section 2. Section 604.50, Florida Statutes, is amended to read:

604.50 Nonresidential farm buildings; farm fences; farm signs.—

(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes is exempt from the Florida Building Code and any county or

543664

municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)-(8).

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

(a) "Bona fide agricultural purposes" has the same meaning as provided in s. 193.461(3)(b).

(b) ~~(a)~~ "Farm" has the same meaning as provided in s. 823.14.

(c) ~~(b)~~ "Farm sign" means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.

(d) ~~(c)~~ "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

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

And the title is amended as follows:

Delete line 9

and insert:

circumstances; amending s. 604.50, F.S.; revising an

exemption from the Florida Building Code and certain county and municipal code provisions and fees for nonresidential farm buildings, fences, and signs; limiting applicability of the exemption to such farm buildings, fences, and signs located on certain lands; defining the term “bona fide agricultural purposes”; providing an effective date.

By Senator Brandes

22-01221A-13 20131190__

A bill to be entitled

An act relating to agricultural lands; amending s. 163.3162, F.S.; revising a definition; prohibiting a governmental entity from adopting or enforcing any prohibition, restriction, regulation, or other limitation or from charging a fee on a specific agricultural activity of a bona fide farm operation on land classified as agricultural land under certain circumstances; providing an effective date.

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

Section 1. Paragraphs (b) through (j) of subsection (3) of section 163.3162, Florida Statutes, are redesignated as paragraphs (c) through (k), respectively, paragraph (d) of subsection (2) and paragraph (a) of subsection (3) are amended, and a new paragraph (b) is added to subsection (3) of that section, to read:

163.3162 Agricultural Lands and Practices.—

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

(d) "Governmental entity" has the same meaning as provided in s. 164.1031. The term does not include a water management district, a water control district established under chapter 298, or a special district created by special act for water management purposes.

(3) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(a) A governmental entity ~~county~~ may not exercise any of

22-01221A-13 20131190__

its powers to adopt or enforce any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if such activity is regulated through implemented best management practices, interim measures, or regulations 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; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

(b) A governmental entity may not charge a fee on a specific agricultural activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if such agricultural activity is regulated through implemented best management practices, interim measures, or rules adopted 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 or if such agricultural activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Agricultural Lands

Bill Number 1190 *(if applicable)*

Name Adam Basford

Amendment Barcode [redacted] *(if applicable)*

Job Title Director Legislative Affairs

Address 315 S Calhoun St 850 *Street*

Tallahassee FL 32301 *City* *State* *Zip*

Phone

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Farm Bureau

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-13
Meeting Date

Topic Ag Lands

Bill Number 1190 *(if applicable)*

Name Cindy Littlejohn

Amendment Barcode *(if applicable)*

Job Title Consultant

Address 310 W. College
Street

Tall, FL 32301
City *State* *Zip*

Phone 222-7535

E-mail cindy@littlejohnmann.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Land Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

I respectfully request that **Senate Bill #1190**, relating to Agricultural Lands, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

SENT TO CHAIRMAN'S STAFF DIR. ____ STAFF ____

13 APR 11 PM 3:26

SENATE APPROPRIATIONS
RECEIVED

Cc: Mike Hansen

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

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☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

Cc: Mike Hansen

SENATE APPROPRIATIONS
RECEIVED
13 APR 12 AM 11:33
BFTC, CHAIRMAN
STAFF DIR. STAFF

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/CS/CS/SB 1192
INTRODUCER:	Appropriations Committee; Community Affairs Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Provision of Health Care with Controlled Substances
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/CS**
3.	Brown	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 1192 amends various statutory provisions relating to health care associated with controlled substances.

The bill has an insignificant fiscal impact on the Department of Health (DOH) that can be absorbed within existing resources.

The bill:

- Revises the requirement to register as a controlled substance providing practitioner to practitioners who prescribe more than a 30 day supply of certain controlled substances over a six-month period to one patient;
- Requires certain physicians to check the Prescription Drug Monitoring Program (PDMP) database before prescribing certain controlled substances to a new patient;
- Excludes certain physicians from standards of practice for prescribing controlled substances;
- Defines the term “abandoned” as it relates to pharmacy permits;

- Requires that the DOH serve notices to pharmacy permitees and licensees in writing and by an agent of the DOH or certified mail;
- Clarifies and adds to the types of activities that are grounds for licensure denial, revocation, or suspension, or for disciplinary action for pharmacies;
- Requires that pharmacies commence operations within 180 days of receiving a permit;
- Requires that pharmacies be supervised by a prescription department manager or consultant pharmacist of record at all times;
- Authorizes state funds to pay for the PDMP program;
- Includes pharmaceutical companies as organizations that may be considered inappropriate sources of funds for the PDMP program; and
- Preempts to the state all regulation of pharmacies and pharmacists.

The bill substantially amends the following sections of the Florida Statutes: 409.9201, 456.44, 458.331, 459.015, 465.003, 465.014, 465.015, 465.016, 465.0156, 465.0197, 465.022, 465.023, 465.1901, 499.003, 893.02, and 893.055.

The bill creates the following sections of the Florida Statutes: 465.0065, 465.1902, 893.0552.

II. Present Situation:

Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. The distinguishing factors between the different drug schedules are the "potential for abuse"[1] of the substance contained therein and whether there is a currently accepted medical use for the substance. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.[2]

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, peyote, lysergic acid diethylamide (LSD), and cannabis.[3]

Schedule II controlled substances have severely restricted medical uses and a high potential for abuse, which may lead to severe psychological or physical dependence. These drugs include morphine and its derivatives, amphetamines, cocaine, and pentobarbital.[4]

Schedule III controlled substances have lower abuse potential than Schedule II substances and have some accepted medical use, but they may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of

[1] Section 893.02(20), F.S.
[2] DEA, Office of Diversion Control, Controlled Substance Schedules, available at: www.deadiversion.usdoj.gov/21cfr/cfr/2108cfrt.htm (last visited Apr. 4, 2013).
[3] Section 893.03(1), F.S.
[4] Section 893.03(2), F.S.

hydrocodone (such as Vicodin) or less than 90 mg of dihydrocodeine per dose (such as Tylenol #3), ketamine, and anabolic steroids.[5]

Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan).[6]

Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.[7]

Any health care professional wishing to prescribe controlled substances must apply for a prescribing number from the federal Drug Enforcement Administration (DEA). Prescribing numbers are linked to state licenses and may be suspended or revoked upon any disciplinary action taken against a licensee.

Controlled Substance Prescribing

As of January 1, 2012, every physician, podiatrist, or dentist who prescribes controlled substances in the state for the treatment of chronic nonmalignant pain[8] must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.[9]

Before prescribing any controlled substances for the treatment of chronic nonmalignant pain, a practitioner must document certain characteristics about the nature of the pain, success of past treatments, any underlying health problems, and history of alcohol and substance abuse.[10] The practitioner must develop a written plan for assessing the patient's risk for aberrant drug-related behavior and monitor such behavior throughout the course of controlled substance treatment.[11] Each practitioner must also enter into a controlled substance agreement with their patients; such agreements must include:

- The risks and benefits of controlled substance use, including the risk for addiction or dependence;
- The number and frequency of permitted prescriptions and refills;
- A statement of reasons for discontinuation of therapy, including violation of the agreement; and
- The requirement that a patient's chronic nonmalignant pain only be treated by one practitioner at a time unless otherwise authorized and documented.[12]

[5] Section 893.03(3), F.S.
[6] Section 893.03(4), F.S.
[7] Section 893.03 (5), F.S.
[8] "Chronic nonmalignant pain" is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. Section 456.44(1)(e), F.S.
[9] Section 456.44(2)(a) and (b), F.S.
[10] Section 456.44(3)(a), F.S.
[11] Section 456.44(3)(b), F.S.
[12] Section 456.44(3)(c)1.-3., F.S.

Patients treated for nonmalignant pain with controlled substances must be seen by their prescribing practitioners at least once every three months to monitor progress and compliance, and detailed medical records relating to such treatment must be maintained.[13] Patients at special risk for drug abuse or diversion may require co-monitoring by an addiction medicine physician or a psychiatrist.[14] Anyone with signs or symptoms of substance abuse must be immediately referred to a pain-management physician, an addiction medicine specialist, or an addiction medicine facility.[15]

Anesthesiologists, physiatrists, neurologists, and surgeons are exempt from these provisions.[16] Physicians who hold certain credentials relating to pain medicine are also exempt.[17]

Pain-Management Clinics

A pain-management clinic is any facility that advertises pain-management services or where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.[18] Pain-management clinics are regulated by the practice acts for medical doctors and osteopathic physicians. Until January 1, 2016, all pain-management clinics must register with the DOH and meet certain provisions concerning staffing, sanitation, recordkeeping, and quality assurance.[19] Clinics are exempt from these provisions if they are:

- Licensed under ch. 395, F.S., as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;
- Owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded $50 million;
- Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3); or
- Wholly owned and operated by anesthesiologists, physiatrists, or neurologists, or physicians holding certain credentials in pain medicine.[20]

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under ch. 400, part X, F.S., to be eligible for registration.[21] The DOH is prohibited from registering a pain-management clinic:

- Not owned by a physician or not a health care clinic licensed under part X of ch. 400, F.S.;

[13] Section 456.44(3)(d), F.S.
[14] Section 456.44(3)(e), F.S.
[15] Section 456.44(3)(g), F.S.
[16] *Id*.
[17] *Id.*
[18] Section 458.3265(1)(a)1.c. and 459.0137(1)(a)1.c., F.S.
[19] Section 458.3265 and 459.0137, F.S.
[20] Section 458.3265(1)(a)2.a.-h. and 459.0137(1)(a)2.a.-h., F.S.
[21] Section 458.3265(1)(d) and 459.0137(1)(d), F.S.

- Owned by a physician whose DEA number has ever been revoked;
- Owned by a physician whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction; or
- Owned by a physician who has been convicted of certain drug-related crimes in any jurisdiction.[22]

Pain-management clinics are inspected annually by DOH unless they hold current certification from a DOH-approved national accrediting agency.[23] The DOH may suspend or revoke clinic registration or impose administrative fines of up to $5,000 per violation for any offenses against state pain-management clinic provisions or related federal laws and rules.[24]

If the registration for a pain-management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain-management clinic, and dispose of any medication on the premises.[25] No owner or operator of the clinic may own or operate another pain-management clinic for five years after revocation of registration.[26]

Prescription Drug Monitoring Program (PDMP)

In 2009, the Legislature created the PDMP in s. 893.055, F.S.[27] The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.[28] Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.[29]

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.[30] Indirect access to the PDMP database is provided to:

- The DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- A law enforcement agency; and
- A patient or the legal guardian, or designated health care surrogate of an incapacitated patient.[31]

[22] Section 458.3265(1)(d) and (e) and 459.0137(1)(d) and (e), F.S.
[23] Section 458.3265(3)(a) and 459.0137(3)(a), F.S.
[24] Section 458.3265(5) and 459.0137(5), F.S.
[25] Section 458.3265(1)(h)-(j) and 459.0137(1)(h)-(j), F.S.
[26] Section 458.3265(1)(k) and 459.0137(1)(k), F.S.
[27] *See* ch. 2009-197, L.O.F
[28] Section 893.055(2)(a), F.S.
[29] Section 893.055(3)(a)-(c), F.S.
[30] Section 893.055(7)(b), F.S.
[31] Section 893.055(7)(c)1.-4., F.S.

Restrictions on how DOH may fund implementation and operation of the PDMP are also included in statute. The DOH is prohibited from using state funds and any money received directly or indirectly from prescription drug manufacturers to implement the PDMP.[32] Funding for the PDMP comes from three funding sources:[33]

- Donations procured by the Florida PDMP Foundation, Inc. (Foundation), the direct-support organization authorized by s. 893.055, F.S., to fund the continuing operation of the PDMP;
- Federal grants; and
- Private grants and donations.

Section 893.0551, F.S., provides an exemption from public records for personal information of a patient and certain information concerning health care professionals related to the PDMP.[34] The statute details exceptions for disclosure of information after DOH ensures the legitimacy of the person's request for the information.[35]

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.[36] Health care practitioners began accessing the PDMP on October 17, 2011.[37] Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.[38]

Currently, prescribers are not required to consult the PDMP database prior to prescribing a controlled substance for a patient, but may do so. Between 2011 and 2012, physicians and pharmacists used the PDMP database at least 2.6 million times.[39] Nearly 5,000 pharmacists entered 56 million prescriptions into the database.[40] Law enforcement queried the PDMP database more than 20,000 times in conjunction with active criminal investigations.[41]

[32] Section 893.055(10) and (11)(c), F.S.
[33] Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), *2011-2012 Prescription Drug Monitoring Program Annual Report*, page 7 (available at www.eforcse.com/docs/2012AnnualReport.pdf, last visited on Apr. 3, 2013. Information also came from Florida Department of Health document detailing the funding history of the PDMP, also on file with Health Quality Subcommittee staff.
[34] Section 893.0551(2)(a)-(h), F.S.
[35] Section 893.0551(3)(a)-(g), F.S.
[36] Supra, n. 32 at page 4.
[37] *Id*.
[38] *Id*.
[39] *Id*. at page 3.
[40] *Id*.
[41] *Id*.

Prescription Drug Monitoring Programs in Other States

At least 43 states have passed laws enabling PDMPs.[42] The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.[43] All PDMPs examined are either run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the PDMP and primarily encourage prescribers to use the database through education and outreach programs.[44]

Only three of the 26 states require prescribers to access the database prior to prescribing most or all controlled substances.[45, 46] In 17 of 23 states, including Florida, accessing the database is strictly voluntary and in the remaining six states accessing the database is only required under limited circumstances.[47]

All states reviewed have the authority to take punitive action against dispensers of prescription drugs that do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, and/ or criminal charges, however, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

State Preemption

There is currently no statutory provision that expressly preempts the regulation of operations in pharmacies, health care clinics, health care facilities, and pain-management clinics to the state of Florida. Some counties and municipalities have created ordinances for the regulation of the operation of these clinics based upon the powers and duties conveyed upon these entities in Florida Statutes.[48]

III. Effect of Proposed Changes:

Section 1 amends s. 456.44, F.S. to:

- Restrict the requirement to register as a controlled substance providing practitioner to physicians[49] who prescribe more than a 30-day supply of any Schedule I, II, or III controlled substance over a six-month period to any one patient for the treatment of chronic malignant pain;

[42] The National Conference of State Legislatures, *Prevention of Prescription Drug Overdose and Abuse*, found at: http://www.ncsl.org/issues-research/health/prevention-of-prescription-drug-overdose-and-abuse.aspx, last visited on Apr. 3, 2013.
[43] *OPPAGA Review of State Prescription Drug Monitoring Programs*, Jan. 31, 2013, on file with the Senate Health Policy Committee.
[44] Id., p. 8.
[45] Kentucky, New Mexico, and New York.
[46] Id., p. 4.
[47] These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if the drug has a specific agreement, or if there is a reasonable suspicion that the patient it abusing drugs. Id.
[48] DOH bill analysis on SB 1192, dated Mar. 1, 2013, on file with the Senate Health Policy Committee.
[49] Registered under ch. 458, 459, 461, or 466, F.S.

- Require that physicians who treat new patients in a pain-management clinic, pursuant to s. 458.326, F.S., consult the PDMP database before prescribing a Schedule II or III controlled substance;
- Allow the physician to designate an agent to check the PDMP database;
- Require the Board of Medicine and the Board of Osteopathic Medicine to adopt rules to establish a penalty for not checking the PDMP database; and
- Exclude physicians who prescribe medically necessary controlled substances to residents in a nursing home and a physician licensed under ch. 458 or 459, F.S., who writes fewer than 50 total prescriptions for controlled substances for all of his or her patients during a one-year period from the standards of practice established in this section.

Section 2 amends s. 465.003, F.S., to define the term "abandoned" as used in ch. 465, F.S., relating to pharmacies, as the status of a permit of a person or entity that was issued a pharmacy permit but fails to commence pharmacy operations within 180 days after issuance of the permit without good cause or fails to follow pharmacy closure requirements as set by the board.

Section 3 creates s. 465.0065, F.S., to mandate that each notice served by the DOH under ch. 465, F.S., must be in writing and delivered personally by an agent of the DOH or by certified mail to the pharmacy permitee or licensee. If the pharmacy permitee refuses to accept service or evades service or if the agent is otherwise unable to carry out service after due diligence, the DOH may post the notice in a conspicuous place at the pharmacy or at the licensee's home or business address.

Section 4 amends s. 465.016, F.S., to clarify that violating rules adopted under ch. 893, F.S., relating to drug abuse prevention and control, and misappropriating drugs, supplies, or equipment from a pharmacy permitee constitutes grounds for denial of a license or disciplinary action.

Section 5 amends s. 465.022, F.S., to:

- Require that a pharmacy permitee commence pharmacy operations within 180 days after issuance of the permit or show good cause why operations were not commenced;
- Define commencement of operations as including, but is not limited to, acts within the scope of practice of pharmacy, ordering or receiving drugs, and other similar activities;
- Mandate that the DOH establish rules regarding the commencement of pharmacy operations; and
- Clarify that a pharmacy permitee must be supervised by a prescription department manager or consultant pharmacist of record at all times.

Section 6 amends s. 465.023, F.S., to clarify that violating rules adopted under ch. 893, F.S., relating to drug abuse prevention and control, is grounds for the DOH to revoke or suspend a permit of any pharmacy permitee.

Section 7 creates s. 465.1902, F.S., to:

- Provide that the regulation of pharmacies and pharmacists is expressly preempted to the state. Under the bill, no local ordinance, rule, or regulation may be enacted or remain in effect

which regulates or attempts to regulate pharmacies or pharmacists in subject matters regulated under ch. 465, F.S., including, but not limited to, licensure, discipline, pharmacy permitting, and the dispensing of controlled substances.

Section 8 amends s. 893.055, F.S., to allow the DOH to fund the PDMP program with state funds and maintain the PDMP program. This section also excludes pharmaceutical companies from those organizations that may be considered inappropriate sources of funds for the PDMP program. The bill grants designated agents under the supervision of a health care practitioner access to the PDMP database to conform with provisions in the bill allowing health care practitioners to designate agents to check the PDMP on their behalf.

Section 9 creates s. 893.0552, F.S, to preempt to the state all regulation of the licensure and activity and operation of pain management clinics as defined in ss. 458.3265 and 459.0137, F.S., in the following circumstances:

- The clinic is wholly owned and operated by a physician who performs interventional pain procedures routinely billed using surgical codes, who has never been suspended or revoked for prescribing certain controlled substances, *and who*:
  - has completed a fellowship in pain medicine approved by certain bodies,
  - is board-certified in pain medicine by specified entities, or
  - has a board certification or subcertification in pain management or pain medicine by an approved specialty board;
- The clinic is wholly owned and operated by a physician-multispecialty practice if one or more board-eligible or board-certified medical specialists has one of the qualifications specified above, performs interventional pain procedures of the type routinely billed using surgical codes, and has never been suspended or revoked for prescribing certain controlled substances; and
- Allow local governments and political subdivisions to enact ordinances regarding:
  - Local business taxes adopted pursuant to ch. 205, F.S.; and
  - Land use development regulations adopted pursuant to ch. 163, F.S.

A pain-management clinic specified in this section is permissible use in a land use or zoning category that permits hospitals and other health care facilities or clinics as defined in chapter 395 or s. 408.07, F.S.

Upon the request of a local government, a pain-management clinic must annually demonstrate that it qualifies for the preemption outlined in this section.

Sections 10-19 amend various sections of the Florida Statutes to conform those sections to changes made in Section 2 of the bill.

Section 20 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18 of the Florida Constitution prohibits laws requiring counties or municipalities to spend funds or that limit their ability to raise revenues. Subsection 18(d) provides an applicable exemption for laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 or $1.9 million for FY 2012-13.[50]

It is unknown to what extent the preemption provisions of the bill may limit local government revenue generated by fines related to local ordinances governing pain-management clinics. However, if revenue losses occur and are greater than $1.9 million, the law may be unenforceable unless passed by two-thirds in 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:

Some physicians and health care practices may be negatively impacted from a time management perspective by the additional requirement to consult the PDMP prior to dispensing. However, to the extent that inappropriate prescribing of controlled substances is avoided, overall health care costs may be lessened.

C. Government Sector Impact:

The DOH will incur non-recurring costs for rulemaking that can be absorbed within existing resources. The DOH may also experience an indeterminate increase in workload by implementing the requirements of the bill.

Local government revenue generated from fines for pain-management clinic violations authorized by local ordinance may be reduced.

[50] Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.

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/CS by Appropriations on April 23, 2013:
The CS requires the Board of Osteopathic Medicine and the Board of Medicine to adopt rules to establish a penalty for not checking the PDMP database. The CS provides that the regulation of pharmacies and pharmacists is expressly preempted to the state. The CS grants designated agents under the supervision of a health care practitioner access to the PDMP database.

CS/CS by Community Affairs on April 9, 2013:
- Removes state preemption of the regulation of certain health care clinics and health care facilities;
- Retains exemptions from department registration for pain management clinics owned by certain publically-held corporations or not-for-profit corporations;
- Removes a requirement for physicians who treat intractable pain to consult the PDMP;
- Revises state preemption of the regulation of pain management clinics and osteopathic pain management clinics;
- Upon the request of a local government, requires a pain-management clinic to annually demonstrate that it qualifies for the above preemption; and
- Includes pharmaceutical companies as inappropriate sources of funding for PDMPs.

CS by Health Policy on Mar. 21, 2013:
The CS amends SB 1192 to:
- Place language preempting the regulation of the licensure, activity, and operation of various health care facilities and practitioners in the chapters that pertain to those facilities and practitioners;
- Allow local governments to pass ordinances which regulate pain-management clinics;
- Allow the DOH to send notices, in the manner prescribed in the bill, to pharmacy licensees;
- Amend the title to conform to the bill's contents; and
- Make technical changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 223
and insert:
Section 1. Section 456.44, Florida Statutes, is amended to read:
456.44 Controlled substance prescribing.—
(1) DEFINITIONS.—
(a) "Addiction medicine specialist" means a board-certified psychiatrist with a subspecialty certification in addiction medicine or who is eligible for such subspecialty certification in addiction medicine, an addiction medicine physician certified

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or eligible for certification by the American Society of Addiction Medicine, or an osteopathic physician who holds a certificate of added qualification in Addiction Medicine through the American Osteopathic Association.

(b) "Adverse incident" means any incident set forth in s. 458.351(4)(a)-(e) or s. 459.026(4)(a)-(e).

(c) "Board-certified pain management physician" means a physician who possesses board certification in pain medicine by the American Board of Pain Medicine, board certification by the American Board of Interventional Pain Physicians, or board certification or subcertification in pain management or pain medicine by a specialty board recognized by the American Association of Physician Specialists or the American Board of Medical Specialties or an osteopathic physician who holds a certificate in Pain Management by the American Osteopathic Association.

(d) "Board eligible" means successful completion of an anesthesia, physical medicine and rehabilitation, rheumatology, or neurology residency program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association for a period of 6 years from successful completion of such residency program.

(e) "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

(f) "Mental health addiction facility" means a facility licensed under chapter 394 or chapter 397.

(2) REGISTRATION. ~~Effective January 1, 2012,~~ A physician

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licensed under chapter 458, chapter 459, chapter 461, or chapter 466 who prescribes more than a 30-day supply of any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, over a 6-month period to any one patient for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on the physician's practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

(3) STANDARDS OF PRACTICE.—The standards of practice in this section do not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.

(a) A complete medical history and a physical examination must be conducted before beginning any treatment and must be documented in the medical record. The exact components of the physical examination shall be left to the judgment of the clinician who is expected to perform a physical examination proportionate to the diagnosis that justifies a treatment. The medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse. The medical record shall also document the presence of one or more recognized medical indications for the use of a controlled substance. Each registrant must develop a written plan for assessing each

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patient's risk of aberrant drug-related behavior, which may include patient drug testing. Registrants must assess each patient's risk for aberrant drug-related behavior and monitor that risk on an ongoing basis in accordance with the plan.

(b) Before or during a new patient's visit for services for the treatment of pain at a pain-management clinic registered under s. 458.3265 or s. 459.0137, a physician shall consult the prescription drug monitoring program database provided under s. 893.055(2)(a) before prescribing a controlled substance listed in Schedule II or Schedule III in s. 893.03. The physician may designate an agent under his or her supervision to consult the database. The Board of Medicine under chapter 458 and the Board of Osteopathic Medicine under chapter 459 shall adopt rules to establish a penalty for a physician who does not comply with this subsection.

(c) ~~(b)~~ Each registrant must develop a written individualized treatment plan for each patient. The treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.

(d) ~~(c)~~ The physician shall discuss the risks and benefits

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of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient's surrogate or guardian if the patient is incompetent. The physician shall use a written controlled substance agreement between the physician and the patient outlining the patient's responsibilities, including, but not limited to:

1. Number and frequency of controlled substance prescriptions and refills.

2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.

3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a single treating physician unless otherwise authorized by the treating physician and documented in the medical record.

(e) ~~(d)~~ The patient shall be seen by the physician at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-

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month intervals.

(f) ~~(e)~~ The physician shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation and requires consultation with or referral to an addiction medicine specialist or psychiatrist.

(g) ~~(f)~~ A physician registered under this section must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence.

2. Diagnostic, therapeutic, and laboratory results.

3. Evaluations and consultations.

4. Treatment objectives.

5. Discussion of risks and benefits.

6. Treatments.

7. Medications, including date, type, dosage, and quantity prescribed.

8. Instructions and agreements.

9. Periodic reviews.

10. Results of any drug testing.

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11. A photocopy of the patient's government-issued photo identification.

12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.

13. The physician's full name presented in a legible manner.

(h) ~~(g)~~ Patients with signs or symptoms of substance abuse shall be immediately referred to a board-certified pain management physician, an addiction medicine specialist, or a mental health addiction facility as it pertains to drug abuse or addiction unless the physician is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing physician shall clearly and completely document medical justification for continued treatment with controlled substances and those steps taken to ensure medically appropriate use of controlled substances by the patient. Upon receipt of the consultant's written report, the prescribing physician shall incorporate the consultant's recommendations for continuing, modifying, or discontinuing controlled substance therapy. The resulting changes in treatment shall be specifically documented in the patient's medical record. Evidence or behavioral indications of diversion shall be followed by discontinuation of controlled substance therapy, and the patient shall be discharged, and all results of testing and actions taken by the physician shall be documented in the patient's medical record.

This section ~~subsection~~ does not apply to a board-eligible or board-certified anesthesiologist, physiatrist, rheumatologist,

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or neurologist, or to a board-certified physician who has surgical privileges at a hospital or ambulatory surgery center and primarily provides surgical services. This section ~~subsection~~ does not apply to a board-eligible or board-certified medical specialist who has also completed a fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who is board eligible or board certified in pain medicine by the American Board of Pain Medicine or a board approved by the American Board of Medical Specialties or the American Osteopathic Association and performs interventional pain procedures of the type routinely billed using surgical codes. This section ~~subsection~~ does not apply to a physician who prescribes medically necessary controlled substances for a patient during an inpatient stay in a hospital licensed under chapter 395 or to a resident in a facility licensed under part II of chapter 400. This section does not apply to a physician licensed under chapter 458 or chapter 459 who writes fewer than 50 prescriptions for a controlled substance for all of his or her patients during a 1-year period.

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

And the title is amended as follows:

Delete line 8

and insert:

substances; authorizing the the Board of Medicine and the Board of Osteopathic Medicine to adopt

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 399 - 459
and insert:

Section 8. Paragraph (b) of subsection (2), paragraph (b) of subsection (7), subsection (10), and paragraph (c) of subsection (11) of section 893.055, Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(2)

(b) The department~~, when the direct support organization receives at least $20,000 in nonstate moneys or the state~~


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~~receives at least $20,000 in federal grants for the prescription drug monitoring program,~~ shall adopt rules as necessary concerning the reporting, accessing the database, evaluation, management, development, implementation, operation, security, and storage of information within the system, including rules for when patient advisory reports are provided to pharmacies and prescribers. The patient advisory report shall be provided in accordance with s. 893.13(7)(a)8. The department shall work with the professional health care licensure boards, such as the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy; other appropriate organizations, such as the Florida Pharmacy Association, the Florida Medical Association, the Florida Retail Federation, and the Florida Osteopathic Medical Association, including those relating to pain management; and the Attorney General, the Department of Law Enforcement, and the Agency for Health Care Administration to develop rules appropriate for the prescription drug monitoring program.

(7)

(b) A pharmacy, prescriber, <u>designated agent under the supervision of a health care practitioner,</u> or dispenser shall have access to information in the prescription drug monitoring program's database which relates to a patient of that pharmacy, prescriber, or dispenser in a manner established by the department as needed for the purpose of reviewing the patient's controlled substance prescription history. Other access to the program's database shall be limited to the program's manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or

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such designated staff is for prescription drug program management only or for management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. Confidential and exempt information in the database shall be released only as provided in paragraph (c) and s. 893.0551. The program manager, designated program and support staff who act at the direction of or in the absence of the program manager, and any individual who has similar access regarding the management of the database from the prescription drug monitoring program shall submit fingerprints to the department for background screening. The department shall follow the procedure established by the Department of Law Enforcement to request a statewide criminal history record check and to request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(10) All costs incurred by the department in administering the prescription drug monitoring program shall be funded through state funds, federal grants, or private funding applied for or received by the state. The department may not commit funds for the monitoring program without ensuring funding is available. ~~The prescription drug monitoring program and the implementation thereof are contingent upon receipt of the nonstate funding.~~ The department and state government shall cooperate with the direct-support organization established pursuant to subsection (11) in seeking state funds, federal grant funds, other nonstate grant funds, gifts, donations, or other private moneys for the department if ~~so long as~~ the costs of doing so are not


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considered material. Nonmaterial costs for this purpose include, but are not limited to, the costs of mailing and personnel assigned to research or apply for a grant. Notwithstanding the exemptions to competitive-solicitation requirements under s. 287.057(3)(f), the department shall comply with the competitive-solicitation requirements under s. 287.057 for the procurement of any goods or services required by this section. ~~Funds provided, directly or indirectly, by prescription drug manufacturers may not be used to implement the program.~~

(11) The department may establish a direct-support organization that has a board consisting of at least five members to provide assistance, funding, and promotional support for the activities authorized for the prescription drug monitoring program.

(c) The State Surgeon General shall appoint a board of directors for the direct-support organization. Members of the board shall serve at the pleasure of the State Surgeon General. The State Surgeon General shall provide guidance to members of the board to ensure that moneys received by the direct-support organization are not received from inappropriate sources. Inappropriate sources include, but are not limited to, donors, grantors, persons, ~~or~~ organizations<u>, or pharmaceutical companies,</u> that may monetarily or substantively benefit from the purchase of goods or services by the department in furtherance of the prescription drug monitoring program.

Section 9. Paragraphs (d) and (e) of subsection (3) of section 893.0551, Florida Statutes, are amended to read:

893.0551 Public records exemption for the prescription drug monitoring program.—


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(3) The department shall disclose such confidential and exempt information to the following entities after using a verification process to ensure the legitimacy of that person's or entity's request for the information:

(d) A health care practitioner or a designated agent under his or her supervision who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055.

(e) A pharmacist or a designated agent under his or her supervision who certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055.

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

And the title is amended as follows:

Delete lines 36 - 44

and insert:

development; amending s. 893.055, F.S.; deleting obsolete provisions; requiring a designated agent under the supervision of a health care practitioner to have access to information in the prescription drug monitoring program's database; deleting a provision that prohibits funds from prescription drug manufacturers to be used to implement the prescription drug monitoring program; authorizing the prescription drug monitoring program to be funded by state funds; revising the sources of money which are inappropriate for the direct-support organization of the prescription drug monitoring program to receive;


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amending s. 893.0551, F.S.; requiring the Department of Health to disclose certain confidential and exempt information to a designated agent of a health care practitioner or pharmacist under certain circumstances;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 382 - 398

and insert:

465.1902 Preemption.—The regulation of pharmacies and pharmacists is expressly preempted to the state. No local ordinance, rule, or regulation shall be enacted or remain in effect which regulates or attempts to regulate pharmacies or pharmacists in subject matters regulated under this chapter, including, but not limited to, licensure, discipline, pharmacy permitting, and the dispensing of controlled substances.

957718

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 28 - 36
and insert:
F.S.; providing that the regulation of pharmacies and pharmacists is preempted to the state; providing that a local ordinance, rule, or regulation may not be enacted or remain in effect which regulates or attempts to regulate pharmacies or pharmacists in subject matters regulated under ch. 465, F.S.; amending s. 893.055, F.S.; deleting an

By the Committees on Community Affairs; and Health Policy; and Senator Grimsley

578-04007A-13 20131192c2

A bill to be entitled

An act relating to the provision of health care with controlled substances; amending s. 456.44, F.S.; limiting the application of requirements for prescribing controlled substances; requiring a physician to consult the prescription drug monitoring program database before prescribing certain controlled substances; authorizing the appropriate board to adopt a penalty for failure to consult the database; exempting nursing home residents and certain physicians from requirements regarding prescriptions of controlled substances; amending s. 465.003, F.S.; defining a term; conforming a cross-reference; creating s. 465.0065, F.S.; providing notice requirements for inspection of a pharmacy; amending s. 465.016, F.S.; providing additional grounds for disciplinary action; conforming a cross-reference; amending s. 465.022, F.S.; conforming a cross-reference; requiring a pharmacy permittee to commence operations within 180 days after permit issuance or show good cause why operations were not commenced; requiring the Board of Pharmacy to establish rules; requiring a pharmacy permittee to be supervised by a prescription department manager or consultant pharmacist of record; amending s. 465.023, F.S.; providing additional grounds for disciplinary action; conforming a cross-reference; creating s. 465.1902, F.S.; providing that regulation of the licensure, activity, and operation of pharmacies and pharmacists

578-04007A-13 20131192c2

is preempted to the state; prohibiting a local government or political subdivision of the state from enacting or enforcing an ordinance that imposes a levy, charge, or fee upon, or that otherwise regulates, pharmacies and pharmacists, except for ordinances regarding local business taxes and land development; amending s. 893.055, F.S.; deleting an obsolete provision; deleting a provision that prohibits funds from prescription drug manufacturers to be used to implement the prescription drug monitoring program; authorizing the prescription drug monitoring program to be funded by state funds; revising the sources of money which are inappropriate for the direct-support organization of the prescription drug monitoring program to receive; creating s. 893.0552, F.S.; providing that regulation of the licensure, activity, and operation of pain-management clinics is preempted to the state under certain circumstances; authorizing a local government or political subdivision of the state to enact certain ordinances regarding local business taxes and land development; amending ss. 409.9201, 458.331, 459.015, 465.014, 465.015, 465.0156, 465.0197, 465.1901, 499.003, and 893.02, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 456.44,

Florida Statutes, are amended to read:

456.44 Controlled substance prescribing.—

(2) REGISTRATION. ~~Effective January 1, 2012,~~ A physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466 who prescribes more than a 30-day supply of any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, over a 6-month period to any one patient for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on the physician's practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

(3) STANDARDS OF PRACTICE.—The standards of practice in this section do not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.

(a) A complete medical history and a physical examination must be conducted before beginning any treatment and must be documented in the medical record. The exact components of the physical examination shall be left to the judgment of the clinician who is expected to perform a physical examination proportionate to the diagnosis that justifies a treatment. The medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse. The medical record shall

also document the presence of one or more recognized medical indications for the use of a controlled substance. Each registrant must develop a written plan for assessing each patient's risk of aberrant drug-related behavior, which may include patient drug testing. Registrants must assess each patient's risk for aberrant drug-related behavior and monitor that risk on an ongoing basis in accordance with the plan.

(b) Before or during a new patient's visit for pain-treatment services at a pain-management clinic registered under s. 458.3265 or s. 459.0137, a physician shall consult the prescription drug monitoring program database provided under s. 893.055(2)(a) before prescribing a controlled substance listed in Schedule II or Schedule III in s. 893.03. The physician may designate an agent under his or her supervision to consult the database. The board shall adopt rules to establish a penalty for a physician who does not comply with this subsection.

(c) ~~(b)~~ Each registrant must develop a written individualized treatment plan for each patient. The treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.

(d) ~~(c)~~ The physician shall discuss the risks and benefits of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient's surrogate or guardian if the patient is incompetent. The physician shall use a written controlled substance agreement between the physician and the patient outlining the patient's responsibilities, including, but not limited to:

1. Number and frequency of controlled substance prescriptions and refills.

2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.

3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a single treating physician unless otherwise authorized by the treating physician and documented in the medical record.

(e) ~~(d)~~ The patient shall be seen by the physician at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and

indications of substance abuse or diversion at a minimum of 3-month intervals.

(f) ~~(e)~~ The physician shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation and requires consultation with or referral to an addiction medicine specialist or psychiatrist.

(g) ~~(f)~~ A physician registered under this section must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence.

2. Diagnostic, therapeutic, and laboratory results.

3. Evaluations and consultations.

4. Treatment objectives.

5. Discussion of risks and benefits.

6. Treatments.

7. Medications, including date, type, dosage, and quantity prescribed.

8. Instructions and agreements.

9. Periodic reviews.

10. Results of any drug testing.

11. A photocopy of the patient's government-issued photo identification.

12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.

13. The physician's full name presented in a legible manner.

(h) ~~(g)~~ Patients with signs or symptoms of substance abuse shall be immediately referred to a board-certified pain management physician, an addiction medicine specialist, or a mental health addiction facility as it pertains to drug abuse or addiction unless the physician is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing physician shall clearly and completely document medical justification for continued treatment with controlled substances and those steps taken to ensure medically appropriate use of controlled substances by the patient. Upon receipt of the consultant's written report, the prescribing physician shall incorporate the consultant's recommendations for continuing, modifying, or discontinuing controlled substance therapy. The resulting changes in treatment shall be specifically documented in the patient's medical record. Evidence or behavioral indications of diversion shall be followed by discontinuation of controlled substance therapy, and the patient shall be discharged, and all results of testing and actions taken by the physician shall be documented in the patient's medical record.

This subsection does not apply to a board-eligible or board-

certified anesthesiologist, physiatrist, rheumatologist, or neurologist, or to a board-certified physician who has surgical privileges at a hospital or ambulatory surgery center and primarily provides surgical services. This subsection does not apply to a board-eligible or board-certified medical specialist who has also completed a fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who is board eligible or board certified in pain medicine by the American Board of Pain Medicine or a board approved by the American Board of Medical Specialties or the American Osteopathic Association and performs interventional pain procedures of the type routinely billed using surgical codes. This subsection does not apply to a physician who prescribes medically necessary controlled substances for a patient during an inpatient stay in a hospital licensed under chapter 395 or to a resident in a facility licensed under part II of chapter 400. This subsection does not apply to any physician licensed under chapter 458 or chapter 459 who writes fewer than 50 prescriptions for a controlled substance for all of his or her patients during a 1-year period.

Section 2. Present subsections (1) through (17) of section 465.003, Florida Statutes, are renumbered as subsections (2) through (18), respectively, paragraph (a) of present subsection (11) of that section is amended, and a new subsection (1) is added to that section, to read:

465.003 Definitions.—As used in this chapter, the term:

(1) "Abandoned" means the status of a pharmacy permit of a person or entity that was issued the permit but fails to commence pharmacy operations within 180 days after issuance of

the permit without good cause or fails to follow pharmacy closure requirements as set by the board.

(12)~~(11)~~(a) "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy.

1. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

2. The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as "health care institutions," where medicinal drugs are compounded, dispensed, stored, or sold.

3. The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals.

4. The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.

5. The term "Internet pharmacy" includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in

the practice of pharmacy in this state. Any act described in this definition constitutes the practice of pharmacy as defined in subsection (14)~~(13)~~.

Section 3. Section 465.0065, Florida Statutes, is created to read:

465.0065 Notices; form and service.—Each notice served by the department pursuant to this chapter must be in writing and must be delivered personally by an agent of the department or by certified mail to the pharmacy permittee or licensee. If the pharmacy permittee or licensee refuses to accept service or evades service or if the agent is otherwise unable to carry out service after due diligence, the department may post the notice in a conspicuous place at the pharmacy or at the home or business address for the licensee.

Section 4. Paragraphs (e) and (s) of subsection (1) of section 465.016, Florida Statutes, are amended, and paragraph (u) is added to that subsection, to read:

465.016 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Violating chapter 499; 21 U.S.C. ss. 301-392, known as the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse Prevention and Control Act; or chapter 893 or rules adopted thereunder.

(s) Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

(u) Misappropriating drugs, supplies, or equipment from a pharmacy permittee.

Section 5. Paragraph (j) of subsection (5) of section 465.022, Florida Statutes, is amended, present subsections (10) through (14) are renumbered as subsections (11) through (15), respectively, present subsection (10) of that section is amended, and a new subsection (10) is added to that section, to read:

465.022 Pharmacies; general requirements; fees.—

(5) The department or board shall deny an application for a pharmacy permit if the applicant or an affiliated person, partner, officer, director, or prescription department manager or consultant pharmacist of record of the applicant:

(j) Has dispensed any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

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 shall deny the application if upon final resolution of the case the licensee has failed to successfully complete the program.

(10) The permittee shall commence pharmacy operations within 180 days after issuance of the permit, or show good cause to the department why pharmacy operations were not commenced. Commencement of pharmacy operations includes, but is not limited to, acts within the scope of the practice of pharmacy, ordering or receiving drugs, and other similar activities. The board shall establish rules regarding commencement of pharmacy operations.

(11) ~~(10)~~ A pharmacy permittee shall be supervised by a prescription department manager or consultant pharmacist of record at all times. A permittee must notify the department, on a form approved by the board, within 10 days after any change in prescription department manager or consultant pharmacist of record.

Section 6. Subsection (1) of section 465.023, Florida Statutes, is amended to read:

465.023 Pharmacy permittee; disciplinary action.—

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee, and may fine, place on probation, or otherwise discipline any pharmacy permittee if the permittee, or any affiliated person, partner, officer, director, or agent of the permittee, including a person fingerprinted under s. 465.022(3), has:

(a) Obtained a permit by misrepresentation or fraud or through an error of the department or the board;

(b) Attempted to procure, or has procured, a permit for any other person by making, or causing to be made, any false representation;

(c) Violated any of the requirements of this chapter or any

of the rules of the Board of Pharmacy; of chapter 499, known as the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-392, known as the "Federal Food, Drug, and Cosmetic Act"; of 21 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse Prevention and Control Act; or of chapter 893 or rules adopted thereunder;

(d) Been convicted or found guilty, regardless of adjudication, of a felony or any other crime involving moral turpitude in any of the courts of this state, of any other state, or of the United States;

(e) Been convicted or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for any offense that would constitute a violation of this chapter;

(f) Been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, the profession of pharmacy;

(g) Been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud; or

(h) Dispensed any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by

board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

Section 7. Section 465.1902, Florida Statutes, is created to read:

465.1902 Preemption.—This chapter preempts to the state all regulation of the licensure, activity, and operation of pharmacies and pharmacists as defined in this chapter. A local government or political subdivision of the state may not enact or enforce an ordinance that imposes a levy, charge, or fee upon, or that otherwise regulates, pharmacies and pharmacists as defined in this chapter, except that this preemption does not prohibit a local government or political subdivision from enacting an ordinance regarding the following:

(1) Local business taxes adopted pursuant to chapter 205.

(2) Land use development regulations adopted pursuant to chapter 163, which include regulation of any aspect of development, including a subdivision, building construction, sign regulation, and any other regulation concerning the development of land, landscaping, or tree protection, and which do not include restrictions on pain-management services, health care services, or the prescribing of controlled substances.

Section 8. Paragraph (b) of subsection (2), subsection (10), and paragraph (c) of subsection (11) of section 893.055, Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(2)

(b) The department~~, when the direct support organization receives at least $20,000 in nonstate moneys or the state receives at least $20,000 in federal grants for the prescription~~

~~drug monitoring program,~~ shall adopt rules as necessary concerning the reporting, accessing the database, evaluation, management, development, implementation, operation, security, and storage of information within the system, including rules for when patient advisory reports are provided to pharmacies and prescribers. The patient advisory report shall be provided in accordance with s. 893.13(7)(a)8. The department shall work with the professional health care licensure boards, such as the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy; other appropriate organizations, such as the Florida Pharmacy Association, the Florida Medical Association, the Florida Retail Federation, and the Florida Osteopathic Medical Association, including those relating to pain management; and the Attorney General, the Department of Law Enforcement, and the Agency for Health Care Administration to develop rules appropriate for the prescription drug monitoring program.

(10) All costs incurred by the department in administering the prescription drug monitoring program shall be funded through state funds, federal grants, or private funding applied for or received by the state. The department may not commit funds for the monitoring program without ensuring funding is available. ~~The prescription drug monitoring program and the implementation thereof are contingent upon receipt of the nonstate funding.~~ The department and state government shall cooperate with the direct-support organization established pursuant to subsection (11) in seeking state funds, federal grant funds, other nonstate grant funds, gifts, donations, or other private moneys for the department if ~~so long as~~ the costs of doing so are not considered material. Nonmaterial costs for this purpose include,

but are not limited to, the costs of mailing and personnel assigned to research or apply for a grant. Notwithstanding the exemptions to competitive-solicitation requirements under s. 287.057(3)(f), the department shall comply with the competitive-solicitation requirements under s. 287.057 for the procurement of any goods or services required by this section. ~~Funds provided, directly or indirectly, by prescription drug manufacturers may not be used to implement the program.~~

(11) The department may establish a direct-support organization that has a board consisting of at least five members to provide assistance, funding, and promotional support for the activities authorized for the prescription drug monitoring program.

(c) The State Surgeon General shall appoint a board of directors for the direct-support organization. Members of the board shall serve at the pleasure of the State Surgeon General. The State Surgeon General shall provide guidance to members of the board to ensure that moneys received by the direct-support organization are not received from inappropriate sources. Inappropriate sources include, but are not limited to, donors, grantors, persons, ~~or~~ organizations, or pharmaceutical companies, that may monetarily or substantively benefit from the purchase of goods or services by the department in furtherance of the prescription drug monitoring program.

Section 9. Section 893.0552, Florida Statutes, is created to read:

893.0552 Preemption of regulation.—

(1) This section preempts to the state all regulation of the licensure, activity, and operation of pain-management

clinics as defined in ss. 458.3265 and 459.0137 in the following circumstances:

(a) The clinic is wholly owned and operated by a physician who performs interventional pain procedures of the type routinely billed using surgical codes, who has never been suspended or revoked for prescribing a controlled substance in Schedule II or Schedule III of s. 893.03 and drugs containing Alprazolam in excessive or inappropriate quantities that are not in the best interest of a patient, and who:

1. Has completed a fellowship in pain medicine which is approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

2. Is board-certified in pain medicine by the American Board of Pain Medicine, board-certified by the American Board of Interventional Pain Physicians; or

3. Has a board certification or subcertification in pain management or pain medicine by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association.

(b) The clinic is wholly owned and operated by a physician-multispecialty practice if one or more board-eligible or board-certified medical specialists has one of the qualifications specified in subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3., performs interventional pain procedures of the type routinely billed using surgical codes, and has never been suspended or revoked for prescribing a controlled substance in Schedule II or Schedule III of s. 893.03 and drugs containing Alprazolam in excessive or inappropriate quantities that are not in the best interest of a patient.

(2) Notwithstanding subsection (1), the preemption does not prohibit a local government or political subdivision from enacting an ordinance regarding local business taxes adopted pursuant to chapter 205 and land use development regulations adopted pursuant to chapter 163. A pain-management clinic in which the regulation of its licensure, activity, and operation is preempted to the state pursuant to subsection (1) is a permissible use in a land use or zoning category that permits hospitals and other health care facilities or clinics as defined in chapter 395 or s. 408.07. Upon the request of a local government, a pain-management clinic must annually demonstrate that it qualifies for preemption pursuant to subsection (1).

Section 10. Subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

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

(a) "Prescription drug" means any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act or by s. 465.003 ~~s. 465.003(8)~~, s. 499.003(46) or (53) or s. 499.007(13).

(b) "Value" means the amount billed to the Medicaid program for the property dispensed or the market value of a legend drug or goods or services at the time and place of the offense. If the market value cannot be determined, the term means the replacement cost of the legend drug or goods or services within a reasonable time after the offense.

The value of individual items of the legend drugs or goods or

services involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.

Section 11. Paragraph (pp) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(pp) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory

agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 458.3265(2).

Section 12. Paragraph (rr) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(rr) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication

that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 459.0137(2).

Section 13. Subsection (1) of section 465.014, Florida Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts shall be performed under the direct supervision of a licensed pharmacist who shall be responsible for all such acts performed by persons under his or her supervision. A pharmacy registered technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise permitted by the guidelines adopted by the board. The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one but not more than three pharmacy technicians.

Section 14. Paragraph (c) of subsection (2) of section 465.015, Florida Statutes, is amended to read:

465.015 Violations and penalties.—

(2) It is unlawful for any person:

(c) To sell or dispense drugs as defined in s. 465.003 ~~s. 465.003(8)~~ without first being furnished with a prescription.

Section 15. Subsection (8) of section 465.0156, Florida Statutes, is amended to read:

465.0156 Registration of nonresident pharmacies.—

(8) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes of this section, the registered pharmacy and the pharmacist designated by the registered pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

Section 16. Subsection (4) of section 465.0197, Florida Statutes, is amended to read:

465.0197 Internet pharmacy permits.—

(4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes of this section, the Internet pharmacy and the pharmacist designated by the Internet pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

Section 17. Section 465.1901, Florida Statutes, is amended to read:

465.1901 Practice of orthotics and pedorthics.—The provisions of chapter 468 relating to orthotics or pedorthics do not apply to any licensed pharmacist or to any person acting under the supervision of a licensed pharmacist. The practice of orthotics or pedorthics by a pharmacist or any of the

pharmacist's employees acting under the supervision of a pharmacist shall be construed to be within the meaning of the term "practice of the profession of pharmacy" as set forth in s. 465.003 ~~s. 465.003(13)~~, and shall be subject to regulation in the same manner as any other pharmacy practice. The Board of Pharmacy shall develop rules regarding the practice of orthotics and pedorthics by a pharmacist. Any pharmacist or person under the supervision of a pharmacist engaged in the practice of orthotics or pedorthics is not precluded from continuing that practice pending adoption of these rules.

Section 18. Subsection (43) of section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(43) "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act or s. 465.003 ~~s. 465.003(8)~~, s. 499.007(13), or subsection (11), subsection (46), or subsection (53), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Section 19. Subsection (22) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(22) "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so, and meeting the requirements of s. 893.04. The term also includes an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in s. 465.003 ~~s. 465.003(8)~~, which does not fall within the definition of a controlled substance as defined in this act.

Section 20. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic SB1192 - Controlled Substances

Bill Number 1192 *(if applicable)*

Name Nick Matthews

Amendment Barcode 957718 *(if applicable)*
by Sobel

Job Title Legislative Coordinator

Address 115 S. Andrews Ave.
Street

Phone

Fort Lauderdale FL
City *State* *Zip*

E-mail NMatthews@Broward.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Broward County - waive in support

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Pharmacy / Controlled Sub. Bill Number 1192

Name Lisa Thurley Amendment Barcode 957718 *(if applicable)*

Job Title

Address 100 S. Monroe St. Phone 850.922.4300

Street

Tallahassee, FL 32301 E-mail lthurley@flcounties.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing FL Assoc of Counties

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Waive in Support

4/23/13
Meeting Date

Topic Controlled Substances

Bill Number 1192 *(if applicable)*

Name Ron Watson

Amendment Barcode *(if applicable)*

Job Title Lobbyist

Address 118 E Jefferson St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 224-1089

E-mail rwatson@floridadental.org

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

Representing FDA Florida Dental Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Controlled Substance Prescribing

Bill Number 1192 *(if applicable)*

Name Rebecca O'Hara

Amendment Barcode *(if applicable)*

Job Title VP Govt Affairs

Address 113 E College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 339 6211

E-mail rohara@flmedical.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla Medical Assn

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Health Care

Bill Number 1192 *(if applicable)*

Name Melissa Joiner

Amendment Barcode *(if applicable)*

Job Title Director Gov't Affairs

Address 228 Adams St.
Street
Tallahassee FL 32311
City *State* *Zip*

Phone 850-570-0269

E-mail Melissa@frf.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.23.13
Meeting Date

Topic Prescription Drugs / Controlled Substances Bill Number 1192 *(if applicable)*

Name Lt. Paul Kammerer Amendment Barcode *(if applicable)*

Job Title

Address P.O. Box 5169 Phone 386 254 1537
~~Street~~

DeLand FL
City *State* *Zip*

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Volusia County Sheriff's Office / Florida Sheriffs Association

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

BILL:	PCS/SB 1200 (971948)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Simpson
SUBJECT:	Taxation of Property
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Weidenbenner	Halley	AG	**Favorable**
3.	Babin	Diez-Arguelles	AFT	**Fav/CS**
4.	Babin	Hansen	AP	**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:

PCS/SB 1200 eliminates the authority of a Value Adjustment Board (VAB) under its own motion, to review certain land classifications and exemptions granted by a property appraiser. The bill also eliminates two statutory requirements directing the property appraiser to reclassify lands as nonagricultural.

The Revenue Estimating Conference (REC) determined that this bill will reduce local property tax revenues by $0.23 million per year.

This bill substantially amends the following sections of the Florida Statutes: 193.461, 193.503, 193.625, and 196.194.

II. Present Situation:

Property Valuation in Florida

The Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes.[1] However, sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications, and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.[2]

Agricultural Property Classification

For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes."[3] "Agricultural purposes" include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.[4]

Property appraisers are required to reclassify lands as nonagricultural when:

- The land is diverted from an agricultural to a nonagricultural use;
- The land is no longer being utilized for agricultural purposes;
- The land has been zoned to a nonagricultural use at the request of the owner.[5]

A county commission may reclassify lands from agricultural to nonagricultural when there is contiguous urban or metropolitan development and the county commission finds that the continued use of the lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.[6]

Value Adjustment Boards

After the property appraiser determines the assessed value of all property, the county convenes a value adjustment board (VAB) to hear petitions from affected taxpayers regarding assessments. Each VAB is composed of two members from the county governing board, one member from the school board, and two citizen members.[7] Counties with a population of more than 75,000 must appoint special magistrates to take testimony and provide recommendations to the board.[8]

The value adjustment board meets for the following purposes:

[1] Fla. Const. Art. VII, s. 4
[2] See s. 196.031, F.S.
[3] Section 193.461(3)(b), F.S.
[4] Section 193.461(5), F.S.
[5] Section 193.461(4)(a), F.S.
[6] Section 193.461(4)(b), F.S.
[7] Section 194.015, F.S.
[8] Section 194.035, F.S. Counties with a population of less than 75,000 may appoint special magistrates, but such is not required.

- To hear petitions relating to assessments filed pursuant to s. 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 pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.[9]

Not only can VABs review assessments, exemptions and classifications when a taxpayer petitions for review, but the VAB is also permitted, on its own motion, to review agricultural land, historic property, and high-water recharge land classifications, as well as exemptions granted by the property appraiser.

III. Effect of Proposed Changes:

Section 1 amends s. 193.461, F.S., removing the VAB's authority to review agricultural classifications on its own motion.

The bill also:

- Deletes the requirement that a property appraiser reclassify agricultural property as nonagricultural when the owner requests the property be rezoned as nonagricultural;
- Removes the county commission's authority to reclassify agricultural land as nonagricultural when there is contiguous urban development and the board finds that the continued agricultural use of the land will deter the expansion of the community.

Section 2 amends s. 193.503, F.S., removing the VAB's authority to initiate a review of historic property classifications on its own motion.

Section 3 amends s. 193.625, F.S., removing the VAB's authority to initiate a review of high-water recharge land classifications on its own motion.

Section 4 amends s. 196.194, F.S., removing the VAB's authority to initiate a review of property tax exemptions on its own motion.

Section 5 provides that the bill takes effect upon becoming a law and applies retroactively to January 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18 of the Florida Constitution, prohibits laws requiring counties or municipalities to spend funds or that limit their ability to raise revenues. Subsection 18(d) provides an applicable exemption for laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for

[9] Section 194.032(1)(a)1.-4., F.S.

the applicable fiscal year times $0.10 or $1.9 million for FY 2012-13.[10] The REC determined that this bill will reduce local property tax revenues by $0.23 million per year. Thus, this bill is exempt from the mandates requirement.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The REC has determined that this bill will reduce local property tax revenues by $0.23 million per year.

B. Private Sector Impact:

The bill may result in more landowners retaining the agricultural classification on their property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 11, 2013:
The committee substitute:

[10] Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.

- Retains a presumption in current law that agricultural land sold for three or more times the agricultural assessment will no longer be used for agricultural purposes.
- Changes the effective date from January 1, 2012 to January 1, 2013.

B. Amendments:

None.

115124

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 70

and insert:

~~(c) Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.~~

115124

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 13
and insert:
circumstances; deleting a presumption that land sold for a certain price is not used primarily for agricultural purposes; amending s. 193.503, F.S.; deleting

971948

576-04170-13

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the taxation of property; amending s. 193.461, F.S.; deleting authorization for a value adjustment board upon its own motion to review lands classified by a property appraiser as agricultural or nonagricultural; deleting a requirement that the property appraiser must reclassify as nonagricultural certain lands that have been zoned to a nonagricultural use; deleting authorization for a board of county commissioners to reclassify as nonagricultural certain lands that are contiguous to urban or metropolitan development under specified circumstances; amending s. 193.503, F.S.; deleting authorization for a value adjustment board upon its own motion to review property granted or denied classification by a property appraiser as historic property that is being used for commercial or certain nonprofit purposes; amending s. 193.625, F.S.; deleting authorization for a value adjustment board upon its own motion to review land granted or denied a high-water recharge classification by a property appraiser; amending s. 196.194, F.S.; deleting authorization for a value adjustment board to review property tax exemptions upon its own motion or motion of the property appraiser and deleting certain notice requirements relating to the review of such exemptions; providing for retroactive application;

971948

576-04170-13

providing an effective date.

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

Section 1. Subsections (2) and (4) of section 193.461, Florida Statutes, are amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of agricultural classification on or before July 1 of the year for which the application was filed. The notification shall advise the landowner of his or her right to appeal to the value adjustment board and of the filing deadline. ~~The board may also review all lands classified by the property appraiser upon its own motion.~~ The property appraiser shall have available at his or her office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(4)~~(a)~~ The property appraiser shall reclassify the following lands as nonagricultural:

(a)~~1.~~ Land diverted from an agricultural to a nonagricultural use.

(b)~~2.~~ Land no longer being utilized for agricultural purposes.

~~3. Land that has been zoned to a nonagricultural use at the~~

~~request of the owner subsequent to the enactment of this law.~~

~~(b) The board of county commissioners may also reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.~~

(c) Sale of land for a purchase price that ~~which~~ is three or more times the agricultural assessment placed on the land creates ~~shall create~~ a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.

Section 2. Subsection (7) of section 193.503, Florida Statutes, is amended to read:

193.503 Classification and assessment of historic property used for commercial or certain nonprofit purposes.—

(7) Any property owner who is denied classification under this section may appeal to the value adjustment board. The property appraiser shall notify the property owner in writing of the denial of such classification on or before July 1 of the year for which the application was filed. The notification shall advise the property owner of his or her right to appeal to the value adjustment board and of the filing deadline. ~~The board may also review all property classified by the property appraiser upon its own motion.~~ The property appraiser shall have available at his or her office a list by ownership of all applications received showing the full valuation under s. 193.011, the

valuation of the property under the provisions of this section, and whether or not the classification requested was granted.

Section 3. Subsection (2) of section 193.625, Florida Statutes, is amended to read:

193.625 High-water recharge lands; classification and assessment.—

(2) Any landowner whose land is within a county that has a high-water recharge protection tax assessment program and whose land is denied high-water recharge classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of high-water recharge classification on or before July 1 of the year for which the application was filed. The notification must advise the landowner of a right to appeal to the value adjustment board and of the filing deadline. ~~The board may also review all lands classified by the property appraiser upon its own motion.~~ The property appraiser shall have available at her or his office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

Section 4. Subsection (1) of section 196.194, Florida Statutes, is amended to read:

196.194 Value adjustment board; notice; hearings; appearance before the board.—

(1) The value adjustment board shall hear disputed or appealed applications for exemption and shall grant such exemptions in whole or in part in accordance with criteria set

971948

576-04170-13

forth in this chapter. ~~It may review exemptions on its own motion or upon motion of the property appraiser. Review of an exemption application upon motion of the board shall not be held until the applicant has had at least 5 calendar days' notice of the intent of the board to review the application.~~

Section 5. This act shall take effect upon becoming a law and apply retroactively to January 1, 2013.

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 Committee on Appropriations

BILL:	CS/SB 1200
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Simpson
SUBJECT:	Taxation of Property
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Weidenbenner	Halley	AG	**Favorable**
3.	Babin	Diez-Arguelles	AFT	**Fav/CS**
4.	Babin	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1200 eliminates the authority of a Value Adjustment Board (VAB) under its own motion, to review certain land classifications and exemptions granted by a property appraiser. The bill also eliminates three statutory requirements directing the property appraiser to reclassify lands as nonagricultural.

The Revenue Estimating Conference (REC) determined that deleting the three statutory requirements directing the property appraiser to reclassify agricultural lands as nonagricultural will reduce local property tax revenues by $0.5 million per year.

This bill substantially amends the following sections of the Florida Statutes: 193.461, 193.503, 193.625, and 196.194.

II. Present Situation:

Property Valuation in Florida

The Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes.[1] However, sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications, and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.[2]

Agricultural Property Classification

For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes."[3] "Agricultural purposes" include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.[4]

Property appraisers are required to reclassify lands as nonagricultural when:

- The land is diverted from an agricultural to a nonagricultural use;
- The land is no longer being utilized for agricultural purposes;
- The land has been zoned to a nonagricultural use at the request of the owner.[5]

The law creates a presumption that land is no longer used for a bona fide agricultural purpose when the land has been sold for three or more times the agricultural assessment on the land.[6] This presumption is rebuttable by a showing of special circumstances by the landowner demonstrating that the land will continue to be used for bona fide agricultural purposes.[7]

A county commission may reclassify lands from agricultural to nonagricultural when there is contiguous urban or metropolitan development and the county commission finds that the continued use of the lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.[8]

Value Adjustment Boards

After the property appraiser determines the assessed value of all property, the county convenes a value adjustment board (VAB) to hear petitions from affected taxpayers regarding assessments. Each VAB is composed of two members from the county governing board, one member from the

[1] Fla. Const. Art. VII, s. 4
[2] See s. 196.031, F.S.
[3] Section 193.461(3)(b), F.S.
[4] Section 193.461(5), F.S.
[5] Section 193.461(4)(a), F.S.
[6] Section 193.461(4)(c), F.S.
[7] *Id.*
[8] Section 193.461(4)(b), F.S.

school board, and two citizen members.[9] Counties with a population of more than 75,000 must appoint special magistrates to take testimony and provide recommendations to the board.[10]

The value adjustment board meets for the following purposes:

- To hear petitions relating to assessments filed pursuant to s. 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 pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.[11]

Not only can VABs review assessments, exemptions and classifications when a taxpayer petitions for review, but the VAB is also permitted, on its own motion, to review agricultural land, historic property, and high-water recharge land classifications, as well as exemptions granted by the property appraiser.

III. Effect of Proposed Changes:

Section 1 amends s. 193.461, F.S., removing the VAB's authority to review agricultural classifications on its own motion.

The bill also:

- Deletes the requirement that a property appraiser reclassify agricultural property as nonagricultural when the owner requests the property be rezoned as nonagricultural;
- Deletes the rebuttable presumption that property is no longer used for bona fide agricultural purposes when it is sold for three or more times the agricultural assessment.
- Removes the county commission's authority to reclassify agricultural land as nonagricultural when there is contiguous urban development and the board finds that the continued agricultural use of the land will deter the expansion of the community.

Section 2 amends s. 193.503, F.S., removing the VAB's authority to initiate a review of historic property classifications on its own motion.

Section 3 amends s. 193.625, F.S., removing the VAB's authority to initiate a review of high-water recharge land classifications on its own motion.

Section 4 amends s. 196.194, F.S., removing the VAB's authority to initiate a review of property tax exemptions on its own motion.

Section 5 provides that the bill takes effect upon becoming a law and applies retroactively to January 1, 2013.

[9] Section 194.015, F.S.
[10] Section 194.035, F.S. Counties with a population of less than 75,000 may appoint special magistrates, but such is not required.
[11] Section 194.032(1)(a)1.-4., F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18 of the Florida Constitution, prohibits laws requiring counties or municipalities to spend funds or that limit their ability to raise revenues. Subsection 18(d) provides an applicable exemption for laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 or $1.9 million for FY 2012-13.[12] The REC determined that this bill will reduce local property tax revenues by $0.5 million per year. Thus, this bill is exempt from the mandates requirement.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The REC determined that deleting the three statutory requirements directing a property appraiser to reclassify agricultural lands as nonagricultural will reduce local property tax revenues by $0.5 million per year.

B. Private Sector Impact:

The bill may result in more landowners retaining the agricultural classification on their property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

[12] Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.

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 Appropriations April 23, 2013:
The committee substitute:

- Deletes a presumption in current law that agricultural land sold for three or more times the agricultural assessment will no longer be used for agricultural purposes.
- Changes the effective date from January 1, 2012 to January 1, 2013.

B. Amendments:

None.

By Senator Simpson

18-00760-13 20131200__

A bill to be entitled

An act relating to the taxation of property; amending s. 193.461, F.S.; deleting authorization for a value adjustment board upon its own motion to review lands classified by a property appraiser as agricultural or nonagricultural; deleting a requirement that the property appraiser must reclassify as nonagricultural certain lands that have been zoned to a nonagricultural use; deleting authorization for a board of county commissioners to reclassify as nonagricultural certain lands that are contiguous to urban or metropolitan development under specified circumstances; deleting an evidentiary presumption that land is not being used primarily for bone fide agricultural purposes if it is purchased for a certain amount above its agricultural assessment; amending s. 193.503, F.S.; deleting authorization for a value adjustment board upon its own motion to review property granted or denied classification by a property appraiser as historic property that is being used for commercial or certain nonprofit purposes; amending s. 193.625, F.S.; deleting authorization for a value adjustment board upon its own motion to review land granted or denied a high-water recharge classification by a property appraiser; amending s. 196.194, F.S.; deleting authorization for a value adjustment board to review property tax exemptions upon its own motion or motion of the property appraiser and deleting certain notice requirements

18-00760-13 20131200__

relating to the review of such exemptions; providing for retroactive application; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 193.461, Florida Statutes, are amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of agricultural classification on or before July 1 of the year for which the application was filed. The notification shall advise the landowner of his or her right to appeal to the value adjustment board and of the filing deadline. ~~The board may also review all lands classified by the property appraiser upon its own motion.~~ The property appraiser shall have available at his or her office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(4)~~(a)~~ The property appraiser shall reclassify the following lands as nonagricultural:

(a)~~1.~~ Land diverted from an agricultural to a nonagricultural use.

(b)~~2.~~ Land no longer being utilized for agricultural

purposes.

~~3. Land that has been zoned to a nonagricultural use at the request of the owner subsequent to the enactment of this law.~~

~~(b) The board of county commissioners may also reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.~~

~~(c) Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.~~

Section 2. Subsection (7) of section 193.503, Florida Statutes, is amended to read:

193.503 Classification and assessment of historic property used for commercial or certain nonprofit purposes.—

(7) Any property owner who is denied classification under this section may appeal to the value adjustment board. The property appraiser shall notify the property owner in writing of the denial of such classification on or before July 1 of the year for which the application was filed. The notification shall advise the property owner of his or her right to appeal to the value adjustment board and of the filing deadline. ~~The board may also review all property classified by the property appraiser upon its own motion.~~ The property appraiser shall have available

at his or her office a list by ownership of all applications received showing the full valuation under s. 193.011, the valuation of the property under the provisions of this section, and whether or not the classification requested was granted.

Section 3. Subsection (2) of section 193.625, Florida Statutes, is amended to read:

193.625 High-water recharge lands; classification and assessment.—

(2) Any landowner whose land is within a county that has a high-water recharge protection tax assessment program and whose land is denied high-water recharge classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of high-water recharge classification on or before July 1 of the year for which the application was filed. The notification must advise the landowner of a right to appeal to the value adjustment board and of the filing deadline. ~~The board may also review all lands classified by the property appraiser upon its own motion.~~ The property appraiser shall have available at her or his office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

Section 4. Subsection (1) of section 196.194, Florida Statutes, is amended to read:

196.194 Value adjustment board; notice; hearings; appearance before the board.—

(1) The value adjustment board shall hear disputed or

appealed applications for exemption and shall grant such exemptions in whole or in part in accordance with criteria set forth in this chapter. ~~It may review exemptions on its own motion or upon motion of the property appraiser. Review of an exemption application upon motion of the board shall not be held until the applicant has had at least 5 calendar days' notice of the intent of the board to review the application.~~

Section 5. This act shall take effect upon becoming a law and apply retroactively to January 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Location of Property Bill Number 1200 *(if applicable)*

Name Adam Basford Amendment Barcode *(if applicable)*

Job Title Director of Legislative Affairs

Address 315 S Calhoun St 650 Phone
Street

Tallahassee FL 32301 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Farm Bureau

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-13
Meeting Date

Topic Taxation of Property

Bill Number 1200 *(if applicable)*

Name Cindy Littlejohn

Amendment Barcode 115124 *(if applicable)*

Job Title Consultant

Address 310 W. College Ave *Street*

Phone 222-7535

Tallahassee FL 32301 *City State Zip*

E-mail cindy@littlejohnmam.com

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

Representing Fl Land Council

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Property Tax

Bill Number SB 1208 *(if applicable)*

Name Doug Mann

Amendment Barcode *(if applicable)*

Job Title —

Address 310 W. College Ave.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 222-7535

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Taxation of Property

Bill Number 1200 *(if applicable)*

Name Martha W. Cleaver

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 403 E Park Ave
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 681-2770

E-mail marthacleaver@fapa.net

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Assoc. of Property Appraisers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ~~☐~~ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1246 (877596)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Bean
SUBJECT:	Public Retirement Plans
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	**Favorable**
2.	Toman	Yeatman	CA	**Favorable**
3.	Fournier	Diez-Arguelles	AFT	**Fav/CS**
4.	Fournier	Hansen	AP	**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:

PCS/SB 1246 provides that a consolidated government that has entered into an interlocal agreement to provide police protection services to another incorporated municipality is eligible to receive the premium taxes reported for the other municipality under certain circumstances. The bill authorizes the municipality receiving the police protection services to enact an ordinance levying the premium tax as provided by law and to distribute those premium tax revenues reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The Revenue Estimating Conference has estimated that this bill has an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

This bill substantially amends sections 185.03 and 185.08, Florida Statutes.

II. Present Situation:

Municipal Police Pensions

Chapter 185, F.S., provides funding for municipal police officers' pension plans. It provides for a "uniform retirement system" with defined benefit retirement plans for municipal police officers and sets standards for the operation and funding of these pension systems.[1] Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of .85 percent of the gross amount of receipts of premiums from policyholders on casualty insurance policies covering property within its corporate limits.[2] Revenues from this excise tax are one of the funding sources for police officers' pension plans. Currently, a municipality is eligible to receive state premium taxes (or excise taxes) only on those premiums for casualty insurance policies covering property within its municipal limits. A municipality that provides police protection services outside of its municipal limits through an interlocal agreement is not eligible to receive premium tax revenue for casualty policies covering the property where the service is being provided.[3]

In order to qualify for the premium taxes, a police officers' pension plan must meet certain requirements in ch. 185, F.S.[4] The Department of Management Services (DMS) oversees and monitors these pension plans; however, day-to-day operational control rests with local boards of trustees.[5] Any premium taxes collected by and distributed to a municipality for funding police officers' pension plans have a negative impact on the General Revenue Fund because those premium taxes paid by an insurance company under ch. 185, F.S., to a municipality are allowed as a credit against premium taxes the insurance company must pay to the state under s. 624.509, F.S.

Chapter 185, F.S., applies only to municipalities organized and established pursuant to the laws of the state, and does not apply to the unincorporated areas of any county or counties or to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

Firefighter Pensions

Under current law, a municipality may receive another municipality's premium tax revenues (associated with the tax on property insurance premiums) when there is an interlocal agreement in place to provide fire protection services.[6] The municipality receiving fire services must levy the tax authorized by ch. 175, F.S., and copies of the interlocal agreement and the municipal ordinance levying the tax must be provided to the Division of Retirement within DMS.

[1] Section 185.01, F.S.
[2] Section 185.08, F.S.
[3] *Id.*
[4] *See* ss. 185.10, 185.085, F.S.
[5] Section 185.05, F.S.
[6] Section 175.041, F.S.

Consolidation

Consolidation combines city and county governments so that the boundaries of the county and an affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent governmental units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial. Nationally, few successful city-county consolidations exist. According to the National Association of Counties, only 31 of the 3,066 county governments in the United States are combined city/county governments.

Section 3, Article VIII, of the Florida Constitution, reads as follows:

> Consolidation. —The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

Prior to 1933, the Florida Constitution of 1885 was silent on the subject of consolidation. The 1933 Legislature passed a constitutional amendment specifically declaring its own power to establish a municipal corporation consolidating the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the affected voters. The electorate of Florida adopted this amendment in 1934.

The voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967, and to date, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. Section 9, of Article VIII, of the Constitution of 1885, establishes the Jacksonville/Duval County consolidated charter. Section 6(e), Art. VIII of the State Constitution provides that Section 9, of Article VIII, of the Constitution of 1885 remained in full force and effect after the adoption of the 1968 revision. The municipalities of Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach are not consolidated with Duval County.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 185.03 and 185.08, F.S., respectively, to allow a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, to receive the distribution of premium tax revenues related to casualty insurance premiums covering property within a non-consolidated municipality with the county's boundaries. The consolidated government must notify the Division of Retirement of the Department of Management Services (division) when it has entered into an interlocal agreement to provide police services to a municipality within its

boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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 estimated that this bill has an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

B. Private Sector Impact:

None. Although the bill authorizes a municipality to enact a tax on insurance premiums, the municipal taxes are fully credited against the state taxes on insurance premiums.

C. Government Sector Impact:

The Department of Revenue (DOR) will be notified by the Division of Retirement (within the Department of Management Services) of any additional taxing jurisdiction as a result of the language of this bill. DOR will need to add those jurisdictions to the insurance premium tax form in the annual form process. The form will be adopted in a rule in the annual form adoption process. Additionally, this bill will require changes to the Insurance Premium Database to determine situs of premiums for allocation purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2005, the Legislature made similar changes to ch. 175, F.S., relating to the Firefighters' Pension Trust Fund. Sections 175.041 and 175.101, F.S., allow a municipality to receive excise tax monies for firefighter pension plans from another municipality if there is an interlocal agreement in place to provide fire protection services.

VIII. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 17, 2013
The committee substitute amends the bill so that the language in s. 185.08, F.S., parallels a similar provision in s. 175.101, F.S.

B. Amendments:

None.

877596

576-04554-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to public retirement plans; amending ss. 185.03 and 185.08, F.S.; specifying applicability of ch. 185, F.S., to certain consolidated governments; providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law; providing an effective date.

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

Section 1. Subsection (2) of section 185.03, Florida Statutes, is amended to read:

185.03 Municipal police officers' retirement trust funds; creation; applicability of provisions; participation by public safety officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(2)(a) ~~The provisions of~~ This chapter applies ~~shall apply~~ only to municipalities organized and established pursuant to the laws of the state~~,~~ and does ~~said provisions shall~~ not apply to the unincorporated areas of a ~~any~~ county or ~~counties nor shall the provisions hereof apply~~ to any governmental entity whose

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576-04554-13

police officers are eligible to participate in the Florida Retirement System.

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 2. Subsection (1) of section 185.08, Florida Statutes, is amended to read:

185.08 State excise tax on casualty insurance premiums authorized; procedure.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1)(a) Each incorporated municipality in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, had a lawfully established municipal police officers' retirement trust fund or city fund, by whatever name known, providing pension or relief benefits to police officers as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on, the business of

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576-04554-13

casualty insurance as shown by records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the ~~said~~ municipalities, respectively, amounting to .85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(b) This section also applies to a municipality that consists of a single consolidated government, composed of a former county and one or more municipalities, which was consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, as provided in s. 185.03(2)(b), and to casualty insurance policies covering properties within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, if the properties are being provided police protection services by the consolidated government.

Section 3. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/SB 1246
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Bean
SUBJECT:	Public Retirement Plans
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	**Favorable**
2.	Toman	Yeatman	CA	**Favorable**
3.	Fournier	Diez-Arguelles	AFT	**Fav/CS**
4.	Fournier	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1246 provides that a consolidated government that has entered into an interlocal agreement to provide police protection services to another incorporated municipality is eligible to receive the premium taxes reported for the other municipality under certain circumstances. The bill authorizes the municipality receiving the police protection services to enact an ordinance levying the premium tax as provided by law and to distribute those premium tax revenues reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The Revenue Estimating Conference has estimated that this bill has an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

This bill substantially amends sections 185.03 and 185.08, Florida Statutes.

II. Present Situation:

Municipal Police Pensions

Chapter 185, F.S., provides funding for municipal police officers' pension plans. It provides for a "uniform retirement system" with defined benefit retirement plans for municipal police officers and sets standards for the operation and funding of these pension systems.[1] Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of .85 percent of the gross amount of receipts of premiums from policyholders on casualty insurance policies covering property within its corporate limits.[2] Revenues from this excise tax are one of the funding sources for police officers' pension plans. Currently, a municipality is eligible to receive state premium taxes (or excise taxes) only on those premiums for casualty insurance policies covering property within its municipal limits. A municipality that provides police protection services outside of its municipal limits through an interlocal agreement is not eligible to receive premium tax revenue for casualty policies covering the property where the service is being provided.[3]

In order to qualify for the premium taxes, a police officers' pension plan must meet certain requirements in ch. 185, F.S.[4] The Department of Management Services (DMS) oversees and monitors these pension plans; however, day-to-day operational control rests with local boards of trustees.[5] Any premium taxes collected by and distributed to a municipality for funding police officers' pension plans have a negative impact on the General Revenue Fund because those premium taxes paid by an insurance company under ch. 185, F.S., to a municipality are allowed as a credit against premium taxes the insurance company must pay to the state under s. 624.509, F.S.

Chapter 185, F.S., applies only to municipalities organized and established pursuant to the laws of the state, and does not apply to the unincorporated areas of any county or counties or to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

Firefighter Pensions

Under current law, a municipality may receive another municipality's premium tax revenues (associated with the tax on property insurance premiums) when there is an interlocal agreement in place to provide fire protection services.[6] The municipality receiving fire services must levy the tax authorized by ch. 175, F.S., and copies of the interlocal agreement and the municipal ordinance levying the tax must be provided to the Division of Retirement within DMS.

[1] Section 185.01, F.S.
[2] Section 185.08, F.S.
[3] *Id.*
[4] *See* ss. 185.10, 185.085, F.S.
[5] Section 185.05, F.S.
[6] Section 175.041, F.S.

Consolidation

Consolidation combines city and county governments so that the boundaries of the county and an affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent governmental units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial. Nationally, few successful city-county consolidations exist. According to the National Association of Counties, only 31 of the 3,066 county governments in the United States are combined city/county governments.

Section 3, Article VIII, of the Florida Constitution, reads as follows:

> Consolidation. —The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

Prior to 1933, the Florida Constitution of 1885 was silent on the subject of consolidation. The 1933 Legislature passed a constitutional amendment specifically declaring its own power to establish a municipal corporation consolidating the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the affected voters. The electorate of Florida adopted this amendment in 1934.

The voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967, and to date, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. Section 9, of Article VIII, of the Constitution of 1885, establishes the Jacksonville/Duval County consolidated charter. Section 6(e), Art. VIII of the State Constitution provides that Section 9, of Article VIII, of the Constitution of 1885 remained in full force and effect after the adoption of the 1968 revision. The municipalities of Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach are not consolidated with Duval County.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 185.03 and 185.08, F.S., respectively, to allow a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, to receive the distribution of premium tax revenues related to casualty insurance premiums covering property within a non-consolidated municipality with the county's boundaries. The consolidated government must notify the Division of Retirement of the Department of Management Services (division) when it has entered into an interlocal agreement to provide police services to a municipality within its

boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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 estimated that this bill has an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

B. Private Sector Impact:

None. Although the bill authorizes a municipality to enact a tax on insurance premiums, the municipal taxes are fully credited against the state taxes on insurance premiums.

C. Government Sector Impact:

The Department of Revenue (DOR) will be notified by the Division of Retirement (within the Department of Management Services) of any additional taxing jurisdiction as a result of the language of this bill. DOR will need to add those jurisdictions to the insurance premium tax form in the annual form process. The form will be adopted in a rule in the annual form adoption process. Additionally, this bill will require changes to the Insurance Premium Database to determine situs of premiums for allocation purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2005, the Legislature made similar changes to ch. 175, F.S., relating to the Firefighters' Pension Trust Fund. Sections 175.041 and 175.101, F.S., allow a municipality to receive excise tax monies for firefighter pension plans from another municipality if there is an interlocal agreement in place to provide fire protection services.

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 Appropriations on April 23, 2013
The committee substitute amends the bill so that the language in s. 185.08, F.S., parallels a similar provision in s. 175.101, F.S.

B. Amendments:

None.

By Senator Bean

4-00935-13 20131246__

A bill to be entitled

An act relating to public retirement plans; amending ss. 185.03 and 185.08, F.S.; specifying applicability of ch. 185, F.S., to certain consolidated governments; providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law; providing an effective date.

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

Section 1. Subsection (2) of section 185.03, Florida Statutes, is amended to read:

185.03 Municipal police officers' retirement trust funds; creation; applicability of provisions; participation by public safety officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(2)(a) ~~The provisions of~~ This chapter applies ~~shall apply~~ only to municipalities organized and established pursuant to the laws of the state~~,~~ and does ~~said provisions shall~~ not apply to the unincorporated areas of a ~~any~~ county or ~~counties nor shall the provisions hereof apply~~ to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

4-00935-13 20131246__

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 2. Subsection (1) of section 185.08, Florida Statutes, is amended to read:

185.08 State excise tax on casualty insurance premiums authorized; procedure.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1)(a) Each incorporated municipality in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, had a lawfully established municipal police officers' retirement trust fund or city fund, by whatever name known, providing pension or relief benefits to police officers as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on, the business of casualty insurance as shown by records of the Office of Insurance Regulation of the Financial Services Commission, an

excise tax in addition to any lawful license or excise tax now levied by each of the ~~said~~ municipalities, respectively, amounting to .85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in this section. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Retirement Bill Number 1246 *(if applicable)*

Name Paige Carter-Smith Amendment Barcode *(if applicable)*

Job Title Governmental Consultant

Address 502 North Adams Phone 222 6052
Street

Tall FL 32301 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Jacksonville Police Fire Pension

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 18, 2013

I respectfully request that **Senate Bill # 1246**, relating to Public Retirement Plans, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

SENATE APPROPRIATIONS
RECEIVED
13 APR 18 AM 9:24
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STAFF DIR.
STAFF

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	PCS/SB 1280 (458308)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Sachs
SUBJECT:	Tax Dealer Collection Allowances
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Favorable**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Hansen	AP	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

PCS/SB 1280 revises the process through which sales tax dealers forgo the sales tax collection allowance and direct the collection allowance amount to be transferred into the Educational Enhancement Trust Fund. The proposed change would keep the election for the remainder of the calendar year unless the dealer indicates termination of the election by filing a return that deducts the collection allowance from the amount of tax due.

This bill has no impact on state or local revenues.

This bill provides an effective date of January 1, 2014.

This bill amends section 212.12, Florida Statutes.

II. Present Situation:

Sales and Use Taxes

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Florida imposes a six percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.[1]

[1] *See* ss. 212.05 and 212.06, F.S.

Section 212.12(1)(d), F.S., allows sales tax dealers who are entitled to a collection allowance to direct the amount of the allowance be deposited into the Educational Enhancement Trust Fund (EETF) when filing a sales tax return with the Florida Department of Revenue. The return must be timely filed for the dealer to make the election.[2] If the return is filed late, or the election is not made on the return when filed, the dealer is prohibited from making the election for that reporting period.[3] The dealer must make an election for each return filed.

The Educational Enhancement Trust Fund (EETF)

The EETF was established to administer the proceeds from lottery sales and the slot machine tax revenues.[4] The first lottery revenues transferred to the EETF in each fiscal year are secured for debt service payable on the bonds issued by the state for the construction, maintenance, or repair of schools under the Classrooms First Program (the 1997 School Capital Outlay Bond Program) and the Classrooms for Kids Program (the 2003 Class Size Reduction Lottery Revenue Program).[5]

The revenue remaining in the EETF after providing for debt service obligations is appropriated to benefit public education, at the discretion of the Legislature.[6] The largest appropriation from the Educational Enhancement Trust Fund[7] is for the Bright Futures Scholarship Program, which is a merit-based scholarship program designed to provide college scholarships to students who achieve certain academic levels in high school.[8]

The next largest appropriations are the Florida School Recognition Program, which rewards individual public K-12 schools that sustain high performance or demonstrate exemplary improvement[9] and the class size reduction appropriation, which provides operating funds to school districts for the purpose of reducing class sizes.[10]

Public educational programs and purposes funded by the EETF may include, but are not limited to: endowments, scholarships, matching funds, direct grants, research and economic development related to education, salary enhancement, contracts with independent institutions to conduct programs consistent with the state master plan for postsecondary education, and other educational programs or purposes deemed desirable by the Legislature.[11]

[2] s. 212.12(1)(a)2.b., F.S.
[3] s. 212.12(1)(d)1, F.S.
[4] *See* ss. 24.121(2) and 551.106(2)(b), F.S.
[5] *See* ss. 24.121(2), 1013.68, 1013.70, 1013.735, and 1013.737, F.S.
[6] s. 24.121(2), F.S.
[7] *2012-13 Education Appropriations*, Florida Department of Education, October 2012, www.fldoe.org/fefp/pdf/lotbook.pdf (last visited March 21, 2013)
[8] *See* ss. 1009.53-1009.538, F.S.
[9] s. 1008.36, F.S.
[10] *See* ss. 1003.03 and 1011.685, F.S.
[11] s. 24.121(5)(a), F.S.

III. Effect of Proposed Changes:

The bill provides that the sales tax dealer's election to direct the amount of the allowance deposited into the EETF will remain the dealer's election for subsequent periods of the calendar year unless the dealer indicates termination of the election by filing a return that deducts the collection allowance from the amount of tax due. This would allow the sales tax dealer to make one election in a calendar year instead of having to make the election on each return.

The bill is effective January 1, 2014 and applies to sales and use tax returns due on or after February 1, 2014.

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:

In order to implement the statutory change in PCS/SB 1280, the Department of Revenue (DOR) may need to change the programming for the electronic sales and use tax return and the instructions regarding how to make the election.

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.)

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 11, 2013:
The committee substitute changes the effective date to January 1, 2014.

B. Amendments:

None.

458308

576-04172-13

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance Tax)

A bill to be entitled

An act relating to tax dealer collection allowances; amending s. 212.12, F.S.; revising the process for dealers to elect to forgo the sales tax collection allowance and direct that the collection allowance amount be transferred into the Educational Enhancement Trust Fund; providing applicability; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(1)

(d)1. A dealer entitled to the collection allowance provided in this section may elect to forgo ~~forego~~ the collection allowance and direct that the amount be transferred into the Educational Enhancement Trust Fund. Such an election must be made with the timely filing of a return, remains in effect for returns filed for subsequent reporting periods of the calendar year unless the dealer indicates termination of the election by filing a return that deducts the collection allowance from the amount of tax due, and may not be rescinded

458308

576-04172-13

for a reporting period once the return for that reporting period is filed ~~made~~. If a dealer who makes such an election files a delinquent return, underpays the tax, or files an incomplete return, the amount transferred into the Educational Enhancement Trust Fund shall be the amount of the collection allowance remaining after resolution of liability for all of the tax, interest, and penalty due on that return or underpayment of tax. The Department of Education shall distribute the remaining amount from the trust fund to the school districts that have adopted resolutions stating that those funds will be used to ensure that up-to-date technology is purchased for the classrooms in the district and that teachers are trained in the use of that technology. Revenues collected in districts that do not adopt such a resolution shall be equally distributed to districts that have adopted such resolutions.

2. This paragraph applies to all taxes, surtaxes, and any local option taxes administered under this chapter and remitted directly to the department. This paragraph does not apply to a locally imposed and self-administered convention development tax, tourist development tax, or tourist impact tax administered under this chapter.

3. Revenues from the dealer-collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund. The Department of Revenue shall provide to the Department of Education quarterly information about such revenues by county to which the collection allowance was attributed.

Notwithstanding any provision of chapter 120 to the contrary,

458308

576-04172-13

the Department of Revenue may adopt rules to carry out the amendment made by chapter 2006-52, Laws of Florida, to this section.

Section 2. The amendments to s. 212.12, Florida Statutes, made by this act apply to sales and use tax returns due on or after February 1, 2014.

Section 3. This act shall take effect January 1, 2014.

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 Committee on Appropriations

BILL:	CS/SB 1280
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Sachs
SUBJECT:	Tax Dealer Collection Allowances
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Favorable**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

I. Summary:

CS/SB 1280 revises the process through which sales tax dealers forgo the sales tax collection allowance and direct the collection allowance amount to be transferred into the Educational Enhancement Trust Fund. The proposed change would keep the election for the remainder of the calendar year unless the dealer indicates termination of the election by filing a return that deducts the collection allowance from the amount of tax due.

This bill has no impact on state or local revenues.

This bill provides an effective date of January 1, 2014.

This bill amends section 212.12, Florida Statutes.

II. Present Situation:

Sales and Use Taxes

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Florida imposes a six percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.[1]

[1] *See* ss. 212.05 and 212.06, F.S.

Section 212.12(1)(d), F.S., allows sales tax dealers who are entitled to a collection allowance to direct the amount of the allowance be deposited into the Educational Enhancement Trust Fund (EETF) when filing a sales tax return with the Florida Department of Revenue. The return must be timely filed for the dealer to make the election.[2] If the return is filed late, or the election is not made on the return when filed, the dealer is prohibited from making the election for that reporting period.[3] The dealer must make an election for each return filed.

The Educational Enhancement Trust Fund (EETF)

The EETF was established to administer the proceeds from lottery sales and the slot machine tax revenues.[4] The first lottery revenues transferred to the EETF in each fiscal year are secured for debt service payable on the bonds issued by the state for the construction, maintenance, or repair of schools under the Classrooms First Program (the 1997 School Capital Outlay Bond Program) and the Classrooms for Kids Program (the 2003 Class Size Reduction Lottery Revenue Program).[5]

The revenue remaining in the EETF after providing for debt service obligations is appropriated to benefit public education, at the discretion of the Legislature.[6] The largest appropriation from the Educational Enhancement Trust Fund[7] is for the Bright Futures Scholarship Program, which is a merit-based scholarship program designed to provide college scholarships to students who achieve certain academic levels in high school.[8]

The next largest appropriations are the Florida School Recognition Program, which rewards individual public K-12 schools that sustain high performance or demonstrate exemplary improvement[9] and the class size reduction appropriation, which provides operating funds to school districts for the purpose of reducing class sizes.[10]

Public educational programs and purposes funded by the EETF may include, but are not limited to: endowments, scholarships, matching funds, direct grants, research and economic development related to education, salary enhancement, contracts with independent institutions to conduct programs consistent with the state master plan for postsecondary education, and other educational programs or purposes deemed desirable by the Legislature.[11]

[2] s. 212.12(1)(a)2.b., F.S.
[3] s. 212.12(1)(d)1, F.S.
[4] *See* ss. 24.121(2) and 551.106(2)(b), F.S.
[5] *See* ss. 24.121(2), 1013.68, 1013.70, 1013.735, and 1013.737, F.S.
[6] s. 24.121(2), F.S.
[7] *2012-13 Education Appropriations*, Florida Department of Education, October 2012, www.fldoe.org/fefp/pdf/lotbook.pdf (last visited March 21, 2013)
[8] *See* ss. 1009.53-1009.538, F.S.
[9] s. 1008.36, F.S.
[10] *See* ss. 1003.03 and 1011.685, F.S.
[11] s. 24.121(5)(a), F.S.

III. Effect of Proposed Changes:

The bill provides that the sales tax dealer's election to direct the amount of the allowance deposited into the EETF will remain the dealer's election for subsequent periods of the calendar year unless the dealer indicates termination of the election by filing a return that deducts the collection allowance from the amount of tax due. This would allow the sales tax dealer to make one election in a calendar year instead of having to make the election on each return.

The bill is effective January 1, 2014 and applies to sales and use tax returns due on or after February 1, 2014.

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:

In order to implement the statutory change in CS/SB 1280, the Department of Revenue (DOR) may need to change the programming for the electronic sales and use tax return and the instructions regarding how to make the election.

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 Appropriations on April 23, 2013:
The committee substitute changes the effective date to January 1, 2014.

B. Amendments:

None.

By Senator Sachs

34-00916-13 20131280__

A bill to be entitled

An act relating to tax dealer collection allowances; amending s. 212.12, F.S.; revising the process for dealers to elect to forgo the sales tax collection allowance and direct that the collection allowance amount be transferred into the Educational Enhancement Trust Fund; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(1)

(d)1. A dealer entitled to the collection allowance provided in this section may elect to forgo ~~forego~~ the collection allowance and direct that the amount be transferred into the Educational Enhancement Trust Fund. Such an election must be made with the timely filing of a return, remains in effect for returns filed for subsequent reporting periods of the calendar year unless the dealer indicates termination of the election by filing a return that deducts the collection allowance from the amount of tax due, and may not be rescinded for a reporting period once the return for that reporting period is filed ~~made~~. If a dealer who makes such an election files a delinquent return, underpays the tax, or files an incomplete

34-00916-13 20131280__

return, the amount transferred into the Educational Enhancement Trust Fund shall be the amount of the collection allowance remaining after resolution of liability for all of the tax, interest, and penalty due on that return or underpayment of tax. The Department of Education shall distribute the remaining amount from the trust fund to the school districts that have adopted resolutions stating that those funds will be used to ensure that up-to-date technology is purchased for the classrooms in the district and that teachers are trained in the use of that technology. Revenues collected in districts that do not adopt such a resolution shall be equally distributed to districts that have adopted such resolutions.

2. This paragraph applies to all taxes, surtaxes, and any local option taxes administered under this chapter and remitted directly to the department. This paragraph does not apply to a locally imposed and self-administered convention development tax, tourist development tax, or tourist impact tax administered under this chapter.

3. Revenues from the dealer-collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund. The Department of Revenue shall provide to the Department of Education quarterly information about such revenues by county to which the collection allowance was attributed.

Notwithstanding any provision of chapter 120 to the contrary, the Department of Revenue may adopt rules to carry out the amendment made by chapter 2006-52, Laws of Florida, to this section.

Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Senator Maria Lorts Sachs
Minority Leader Pro Tempore
District 34

Committees:

Gaming
Vice Chair

Agriculture

Education

Appropriations
Subcommittee on
Education

Appropriations
Subcommittee on Finance
and Tax

Military Affairs, Space,
and Domestic Security

Regulated Industries

STAFF:

Matthew Damsky
Legislative Assistant

Joshua Freeman
Legislative Assistant

Caitlin Lewis
Legislative Assistant

April 9, 2013

The Office of Senator Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Negron:

I am writing to request that Senate Bill 1280 (Tax Dealer Collection Allowances) be heard during the Appropriations Committee Meeting on Thursday April 18th. If you have any questions feel free to contact me or my staff. Thank you for your consideration.

Very truly yours,

Sen. Maria Sachs,
District 34

Cc: Mike Hansen
Cindy Kynoch
Alicia Weiss
Holly Demers
Carrie Lira
Audra Robitaille

SENATE APPROPRIATIONS
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STAFF DIR. _____ STAFF _____

17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427
Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: *www.flsenate.gov*

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1350
INTRODUCER:	Criminal Justice Committee and Senator Bradley
SUBJECT:	Criminal Penalties
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Cantral	Sadberry	ACJ	**Favorable**
3.	Cantral	Hansen	AP	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1350 conforms Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment as set forth in recent opinions of the United States Supreme Court. It provides that a juvenile offender who is convicted of murder may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers specified factors relating to the offender's age and attendant circumstances. The bill also limits the maximum sentence for a juvenile offender who does not commit homicide to a term of not more than 50 years.

The bill has an insignificant fiscal impact. The Criminal Justice Impact Conference met on March 21, 2013, and determined the bill has insignificant impact on prison beds.

This bill has an effective date of July 1, 2013.

This bill substantially amends section 775.082, Florida Statutes.

II. Present Situation:

In recent years, the U.S. Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.[1] The first of these was *Roper v. Simmons*, 543 U. S. 551 (2005), in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

Graham v. Florida

In *Graham*, the Court held that a juvenile offender cannot be sentenced to life in prison without the possibility of parole for any offense other than a homicide. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."[2] Because Florida has abolished parole[3] and the Court deems the possibility of executive clemency to be remote,[4] currently a juvenile offender in Florida cannot be given a life sentence for a non-homicide offense.

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.[5] Therefore, any juvenile offender serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the circuits in reviewing sentences for a lengthy term of years. The First Circuit Court of Appeals recognizes that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender's life expectancy.[6] On the other hand, the Fourth and

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[1] The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

[2] *See Graham* at 2034

[3] Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

[4] *Graham* at 2027

[5] *See, e.g.,*

[6] *Adams v. State*, --- So.3d ---, 37 Fla.L.Weekly D1865 (Fla. 1st DCA 2012). The First District Court of Appeals has struck down sentences of 60 years (*Adams)* and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011)).

Fifth Circuit Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.[7]

Miller v. Alabama

In *Miller*, the Court held that juvenile offenders who commit homicide cannot be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized consideration of factors related to the offender's age must be considered before a life without parole sentence can be imposed. The Court also indicated that it expects that few juvenile offenders will be found to merit life without parole sentences.

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the Court's holdings in *Roper* (invalidating the death penalty for juvenile offenders) and *Miller*, there is currently no statutory punishment for a juvenile who commits capital murder.

The majority opinion in *Miller* noted that mandatory life-without-parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[8] Although the Court did not require consideration of specific factors, it highlighted the following considerations:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, *e.g.*, *Graham*, 560 U.S., at ––––, 130 S.Ct., at 2032 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings"); *J.D.B. v. North Carolina*, 564 U.S. ––––, ––––, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment

[7] *See Guzman v. State*, --- So.3d ----, 2013 WL 949889 (Fla. 4th Dist. 2013)*; Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning - *see Young v. State*, --- So.3d --, 2013 WL 614247(Fla. 2d DCA 2013). The reported longest sentence under the 85% law that was allowed to stand was 100 years for burglary of a dwelling while armed (*Johnson v. State*, --- So.3d ----, 2013 WL 1007663 (Fla. 5th Dist. 2013).

[8] *Miller* at 2467.

> disregards the possibility of rehabilitation even when the circumstances most suggest it.[9]

The First and Third District Courts of Appeal view *Miller* as a procedural change in the law and have held that it does not apply retroactively to sentences that were final before the opinion was issued.[10] The retroactivity issue has not been addressed by the other District Courts of Appeal, the Florida Supreme Court, or the United States Supreme Court.

Graham and Miller Inmates

The Department of Corrections reports that it currently has custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);[11] and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.[12]

Life Expectancy

The Center for Disease Control's United States Life Tables for 2008 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:[13]

Remaining Life Expectancy: 17-18 Year Old Persons in the United States	
Hispanic Females	67.0 years
White Females	64.5 years
Hispanic Males	62.1 years
Black Females	61.3 years
White Males	59.8 years
Black Males	54.9 years

Parole

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they

[9] *Miller* at 2468.
[10] *See Gonzalez v. State*, 101 So.3d 886 (Fla. 1st DCA 2012); *Geter v. State*, --- So.3d ----, 2012 WL 4448860 (Fla. 3d DCA 2012).
[11] This includes inmates who were sentenced for attempted murder. In Manuel v. State, 48 So.3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.
[12] The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections staff to Senate Criminal Justice Committee staff, which is on file with the Senate Criminal Justice Committee.
[13] The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2008*, National Vital Statistics Reports, Volume 61, Number 3 (September 24, 2012), available at www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf (last visited on March 28, 2013).

committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.[14]

III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in the *Graham* and *Miller* decisions. It does so by making changes at the sentencing phase, rather than by creating parole or another post-sentencing release process.

Graham Defendants

The bill provides that a juvenile offender who commits a non-homicide offense that is punishable by life imprisonment[15] may be punished by a term of imprisonment not exceeding 50 years. This provision applies to offenses committed on or after July 1, 2013. Non-homicide juvenile offenders who commit such an offense prior to July 1, 2013, or who have already been sentenced to life imprisonment for such an offense, can be sentenced or resentenced to any punishment authorized by law at the time the crime was committed other than life imprisonment.[16]

Miller defendants and other juvenile offenders who commit homicides

The bill provides that a juvenile offender who is convicted of a capital offense must be sentenced to either life imprisonment or to imprisonment for a term of not less than 50 years. The sentencing court is required to consider the following factors in determining the appropriate sentence:

- The nature and circumstances of the offense committed by the defendant.
- The effect of the crime on the victim's family and on the community.
- The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- The defendant's background, including his or her family, home, and community environment.
- The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- The extent of the defendant's participation in the offense.
- The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- The nature and extent of the defendant's prior criminal history.
- The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- The possibility of rehabilitating the defendant.

[14] "Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than $3 Billion," Florida Tax Watch, March 2010, p.47.
[15] This includes life felonies and first-degree felonies punishable by a term of years not exceeding life imprisonment.
[16] As previously discussed, Florida intermediate appellate courts have split on the question of whether *Graham* requires resentencing for a juvenile offender who has been sentenced to a lengthy term of years if the court determines that it is functionally equivalent to a life sentence.

This list includes all of the factors from the portion of the *Miller* opinion that was quoted previously in this analysis.

Consideration of these factors is mandatory in the sentencing of a juvenile offender who has been convicted of a capital offense, or of a life felony or first-degree felony punishable by a term of years not exceeding life imprisonment for committing murder under s. 782.04, F.S.[17]

Under current law, Florida Statutes provide that any offender who is convicted of a life felony under s. 782.04, F.S., can be punished by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. The bill does not change these punishments except to provide that a juvenile offender cannot be sentenced to life imprisonment or to a term of years equal to life imprisonment unless the sentencing court has considered the required factors and concluded that such punishment is appropriate.[18]

Florida Statutes currently provide that any offender who is convicted of murder under s. 782.04, F.S., that is a first-degree felony punishable by a term of years not exceeding life imprisonment can be sentenced to a term of years not exceeding life imprisonment or to a lesser term of years. The bill allows a sentence to a term of years equal to life imprisonment only if the sentencing court has considered the required factors and concluded that such punishment is appropriate.

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:

The bill does not specify whether its provisions concerning sentencing for murder under s. 782.04, F.S., are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999).

[17] Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

[18] The bill creates the phrase "term of years equal to life imprisonment," leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

Article X, section 9 of the Florida Constitution (the "Savings Clause") provides: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007). The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature.

It is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. Sand*, 330 So.2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change). Because current case law indicates that *Miller* does not apply retroactively, the Savings Clause prevents applying the bill's provisions retroactively.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact conference determined that CS/SB 1350 will have no impact on the need for prison beds. The bill would potentially have an impact on the court system to the extent that sentencing hearings for the offenders affected by the bill may require more time and resources than current sentencing hearings.

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 April 8, 2013:

- Removes language indicating that the bill's provisions concerning penalties for murder are retroactive to the extent required by *Miller*.

- Clarifies that the bill applies to offenses that are reclassified to the relevant offense levels by application of an enhancement statute.

B. Amendments:

None.

176724

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment

Delete lines 55 - 57
and insert:

If the judge concludes that life imprisonment is not an appropriate sentence, the defendant shall be punished by imprisonment for a term of not less than 30 years.

813126

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment (with title amendment)

Between lines 57 and 58
insert:

(c)1. A person who is sentenced under paragraph (b) shall have his or her sentence reviewed after 25 years of incarceration. The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose. The Department of Corrections shall notify each juvenile offender who is committed to the department of her or his eligibility to participate in a resentencing hearing within 18

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months after 24 years of incarceration. The juvenile offender may apply to the court of original jurisdiction requesting that a resentencing hearing be held.

2. A juvenile offender is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile cannot afford an attorney.

3. The court shall hold a resentencing hearing to determine whether the juvenile offender's sentence should be modified. The resentencing court shall consider all of the following factors:

a. Whether the juvenile offender demonstrates maturity and rehabilitation.

b. Whether the juvenile offender remains at the same level of risk to society as he or she was at the time of the initial sentencing.

c. The opinion of the victim's next of kin. The absence of the victim's next of kin from the resentencing hearing is not a factor in the court's determination under this section.

d. Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

e. Whether the juvenile has shown sincere and sustained remorse for the criminal offense.

f. Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

g. Whether the juvenile offender has successfully obtained a general educational development [GED] certificate or completed any other educational, technical, work, vocational, or self-

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rehabilitation program.

h. Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

i. The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as they apply to rehabilitation.

4. If the court determines at the resentencing hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society based on these factors, a term of probation of at least 5 years, shall be imposed. If the court determines that the juvenile offender has not demonstrated rehabilitation and is not fit to reenter society based on these factors, the court shall issue an order in writing stating why the sentence is not being modified.

5. A juvenile offender who is not resentenced under this paragraph at the initial resentencing is eligible for up to three more sentencing reviews. A minimum of 5 years must pass before the individual is eligible for the sentencing review. A juvenile sentenced to a term of years less than life may not petition the court for a review of her or his sentence if she or he is in the last 7 years of her or his sentence.

(d) This subsection shall apply retroactively.

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

And the title is amended as follows:

Delete line 7

and insert:

imprisonment is an appropriate sentence; providing that certain persons for whom a life sentence is

appropriate may have the sentence reviewed after 24 years of incarceration; specifying that the juvenile offender is entitled to be represented by counsel; requiring the court to consider certain specified factors before resentencing the juvenile offender; requiring at least 5 years of probation if released into the community; providing that an offender is eligible for up to three sentencing reviews; requiring that a minimum of 5 years must pass before the offender is eligible for the sentencing review; providing for retroactive application; providing an

By the Committee on Criminal Justice; and Senator Bradley

591-03860-13 20131350c1

A bill to be entitled

An act relating to criminal penalties; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring that a judge consider certain factors before determining if life imprisonment is an appropriate sentence; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) A person who is convicted of a capital felony, or an offense that was reclassified as a capital felony, that was committed before the person was 18 years of age shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether

591-03860-13 20131350c1

life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

4. The defendant's background, including his or her family, home, and community environment.

5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

6. The extent of the defendant's participation in the offense.

7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.

8. The nature and extent of the defendant's prior criminal history.

9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

10. The possibility of rehabilitating the defendant.

If the judge concludes that life imprisonment is not an appropriate sentence, the defendant shall be punished by imprisonment for a term of not less than 50 years.

(3) A person who has been convicted of any other designated

felony may be punished as follows:

(a)1. For a life felony committed before ~~prior to~~ October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person convicted under s. 782.04 for an offense that was reclassified as a life felony that was committed before the person was 18 years of age is eligible to be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant

circumstances, including, but not limited to, the factors listed in paragraph (1)(b) and concludes that imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

6. For offenses committed on or after July 1, 2013, a person convicted of a life felony or of an offense that was reclassified as a life felony, other than an offense listed in s. 782.04, that was committed before the person was 18 years of age shall be punished by a term of imprisonment not to exceed 50 years.

(b) Except as provided in subparagraphs 1. and 2., for a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

1. A person convicted under s. 782.04 of a first-degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first-degree felony punishable by a term of years not exceeding life imprisonment, that was committed before the person was 18 years of age is eligible for a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors listed in paragraph (1)(b) and concludes that a term of years equal to life imprisonment is an appropriate sentence.

2. For offenses committed on or after July 1, 2013, a person convicted for a first-degree felony punishable by a term

of years not exceeding life imprisonment or of an offense that was reclassified as a first-degree felony punishable by a term of years not exceeding life imprisonment, other than an offense listed in s. 782.04, that was committed before the person was 18 years of age shall be punished by a term of imprisonment not to exceed 50 years.

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic CRIMINAL PENALTIES Bill Number 1350

Name CARLOS J. MARTINEZ Amendment Barcode 176724 *(if applicable)*

Job Title PUBLIC DEFENDER, 11TH JUDICIAL CIRCUIT

Address 1320 NW 14TH ST. Phone 305-545-1900

Street

MIAMI FL 33125 E-mail CZM@pdmiami.com

City *State* *Zip*

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

Representing FLORIDA PUBLIC DEFENDER ASSOCIATION

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Juvenile Sentencing

Bill Number 1350 *(if applicable)*

Name Brad King

Amendment Barcode 176724 *(if applicable)*

Job Title State Attorney, 5th Circuit

Address 110 NW 1st Ave Suite 5000
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Phone 352-671-5914

Ocala, FL 34475
City *State* *Zip*

E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Prosecuting Attorneys Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Criminal Penalties

Bill Number 1350 *(if applicable)*

Name Tim Nungesser

Amendment Barcode 176724 *(if applicable)*

Job Title Lobbyist

Address 1948 Greenwood Dr.
Street

Phone 850-445-5367

Tallahassee FL 32303
City *State* *Zip*

E-mail tim@tcastrategies.com

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

Representing Southern Poverty Law Center

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

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

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

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THE FLORIDA SENATE

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4/23/13
Meeting Date

Topic Criminal Penalties — Bill Number 1350

Name Sheila Hopkins — Amendment Barcode 8/3/26 (if applicable) 176724 (if applicable)

Job Title Director of Social Concerns / Respect Life

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Tallahassee (City) FL (State) 32301 (Zip) — E-mail shopkins@flacathconf.org

Speaking: ☒ For (amendments) ☒ Against (current Bill) ☐ Information

Representing Fl. Conference of Catholic Bishops

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

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4/23/13
Meeting Date

Topic CRIMINAL PENALTIES Bill Number 1350 *(if applicable)*

Name CARLOS J. MARTINEZ Amendment Barcode 813126 *(if applicable)*

Job Title PUBLIC DEFENDER, 11TH JUDICIAL CIRCUIT

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City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA PUBLIC DEFENDER ASSOCIATION

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

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4/23/13
Meeting Date

Topic Juvenile Sentencing Bill Number 1350 *(if applicable)*

Name Brad King Amendment Barcode 813126 *(if applicable)*

Job Title State Attorney, 5th Circuit

Address 110 NW 1st Ave, Suite 5000 Phone 352 671 5914
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Ocala FL. 34475 E-mail
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Prosecuting Attorney Assoc.

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

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4/23/13
Meeting Date

Topic Criminal Penalties

Bill Number 1350 *(if applicable)*

Name Tim Nungesser

Amendment Barcode 813126 *(if applicable)*

Job Title Lobbyist

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Tallahassee FL 32303
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Phone 850-445-5367

E-mail tim@trnstrategies.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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APPEARANCE RECORD

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4.23.13
Meeting Date

Topic Juvenile Sentencing

Bill Number 1350 *(if applicable)*

Name Lt. Morgan

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 569 *Street*

Phone 386 254 1537

DeLand FL *City* *State* *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Volusia County Sheriffs Office / Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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APPEARANCE RECORD

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4/23/13
Meeting Date

Topic JUVENILE SENTENCING Bill Number 1350 *(if applicable)*

Name BRAD KING Amendment Barcode *(if applicable)*

Job Title STATE ATTORNEY, FIFTH CIRCUIT

Address 110 NW 1ST AVE SUITE 5000 Phone 352-671-5914
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OCALA FL 34475 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA PROSECUTING ATTORNEY ASSOC.

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

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4/23/13
Meeting Date

Topic CRIMINAL PENALTIES

Bill Number 1350 *(if applicable)*

Name CARLOS J. MARTINEZ

Amendment Barcode *(if applicable)*

Job Title PUBLIC DEFENDER, 11th Circuit

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City *State* *Zip*

E-mail czm@pdmiami.com

Speaking: ☐ For ☒ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Criminal Penalties

Bill Number SB 1350 *(if applicable)*

Name Tim Nungesser

Amendment Barcode *(if applicable)*

Job Title Lobbyist

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Tallahassee FL 32303
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Phone 850-445-5360

E-mail tim@tmstrategies.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Juvenile Sentencing — Bill Number 1350 *(if applicable)*

Name Rob Johnson — Amendment Barcode _____ *(if applicable)*

Job Title Legislative Director

Address PL-01 The Capitol — Phone 245-0145
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TALL. FL 32399 — E-mail _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing AG Pam Bondi

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

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S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2013

I respectfully request that **Senate Bill # 1350**, relating to Criminal Penalties, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

SENATE APPROPRIATIONS
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S-020 (03/2004)

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL:	PCS/CS/SB 1352 (508548)
INTRODUCER:	Community Affairs Committee and Senator Ring
SUBJECT:	Paper Reduction
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/1 amendment**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	Carey	Martin	ATD	**Fav/CS**
4.	Carey	Hansen	AP	**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:

PCS/CS/SB 1352 addresses the stated goal of the State of Florida to decrease the paperwork burden associated with the conduct of state business. This bill furthers that goal by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

There is no fiscal impact to state revenues or expenditures. There may be a fiscal impact to local governments as supervisors of elections will be required to maintain email addresses for electronic ballots, and to property appraisers who will be required to provide notice of proposed property taxes and non-ad valorem assessments on a website.

The bill:

- Requires the statewide voter registration application to elicit the voter registration applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.
- Authorizes the supervisor of elections to provide electronic sample ballots to electors if certain requirements are met.

- Requires the clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances, and requires the Department to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk.
- Permits the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the board's decision in certain hearings if electronic means is selected by the taxpayer.
- Authorizes the property appraiser to prepare and make available certain tax information on his or her office's website, if the county governing board of that jurisdiction approves the measure by ordinance at the request of the property appraiser.
- Requires the property appraiser to provide legal notice in a periodical meeting the requirements of s. 50.011, F.S., that the notice of proposed property tax rates and non-ad valorem assessments are available on the property appraiser's website and authorizes notification of same by e-mail to persons who have requested such notice.

This bill substantially amends the following sections of the Florida Statutes: 97.052, 101.20, 125.66, 194.034, and 200.069.

II. Present Situation:

The Florida Legislature has on various occasions expressed that the reduction of the use of paper, where feasible, is the policy of the state.[1] This bill furthers the goal of lowering the use of paper by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

Voter Registration and Sample Ballots

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.[2] The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.[3] The application does not request a voter's e-mail address.

Current law also requires the supervisor of elections to publish a sample ballot in a newspaper of general circulation in the county, prior to the day of the election. If the county has an addressograph or similar system, the supervisor may mail a sample ballot to each registered elector in lieu of publication. The sample ballot must be mailed at least seven days prior to any election.[4]

[1] *See* sections 23.20-23.22, F.S. "The state must minimize the paperwork burden by evaluating its need for information, determining whether it already has access to the necessary information, and coordinating data collection initiatives at their source." Section 23.20(4), F.S. *See also* section 120.74(1)(e), F.S. "[E]ach agency shall perform a formal review of its rules every 2 years. In the review, each agency must [s]eek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector."
[2] Section 97.052(1), F.S.
[3] Section 97.052(2), F.S.
[4] Section 101.20(2), F.S.

Transmittal of Enacted Ordinances

Current law provides requirements for counties to adhere to when exercising the ordinance-making powers conferred by the State Constitution.[5] It establishes the following regular enactment procedure:

> The board of county commissioners at any regular or special meeting may enact or amend any ordinance … if notice of intent to consider such ordinance is given at least 10 days prior to said meeting by publication in a newspaper of general circulation in the county. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.[6]

Certified copies of ordinances or amendments thereto must be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by the board. The ordinances or amendments take effect upon filing with the Department of State, unless the ordinance prescribes a later effective date.[7]

Value Adjustment Boards

Value adjustment boards are constituted in each county to conduct administrative hearings relating to assessments, complaints relating to homestead exemptions, appeals from tax exemptions denied, and appeals concerning ad valorem deferrals and classifications.[8] The value adjustment board must render a written decision within 20 calendar days after the last day the board is in session. The clerk must then provide notice of the board's decision by first-class mail.[9]

Property Appraisers

Current law requires each property appraiser to provide notice of proposed property taxes and non-ad valorem assessments by first-class mail to each taxpayer listed on the current year's assessments. Elements that must be included on such notice are prescribed by statute.[10]

[5] Section 125.66(1), F.S.
[6] Section 125.66(2)(a), F.S.
[7] Section 125.66(2)(b), F.S.
[8] Section 194.032(1)(a), F.S.
[9] Section 194.034(2), F.S.
[10] Section 200.069, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 97.052, F.S., to require the statewide voter registration application to include a field for an applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

Section 2 amends s. 101.20(2), F.S., to permit a supervisor of elections to provide electronic sample ballots to electors who have provided e-mail addresses and opted into the electronic ballot delivery system. It allows a supervisor of elections to mail or e-mail sample ballots to registered electors in lieu of publishing such ballots in a newspaper of general circulation in the county.

Section 3 amends s. 125.66(2)(b), F.S., to require a clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances. It requires the Department of State to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk of the board of county commissioners.

Section 4 amends s. 194.034(2), F.S., to permit the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the value adjustment board's decision in a hearing held pursuant to s. 194.034, F.S., if electronic means is selected by the taxpayer on the originally filed petition.

Section 5 amends s. 200.069, F.S., to require a property appraiser to provide legal notice in a newspaper or periodical meeting the requirements of s. 50.011, F.S., that proposed property taxes and non-ad valorem assessments are available for viewing and download at the appraiser's website It also authorizes a property appraiser to provide notification by e-mail to property owners or other interested parties who have registered an e-mail address with the appraiser.

The property appraiser may prepare and make available on his or her office's website a notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll as a separate web page, link, attachment, or document, only after the county governing board has approved the measure by ordinance, as requested by the property appraiser. Such online notice from the appraiser must meet specified criteria, including, but not limited to, specifying all substantive elements required for such notice. The property appraiser may display the required substantive elements in a format different from that prescribed by the Department of Revenue only upon receiving prior written permission from the executive director of the Department. The format may contain additional substantive elements deemed important by the appraiser, in addition to the elements provided for by law.

Section 6 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences.

Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist.

Subsection (d) of Art. VII, Sec. 18, exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 ($1.9 million for FY 2012-2013[11]), are exempt.[12]

This bill could cause counties to incur additional expenses associated with the requirement that the property appraiser post certain tax information on his or her office's website. The overall collective financial impact would appear unlikely to exceed $1.9 million per year in the aggregate. Accordingly, it would appear as if the bill is exempt from paragraph (a).

The mandates provision does not apply to the changes being made to ss. 97.052 and 101.20, F.S., because subsection 18(d) of Article VII, Fla. Const., explicitly exempts election laws from the mandates provision.

B. Public Records/Open Meetings Issues:

Current law provides a public record exemption for certain information held by an agency for purposes of voter registration.[13] SB 1260 is the public records bill linked to SB 1352 expanding the current public records exemption for voter registration information to include e-mail addresses of a voter registration applicant or voter.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Preclearance Requirement

The Department of State provided the following comments regarding preclearance:

> Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change, including but not

[11] Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf (Last visited on March 15, 2013).
[12] *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited on March 15, 2013).
[13] Section 97.0585, F.S.

limited to, a change in the manner of voting, change in registration, balloting, and the counting of votes, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice or the federal District Court for the District of Columbia. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Until precleared by federal authorities, the legislation is unenforceable in these five counties.[14]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State does not anticipate any fiscal impact associated with modifying the uniform statewide voter application.

There may be a fiscal impact on supervisors of elections associated with maintaining the e-mail address of voters and voter registration applicants, and with monitoring which registered voters wish to receive sample ballots electronically. Additionally, there may be costs to supervisors of elections related to establishing a system to send sample ballots electronically. However, it is anticipated that some, if not most, of these costs may be offset by savings resulting from the electronic provision of sample ballots.

There may be a fiscal impact on property appraisers associated with the requirement that a property appraiser prepare and make available on his or her office's website notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll.

[14] Department of State, *Analysis on Senate Bill 1352* (March 4, 2013) (on file with the staff of the Senate Community Affairs Committee).

VI. Technical Deficiencies:

According to the Department of Revenue's analysis of SB 1352, "It is not clear how the property appraisers will prove compliance with ss. 200.065 and 200.069, F.S., when electronic notification is used."[15]

Also, s. 200.065, F.S., refers to the mailing of the TRIM Notice with regard to the TRIM timeline and the deadline for filing VAB petitions. This section would have to be updated to refer to the posting of the notices online.[16]

VII. Related Issues:

According to the Department of Revenue's analysis of SB 1352, "Section 4 of this bill would require amendments to the VAB petition form, DR-486, and Rule 12D-9.015, F.A.C."[17]

VIII. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 17, 2013:
The committee substitute authorizes, rather than requires, the property appraiser to make certain information available on a website, and only after approval by ordinance adopted by the county governing board of that jurisdiction at the request of the property appraiser. In addition, the property appraiser is required to provide legal notice meeting the statutory requirements of legal and official advertisements.

CS by Community Affairs on March 20, 2013:
The committee substitute removes the portions of the bill dealing with bail bondsman, and changes the effective date to October 1, 2013.

B. Amendments:

None.

[15] Department of Revenue, *Analysis on Senate Bill 1352* (March 12, 2013) (on file with the staff of the Senate Community Affairs Committee).
[16] *Id.*
[17] *Id.*

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Smith) recommended the following:

Senate Amendment

Delete lines 54 - 64
and insert:
~~prior to~~ the day of election. A supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before any election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery ~~If the county has an addressograph or equivalent system for mailing to registered electors~~, a sample ballot may be mailed to each registered

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elector or to each household in which there is a registered elector~~, in lieu of publication,~~ at least 7 days before ~~prior to~~ any election.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to paper reduction; amending s. 97.052, F.S.; providing that the uniform statewide voter registration application be designed to elicit the e-mail address of an applicant and whether the applicant desires to receive sample ballots by e-mail; amending s. 101.20, F.S.; authorizing a supervisor of elections to send a sample ballot to a registered elector by e-mail under certain circumstances; amending s. 125.66, F.S.; requiring the clerk of a board of county commissioners to electronically transmit enacted ordinances, amendments, and emergency ordinances to the Department of State; amending s. 194.034, F.S.; permitting a value adjustment board to electronically provide the taxpayer and property appraiser with notice of the decision of the board; amending s. 200.069, F.S.; authorizing the property appraiser to notify taxpayers of proposed property taxes by posting the notice on the appraiser's website in lieu of first-class mail when approved by the county governing board; providing notice format details; requiring publication of legal notice that the notice of proposed taxes and assessments is available through the property appraiser's website; authorizing the property appraiser to provide e-mail notification when the proposed taxes and assessments

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are available on the appraiser's website; providing an effective date.

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

Section 1. Paragraphs (e) through (t) of subsection (2) of section 97.052, Florida Statutes, are redesignated as paragraphs (f) through (u), respectively, and a new paragraph (e) is added to that section, to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

Section 2. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county, before ~~prior to~~ the day of election. In lieu of publication, a supervisor may send a sample ballot to each registered elector


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by e-mail at least 7 days before any election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery ~~If the county has an addressograph or equivalent system for mailing to registered electors~~, a sample ballot may be mailed to each registered elector or to each household in which there is a registered elector, in lieu of publication, at least 7 days before ~~prior to~~ any election.

Section 3. Paragraph (b) of subsection (2) and subsection (3) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)

(b) Certified copies of ordinances or amendments thereto enacted under this regular enactment procedure shall be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by said board and shall take effect upon filing with the Department of State. However, any ordinance may prescribe a later effective date. In lieu of delivery of the certified copies of the enacted ordinances or amendments by first-class mail, the clerk of the board of county commissioners shall transmit the enacted ordinances or amendments to the department by e-mail. The department shall confirm by e-mail the receipt and effective date of the ordinances or amendments with the clerk of the board of county commissioners.

(3) The emergency enactment procedure shall be as follows:


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The board of county commissioners at any regular or special meeting may enact or amend any ordinance with a waiver of the notice requirements of subsection (2) by a four-fifths vote of the membership of such board, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary. However, no emergency ordinance or resolution shall be enacted which establishes or amends the actual zoning map designation of a parcel or parcels of land or changes the actual list of permitted, conditional, or prohibited uses within a zoning category. Emergency enactment procedures for land use plans adopted pursuant to part II of chapter 163 shall be pursuant to that part. Certified copies of ordinances or amendments thereto enacted under this emergency enactment procedure by a county shall be filed with the Department of State by the clerk of the board of county commissioners as soon after enactment by said board as is practicable. An emergency ordinance enacted under this procedure shall be transmitted by the clerk of the board of county commissioners by e-mail to the Department of State. It shall be deemed to be filed and shall take effect when a copy has been accepted and confirmed by the department by e-mail ~~deemed to be filed and shall take effect when a copy has been accepted by the postal authorities of the Government of the United States for special delivery by certified mail to the Department of State~~.

Section 4. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by


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the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition ~~each taxpayer and the property appraiser of the decision of the board~~. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

Section 5. Section 200.069, Florida Statutes, is amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements


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and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. In lieu of delivery of the notice of proposed property taxes by first-class mail, the property appraiser may prepare and make available for viewing and printing on his or her office website the notice of proposed property taxes for each taxpayer to be listed on the current year's assessment roll, but only if, following a recommendation by the property appraiser, the county governing board of his or her jurisdiction approves the measure by ordinance. If approved by ordinance of the county governing board, the notice shall be

a separate web page, web link, attachment, or document and shall contain all the substantive elements outlined in this section. The property appraiser may use a format for web display of all substantive elements as outlined in this section other than that provided by the department for purposes of this section, but only if his or her office obtains prior written permission from the executive director of the department. The format may contain substantive elements deemed important by the property appraiser, in addition to those outlined in this section. The property appraiser may continue to use the approved format until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. The property appraiser shall provide legal notice in a periodical meeting the requirements of s. 50.011 that the notice of proposed property taxes and non-ad valorem assessments is available on the property appraiser website. The legal notice shall contain the property appraiser's website address. The property appraiser may also provide notification by e-mail to property owners or other interested parties who have registered a request with the property appraiser for e-mail notification when the notice of proposed property taxes and non-ad valorem assessments is available on the website.

(1) The first page of the notice shall read:

NOTICE OF PROPOSED PROPERTY TAXES
DO NOT PAY—THIS IS NOT A BILL

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets

and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION.

Each taxing authority may AMEND OR ALTER its proposals at the hearing.

(2)(a) The notice shall include a brief legal description of the property, the name and mailing address of the owner of record, and the tax information applicable to the specific parcel in question. The information shall be in columnar form. There shall be seven column headings which shall read: "Taxing Authority," "Your Property Taxes Last Year," "Last Year's Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget Change Is Adopted," and "A Public Hearing on the Proposed Taxes and Budget Will Be Held:."

(b) As used in this section, the term "last year's adjusted tax rate" means the rolled-back rate calculated pursuant to s. 200.065(1).

(3) There shall be under each column heading an entry for the county; the school district levy required pursuant to s. 1011.60(6); other operating school levies; the municipality or municipal service taxing unit or units in which the parcel lies, if any; the water management district levying pursuant to s. 373.503; the independent special districts in which the parcel lies, if any; and for all voted levies for debt service applicable to the parcel, if any.

(4) For each entry listed in subsection (3), there shall

appear on the notice the following:

(a) In the first column, a brief, commonly used name for the taxing authority or its governing body. The entry in the first column for the levy required pursuant to s. 1011.60(6) shall be "By State Law." The entry for other operating school district levies shall be "By Local Board." Both school levy entries shall be indented and preceded by the notation "Public Schools:". For each voted levy for debt service, the entry shall be "Voter Approved Debt Payments."

(b) In the second column, the gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, the second column shall be blank.

(c) In the third column, last year's adjusted tax rate or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(d) In the fourth column, the gross amount of ad valorem taxes which will apply to the parcel in the current year if each taxing authority levies last year's adjusted tax rate or, in the case of voted levies for debt service, the amount previously authorized by referendum.

(e) In the fifth column, the tax rate that each taxing authority must levy against the parcel to fund the proposed budget or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(f) In the sixth column, the gross amount of ad valorem taxes that must be levied in the current year if the proposed budget is adopted.

(g) In the seventh column, the date, the time, and a brief

description of the location of the public hearing required pursuant to s. 200.065(2)(c).

(5) Following the entries for each taxing authority, a final entry shall show: in the first column, the words "Total Property Taxes:" and in the second, fourth, and sixth columns, the sum of the entries for each of the individual taxing authorities. The second, fourth, and sixth columns shall, immediately below said entries, be labeled Column 1, Column 2, and Column 3, respectively. Below these labels shall appear, in boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

(6)(a) The second page of the notice shall state the parcel's market value and for each taxing authority that levies an ad valorem tax against the parcel:

1. The assessed value, value of exemptions, and taxable value for the previous year and the current year.

2. Each assessment reduction and exemption applicable to the property, including the value of the assessment reduction or exemption and tax levies to which they apply.

(b) The reverse side of the second page shall contain definitions and explanations for the values included on the front side.

(7) The following statement shall appear after the values listed on the front of the second page:

If you feel that the market value of your property is inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at ...(phone number)... or ...(location)....

If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE ...(date)....

(8) The reverse side of the first page of the form shall read:

EXPLANATION

*COLUMN 1—"YOUR PROPERTY TAXES LAST YEAR"
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.
*COLUMN 2—"YOUR TAXES IF NO BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.
*COLUMN 3—"YOUR TAXES IF PROPOSED BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.

*Note: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive. (Discounts are a maximum of 4 percent of the amounts shown on

this form.)

(9) The bottom portion of the notice shall further read in bold, conspicuous print:

"Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district."

(10)(a) If requested by the local governing board levying non-ad valorem assessments and agreed to by the property appraiser, the notice specified in this section may contain a notice of proposed or adopted non-ad valorem assessments. If so agreed, the notice shall be titled:

NOTICE OF PROPOSED PROPERTY TAXES
AND PROPOSED OR ADOPTED
NON-AD VALOREM ASSESSMENTS
DO NOT PAY—THIS IS NOT A BILL

There must be a clear partition between the notice of proposed property taxes and the notice of proposed or adopted non-ad valorem assessments. The partition must be a bold, horizontal line approximately 1/8-inch thick. By rule, the department shall provide a format for the form of the notice of proposed or adopted non-ad valorem assessments which meets the following minimum requirements:

1. There must be subheading for columns listing the levying local governing board, with corresponding assessment rates

expressed in dollars and cents per unit of assessment, and the associated assessment amount.

2. The purpose of each assessment must also be listed in the column listing the levying local governing board if the purpose is not clearly indicated by the name of the board.

3. Each non-ad valorem assessment for each levying local governing board must be listed separately.

4. If a county has too many municipal service benefit units or assessments to be listed separately, it shall combine them by function.

5. A brief statement outlining the responsibility of the tax collector and each levying local governing board as to any non-ad valorem assessment must be provided on the form, accompanied by directions as to which office to contact for particular questions or problems.

(b) If the notice includes all adopted non-ad valorem assessments, the provisions contained in subsection (9) shall not be placed on the notice.

Section 6. This act shall take effect October 1, 2013.

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 Committee on Appropriations				
BILL:	CS/CS/SB 1352			
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Ring			
SUBJECT:	Paper Reduction			
DATE:	April 25, 2013	REVISED:		

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/1 amendment**
2.	Anderson	Yeatman	CA	**Fav/CS**
3.	Carey	Martin	ATD	**Fav/CS**
4.	Carey	Hansen	AP	**Fav/CS**
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 1352 addresses the stated goal of the State of Florida to decrease the paperwork burden associated with the conduct of state business. This bill furthers that goal by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

There is no fiscal impact to state revenues or expenditures. There may be a fiscal impact to local governments as supervisors of elections will be required to maintain email addresses for electronic ballots, and to property appraisers who will be required to provide notice of proposed property taxes and non-ad valorem assessments on a website.

The bill:

- Requires the statewide voter registration application to elicit the voter registration applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.
- Authorizes the supervisor of elections to provide electronic sample ballots to electors if certain requirements are met.

- Requires the clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances, and requires the Department to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk.
- Permits the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the board's decision in certain hearings if electronic means is selected by the taxpayer.
- Authorizes the property appraiser to prepare and make available certain tax information on his or her office's website, if the county governing board of that jurisdiction approves the measure by ordinance at the request of the property appraiser.
- Requires the property appraiser to provide legal notice in a periodical meeting the requirements of s. 50.011, F.S., that the notice of proposed property tax rates and non-ad valorem assessments are available on the property appraiser's website and authorizes notification of same by e-mail to persons who have requested such notice.

This bill substantially amends the following sections of the Florida Statutes: 97.052, 101.20, 125.66, 194.034, and 200.069.

II. Present Situation:

The Florida Legislature has on various occasions expressed that the reduction of the use of paper, where feasible, is the policy of the state.[1] This bill furthers the goal of lowering the use of paper by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

Voter Registration and Sample Ballots

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.[2] The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.[3] The application does not request a voter's e-mail address.

Current law also requires the supervisor of elections to publish a sample ballot in a newspaper of general circulation in the county, prior to the day of the election. If the county has an addressograph or similar system, the supervisor may mail a sample ballot to each registered elector in lieu of publication. The sample ballot must be mailed at least seven days prior to any election.[4]

[1] *See* sections 23.20-23.22, F.S. "The state must minimize the paperwork burden by evaluating its need for information, determining whether it already has access to the necessary information, and coordinating data collection initiatives at their source." Section 23.20(4), F.S. *See also* section 120.74(1)(e), F.S. "[E]ach agency shall perform a formal review of its rules every 2 years. In the review, each agency must [s]eek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector."
[2] Section 97.052(1), F.S.
[3] Section 97.052(2), F.S.
[4] Section 101.20(2), F.S.

Transmittal of Enacted Ordinances

Current law provides requirements for counties to adhere to when exercising the ordinance-making powers conferred by the State Constitution.[5] It establishes the following regular enactment procedure:

> The board of county commissioners at any regular or special meeting may enact or amend any ordinance … if notice of intent to consider such ordinance is given at least 10 days prior to said meeting by publication in a newspaper of general circulation in the county. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.[6]

Certified copies of ordinances or amendments thereto must be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by the board. The ordinances or amendments take effect upon filing with the Department of State, unless the ordinance prescribes a later effective date.[7]

Value Adjustment Boards

Value adjustment boards are constituted in each county to conduct administrative hearings relating to assessments, complaints relating to homestead exemptions, appeals from tax exemptions denied, and appeals concerning ad valorem deferrals and classifications.[8] The value adjustment board must render a written decision within 20 calendar days after the last day the board is in session. The clerk must then provide notice of the board's decision by first-class mail.[9]

Property Appraisers

Current law requires each property appraiser to provide notice of proposed property taxes and non-ad valorem assessments by first-class mail to each taxpayer listed on the current year's assessments. Elements that must be included on such notice are prescribed by statute.[10]

[5] Section 125.66(1), F.S.
[6] Section 125.66(2)(a), F.S.
[7] Section 125.66(2)(b), F.S.
[8] Section 194.032(1)(a), F.S.
[9] Section 194.034(2), F.S.
[10] Section 200.069, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 97.052, F.S., to require the statewide voter registration application to include a field for an applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

Section 2 amends s. 101.20(2), F.S., to permit a supervisor of elections to provide electronic sample ballots to electors who have provided e-mail addresses and opted into the electronic ballot delivery system..

Section 3 amends s. 125.66(2)(b), F.S., to require a clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances. It requires the Department of State to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk of the board of county commissioners.

Section 4 amends s. 194.034(2), F.S., to permit the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the value adjustment board's decision in a hearing held pursuant to s. 194.034, F.S., if electronic means is selected by the taxpayer on the originally filed petition.

Section 5 amends s. 200.069, F.S., to require a property appraiser to provide legal notice in a newspaper or periodical meeting the requirements of s. 50.011, F.S., that proposed property taxes and non-ad valorem assessments are available for viewing and download at the appraiser's website It also authorizes a property appraiser to provide notification by e-mail to property owners or other interested parties who have registered an e-mail address with the appraiser.

The property appraiser may prepare and make available on his or her office's website a notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll as a separate web page, link, attachment, or document, only after the county governing board has approved the measure by ordinance, as requested by the property appraiser. Such online notice from the appraiser must meet specified criteria, including, but not limited to, specifying all substantive elements required for such notice. The property appraiser may display the required substantive elements in a format different from that prescribed by the Department of Revenue only upon receiving prior written permission from the executive director of the Department. The format may contain additional substantive elements deemed important by the appraiser, in addition to the elements provided for by law.

Section 6 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences. Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the

expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist.

Subsection (d) of Art. VII, Sec. 18, exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 ($1.9 million for FY 2012-2013[11]), are exempt.[12]

This bill could cause counties to incur additional expenses associated with the requirement that the property appraiser post certain tax information on his or her office's website. The overall collective financial impact would appear unlikely to exceed $1.9 million per year in the aggregate. Accordingly, it would appear as if the bill is exempt from paragraph (a).

The mandates provision does not apply to the changes being made to ss. 97.052 and 101.20, F.S., because subsection 18(d) of Article VII, Fla. Const., explicitly exempts election laws from the mandates provision.

B. Public Records/Open Meetings Issues:

Current law provides a public record exemption for certain information held by an agency for purposes of voter registration.[13] SB 1260 is the public records bill linked to SB 1352 expanding the current public records exemption for voter registration information to include e-mail addresses of a voter registration applicant or voter.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Preclearance Requirement

The Department of State provided the following comments regarding preclearance:

> Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in registration, balloting, and the counting of votes, change in candidacy

[11] Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf (Last visited on March 15, 2013).
[12] *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited on March 15, 2013).
[13] Section 97.0585, F.S.

requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice or the federal District Court for the District of Columbia. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Until precleared by federal authorities, the legislation is unenforceable in these five counties.[14]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State does not anticipate any fiscal impact associated with modifying the uniform statewide voter application.

There may be a fiscal impact on supervisors of elections associated with maintaining the e-mail address of voters and voter registration applicants, and with monitoring which registered voters wish to receive sample ballots electronically. Additionally, there may be costs to supervisors of elections related to establishing a system to send sample ballots electronically. However, it is anticipated that some, if not most, of these costs may be offset by savings resulting from the electronic provision of sample ballots.

There may be a fiscal impact on property appraisers associated with the requirement that a property appraiser prepare and make available on his or her office's website notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll.

[14] Department of State, *Analysis on Senate Bill 1352* (March 4, 2013) (on file with the staff of the Senate Community Affairs Committee).

VI. Technical Deficiencies:

According to the Department of Revenue's analysis of SB 1352, "It is not clear how the property appraisers will prove compliance with ss. 200.065 and 200.069, F.S., when electronic notification is used."[15]

Also, s. 200.065, F.S., refers to the mailing of the TRIM Notice with regard to the TRIM timeline and the deadline for filing VAB petitions. This section would have to be updated to refer to the posting of the notices online.[16]

VII. Related Issues:

According to the Department of Revenue's analysis of SB 1352, "Section 4 of this bill would require amendments to the VAB petition form, DR-486, and Rule 12D-9.015, F.A.C."[17]

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 Appropriations on April 23, 2013:
The committee substitute differs from the prior version of the bill in that it authorizes, rather than requires, the property appraiser to make certain information available on a website, and only after approval by ordinance adopted by the county governing board of that jurisdiction at the request of the property appraiser. In addition, the property appraiser is required to provide legal notice meeting the statutory requirements of legal and official advertisements. Finally, the provision which allowed a supervisor of elections to send sample ballot to a registered elector by e-mail, in lieu of publication, was removed from the bill.

CS by Community Affairs on March 20, 2013:
The committee substitute removes the portions of the bill dealing with bail bondsman, and changes the effective date to October 1, 2013.

B. Amendments:

None.

[15] Department of Revenue, *Analysis on Senate Bill 1352* (March 12, 2013) (on file with the staff of the Senate Community Affairs Committee).
[16] *Id.*
[17] *Id.*

By the Committee on Community Affairs; and Senator Ring

578-02812-13 20131352c1

A bill to be entitled

An act relating to paper reduction; amending s. 97.052, F.S.; providing that the uniform statewide voter registration application be designed to elicit the e-mail address of an applicant and whether the applicant desires to receive sample ballots by e-mail; amending s. 101.20, F.S.; authorizing a supervisor of elections to send a sample ballot to a registered elector by e-mail under certain circumstances; amending s. 125.66, F.S.; requiring the clerk of a board of county commissioners to electronically transmit enacted ordinances, amendments, and emergency ordinances to the Department of State; amending s. 194.034, F.S.; permitting a value adjustment board to electronically provide the taxpayer and property appraiser with notice of the decision of the board; amending s. 200.069, F.S.; authorizing the property appraiser to notify taxpayers of proposed property taxes by postcard or e-mail in lieu of first-class mail; providing notice language; authorizing the property appraiser to prepare and make available on the appraiser's website the notice of proposed property taxes; providing additional notice requirements; providing an effective date.

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

Section 1. Paragraphs (e) through (t) of subsection (2) of section 97.052, Florida Statutes, are redesignated as paragraphs

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(f) through (u), respectively, and a new paragraph (e) is added to that section, to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

Section 2. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county, before ~~prior to~~ the day of election. In lieu of publication, a supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before any election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery ~~If the county has an addressograph or equivalent system for mailing to registered electors~~, a sample ballot may be mailed to each registered elector or to each

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

household in which there is a registered elector, in lieu of publication, at least 7 days before ~~prior to~~ any election.

Section 3. Paragraph (b) of subsection (2) and subsection (3) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)

(b) Certified copies of ordinances or amendments thereto enacted under this regular enactment procedure shall be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by said board and shall take effect upon filing with the Department of State. However, any ordinance may prescribe a later effective date. In lieu of delivery of the certified copies of the enacted ordinances or amendments by first-class mail, the clerk of the board of county commissioners shall transmit the enacted ordinances or amendments to the department by e-mail. The department shall confirm by e-mail the receipt and effective date of the ordinances or amendments with the clerk of the board of county commissioners.

(3) The emergency enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance with a waiver of the notice requirements of subsection (2) by a four-fifths vote of the membership of such board, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary. However, no emergency ordinance or resolution shall be enacted which establishes or amends the actual zoning map designation of

a parcel or parcels of land or changes the actual list of permitted, conditional, or prohibited uses within a zoning category. Emergency enactment procedures for land use plans adopted pursuant to part II of chapter 163 shall be pursuant to that part. Certified copies of ordinances or amendments thereto enacted under this emergency enactment procedure by a county shall be filed with the Department of State by the clerk of the board of county commissioners as soon after enactment by said board as is practicable. An emergency ordinance enacted under this procedure shall be transmitted by the clerk of the board of county commissioners by e-mail to the Department of State. It shall be deemed to be filed and shall take effect when a copy has been accepted and confirmed by the department by e-mail ~~deemed to be filed and shall take effect when a copy has been accepted by the postal authorities of the Government of the United States for special delivery by certified mail to the Department of State~~.

Section 4. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the

recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition ~~each taxpayer and the property appraiser of the decision of the board~~. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

Section 5. Section 200.069, Florida Statutes, is amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the

placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. In lieu of delivery of the notice of proposed property taxes by first-class mail, the property appraiser may prepare and mail a postcard to each taxpayer listed on the current year's assessment roll, which shall contain at a minimum the following statement:

ATTENTION PROPERTY OWNER

This postcard is your official notification pursuant to sections 192.0105 and 200.069, Florida Statutes, that your notice of proposed property taxes and non-ad valorem assessments is available for viewing and download on my website at ...(website address).... If you are unable to access my website, you are entitled to have a copy of your notice mailed to you for free by contacting my office at ... (telephone number).... Please note: your final tax bill may contain non-ad valorem assessments that may not be reflected on your

notice, such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities that may be levied by your county, city, or special district.

The property appraiser may also provide notification by e-mail to property owners or other interested parties who have registered an e-mail address with the property appraiser that the notice of proposed property taxes and non-ad valorem assessments is available for viewing and download on the property appraiser office's website. The property appraiser shall prepare and make available for viewing, printing, and downloading on the property appraiser office's website a notice of proposed property taxes and non-ad valorem assessments for each taxpayer to be listed on the current year's assessment roll, which shall be a separate web page, weblink, attachment, or document, and shall contain all the substantive elements as outlined in this section. The property appraiser may use a format for web display of all substantive elements as outlined in this section other than that provided by the department for purposes of this part, but only if the property appraiser's office obtains prior written permission from the executive director of the department. The format may contain substantive elements deemed important by the property appraiser, in addition to the elements outlined in this section. The property appraiser may continue to use the approved format until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director of the department.

(1) The first page of the notice shall read:

NOTICE OF PROPOSED PROPERTY TAXES
DO NOT PAY—THIS IS NOT A BILL

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION.

Each taxing authority may AMEND OR ALTER its proposals at the hearing.

(2)(a) The notice shall include a brief legal description of the property, the name and mailing address of the owner of record, and the tax information applicable to the specific parcel in question. The information shall be in columnar form. There shall be seven column headings which shall read: "Taxing Authority," "Your Property Taxes Last Year," "Last Year's Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget Change Is Adopted," and "A Public Hearing on the Proposed Taxes and Budget Will Be Held:."

(b) As used in this section, the term "last year's adjusted tax rate" means the rolled-back rate calculated pursuant to s. 200.065(1).

(3) There shall be under each column heading an entry for the county; the school district levy required pursuant to s.

1011.60(6); other operating school levies; the municipality or municipal service taxing unit or units in which the parcel lies, if any; the water management district levying pursuant to s. 373.503; the independent special districts in which the parcel lies, if any; and for all voted levies for debt service applicable to the parcel, if any.

(4) For each entry listed in subsection (3), there shall appear on the notice the following:

(a) In the first column, a brief, commonly used name for the taxing authority or its governing body. The entry in the first column for the levy required pursuant to s. 1011.60(6) shall be "By State Law." The entry for other operating school district levies shall be "By Local Board." Both school levy entries shall be indented and preceded by the notation "Public Schools:". For each voted levy for debt service, the entry shall be "Voter Approved Debt Payments."

(b) In the second column, the gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, the second column shall be blank.

(c) In the third column, last year's adjusted tax rate or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(d) In the fourth column, the gross amount of ad valorem taxes which will apply to the parcel in the current year if each taxing authority levies last year's adjusted tax rate or, in the case of voted levies for debt service, the amount previously authorized by referendum.

(e) In the fifth column, the tax rate that each taxing

authority must levy against the parcel to fund the proposed budget or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(f) In the sixth column, the gross amount of ad valorem taxes that must be levied in the current year if the proposed budget is adopted.

(g) In the seventh column, the date, the time, and a brief description of the location of the public hearing required pursuant to s. 200.065(2)(c).

(5) Following the entries for each taxing authority, a final entry shall show: in the first column, the words "Total Property Taxes:" and in the second, fourth, and sixth columns, the sum of the entries for each of the individual taxing authorities. The second, fourth, and sixth columns shall, immediately below said entries, be labeled Column 1, Column 2, and Column 3, respectively. Below these labels shall appear, in boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

(6)(a) The second page of the notice shall state the parcel's market value and for each taxing authority that levies an ad valorem tax against the parcel:

1. The assessed value, value of exemptions, and taxable value for the previous year and the current year.

2. Each assessment reduction and exemption applicable to the property, including the value of the assessment reduction or exemption and tax levies to which they apply.

(b) The reverse side of the second page shall contain definitions and explanations for the values included on the front side.

(7) The following statement shall appear after the values

listed on the front of the second page:

If you feel that the market value of your property is inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at ...(phone number)... or ...(location).... If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE ...(date)....

(8) The reverse side of the first page of the form shall read:

EXPLANATION

*COLUMN 1—"YOUR PROPERTY TAXES LAST YEAR"
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.
*COLUMN 2—"YOUR TAXES IF NO BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.
*COLUMN 3—"YOUR TAXES IF PROPOSED BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings

shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.

*Note: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive. (Discounts are a maximum of 4 percent of the amounts shown on this form.)

(9) The bottom portion of the notice shall further read in bold, conspicuous print:

"Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district."

(10)(a) If requested by the local governing board levying non-ad valorem assessments and agreed to by the property appraiser, the notice specified in this section may contain a notice of proposed or adopted non-ad valorem assessments. If so agreed, the notice shall be titled:

NOTICE OF PROPOSED PROPERTY TAXES
AND PROPOSED OR ADOPTED
NON-AD VALOREM ASSESSMENTS
DO NOT PAY—THIS IS NOT A BILL

There must be a clear partition between the notice of proposed property taxes and the notice of proposed or adopted non-ad

valorem assessments. The partition must be a bold, horizontal line approximately 1/8-inch thick. By rule, the department shall provide a format for the form of the notice of proposed or adopted non-ad valorem assessments which meets the following minimum requirements:

1. There must be subheading for columns listing the levying local governing board, with corresponding assessment rates expressed in dollars and cents per unit of assessment, and the associated assessment amount.

2. The purpose of each assessment must also be listed in the column listing the levying local governing board if the purpose is not clearly indicated by the name of the board.

3. Each non-ad valorem assessment for each levying local governing board must be listed separately.

4. If a county has too many municipal service benefit units or assessments to be listed separately, it shall combine them by function.

5. A brief statement outlining the responsibility of the tax collector and each levying local governing board as to any non-ad valorem assessment must be provided on the form, accompanied by directions as to which office to contact for particular questions or problems.

(b) If the notice includes all adopted non-ad valorem assessments, the provisions contained in subsection (9) shall not be placed on the notice.

Section 6. This act shall take effect October 1, 2013.

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 Committee on Appropriations

BILL:	PCS/CS/SB 1388 (413204)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Committee on Education; and Senator Montford
SUBJECT:	Instructional Materials for K-12 Public Education
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**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:

PCS/CS/SB 1388 increases flexibility for a school district while requiring instructional materials to align with state standards. The bill authorizes a school district to review, approve and purchase instructional materials, while retaining a DOE statewide instructional materials review process.

The local and state instructional materials review processes will have a cost; however, the cost may be mitigated or offset with a fee assessed to publishers. The fees are to be used to cover the cost of substitute teachers who replace teachers selected to review materials, and travel and per diem costs. Reviewers may be paid a stipend. There is no requirement for a state appropriation.

The bill takes effect July 1, 2013.

The bill substantially amends the following sections of the Florida Statutes: 1001.10, 1003.55, 1003.621, 1006.28, 1006.29, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.37, 1006.38, 1006.40, and 1011.62, Florida Statutes, and repeals sections 1006.282, and 1006.33.

The bill creates section 1006.283, Florida Statutes.

II. Present Situation:

School Districts

A school district must provide adequate instructional materials for its students, ensure the materials are consistent with the district's educational goals, and ensure the materials meet the objectives and the curriculum frameworks adopted by the State Board of Education (SBE).[1]

The district is required to purchase current instructional materials in the core areas to provide students with current tools of instruction.[2] This purchase must be made within the first two years of the effective date of the adoption cycle.[3] Up to fifty percent of the allocation may be used to purchase non-adopted materials.[4]

Superintendents must, at the Department of Education's (DOE) request, provide an experienced classroom teacher or district-level content supervisor with expertise in the content area to review submissions recommended for adoption by the state instructional materials reviewers.[5]

The Commissioner of Education

The Commissioner of Education (Commissioner) establishes the number of items to be adopted by the state.[6] The Commissioner appoints three state instructional materials reviewers to review instructional materials and evaluate the content for alignment with the applicable standards.[7] An evaluation by the third reviewer will only be required for situations in which the first two reviewers disagree as to whether materials should be placed on the state-adopted materials list.[8]

The Commissioner has the authority to select and adopt instructional materials for each grade and subject area and to contract with publishers for the instructional materials adopted.[9] The term of the adoption is five years.[10]

State Instructional Materials Reviewers and Content

Reviewers must evaluate all materials submitted by publishers in each adoption to determine if the material aligns with the applicable state standards, developed criteria, and any applicable performance standards.[11]

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[1] ss. 1006.28(1) and 1001.03(1), F.S.
[2] s. 1006.40(2), F.S.
[3] *Id.*
[4] s. 1006.40(3)(b), F.S.
[5] s. 1006.29(1), F.S.
[6] s. 1006.35(3), F.S.
[7] s. 1006.29(1)(b), F.S.
[8] s. 1006.29(3), F.S.
[9] s. 1006.34(2), F.S.
[10] s. 1006.36(1), F.S.
[11] s. 1006.31(2)(e), F.S.

In addition to the standards, materials should also reflect appropriate diversity, include the Constitution and the Declaration of Independence in the social studies content area, and ensure that materials do not reflect unfairly upon people because of their race, color, creed, national origin, ancestry, gender, or occupation.[12] Reviewers must report to the DOE the materials being recommended that meet the guidelines for adoption.[13]

Publishers

Publishers of instructional materials must, in part:

- Submit detailed specifications of the physical characteristics of the instructional materials;
- Provide evidence that the materials address the performance standards;
- Furnish the instructional materials at a price which matches the lowest price offered anywhere else in the United States;
- Guarantee that any instructional materials sold in Florida will be equal in quality to the instructional materials sold elsewhere in the United States and will be kept up-to-date; and
- Maintain or contract with a depository in the state and keep an inventory.[14]

III. Effect of Proposed Changes:

The bill increases flexibility for a school district while requiring instructional materials to align with state standards. The bill authorizes a school district to review, approve and purchase instructional materials, while retaining a DOE statewide instructional materials review process.

District School Board Instructional Materials Program

The bill creates the district school board instructional materials program. The program allows a district school board, or consortium of school districts, to implement an instructional materials program that includes the review, approval, and purchasing of instructional materials. The school district would be able to set and collect fees, not to exceed fees assessed by the Department of Education (DOE), from publishers that participate in the instructional materials approval process. The fees would be allocated for the support of the review process, and maintained in a separate line item for auditing purposes. The school district cannot collect fees for materials that DOE approves and places on its website. The school district would adopt rules to implement the program.

If a school district elected to participate in the program, the school district would notify DOE and provide an annual report to the legislature, and the superintendent would annually certify to the DOE by March 31 that all core instructional materials are aligned with applicable state standards, and include a list of all school district approved core instructional materials that would be used or purchased. Each principal would be required to verify that all instructional materials are fully and properly accounted for as prescribed by school district rule.

[12] s. 1006.31(2)(d), F.S.
[13] s. 1006.31(3), F.S.
[14] s. 1006.38, F.S.

School District Instructional Materials Allocation

School districts would be required to provide current instructional materials to each student with a major tool or assistance in core courses. The bill deletes the requirement for such materials to be purchased within the first 2 years after the effective date of an adoption cycle. By the 2015-2016 school year, school districts could use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards. Remaining funds would be used for the purchase of instructional materials or other items including library and reference books and non-print materials, having intellectual content which assist in the instruction of a subject or course.

State Instructional Review

The bill retains the ability for DOE to have a state instructional material review process, and would increase the number of state instructional material reviewers appointed by the Commissioner, from 3 to up to 5. The 5 members would include: 2 professional content experts; 2 K-12 educators that are active teachers or supervisors and represent the major fields and levels in which instructional materials are used; and 1 layperson. A DOE content expert may be an alternate reviewer. Publishers would have the opportunity to provide a live, virtual, or in-person presentation to the reviewers.

The DOE would adopt a rule to assess and collect fees to support the review process. The fees would be deposited in the DOE Operating Trust Fund. A district school board would be reimbursed for the cost of a substitute teacher for each workday an employee is acting as a state reviewer. Additionally, each reviewer would receive a travel and per diem stipend in accordance with section 112.061, F.S.

The definition of "instructional materials" would be expanded from materials that serve as a "major tool for assisting" to a "major tool or for assisting" in the instruction of a subject or course.

State List of Approved Instructional Materials

By March 1 of each year, the DOE would publish on its website a list of all instructional materials that are approved by the DOE or that are approved by another state, if such materials align with applicable state standards. The list would be maintained and updated, and include sufficient instructional materials or major tools to cover all of the core content areas. The purchase price would be posted. District approved materials would also be posted on the website.

The Commissioner would be able to remove approved instructional materials from the list if a manufacturer refused to correct errors, at the publisher's request, if there is no material impact on the state's education goals, or if the materials do not align with all applicable state standards. If the Commissioner removes materials from the list, a district may not purchase the materials for use in core content areas.

District and State Instructional Materials Reviewer Duties

Instructional material reviewers for both the district and state processes would use certain standards to determine the propriety of materials, such as:

- The age of student who normally could be expected to have access to the material.
- The educational purpose served by the material.
- The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.
- The degree to which the material represents the broad racial, ethnic, socioeconomic, and cultural diversity of students in the state.
- Any instructional material that contains pornography or that is otherwise harmful to minors, may not be used or made available within any public school.

Instructional Material Publishers

The bill authorizes, but no longer requires, school districts to purchase instructional materials from a publisher's book depository. A publisher would provide materials to the school district with most-favored-nations pricing, with automatic reductions, based on materials sold to any other state or school district in the state or nation. The costs for a product would not increase, and would be posted on all marketing materials.

The bill requires publisher duties and responsibilities to apply to both the school district and DOE approval processes. Beginning in 2013-2014, publishers would no longer be required to provide evidence that the instructional materials include specific reference to statewide standards at the point of student use. Publishers would still be required to provide the evidence in the teachers' manual and incorporate the standards into chapter tests and assessments.

The bill deletes the prohibition on a school district or publisher from participating in a pilot program of materials being considered during the 18-month period before the official adoption of the materials by the commissioner.

Commissioner's Report to the Legislature

The bill requires the Commissioner to annually submit by January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the State Board of Education, an annual report regarding district and state instructional material reviews, the impact on the quality and availability of instructional materials, and the cost-effectiveness of the state and district review processes.

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 authorizes school districts to set and collect fees from publishers that participate in the instructional materials approval process. The school district fees may not exceed those set by DOE, and the school district may not charge a fee for materials already on the state list.

C. Government Sector Impact:

The bill authorizes school districts to charge publishers that participate in the instructional materials process a fee. The fee revenues are to be used to support the review process, and may offset the costs. The school district fees may not exceed those set by DOE, and the school district may not charge a fee for materials already on the state list.

The bill authorizes, but does not require, the DOE to assess a fee of the publishers who participate in the review process. Fee revenues are to be used to cover the cost of the review process, including meeting, travel, per diem, and costs for hiring substitute teachers who replace teachers who are selected to be reviewers. Reviewers are entitled to reimbursement for travel and per diem and may be paid a stipend. An estimate of this cost is as much as $750,000 annually based on a $500 stipend for each of the five reviewers for roughly 300 content area submissions that are provided for review. However, the bill is permissive regarding the stipend and, if provided, would be supported by fee revenue.

This bill does not required a state appropriation.

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.)

Recommended CS/CS by Appropriations Subcommittee on Education on April 11, 2013:
The committee substitute:

- Requires reviewers to use specific standards to determine propriety of instructional materials.
- Requires DOE to annually post a list of approved instructional materials on its website.
- Restructures the eligibility requirements for instructional material reviewers.
- Authorizes the Commissioner to remove materials on the list under certain circumstances.
- Deletes the requirement for school districts to purchase instructional materials within the first 2 years of an adoption cycle.
- Deletes the requirement for school districts to purchase instructional materials from the publisher's depository.
- Deletes the requirement for a publisher to identify the statewide standards at the point of student use.
- Repeals the school district pilot program for transition to electronic and digital instructional materials and
- Revised the DOE process for reviewing materials submitted by publishers.

CS by Education on April 1, 2013:
CS/SB 1388 differs from SB 1388 in that it:

- Requires a district school board to adopt rules implementing an instructional materials review program, as opposed to identifying specific requirements in law.
- Reinstates statewide adoption of instructional materials by DOE, as opposed to a process by which a school district or publisher may refer review of instructional materials to the DOE.
- Changes the definition of "instructional materials" to include materials that serve as a "tool" that assists, as opposed to simply assisting in the instruction of a subject or course.
- Deletes the prohibition of a school district assessing a fee to review materials that were previously evaluated by the state, but caps the fees a district may collect to be no more than assessed by the state.
- Removes proposed amendments to ss. 1001.10, 1003.55, 1003.621, 1006.28, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.38, and 1011.62, F.S.
- Deletes the proposed repeal of ss. 1006.282, 1006.33, 1006.37, and 1010.82, F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) and subsection (2) of section 1006.28, Florida Statutes, are amended to read:

1006.28 Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials.—

(1) DISTRICT SCHOOL BOARD.—The district school board has the duty to provide adequate instructional materials for all students in accordance with the requirements of this part. The

term "adequate instructional materials" means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature. The district school board has the following specific duties:

(b) *Instructional materials.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials and furnish such other instructional materials as may be needed. The district school board shall ensure that instructional materials used in the district are consistent with the district goals and objectives and the course descriptions established in ~~curriculum frameworks adopted by~~ rule of the State Board of Education, as well as with the state and district performance standards provided for in s. 1001.03(1).

(2) DISTRICT SCHOOL SUPERINTENDENT.—

(a) The district school superintendent has the duty to recommend such plans for improving, providing, distributing, accounting for, and caring for instructional materials and other instructional aids as will result in general improvement of the district school system, as prescribed in this part, in accordance with adopted district school board rules prescribing the duties and responsibilities of the district school superintendent regarding the requisition, purchase, receipt,

storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials, and providing for an evaluation of any instructional materials to be requisitioned that have not been used previously in the district's schools. The district school superintendent must keep adequate records and accounts for all financial transactions for funds collected pursuant to subsection (3), as a component of the educational service delivery scope in a school district best financial management practices review under s. 1008.35.

(b) Beginning in the 2013-2014 school year, each district school superintendent shall certify to the department by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards. A list of the state-approved or district-approved core instructional materials that will be used or purchased for use by the school district shall be included in the certification ~~notify the department by April 1 of each year the state-adopted instructional materials that will be requisitioned for use in his or her school district~~. ~~The notification shall include a district school board plan for instructional materials use to assist in determining if adequate instructional materials have been requisitioned.~~

(c) Each principal shall verify that all instructional materials are fully and properly accounted for as prescribed by adopted rules of the district school board.

Section 2. Section 1006.282, Florida Statutes, is repealed.

Section 3. Section 1006.283, Florida Statutes, is created to read:

1006.283 District school board instructional materials review process.—

(1) A school board or consortium of school districts may implement an instructional materials program that includes the review, approval, and purchasing of instructional materials. Beginning in the 2013-2014 school year, the district school superintendent shall certify to the department by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards. Included in the certification shall be a list of the core instructional materials that will be used or purchased for use by the school district.

(2) The school board shall adopt rules implementing the district's instructional materials program which must include, but need not be limited to:

(a) Its review and purchase process.

(b) Identification of a review cycle for instructional materials.

(c) The duties and qualifications of the instructional materials reviewers.

(d) The requirements for an affidavit made by a district instructional materials reviewer, which substantially includes the requirements of s. 1006.30.

(e) Compliance with s. 1006.32, relating to prohibited acts.

(f) A process that certifies the accuracy of instructional materials.

(g) The incorporation of applicable requirements of s. 1006.38, relating to the duties, responsibilities, and

requirements of publishers of instructional materials.

(h) The process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.

(3)(a) The school board may assess and collect fees from publishers participating in the instructional materials approval process. The amount assessed and collected must be posted on the school district's website and reported to the department. The fees may not exceed the amount established in state board rule under s. 1006.34(2). Any fees collected for this process shall be allocated for the support of the review process and maintained in a separate line item for auditing purposes. Fees may not be collected from publishers to review instructional materials that are approved by the department and placed on the department's website.

(b) The fees shall be used to cover the actual cost of substitute teachers for each workday that a member of a school district's instructional staff is absent from his or her assigned duties for the purpose of rendering service as an instructional materials reviewer. In addition, each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings.

(4) Instructional materials that have been reviewed by the district instructional materials reviewers and approved must have been determined to align with all applicable state standards pursuant to s. 1003.41 and the requirements in s. 1006.31. The district school superintendent shall annually certify to the department that all instructional materials for

core courses used by the district are aligned with all applicable state standards.

(5) A publisher that offers instructional materials to a district school board must provide such materials at a price that, including all costs of electronic transmission, does not exceed the lowest price at which the publisher offers such instructional materials for approval or sale to any state or school district in the United States.

(6) A publisher shall reduce automatically the price of the instructional materials to the district school board to the extent that reductions are made elsewhere in the United States.

Section 4. Section 1006.29, Florida Statutes, is amended to read:

1006.29 Department of Education ~~State~~ instructional materials reviewers.—

(1) For purposes of this section, the term "instructional materials" means items that have intellectual content and that, by design, serve as a major tool or for assisting in the instruction of a subject or course.

(2) ~~(1)~~ (a) The commissioner shall determine annually the areas in which instructional materials shall be submitted for approval ~~adoption~~, taking into consideration the desires of the district school boards. ~~The commissioner shall also determine the number of titles to be adopted in each area.~~

(b) ~~By April 15 of each school year,~~ The department ~~commissioner~~ shall appoint five reviewers for each submission by a publisher or district school board ~~three state or national experts in the content areas submitted for adoption~~ to review for approval the instructional materials and evaluate the

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content for alignment with the applicable ~~Next Generation Sunshine~~ state standards. ~~These reviewers shall be designated as state instructional materials reviewers and shall review~~ The materials shall be evaluated for the level of instructional support and the accuracy and appropriateness of progression of introduced content. Instructional materials shall be made electronically available to the reviewers. The state review of the instructional materials shall be made by the five reviewers. Two of the reviewers must be professional content experts, two must be K-12 educators who are actively engaged in teaching or in the supervision of teaching in the public elementary, middle, or high schools and represent the major fields and levels in which instructional materials are used in the public schools, and one must be a lay person who is not professionally connected with education. In the event only four reviewers can be procured, or if one of the five reviewers is unable to fulfill his or her responsibilities, the additional reviewer may be a content expert from the department. As part of the review process, each reviewer shall be provided training on the electronic review system. The reviewers shall independently make recommendations to the commissioner regarding materials that should be placed on the list of approved materials through an electronic feedback review system.

(c) The department may assess and collect fees in accordance with s. 1006.34(2). The amount assessed and collected shall be posted on the department's website and must be reported to the State Board of Education. Any fees collected for this process shall be allocated for the support of the review process, maintained in a separate account for auditing purposes,


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and deposited in the department's Operating Trust Fund.

(d) Fees collected under paragraph (c) shall be used to cover the cost of the review process, including the cost of any meetings and applicable travel and per diem, and the amount paid by a school district to substitute teachers who fill in for instructional staff that is absent for the purpose of rendering service as an instructional materials reviewer. In addition, each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings ~~The initial review of the materials shall be made by only two of the three reviewers. If the two reviewers reach different results, the third reviewer shall break the tie. The reviewers shall independently make recommendations to the commissioner regarding materials that should be placed on the list of adopted materials through an electronic feedback review system.~~

(e) ~~(c)~~ The commissioner shall request each district school superintendent to nominate one classroom teacher or district-level content supervisor to review two or three of the submissions recommended by the department ~~state~~ instructional materials reviewers. School districts shall ensure that these district reviewers are provided with the support and time necessary to accomplish a thorough review of the instructional materials. District reviewers shall independently rate the recommended submissions on the instructional usability of the resources. District reviewers may be paid a stipend and are entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings, if applicable.

(3)~~(2)~~ For purposes of approving materials ~~state adoption~~, the term "instructional materials" means items having intellectual content that by design serve as a major tool or for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher shall ~~may~~ also offer sections of ~~state-adopted~~ instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers.

(4)~~(3)~~ Beginning in the 2015-2016 academic year, all approved ~~adopted~~ instructional materials for students in kindergarten through grade 12 must be provided in an electronic or digital format. For purposes of this section, the term:

(a) "Electronic format" means text-based or image-based content in a form that is produced on, published by, and readable on computers or other digital devices and is an electronic version of a printed book, whether or not any printed equivalent exists.

(b) "Digital format" means text-based or image-based content in a form that provides the student with various interactive functions; that can be searched, tagged, distributed, and used for individualized and group learning; that includes multimedia content such as video clips, animations, and virtual reality; and that has the ability to be

accessed at any time and anywhere.

The terms do not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies.

(5) ~~(4)~~ The department shall develop a training program for persons selected to review submitted ~~as state~~ instructional materials ~~reviewers and school district reviewers~~. The program shall be structured to assist reviewers in developing the skills necessary to make valid, culturally sensitive, and objective decisions regarding the content and rigor of instructional materials. All persons reviewing ~~serving as~~ instructional materials ~~reviewers~~ must complete the training program prior to beginning the review and selection process.

(6) By March 1 of each year, the department shall post on its website a list of department-approved instructional materials and instructional materials approved by other states which align with applicable state standards. The list shall be maintained and updated periodically. The list shall be comprehensive and include sufficient instructional materials or major tools to cover all of the core content areas. The posting must include the purchase price of each product once it is purchased anywhere in the United States. In addition to the posting, the department shall send school district administrators periodic updates to the website. District-approved instructional materials shall also be posted on the website.

Section 5. Section 1006.30, Florida Statutes, is amended to read:

1006.30 Affidavit of the Department of Education ~~state~~ instructional materials reviewers.—Before transacting any business, each department ~~state~~ instructional materials reviewer shall make an affidavit, to be filed with the department, that:

(1) The reviewer will faithfully discharge the duties imposed upon him or her.

(2) The reviewer has no interest in any publishing or manufacturing organization that produces or sells instructional materials.

(3) The reviewer is in no way connected with the distribution of the instructional materials.

(4) The reviewer does not have any direct or indirect pecuniary interest in the business or profits of any person engaged in manufacturing, publishing, or selling instructional materials designed for use in the public schools.

(5) The reviewer will not accept any emolument or promise of future reward of any kind from any publisher or manufacturer of instructional materials or his or her agent or anyone interested in, or intending to bias his or her judgment in any way in, the selection of any materials to be approved ~~adopted~~.

(6) The reviewer understands that it is unlawful to discuss matters relating to instructional materials submitted for approval ~~adoption~~ with any agent of a publisher or manufacturer of instructional materials, either directly or indirectly, except during the period when the publisher or manufacturer is providing a presentation for the reviewer during his or her review of the instructional materials submitted for approval ~~adoption~~.

Section 6. Section 1006.31, Florida Statutes, is amended to


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read:

1006.31 Duties of the Department of Education and school district ~~each state~~ instructional materials reviewer.—The duties of the ~~each state~~ instructional materials reviewer are:

(1) PROCEDURES.—To adhere to procedures prescribed by the department or the district for evaluating instructional materials submitted by publishers and manufacturers in each review for approval ~~adoption~~.

(2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To evaluate carefully all instructional materials submitted, in order to ascertain which instructional materials, if any, submitted for consideration implement the selection criteria developed by the department or the district and those curricular objectives included within applicable performance standards provided for in s. 1001.03(1).

(a) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall include only instructional materials ~~that~~ accurately portray the ethnic, socioeconomic, cultural, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.

(b) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall include only materials that accurately portray, whenever appropriate, humankind’s place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use


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of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall require such materials as he or she deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.

(d) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. A reviewer may not recommend any instructional materials for use in the schools which contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, or occupation.

(e) When evaluating instructional materials, library media, and other reading material for use in the schools, a reviewer shall use the following standards to determine the propriety of the material:

1. The age of students who normally could be expected to have access to the material.

2. The educational purpose to be served by the material. In considering instructional materials for classroom use, priority shall be given to the selection of materials that encompass the state and district school board performance standards provided for in s. 1001.03(1) and include the instructional objectives contained within the course descriptions established in rule by the State Board of Education.

3. The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

4. The degree to which the material represents the broad racial, ethnic, socioeconomic, and cultural diversity of students in the state.

Any instructional material containing pornography or otherwise prohibited by s. 847.012 may not be used or made available within any public school.

(f) ~~(c) Any~~ Instructional material recommended by a ~~each~~ reviewer for use in the schools shall be, to the satisfaction of the ~~each~~ reviewer, accurate, objective, and current and suited to the needs and comprehension of students at their respective grade levels. Reviewers shall consider for adoption materials developed for academically talented students such as those enrolled in advanced placement courses.

(3) REPORT OF REVIEWERS.—After a thorough study of all data submitted on each instructional material, to submit an electronic report to the department. The report shall be made public and must include responses to each section of the report format prescribed by the department.

Section 7. Section 1006.32, Florida Statutes, is amended to read:

1006.32 Prohibited acts.—

(1) A publisher or manufacturer of instructional material, or any representative thereof, may not offer to give any emolument, money, or other valuable thing, or any inducement, to any district school board official or department or district

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~~state~~ instructional materials reviewer to directly or indirectly introduce, recommend, vote for, or otherwise influence the approval ~~adoption~~ or purchase of any instructional materials.

(2) A district school board official or a department or district ~~state~~ instructional materials reviewer may not solicit or accept any emolument, money, or other valuable thing, or any inducement, to directly or indirectly introduce, recommend, vote for, or otherwise influence the approval ~~adoption~~ or purchase of any instructional material.

~~(3) A district school board or publisher may not participate in a pilot program of materials being considered for adoption during the 18-month period before the official adoption of the materials by the commissioner. Any pilot program during the first 2 years of the adoption period must have the prior approval of the commissioner.~~

(3)~~(4)~~ A ~~Any~~ publisher or manufacturer of instructional materials or representative thereof or a ~~any~~ district school board official or department or district ~~state~~ instructional materials reviewer who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A ~~Any~~ representative of a publisher or manufacturer who violates any provision of this section, in addition to any other penalty, shall be banned from practicing business in the state for a period of 1 calendar year.

(4)~~(5)~~ This section does not prohibit any publisher, manufacturer, or agent from supplying, for purposes of examination, necessary sample copies of instructional materials to any district school board official or department or district


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~~state~~ instructional materials reviewer.

(5)~~(6)~~ This section does not prohibit a district school board official or department or district ~~state~~ instructional materials reviewer from receiving sample copies of instructional materials.

(6)~~(7)~~ This section does not prohibit or restrict a district school board official from receiving royalties or other compensation, other than compensation paid to him or her as commission for negotiating sales to district school boards, from the publisher or manufacturer of instructional materials written, designed, or prepared by such district school board official~~,~~ and ~~adopted by the commissioner or~~ purchased by any district school board. A ~~No~~ district school board official may not ~~shall be allowed to~~ receive royalties on any materials not ~~on the state-adopted list~~ purchased for use by his or her district school board.

(7)~~(8)~~ A district school superintendent, district school board member, teacher, or other person officially connected with the government or direction of public schools may not receive during the months actually engaged in performing duties under his or her contract any private fee, gratuity, donation, or compensation, in any manner whatsoever, for promoting the sale or exchange of any instructional material, map, or chart in any public school, or be an agent for the sale or the publisher of any instructional material or reference work, or have a direct or indirect pecuniary interest in the introduction of any such instructional material, and any such agency or interest shall disqualify any person so acting or interested from holding any district school board employment whatsoever, and the person

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commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; however, this subsection does not prevent the approval ~~adoption~~ of any instructional material written in whole or in part by a Florida author.

Section 8. Section 1006.33, Florida Statutes, is repealed.

Section 9. Section 1006.34, Florida Statutes, is amended to read:

1006.34 Powers and duties of the State Board of Education ~~commissioner and the department~~ in evaluating ~~selecting and adopting~~ instructional materials.—

(1) PROCEDURES FOR EVALUATING INSTRUCTIONAL MATERIALS.—The State Board of Education shall adopt rules prescribing the procedures by which the department shall evaluate instructional materials submitted by publishers and manufacturers in each review for approval ~~adoption~~. Included in these procedures shall be provisions affording each publisher or manufacturer or his or her representative an opportunity to provide a live virtual or in-person presentation to the department ~~state~~ instructional materials reviewers on the merits of each instructional material submitted in each review for approval ~~adoption~~.

(2) FEES.—The State Board of Education shall adopt by rule a fee schedule specifying the amount of fees that the department may charge publishers who submit instructional materials for review. Fees may not exceed the actual costs for the review, taking into consideration the cost of reviewers, the content area and complexity of the instructional materials to be reviewed, and other relevant factors. The fee schedule must specify the amount that may be collected by the department for each submission.

~~(2) SELECTION AND ADOPTION OF INSTRUCTIONAL MATERIALS.—~~

~~(a) The department shall notify all publishers and manufacturers of instructional materials who have submitted bids that within 3 weeks after the deadline for receiving bids, at a designated time and place, it will open the bids submitted and deposited with it. At the time and place designated, the bids shall be opened, read, and tabulated in the presence of the bidders or their representatives. No one may revise his or her bid after the bids have been filed. When all bids have been carefully considered, the commissioner shall, from the list of suitable, usable, and desirable instructional materials reported by the state instructional materials reviewers, select and adopt instructional materials for each grade and subject field in the curriculum of public elementary, middle, and high schools in which adoptions are made and in the subject areas designated in the advertisement. The adoption shall continue for the period specified in the advertisement, beginning on the ensuing April 1. The adoption shall not prevent the extension of a contract as provided in subsection (3). The commissioner shall always reserve the right to reject any and all bids. The commissioner may ask for new sealed bids from publishers or manufacturers whose instructional materials were recommended by the state instructional materials reviewers as suitable, usable, and desirable; specify the dates for filing such bids and the date on which they shall be opened; and proceed in all matters regarding the opening of bids and the awarding of contracts as required by this part. In all cases, bids shall be accompanied by a cash deposit or certified check of from $500 to $2,500, as the department may direct. The department, in adopting~~

~~instructional materials, shall give due consideration both to the prices bid for furnishing instructional materials and to the report and recommendations of the state instructional materials reviewers. When the commissioner has finished with the report of the state instructional materials reviewers, the report shall be filed and preserved with the department and shall be available at all times for public inspection.~~

~~(b) In the selection of instructional materials, library media, and other reading material used in the public school system, the standards used to determine the propriety of the material shall include:~~

~~1. The age of the students who normally could be expected to have access to the material.~~

~~2. The educational purpose to be served by the material. In considering instructional materials for classroom use, priority shall be given to the selection of materials which encompass the state and district school board performance standards provided for in s. 1001.03(1) and which include the instructional objectives contained within the curriculum frameworks approved by rule of the State Board of Education.~~

~~3. The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.~~

~~4. The consideration of the broad racial, ethnic, socioeconomic, and cultural diversity of the students of this state.~~

~~Any instructional material containing pornography or otherwise prohibited by s. 847.012 may not be used or made available~~

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~~within any public school.~~

~~(3) CONTRACT WITH PUBLISHERS OR MANUFACTURERS; BOND.—As soon as practicable after the commissioner has adopted any instructional materials and all bidders that have secured the adoption of any instructional materials have been notified thereof by registered letter, the department shall prepare a contract in proper form with every bidder awarded the adoption of any instructional materials. Each contract shall be executed by the commissioner, one copy to be kept by the contractor and one copy to be filed with the department. After giving due consideration to comments by the district school boards, the commissioner, with the agreement of the publisher, may extend or shorten a contract period for a period not to exceed 2 years; and the terms of any such contract shall remain the same as in the original contract. Any publisher or manufacturer to whom any contract is let under this part must give bond in such amount as the department requires, payable to the state, conditioned for the faithful, honest, and exact performance of the contract. The bond must provide for the payment of reasonable attorney's fees in case of recovery in any suit thereon. The surety on the bond must be a guaranty or surety company lawfully authorized to do business in the state; however, the bond shall not be exhausted by a single recovery but may be sued upon from time to time until the full amount thereof is recovered, and the department may at any time, after giving 30 days' notice, require additional security or additional bond. The form of any bond or bonds or contract or contracts under this part shall be prepared and approved by the department. At the discretion of the department, a publisher or manufacturer to whom any contract is~~

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~~let under this part may be allowed a cash deposit in lieu of a bond, conditioned for the faithful, honest, and exact performance of the contract. The cash deposit, payable to the department, shall be placed in the Textbook Bid Trust Fund. The department may recover damages on the cash deposit given by the contractor for failure to furnish instructional materials, the sum recovered to inure to the General Revenue Fund.~~

~~(4) REGULATIONS GOVERNING THE CONTRACT.—The department may, from time to time, take any necessary actions, consistent with this part, to secure the prompt and faithful performance of all instructional materials contracts; and if any contractor fails or refuses to furnish instructional materials as provided in this part or otherwise breaks his or her contract, the department may sue on the required bond in the name of the state, in the courts of the state having jurisdiction, and recover damages on the bond given by the contractor for failure to furnish instructional materials, the sum recovered to inure to the General Revenue Fund.~~

~~(5) RETURN OF DEPOSITS.—~~

~~(a) The successful bidder shall be notified by registered mail of the award of contract and shall, within 30 days after receipt of the contract, execute the proper contract and post the required bond. When the bond and contract have been executed, the department shall notify the Chief Financial Officer and request that a warrant be issued against the Textbook Bid Trust Fund payable to the successful bidder in the amount deposited pursuant to this part. The Chief Financial Officer shall issue and forward the warrant to the department for distribution to the bidder.~~

~~(b) At the same time or prior thereto, the department shall inform the Chief Financial Officer of the names of the unsuccessful bidders. Upon receipt of such notice, the Chief Financial Officer shall issue warrants against the Textbook Bid Trust Fund payable to the unsuccessful bidders in the amounts deposited pursuant to this part and shall forward the warrants to the department for distribution to the unsuccessful bidders.~~

~~(c) One copy of each contract and an original of each bid, whether accepted or rejected, shall be preserved with the department for at least 3 years after the termination of the contract.~~

~~(6) DEPOSITS FORFEITED.—If any successful bidder fails or refuses to execute contract and bond within 30 days after receipt of the contract, the cash deposit shall be forfeited to the state and placed by the Chief Financial Officer in the General Revenue Fund.~~

~~(7) FORFEITURE OF CONTRACT AND BOND.—If any publisher or manufacturer of instructional materials fails or refuses to furnish instructional materials as provided in the contract, the publisher's or manufacturer's bond is forfeited and the commissioner must make another contract.~~

Section 10. Section 1006.35, Florida Statutes, is amended to read:

1006.35 Accuracy of instructional materials.—

(1) In addition to relying on statements of publishers or manufacturers of instructional materials, the commissioner may conduct or cause to be conducted an independent investigation to determine the accuracy of approved ~~state-adopted~~ instructional materials.


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(2) When errors in approved ~~state-adopted~~ materials are confirmed, the publisher or manufacturer of the materials shall provide to each district school board that has purchased the materials the corrections in a format approved by the department.

(3) The commissioner may remove materials from the list of approved ~~state-adopted~~ materials:

(a) If he or she finds that the content is in error and the publisher or manufacturer refuses to correct the error when notified by the department.

(b)~~(4) The commissioner may remove materials from the list of state-adopted materials~~ At the request of the publisher or manufacturer if, in the commissioner's ~~his or her~~ opinion, there is no material impact on the state's education goals.

(c) If the materials do not align with all applicable state standards.

(4) If the commissioner removes materials from the list of approved materials, the district may not purchase them for use in core content areas.

Section 11. Section 1006.36, Florida Statutes, is amended to read:

1006.36 State review cycle ~~Term of adoption~~ for instructional materials.—

(1) The state review cycle ~~term of adoption~~ of any instructional materials shall ~~must~~ be a 5-year period ~~beginning on April 1 following the adoption~~, except that the commissioner may approve alternative schedules ~~terms of adoption~~ of less than 5 years for materials in content areas which require more frequent revision. ~~Any contract for instructional materials may~~

~~be extended as prescribed in s. 1006.34(3).~~

(2) The department shall publish annually an official schedule of subject areas to be called for review ~~adoption~~ for each of the succeeding 2 years, and a tentative schedule for years 3, 4, and 5. If extenuating circumstances warrant, the commissioner may add one or more subject areas to the official schedule, in which event the commissioner shall develop criteria for such additional subject area or areas and make them available to publishers or manufacturers as soon as practicable before the date on which submission for review is ~~bids are~~ due. The schedule shall be developed so as to promote balance among the subject areas so that the required expenditure for new instructional materials is approximately the same each year in order to maintain curricular consistency.

Section 12. Section 1006.37, Florida Statutes, is amended to read:

1006.37 Requisition of instructional materials from publisher's depository.—

~~(1)~~ The district school superintendent may ~~shall~~ requisition approved ~~adopted~~ instructional materials from the depository of the publisher with whom a contract has been made. ~~However, the superintendent shall requisition current instructional materials to provide each student with a textbook or other materials as a major tool of instruction in core courses of the subject areas specified in s. 1006.40(2). These materials must be requisitioned within the first 2 years of the adoption cycle, except for instructional materials related to growth of student membership or instructional materials maintenance needs. The superintendent may requisition~~


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~~instructional materials in the core subject areas specified in s. 1006.40(2) that are related to growth of student membership or instructional materials maintenance needs during the 3rd, 4th, 5th, and 6th years of the original contract period.~~

~~(2) The district school superintendent shall verify that the requisition is complete and accurate and order the depository to forward to him or her the adopted instructional materials shown by the requisition. The depository shall prepare an invoice of the materials shipped, including shipping charges, and mail it to the superintendent to whom the shipment is being made. The superintendent shall pay the depository within 60 days after receipt of the requisitioned materials from the appropriation for the purchase of adopted instructional materials.~~

Section 13. Section 1006.38, Florida Statutes, is amended to read:

1006.38 Duties, responsibilities, and requirements of instructional materials publishers and manufacturers.—This section applies to both the state and district approval processes. Publishers and manufacturers of instructional materials, or their representatives, shall:

(1) Comply with all provisions of this part.

(2) Electronically deliver fully developed sample copies of all instructional materials upon which reviews ~~bids~~ are based to the department pursuant to procedures adopted by the State Board of Education.

(3) Submit~~, at a time designated in s. 1006.33,~~ the following information:

(a) Detailed specifications of the physical characteristics

of the instructional materials, including any software or technological tools required for use by the district, school, teachers, or students. The publisher or manufacturer shall comply with these specifications if the instructional materials are approved ~~adopted~~ and purchased in completed form.

(b) Evidence that the publisher or manufacturer has provided materials that address the performance standards provided for in s. 1001.03(1) and that can be accessed through the district's local instructional improvement system and a variety of electronic, digital, and mobile devices.

(c) Evidence that the instructional materials include specific references to statewide standards in the teacher's manual and incorporate such standards into chapter tests or the assessments. Beginning in the 2013-2014 adoption year, the statewide standards shall not be included at the point of student use.

(4) Make available for purchase by any district school board any diagnostic, criterion-referenced, or other tests that they may develop.

(5) Furnish the instructional materials offered by them at a price in the state which, including all costs of electronic transmission, may not exceed the lowest price at which they offer such instructional materials for approval ~~adoption~~ or sale to any state or school district in the United States.

(6) Reduce automatically the price of the instructional materials to any district school board to the extent that reductions are made elsewhere in the United States.

(7) Provide any instructional materials free of charge in the state to the same extent as they are provided free of charge

to any state or school district in the United States.

(8) Guarantee that all copies of any instructional materials sold in this state will be at least equal in quality to the copies of such instructional materials that are sold elsewhere in the United States and will be kept revised, free from all errors, and up-to-date as may be required by the department.

(9) Agree that any supplementary material developed at the district or state level does not violate the author's or publisher's copyright, provided such material is developed in accordance with the doctrine of fair use.

(10) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, nor enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the state.

(11) Furnish the instructional materials offered by them at a price in the state which, including all costs of electronic transmission, may not exceed the lowest price at which they offer such instructional materials for approval or sale to any other school district in the state.

(12) Provide the department and school districts the cost paid for an instructional materials product by a school or district anywhere in the United States. The cost paid for that product must remain the same for all future sales and must be posted on all marketing materials.

~~(11) Maintain or contract with a depository in the state.~~

~~(12) For the core subject areas specified in s. 1006.40(2),~~


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~~maintain in the depository for the first 2 years of the contract an inventory of instructional materials sufficient to receive and fill orders.~~

(13) For the core subject areas specified in s. 1006.40(2), ensure the availability of an inventory sufficient to receive and fill orders for instructional materials for growth, including the opening of a new school, and replacement during the 3rd and subsequent years of the original contract period.

(14) Accurately and fully disclose only the names of those persons who actually authored the instructional materials. In addition to the penalties provided in subsection (16), the commissioner may remove from the list of state-approved ~~state-adopted~~ instructional materials those instructional materials whose publisher or manufacturer misleads the purchaser by falsely representing genuine authorship.

(15) Grant, without prior written request, for any copyright held by the publisher or its agencies automatic permission to the department or its agencies for the reproduction of instructional materials and supplementary materials in Braille, large print, or other appropriate format for use by visually impaired students or other students with disabilities that would benefit from use of the materials.

(16) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the department in the amount of three times the total sum which the publisher or manufacturer was paid in excess of the price required under subsections (5) and (6) and in the amount of three times the total value of the instructional materials and services which the district school board is

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entitled to receive free of charge under subsection (7).

Section 14. Subsections (2), (3), and (4) of section 1006.40, Florida Statutes, are amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(2) Each district school board must provide ~~purchase~~ current instructional materials to ~~provide~~ each student with a major tool or assistance ~~of instruction~~ in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. ~~Such purchase must be made within the first 2 years after the effective date of the adoption cycle. For the 2012-2013 mathematics adoption, a district using a comprehensive mathematics instructional materials program adopted in the 2009-2010 adoption shall be deemed in compliance with this subsection if it provides each student with such additional state-adopted materials as may be necessary to align the previously adopted comprehensive program to common core standards and the other criteria of the 2012-2013 mathematics adoption.~~

(3) ~~(a)~~ By the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards ~~included on the state-adopted list, except as otherwise authorized in paragraphs (b) and (c)~~.

~~(b) Up to 50 percent of the annual allocation may be used for the purchase of instructional materials, including library and reference books and nonprint materials, not included on the state-adopted list and for the repair and renovation of~~

~~textbooks and library books.~~

~~(c) District school boards may use 100 percent of that portion of the annual allocation designated for the purchase of instructional materials for kindergarten, and 75 percent of that portion of the annual allocation designated for the purchase of instructional materials for first grade, to purchase materials not on the state-adopted list.~~

(4) Remaining funds may ~~The funds described in subsection (3) which district school boards may use to purchase materials not on the state-adopted list shall~~ be used for the purchase of instructional materials or other items, including library and reference books and nonprint materials, having intellectual content which assist in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule.

Section 15. Paragraphs (o), (p), and (q) of subsection (6) of section 1001.10, Florida Statutes, are amended, and paragraph (r) is added to that subsection, to read:

1001.10 Commissioner of Education; general powers and duties.—

(6) Additionally, the commissioner has the following general powers and duties:

(o) To develop criteria for use by department ~~state~~ instructional materials reviewers in evaluating materials


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submitted for approval ~~adoption consideration~~. The criteria shall, as appropriate, be based on instructional expectations reflected in course descriptions ~~curriculum frameworks~~ and student performance standards. The criteria for each subject or course shall be made available to publishers and manufacturers of instructional materials pursuant to the requirements of chapter 1006.

(p) To prescribe procedures for evaluating instructional materials submitted by publishers and manufacturers in each review for approval ~~adoption~~.

(q) To remove any instructional materials from the list of materials approved by the department or a school district ~~enter into agreement with Space Florida to develop innovative aerospace-related education programs that promote mathematics and science education for grades K-20~~.

(r) To submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Board of Education an annual report regarding district and state instructional materials reviews, the impact on the quality and availability of instructional materials, and the cost-effectiveness of the state and district review processes. The report shall be submitted on January 1 following the first fiscal year of implementation of the program and each year thereafter.

Section 16. Subsection (5) of section 1003.55, Florida Statutes, is amended to read:

1003.55 Instructional programs for blind or visually impaired students and deaf or hard-of-hearing students.—

(5) Any publisher or manufacturer of instructional

materials that have been approved by the department or a school district ~~a textbook adopted pursuant to the state instructional materials adoption process~~ shall furnish the department ~~of Education~~ with a computer file in an electronic format specified by the department ~~at least 2 years in advance~~ that is readily translatable to Braille and can be used for large print or speech access. Any instructional materials ~~textbook~~ reproduced pursuant to ~~the provisions of~~ this subsection shall be purchased at a price equal to the price paid for the instructional materials ~~textbook~~ as approved ~~adopted~~. The department ~~of Education~~ shall not reproduce instructional materials ~~textbooks~~ obtained pursuant to this subsection in any manner that would generate revenues for the department from the use of such computer files or that would preclude the rightful payment of fees to the publisher or manufacturer for use of all or some portion of the instructional materials ~~textbook~~.

Section 17. Paragraph (j) of subsection (2) of section 1003.621, Florida Statutes, is amended to read:

1003.621 Academically high-performing school districts.—It is the intent of the Legislature to recognize and reward school districts that demonstrate the ability to consistently maintain or improve their high-performing status. The purpose of this section is to provide high-performing school districts with flexibility in meeting the specific requirements in statute and rules of the State Board of Education.

(2) COMPLIANCE WITH STATUTES AND RULES.—Each academically high-performing school district shall comply with all of the provisions in chapters 1000-1013, and rules of the State Board of Education which implement these provisions, pertaining to the

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following:

(j) Those statutes relating to instructional materials, except that s. 1006.40 ~~s. 1006.37, relating to the requisition of state-adopted materials from the depository under contract with the publisher, and s. 1006.40(3)(a)~~, relating to the use of 50 percent of the instructional materials allocation, is ~~shall be~~ eligible for exemption.

Section 18. Paragraph (b) of subsection (6) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(6) CATEGORICAL FUNDS.—

(b) If a district school board finds and declares in a resolution approved ~~adopted~~ at a regular meeting of the school board that the funds received for any of the following categorical appropriations are urgently needed to maintain ~~school board specified~~ academic classroom instruction specified by the school board, the school board may consider and approve an amendment to the school district operating budget transferring the identified amount of the categorical funds to the appropriate account for expenditure:

1. Funds for student transportation.

2. Funds for safe schools.

3. Funds for supplemental academic instruction if the required additional hour of instruction beyond the normal school

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day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (1)(f).

4. Funds for research-based reading instruction if the required additional hour of instruction beyond the normal school day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (9)(a).

5. Funds for instructional materials if all instructional material purchases necessary to provide updated materials that are aligned with applicable ~~to Next Generation Sunshine~~ state standards and course descriptions ~~benchmarks~~ and that meet statutory requirements of content and learning have been completed for that fiscal year, but no sooner than March 1. Funds available after March 1 may be used to purchase hardware for student instruction.

Section 19. This act shall take effect July 1, 2013.

========== 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 instructional materials for K-12 public education; amending s. 1006.28, F.S.; revising the duties of a district school board and the district superintendent with regard to instructional materials; repealing s. 1006.282, F.S., relating to the pilot program for the transition to electronic and digital

instructional materials; creating s. 1006.283, F.S.; authorizing a district school board or a consortium of school districts to implement an instructional materials program; requiring the district superintendent to certify to the Department of Education that instructional materials for core courses align with applicable state standards; requiring the district school board to adopt rules; authorizing the district school board to set and collect fees from a publisher that participates in the instructional materials review process; requiring the fee amount to be posted on the school district's website and reported to the Department of Education; providing a limit on fees; prohibiting fees from being collected from publishers to review certain instructional materials; providing for a stipend, reimbursement for travel expenses, and per diem for reviewers; requiring instructional materials that are approved by the district instructional materials reviewers to be aligned with applicable state standards; requiring each district school superintendent to annually certify that the instructional materials for core courses used by the district align with applicable state standards; providing pricing requirements for instructional materials; amending s. 1006.29, F.S.; providing a definition; requiring the department to appoint state instructional materials reviewers, rather than state or national experts, to review instructional

materials; providing requirements, appointments, and terms for state instructional materials reviewers; authorizing the department to assess and collect fees; requiring the fee amount to be posted on the department's website and reported to the State Board of Education; providing a purpose for the use of the fees, such as a stipend for service as a reviewer, payment for per diem, and reimbursement for travel expenses for service as a reviewer; requiring a publisher to offer sections of instructional materials in certain versions at reduced rates; requiring the department to post certain instructional materials on its website; amending s. 1006.30, F.S.; conforming provisions to changes made by the act; amending s. 1006.31, F.S.; conforming provisions to changes made by the act; revising the procedure for evaluating instructional materials; providing standards to determine the propriety of instructional materials; amending s. 1006.32, F.S.; conforming provisions to changes made by the act; repealing s. 1006.33, F.S., relating to bids, proposals, and advertisement regarding instructional materials; amending s. 1006.34, F.S.; revising the powers and duties of the State Board of Education in evaluating instructional materials to include collecting fees and adopting rules; conforming provisions to changes made by the act; amending s. 1006.35, F.S.; authorizing the Commissioner of Education to remove materials from the list of approved materials if the materials do not


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align with applicable state standards; prohibiting a school district from purchasing removed materials under certain circumstances; amending s. 1006.36, F.S.; providing for the state review cycle for instructional materials; amending s. 1006.37, F.S.; authorizing a district school superintendent to requisition approved instructional materials; conforming provisions to changes made by the act; amending s. 1006.38, F.S.; providing for applicability; revising duties of publishers and manufacturers; amending s. 1006.40, F.S.; revising the allocation for instructional materials; amending s. 1001.10, F.S.; revising the duties of the Commissioner of Education with regard to instructional materials, including submission of a report to the Governor, the Legislature, and the State Board of Education; amending s. 1003.55, F.S.; requiring a publisher or manufacturer of instructional materials that have been approved by the Department of Education or a school district to furnish the department with a computer file in an electronic format specified by the department; amending ss. 1003.621 and 1011.62, F.S.; conforming provisions to changes made by the act; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (426402)

Delete line 723
and insert:
statewide standards may not be included at the point of

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to instructional materials for K-12 public education; amending s. 1006.28, F.S.; revising the duties of a district school board and the district superintendent with regard to instructional materials; repealing s. 1006.282, F.S., relating to the pilot program for the transition to electronic and digital instructional materials; creating s. 1006.283, F.S.; authorizing a district school board or a consortium of school districts to implement an instructional materials program; requiring the district superintendent to certify to the Department of Education that core instructional materials align with applicable state standards; requiring the district school board to adopt rules; authorizing the district school board to set and collect fees from a publisher that participates in the instructional materials review process; providing a limit on fees; prohibiting fees from being collected from publishers to review instructional materials; providing for a stipend and reimbursement for travel expenses and per diem for reviewers; requiring instructional materials that are approved by the district instructional materials reviewers to be aligned with applicable state standards; requiring each district school board to annually certify that the instructional materials align with applicable state standards; providing

pricing requirements for instructional materials; amending s. 1006.29, F.S.; providing a definition; requiring the department to appoint state instructional materials reviewers, rather than state or national experts, to review instructional materials; providing requirements, appointments, and terms for state instructional materials reviewers; authorizing the department to compensate assigned reviewers with funds collected through certain fees; providing a purpose for the use of the fees; authorizing a stipend for service as a reviewer; providing for payment for per diem and reimbursement for travel expenses for service as a reviewer; requiring a publisher to offer sections of instructional materials in certain versions at reduced rates; requiring the department to post certain instructional materials on its website; amending s. 1006.30, F.S.; conforming provisions to changes made by the act; amending s. 1006.31, F.S.; conforming provisions to changes made by the act; revising the procedure for evaluating instructional materials; providing standards to determine the propriety of instructional materials; amending s. 1006.32, F.S.; conforming provisions to changes made by the act; repealing s. 1006.33, F.S., relating to bids, proposals, and advertisement regarding instructional materials; amending s. 1006.34, F.S.; revising the powers and duties of the State Board of Education in evaluating instructional materials to include

collecting fees and adopting rules; conforming provisions to changes made by the act; amending s. 1006.35, F.S.; authorizing the Commissioner of Education to remove materials from the list of approved materials if the materials do not align with applicable state standards; prohibiting a school district from purchasing removed materials under certain circumstances; amending s. 1006.36, F.S.; providing for the state review cycle for instructional materials; amending s. 1006.37, F.S.; authorizing a district school superintendent to requisition approved instructional materials; conforming provisions to changes made by the act; amending s. 1006.38, F.S.; providing for applicability; revising duties of publishers and manufacturers; amending s. 1006.40, F.S.; revising the allocation for instructional materials; amending s. 1001.10, F.S.; revising the duties of the commissioner with regard to instructional materials, including submission of a report to the Governor and the Legislature; amending s. 1003.55, F.S.; requiring a publisher or manufacturer of instructional materials that have been approved by the Department of Education or a school district to furnish the department with a computer file in an electronic format specified by the department; amending ss. 1003.621 and 1011.62, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and subsection (2) of section 1006.28, Florida Statutes, are amended to read:

1006.28 Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials.—

(1) DISTRICT SCHOOL BOARD.—The district school board has the duty to provide adequate instructional materials for all students in accordance with the requirements of this part. The term "adequate instructional materials" means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature. The district school board has the following specific duties:

(b) *Instructional materials.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials and furnish such other instructional materials as may be needed. The district school board shall ensure that instructional materials used in the district are consistent with the district goals and objectives and the course descriptions established in ~~curriculum frameworks adopted by~~ rule of the State Board of Education, as well as with the state and district performance standards provided for in s.

1001.03(1).

(2) DISTRICT SCHOOL SUPERINTENDENT.—

(a) The district school superintendent has the duty to recommend such plans for improving, providing, distributing, accounting for, and caring for instructional materials and other instructional aids as will result in general improvement of the district school system, as prescribed in this part, in accordance with adopted district school board rules prescribing the duties and responsibilities of the district school superintendent regarding the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials, and providing for an evaluation of any instructional materials to be requisitioned that have not been used previously in the district's schools. The district school superintendent must keep adequate records and accounts for all financial transactions for funds collected pursuant to subsection (3), as a component of the educational service delivery scope in a school district best financial management practices review under s. 1008.35.

(b) Beginning in the 2013-2014 school year, each district school superintendent shall certify to the department by March 31 of each year that all core instructional materials used by the district are aligned with applicable state standards. A list of the state-approved or district-approved core instructional materials that will be used or purchased for use by the school district shall be included in the certification ~~notify the department by April 1 of each year the state-adopted instructional materials that will be requisitioned for use in~~

~~his or her school district~~. ~~The notification shall include a district school board plan for instructional materials use to assist in determining if adequate instructional materials have been requisitioned.~~

(c) Each principal shall verify that all instructional materials are fully and properly accounted for as prescribed by adopted rules of the district school board.

Section 2. Section 1006.282, Florida Statutes, is repealed.

Section 3. Section 1006.283, Florida Statutes, is created to read:

1006.283 District school board instructional materials review process.—

(1) A school board or consortium of school districts may implement an instructional materials program that includes the review, approval, and purchasing of instructional materials. Beginning in the 2013-2014 school year, the district school superintendent shall certify to the department by March 31 of each year that all core instructional materials used by the district are aligned with applicable state standards. Included in the certification shall be a list of the core instructional materials that will be used or purchased for use by the school district.

(2) The school board shall adopt rules implementing the district's instructional materials program which must include, but need not be limited to:

(a) Its review and purchase process.

(b) Identification of a review cycle for instructional materials.

(c) The duties and qualifications of the instructional

materials reviewers.

(d) The requirements for an affidavit made by a district instructional materials reviewer, which substantially includes the requirements of s. 1006.30.

(e) Compliance with s. 1006.32, relating to prohibited acts.

(f) A process that certifies the accuracy of instructional materials.

(g) The incorporation of applicable requirements of s. 1006.38, relating to the duties, responsibilities, and requirements of publishers of instructional materials.

(h) The process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.

(3)(a) The school board may set and collect fees from publishers participating in the instructional materials approval process. The amount assessed and collected shall be advertised and must be reported to the district school board. The fees may not exceed the fees that are assessed for those materials submitted for review by the state as defined by the State Board of Education. Any fees collected for this process shall be allocated for the support of the review process and maintained in a separate line item for auditing purposes. Fees may not be collected from publishers to review instructional materials that are approved by the department and placed on the department's website.

(b) The fees shall be used to cover the actual cost of substitute teachers for each workday that a member of a school district's instructional staff is absent from his or her

assigned duties for the purpose of rendering service as an instructional materials reviewer. In addition, each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings.

(4) Instructional materials that have been reviewed by the district instructional materials reviewers and approved must have been determined to align with all applicable state standards pursuant to s. 1003.41 and the requirements in s. 1006.31. The school board shall annually certify to the department that the school board's core instructional materials are aligned with all applicable state standards.

(5) A publisher that offers instructional materials to a district school board must provide such materials at a price which, including all costs of electronic transmission, does not exceed the lowest price at which the publisher offers such instructional materials for approval or sale to any state or school district in the United States.

(6) A publisher shall reduce automatically the price of the instructional materials to the district school board to the extent that reductions are made elsewhere in the United States.

Section 4. Section 1006.29, Florida Statutes, is amended to read:

1006.29 Department of Education ~~State~~ instructional materials reviewers.—

(1) For purposes of this section, the term "instructional materials" means items that have intellectual content and that, by design, serve as a major tool or for assisting in the instruction of a subject or course.

(2) ~~(1)~~ (a) The commissioner shall determine annually the areas in which instructional materials shall be submitted for approval ~~adoption~~, taking into consideration the desires of the district school boards. ~~The commissioner shall also determine the number of titles to be adopted in each area.~~

(b) ~~By April 15 of each school year,~~ The department ~~commissioner~~ shall appoint five reviewers for each submission by a publisher or district school board ~~three state or national experts in the content areas submitted for adoption~~ to review for approval the instructional materials and evaluate the content for alignment with the applicable ~~Next Generation Sunshine~~ state standards. ~~These reviewers shall be designated as state instructional materials reviewers and shall review~~ The materials shall be evaluated for the level of instructional support and the accuracy and appropriateness of progression of introduced content. Instructional materials shall be made electronically available to the reviewers. The state review of the instructional materials shall be made by the five reviewers. Two of the reviewers must be professional content experts, two must be K-12 educators who are actively engaged in teaching or in the supervision of teaching in the public elementary, middle, or high schools and represent the major fields and levels in which instructional materials are used in the public schools, and one must be a lay person who is not professionally connected with education. In the event only four reviewers can be procured, or if one of the five reviewers is unable to fulfill his or her responsibilities, the additional reviewer may be a content expert from the department. As part of the review process, each reviewer shall be provided training on the

electronic review system. The reviewers shall independently make recommendations to the commissioner regarding materials that should be placed on the list of approved materials through an electronic feedback review system.

(c) The department may assess and collect fees in accordance with s. 1006.34(2). The amount assessed and collected shall be advertised and must be reported to the State Board of Education. Any fees collected for this process shall be allocated for the support of the review process, maintained in a separate account for auditing purposes, and deposited in the department's Operating Trust Fund.

(d) Fees collected under paragraph (c) shall be used to cover the cost of the review process including the cost of any meetings and applicable travel and per diem, and the amount paid by a school district to substitute teachers who fill in for instructional staff that is absent for the purpose of rendering service as an instructional materials reviewer. In addition, each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings ~~The initial review of the materials shall be made by only two of the three reviewers~~. ~~If the two reviewers reach different results, the third reviewer shall break the tie. The reviewers shall independently make recommendations to the commissioner regarding materials that should be placed on the list of adopted materials through an electronic feedback review system.~~

(e) ~~(c)~~ The commissioner shall request each district school superintendent to nominate one classroom teacher or district-level content supervisor to review two or three of the

submissions recommended by the department ~~state~~ instructional materials reviewers. School districts shall ensure that these district reviewers are provided with the support and time necessary to accomplish a thorough review of the instructional materials. District reviewers shall independently rate the recommended submissions on the instructional usability of the resources. District reviewers may be paid a stipend and are entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings, if applicable.

(3) ~~(2)~~ For purposes of approving materials ~~state adoption~~, the term "instructional materials" means items having intellectual content that by design serve as a major tool or for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher shall ~~may~~ also offer sections of ~~state-adopted~~ instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers.

(4) ~~(3)~~ Beginning in the 2015-2016 academic year, all approved ~~adopted~~ instructional materials for students in kindergarten through grade 12 must be provided in an electronic or digital format. For purposes of this section, the term:

(a) "Electronic format" means text-based or image-based

content in a form that is produced on, published by, and readable on computers or other digital devices and is an electronic version of a printed book, whether or not any printed equivalent exists.

(b) "Digital format" means text-based or image-based content in a form that provides the student with various interactive functions; that can be searched, tagged, distributed, and used for individualized and group learning; that includes multimedia content such as video clips, animations, and virtual reality; and that has the ability to be accessed at any time and anywhere.

The terms do not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies.

(5) ~~(4)~~ The department shall develop a training program for persons selected to review submitted ~~as state~~ instructional materials ~~reviewers and school district reviewers~~. The program shall be structured to assist reviewers in developing the skills necessary to make valid, culturally sensitive, and objective decisions regarding the content and rigor of instructional materials. All persons reviewing ~~serving as~~ instructional materials ~~reviewers~~ must complete the training program prior to beginning the review and selection process.

(6) By March 1 of each year, the department shall post on its website a list of department-approved instructional materials and instructional materials approved by other states which align with applicable state standards. The list shall be maintained and updated periodically. The list shall be

comprehensive and include sufficient instructional materials or major tools to cover all of the core content areas. The posting must include the purchase price of each product once it is purchased anywhere in the United States. In addition to the posting, the department shall send school district administrators periodic updates to the website. District-approved instructional materials shall also be posted on the website.

Section 5. Section 1006.30, Florida Statutes, is amended to read:

1006.30 Affidavit of Department of Education ~~state~~ instructional materials reviewers.—Before transacting any business, each department ~~state~~ instructional materials reviewer shall make an affidavit, to be filed with the department, that:

(1) The reviewer will faithfully discharge the duties imposed upon him or her.

(2) The reviewer has no interest in any publishing or manufacturing organization that produces or sells instructional materials.

(3) The reviewer is in no way connected with the distribution of the instructional materials.

(4) The reviewer does not have any direct or indirect pecuniary interest in the business or profits of any person engaged in manufacturing, publishing, or selling instructional materials designed for use in the public schools.

(5) The reviewer will not accept any emolument or promise of future reward of any kind from any publisher or manufacturer of instructional materials or his or her agent or anyone interested in, or intending to bias his or her judgment in any

way in, the selection of any materials to be approved ~~adopted~~.

(6) The reviewer understands that it is unlawful to discuss matters relating to instructional materials submitted for approval ~~adoption~~ with any agent of a publisher or manufacturer of instructional materials, either directly or indirectly, except during the period when the publisher or manufacturer is providing a presentation for the reviewer during his or her review of the instructional materials submitted for approval ~~adoption~~.

Section 6. Section 1006.31, Florida Statutes, is amended to read:

1006.31 Duties of the Department of Education and school district ~~each state~~ instructional materials reviewer.—The duties of the ~~each state~~ instructional materials reviewer are:

(1) PROCEDURES.—To adhere to procedures prescribed by the department or the district for evaluating instructional materials submitted by publishers and manufacturers in each review for approval ~~adoption~~.

(2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To evaluate carefully all instructional materials submitted, in order to ascertain which instructional materials, if any, submitted for consideration implement the selection criteria developed by the department or the district and those curricular objectives included within applicable performance standards provided for in s. 1001.03(1).

(a) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall include only instructional materials ~~that~~ accurately portray the ethnic, socioeconomic, cultural, and racial diversity of our society,

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including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.

(b) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall require such materials as he or she deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.

(d) When evaluating ~~recommending~~ instructional materials for use in the schools, each reviewer shall require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. A reviewer may not recommend any instructional materials for use in the schools which contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, or occupation.

(e) When evaluating instructional materials, library media, and other reading material for use in the schools, a reviewer shall use the following standards to determine the propriety of

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the material:

1. The age of students who normally could be expected to have access to the material.

2. The educational purpose to be served by the material. In considering instructional materials for classroom use, priority shall be given to the selection of materials that encompass the state and district school board performance standards provided for in s. 1001.03(1) and include the instructional objectives contained within the course descriptions established in rule by the State Board of Education.

3. The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

4. The degree to which the material represents the broad racial, ethnic, socioeconomic, and cultural diversity of students in the state.

Any instructional material containing pornography or otherwise prohibited by s. 847.012 may not be used or made available within any public school.

(c) ~~(c)~~ ~~Any~~ Instructional material recommended by a ~~each~~ reviewer for use in the schools shall be, to the satisfaction of the ~~each~~ reviewer, accurate, objective, and current and suited to the needs and comprehension of students at their respective grade levels. Reviewers shall consider for adoption materials developed for academically talented students such as those enrolled in advanced placement courses.

(3) REPORT OF REVIEWERS.—After a thorough study of all data submitted on each instructional material, to submit an

electronic report to the department. The report shall be made public and must include responses to each section of the report format prescribed by the department.

Section 7. Section 1006.32, Florida Statutes, is amended to read:

1006.32 Prohibited acts.—

(1) A publisher or manufacturer of instructional material, or any representative thereof, may not offer to give any emolument, money, or other valuable thing, or any inducement, to any district school board official or department or district ~~state~~ instructional materials reviewer to directly or indirectly introduce, recommend, vote for, or otherwise influence the approval ~~adoption~~ or purchase of any instructional materials.

(2) A district school board official or a department or district ~~state~~ instructional materials reviewer may not solicit or accept any emolument, money, or other valuable thing, or any inducement, to directly or indirectly introduce, recommend, vote for, or otherwise influence the approval ~~adoption~~ or purchase of any instructional material.

~~(3) A district school board or publisher may not participate in a pilot program of materials being considered for adoption during the 18-month period before the official adoption of the materials by the commissioner. Any pilot program during the first 2 years of the adoption period must have the prior approval of the commissioner.~~

(3)~~(4)~~ A ~~Any~~ publisher or manufacturer of instructional materials or representative thereof or a ~~any~~ district school board official or department or district ~~state~~ instructional materials reviewer who violates any provision of this section

commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A ~~Any~~ representative of a publisher or manufacturer who violates any provision of this section, in addition to any other penalty, shall be banned from practicing business in the state for a period of 1 calendar year.

(4)~~(5)~~ This section does not prohibit any publisher, manufacturer, or agent from supplying, for purposes of examination, necessary sample copies of instructional materials to any district school board official or department or district ~~state~~ instructional materials reviewer.

(5)~~(6)~~ This section does not prohibit a district school board official or department or district ~~state~~ instructional materials reviewer from receiving sample copies of instructional materials.

(6)~~(7)~~ This section does not prohibit or restrict a district school board official from receiving royalties or other compensation, other than compensation paid to him or her as commission for negotiating sales to district school boards, from the publisher or manufacturer of instructional materials written, designed, or prepared by such district school board official~~,~~ and ~~adopted by the commissioner or~~ purchased by any district school board. A ~~No~~ district school board official may not ~~shall be allowed to~~ receive royalties on any materials not ~~on the state-adopted list~~ purchased for use by his or her district school board.

(7)~~(8)~~ A district school superintendent, district school board member, teacher, or other person officially connected with the government or direction of public schools may not receive

during the months actually engaged in performing duties under his or her contract any private fee, gratuity, donation, or compensation, in any manner whatsoever, for promoting the sale or exchange of any instructional material, map, or chart in any public school, or be an agent for the sale or the publisher of any instructional material or reference work, or have a direct or indirect pecuniary interest in the introduction of any such instructional material, and any such agency or interest shall disqualify any person so acting or interested from holding any district school board employment whatsoever, and the person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; however, this subsection does not prevent the approval ~~adoption~~ of any instructional material written in whole or in part by a Florida author.

Section 8. Section 1006.33, Florida Statutes, is repealed.

Section 9. Section 1006.34, Florida Statutes, is amended to read:

1006.34 Powers and duties of the State Board of Education ~~commissioner and the department~~ in evaluating ~~selecting and adopting~~ instructional materials.—

(1) PROCEDURES FOR EVALUATING INSTRUCTIONAL MATERIALS.—The State Board of Education shall adopt rules prescribing the procedures by which the department shall evaluate instructional materials submitted by publishers and manufacturers in each review for approval ~~adoption~~. Included in these procedures shall be provisions affording each publisher or manufacturer or his or her representative an opportunity to provide a live, virtual, or in-person presentation to the department ~~state~~ instructional materials reviewers on the merits of each instructional material

submitted in each review for approval ~~adoption~~.

(2) FEES.—The State Board of Education may set and collect fees from publishers participating in the instructional materials approval process who request a review of their submitted materials by the department. The fees set by the State Board of Education shall specify the amount that may be collected by the department per submission from publishers for review. The fees may not exceed the actual costs necessary to support the cost of reviewing instructional materials, including, but not limited to, the costs associated with reviewers. The State Board of Education shall adopt rules regarding the fees.

~~(2) SELECTION AND ADOPTION OF INSTRUCTIONAL MATERIALS.—~~

~~(a) The department shall notify all publishers and manufacturers of instructional materials who have submitted bids that within 3 weeks after the deadline for receiving bids, at a designated time and place, it will open the bids submitted and deposited with it. At the time and place designated, the bids shall be opened, read, and tabulated in the presence of the bidders or their representatives. No one may revise his or her bid after the bids have been filed. When all bids have been carefully considered, the commissioner shall, from the list of suitable, usable, and desirable instructional materials reported by the state instructional materials reviewers, select and adopt instructional materials for each grade and subject field in the curriculum of public elementary, middle, and high schools in which adoptions are made and in the subject areas designated in the advertisement. The adoption shall continue for the period specified in the advertisement, beginning on the ensuing April~~

~~1. The adoption shall not prevent the extension of a contract as provided in subsection (3). The commissioner shall always reserve the right to reject any and all bids. The commissioner may ask for new sealed bids from publishers or manufacturers whose instructional materials were recommended by the state instructional materials reviewers as suitable, usable, and desirable; specify the dates for filing such bids and the date on which they shall be opened; and proceed in all matters regarding the opening of bids and the awarding of contracts as required by this part. In all cases, bids shall be accompanied by a cash deposit or certified check of from $500 to $2,500, as the department may direct. The department, in adopting instructional materials, shall give due consideration both to the prices bid for furnishing instructional materials and to the report and recommendations of the state instructional materials reviewers. When the commissioner has finished with the report of the state instructional materials reviewers, the report shall be filed and preserved with the department and shall be available at all times for public inspection.~~

~~(b) In the selection of instructional materials, library media, and other reading material used in the public school system, the standards used to determine the propriety of the material shall include:~~

~~1. The age of the students who normally could be expected to have access to the material.~~

~~2. The educational purpose to be served by the material. In considering instructional materials for classroom use, priority shall be given to the selection of materials which encompass the state and district school board performance standards provided~~

~~for in s. 1001.03(1) and which include the instructional objectives contained within the curriculum frameworks approved by rule of the State Board of Education.~~

~~3. The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.~~

~~4. The consideration of the broad racial, ethnic, socioeconomic, and cultural diversity of the students of this state.~~

~~Any instructional material containing pornography or otherwise prohibited by s. 847.012 may not be used or made available within any public school.~~

~~(3) CONTRACT WITH PUBLISHERS OR MANUFACTURERS; BOND.—As soon as practicable after the commissioner has adopted any instructional materials and all bidders that have secured the adoption of any instructional materials have been notified thereof by registered letter, the department shall prepare a contract in proper form with every bidder awarded the adoption of any instructional materials. Each contract shall be executed by the commissioner, one copy to be kept by the contractor and one copy to be filed with the department. After giving due consideration to comments by the district school boards, the commissioner, with the agreement of the publisher, may extend or shorten a contract period for a period not to exceed 2 years; and the terms of any such contract shall remain the same as in the original contract. Any publisher or manufacturer to whom any contract is let under this part must give bond in such amount as the department requires, payable to the state, conditioned for~~

~~the faithful, honest, and exact performance of the contract. The bond must provide for the payment of reasonable attorney's fees in case of recovery in any suit thereon. The surety on the bond must be a guaranty or surety company lawfully authorized to do business in the state; however, the bond shall not be exhausted by a single recovery but may be sued upon from time to time until the full amount thereof is recovered, and the department may at any time, after giving 30 days' notice, require additional security or additional bond. The form of any bond or bonds or contract or contracts under this part shall be prepared and approved by the department. At the discretion of the department, a publisher or manufacturer to whom any contract is let under this part may be allowed a cash deposit in lieu of a bond, conditioned for the faithful, honest, and exact performance of the contract. The cash deposit, payable to the department, shall be placed in the Textbook Bid Trust Fund. The department may recover damages on the cash deposit given by the contractor for failure to furnish instructional materials, the sum recovered to inure to the General Revenue Fund.~~

~~(4) REGULATIONS GOVERNING THE CONTRACT.—The department may, from time to time, take any necessary actions, consistent with this part, to secure the prompt and faithful performance of all instructional materials contracts; and if any contractor fails or refuses to furnish instructional materials as provided in this part or otherwise breaks his or her contract, the department may sue on the required bond in the name of the state, in the courts of the state having jurisdiction, and recover damages on the bond given by the contractor for failure to furnish instructional materials, the sum recovered to inure~~

~~to the General Revenue Fund.~~

~~(5) RETURN OF DEPOSITS.—~~

~~(a) The successful bidder shall be notified by registered mail of the award of contract and shall, within 30 days after receipt of the contract, execute the proper contract and post the required bond. When the bond and contract have been executed, the department shall notify the Chief Financial Officer and request that a warrant be issued against the Textbook Bid Trust Fund payable to the successful bidder in the amount deposited pursuant to this part. The Chief Financial Officer shall issue and forward the warrant to the department for distribution to the bidder.~~

~~(b) At the same time or prior thereto, the department shall inform the Chief Financial Officer of the names of the unsuccessful bidders. Upon receipt of such notice, the Chief Financial Officer shall issue warrants against the Textbook Bid Trust Fund payable to the unsuccessful bidders in the amounts deposited pursuant to this part and shall forward the warrants to the department for distribution to the unsuccessful bidders.~~

~~(c) One copy of each contract and an original of each bid, whether accepted or rejected, shall be preserved with the department for at least 3 years after the termination of the contract.~~

~~(6) DEPOSITS FORFEITED.—If any successful bidder fails or refuses to execute contract and bond within 30 days after receipt of the contract, the cash deposit shall be forfeited to the state and placed by the Chief Financial Officer in the General Revenue Fund.~~

~~(7) FORFEITURE OF CONTRACT AND BOND.—If any publisher or~~

~~manufacturer of instructional materials fails or refuses to furnish instructional materials as provided in the contract, the publisher's or manufacturer's bond is forfeited and the commissioner must make another contract.~~

Section 10. Section 1006.35, Florida Statutes, is amended to read:

1006.35 Accuracy of instructional materials.—

(1) In addition to relying on statements of publishers or manufacturers of instructional materials, the commissioner may conduct or cause to be conducted an independent investigation to determine the accuracy of approved ~~state-adopted~~ instructional materials.

(2) When errors in approved ~~state-adopted~~ materials are confirmed, the publisher or manufacturer of the materials shall provide to each district school board that has purchased the materials the corrections in a format approved by the department.

(3) The commissioner may remove materials from the list of approved ~~state-adopted~~ materials:

(a) If he or she finds that the content is in error and the publisher or manufacturer refuses to correct the error when notified by the department.

(b) ~~(4) The commissioner may remove materials from the list of state-adopted materials~~ At the request of the publisher or manufacturer if, in the commissioner's ~~his or her~~ opinion, there is no material impact on the state's education goals.

(c) If the materials do not align with all applicable state standards.

(4) If the commissioner removes materials from the list of

approved materials, the district may not purchase them for use in core content areas.

Section 11. Section 1006.36, Florida Statutes, is amended to read:

1006.36 State review cycle ~~Term of adoption~~ for instructional materials.—

(1) The state review cycle ~~term of adoption~~ of any instructional materials shall ~~must~~ be a 5-year period ~~beginning on April 1 following the adoption~~, except that the commissioner may approve alternative schedules ~~terms of adoption~~ of less than 5 years for materials in content areas which require more frequent revision. ~~Any contract for instructional materials may be extended as prescribed in s. 1006.34(3).~~

(2) The department shall publish annually an official schedule of subject areas to be called for review ~~adoption~~ for each of the succeeding 2 years, and a tentative schedule for years 3, 4, and 5. If extenuating circumstances warrant, the commissioner may add one or more subject areas to the official schedule, in which event the commissioner shall develop criteria for such additional subject area or areas and make them available to publishers or manufacturers as soon as practicable before the date on which submission for review is ~~bids are~~ due. The schedule shall be developed so as to promote balance among the subject areas so that the required expenditure for new instructional materials is approximately the same each year in order to maintain curricular consistency.

Section 12. Section 1006.37, Florida Statutes, is amended to read:

1006.37 Requisition of instructional materials from

publisher's depository.—

~~(1)~~ The district school superintendent may ~~shall~~ requisition approved ~~adopted~~ instructional materials from the depository of the publisher with whom a contract has been made. ~~However, the superintendent shall requisition current instructional materials to provide each student with a textbook or other materials as a major tool of instruction in core courses of the subject areas specified in s. 1006.40(2). These materials must be requisitioned within the first 2 years of the adoption cycle, except for instructional materials related to growth of student membership or instructional materials maintenance needs. The superintendent may requisition instructional materials in the core subject areas specified in s. 1006.40(2) that are related to growth of student membership or instructional materials maintenance needs during the 3rd, 4th, 5th, and 6th years of the original contract period.~~

~~(2) The district school superintendent shall verify that the requisition is complete and accurate and order the depository to forward to him or her the adopted instructional materials shown by the requisition. The depository shall prepare an invoice of the materials shipped, including shipping charges, and mail it to the superintendent to whom the shipment is being made. The superintendent shall pay the depository within 60 days after receipt of the requisitioned materials from the appropriation for the purchase of adopted instructional materials.~~

Section 13. 1006.38, Florida Statutes, is amended to read:

1006.38 Duties, responsibilities, and requirements of instructional materials publishers and manufacturers.—This

section applies to both the state and district approval processes. Publishers and manufacturers of instructional materials, or their representatives, shall:

(1) Comply with all provisions of this part.

(2) Electronically deliver fully developed sample copies of all instructional materials upon which reviews ~~bids~~ are based to the department pursuant to procedures adopted by the State Board of Education.

(3) Submit~~, at a time designated in s. 1006.33,~~ the following information:

(a) Detailed specifications of the physical characteristics of the instructional materials, including any software or technological tools required for use by the district, school, teachers, or students. The publisher or manufacturer shall comply with these specifications if the instructional materials are approved ~~adopted~~ and purchased in completed form.

(b) Evidence that the publisher or manufacturer has provided materials that address the performance standards provided for in s. 1001.03(1) and that can be accessed through the district's local instructional improvement system and a variety of electronic, digital, and mobile devices.

(c) Evidence that the instructional materials include specific references to statewide standards in the teacher's manual and incorporate such standards into chapter tests or the assessments. Beginning in the 2013-2014 adoption year, the statewide standards shall not be included at the point of student use.

(5) Furnish the instructional materials offered by them at a price in the state which, including all costs of electronic

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transmission, may not exceed the lowest price at which they offer such instructional materials for approval ~~adoption~~ or sale to any state or school district in the United States.

(6) Reduce automatically the price of the instructional materials to any district school board to the extent that reductions are made elsewhere in the United States.

(7) Provide any instructional materials free of charge in the state to the same extent as they are provided free of charge to any state or school district in the United States.

(8) Guarantee that all copies of any instructional materials sold in this state will be at least equal in quality to the copies of such instructional materials that are sold elsewhere in the United States and will be kept revised, free from all errors, and up-to-date as may be required by the department.

(9) Agree that any supplementary material developed at the district or state level does not violate the author's or publisher's copyright, provided such material is developed in accordance with the doctrine of fair use.

(10) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, nor enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the state.

(11) Furnish the instructional materials offered by them at a price in the state which, including all costs of electronic transmission, may not exceed the lowest price at which they offer such instructional materials for approval or sale to any

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other school district in the state.

(12) Provide the department and school districts the cost paid for an instructional materials product by a school or district anywhere in the United States. The cost paid for that product must remain the same for all future sales and must be posted on all marketing materials.

~~(11) Maintain or contract with a depository in the state.~~

~~(12) For the core subject areas specified in s. 1006.40(2), maintain in the depository for the first 2 years of the contract an inventory of instructional materials sufficient to receive and fill orders.~~

(13) For the core subject areas specified in s. 1006.40(2), ensure the availability of an inventory sufficient to receive and fill orders for instructional materials for growth, including the opening of a new school, and replacement during the 3rd and subsequent years of the original contract period.

(14) Accurately and fully disclose only the names of those persons who actually authored the instructional materials. In addition to the penalties provided in subsection (16), the commissioner may remove from the list of state-approved ~~state-adopted~~ instructional materials those instructional materials whose publisher or manufacturer misleads the purchaser by falsely representing genuine authorship.

(15) Grant, without prior written request, for any copyright held by the publisher or its agencies automatic permission to the department or its agencies for the reproduction of instructional materials and supplementary materials in Braille, large print, or other appropriate format for use by visually impaired students or other students with

disabilities that would benefit from use of the materials.

(16) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the department in the amount of three times the total sum which the publisher or manufacturer was paid in excess of the price required under subsections (5) and (6) and in the amount of three times the total value of the instructional materials and services which the district school board is entitled to receive free of charge under subsection (7).

Section 14. Subsections (2), (3), and (4) of section 1006.40, Florida Statutes, are amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(2) Each district school board must provide ~~purchase~~ current instructional materials to ~~provide~~ each student with a major tool or assistance ~~of instruction~~ in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. ~~Such purchase must be made within the first 2 years after the effective date of the adoption cycle. For the 2012-2013 mathematics adoption, a district using a comprehensive mathematics instructional materials program adopted in the 2009-2010 adoption shall be deemed in compliance with this subsection if it provides each student with such additional state-adopted materials as may be necessary to align the previously adopted comprehensive program to common core standards and the other criteria of the 2012-2013 mathematics adoption.~~

(3) ~~(a)~~ By the 2015-2016 fiscal year, each district school

board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards ~~included on the state adopted list, except as otherwise authorized in paragraphs (b) and (c)~~.

~~(b) Up to 50 percent of the annual allocation may be used for the purchase of instructional materials, including library and reference books and nonprint materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.~~

~~(c) District school boards may use 100 percent of that portion of the annual allocation designated for the purchase of instructional materials for kindergarten, and 75 percent of that portion of the annual allocation designated for the purchase of instructional materials for first grade, to purchase materials not on the state-adopted list.~~

(4) Remaining funds may ~~The funds described in subsection (3) which district school boards may use to purchase materials not on the state-adopted list shall~~ be used for the purchase of instructional materials or other items including library and reference books and nonprint materials, having intellectual content which assist in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule.

Section 15. Paragraphs (o), (p), and (q) of subsection (6)

of section 1001.10, Florida Statutes, are amended, and paragraph (r) is added to that section to read:

1001.10 Commissioner of Education; general powers and duties.—

(6) Additionally, the commissioner has the following general powers and duties:

(o) To develop criteria for use by department ~~state~~ instructional materials reviewers in evaluating materials submitted for approval ~~adoption consideration~~. The criteria shall, as appropriate, be based on instructional expectations reflected in course descriptions ~~curriculum frameworks~~ and student performance standards. The criteria for each subject or course shall be made available to publishers and manufacturers of instructional materials pursuant to the requirements of chapter 1006.

(p) To prescribe procedures for evaluating instructional materials submitted by publishers and manufacturers in each review for approval ~~adoption~~.

(q) To remove any materials approved by the state or a district ~~enter into agreement with Space Florida to develop innovative aerospace-related education programs that promote mathematics and science education for grades K-20~~.

(r) To submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Board of Education an annual report regarding district and state instructional materials reviews, the impact on the quality and availability of instructional materials, and the cost-effectiveness of the state and district review processes. The report shall be submitted on January 1 following the first

fiscal year of implementation of the program and each year thereafter.

Section 16. Subsection (5) of section 1003.55, Florida Statutes, is amended to read:

1003.55 Instructional programs for blind or visually impaired students and deaf or hard-of-hearing students.—

(5) Any publisher or manufacturer of instructional materials that have been approved by the department or a school district ~~a textbook adopted pursuant to the state instructional materials adoption process~~ shall furnish the department ~~of Education~~ with a computer file in an electronic format specified by the department ~~at least 2 years in advance~~ that is readily translatable to Braille and can be used for large print or speech access. Any instructional materials ~~textbook~~ reproduced pursuant to ~~the provisions of~~ this subsection shall be purchased at a price equal to the price paid for the instructional materials ~~textbook~~ as approved ~~adopted~~. The department ~~of Education~~ shall not reproduce instructional materials ~~textbooks~~ obtained pursuant to this subsection in any manner that would generate revenues for the department from the use of such computer files or that would preclude the rightful payment of fees to the publisher or manufacturer for use of all or some portion of the instructional materials ~~textbook~~.

Section 17. Paragraph (j) of subsection (2) of section 1003.621, Florida Statutes, is amended to read:

1003.621 Academically high-performing school districts.—It is the intent of the Legislature to recognize and reward school districts that demonstrate the ability to consistently maintain or improve their high-performing status. The purpose of this

section is to provide high-performing school districts with flexibility in meeting the specific requirements in statute and rules of the State Board of Education.

(2) COMPLIANCE WITH STATUTES AND RULES.—Each academically high-performing school district shall comply with all of the provisions in chapters 1000-1013, and rules of the State Board of Education which implement these provisions, pertaining to the following:

(j) Those statutes relating to instructional materials, except that s. 1006.40 ~~s. 1006.37, relating to the requisition of state-adopted materials from the depository under contract with the publisher, and s. 1006.40(3)(a)~~, relating to the use of 50 percent of the instructional materials allocation, is ~~shall be~~ eligible for exemption.

Section 18. Paragraph (b) of subsection (6) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(6) CATEGORICAL FUNDS.—

(b) If a district school board finds and declares in a resolution approved ~~adopted~~ at a regular meeting of the school board that the funds received for any of the following categorical appropriations are urgently needed to maintain ~~school board specified~~ academic classroom instruction specified by the school board, the school board may consider and approve

an amendment to the school district operating budget transferring the identified amount of the categorical funds to the appropriate account for expenditure:

1. Funds for student transportation.

2. Funds for safe schools.

3. Funds for supplemental academic instruction if the required additional hour of instruction beyond the normal school day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (1)(f).

4. Funds for research-based reading instruction if the required additional hour of instruction beyond the normal school day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (9)(a).

5. Funds for instructional materials if all instructional material purchases necessary to provide updated materials that are aligned with applicable ~~to Next Generation Sunshine~~ state standards and course descriptions ~~benchmarks~~ and that meet statutory requirements of content and learning have been completed for that fiscal year, but no sooner than March 1. Funds available after March 1 may be used to purchase hardware for student instruction.

Section 19. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 1388
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Committee on Education; and Senator Montford
SUBJECT:	Instructional Materials for K-12 Public Education
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 1388 increases flexibility for a school district while requiring instructional materials to align with state standards. The bill authorizes a school district to review, approve and purchase instructional materials, while retaining a DOE statewide instructional materials review process.

The local and state instructional materials review processes will have a cost; however, the cost may be mitigated or offset with a fee assessed to publishers. The fees are to be used to cover the cost of substitute teachers who replace teachers selected to review materials, and travel and per diem costs. Reviewers may be paid a stipend. There is no requirement for a state appropriation.

The bill takes effect July 1, 2013.

The bill substantially amends the following sections of the Florida Statutes: 1001.10, 1003.55, 1003.621, 1006.28, 1006.29, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.37, 1006.38, 1006.40, and 1011.62, Florida Statutes, and repeals sections 1006.282, and 1006.33.

The bill creates section 1006.283, Florida Statutes.

II. Present Situation:

School Districts

A school district must provide adequate instructional materials for its students, ensure the materials are consistent with the district's educational goals, and ensure the materials meet the objectives and the curriculum frameworks adopted by the State Board of Education (SBE).[1]

The district is required to purchase current instructional materials in the core areas to provide students with current tools of instruction.[2] This purchase must be made within the first two years of the effective date of the adoption cycle.[3] Up to fifty percent of the allocation may be used to purchase non-adopted materials.[4]

Superintendents must, at the Department of Education's (DOE) request, provide an experienced classroom teacher or district-level content supervisor with expertise in the content area to review submissions recommended for adoption by the state instructional materials reviewers.[5]

The Commissioner of Education

The Commissioner of Education (Commissioner) establishes the number of items to be adopted by the state.[6] The Commissioner appoints three state instructional materials reviewers to review instructional materials and evaluate the content for alignment with the applicable standards.[7] An evaluation by the third reviewer will only be required for situations in which the first two reviewers disagree as to whether materials should be placed on the state-adopted materials list.[8]

The Commissioner has the authority to select and adopt instructional materials for each grade and subject area and to contract with publishers for the instructional materials adopted.[9] The term of the adoption is five years.[10]

State Instructional Materials Reviewers and Content

Reviewers must evaluate all materials submitted by publishers in each adoption to determine if the material aligns with the applicable state standards, developed criteria, and any applicable performance standards.[11]

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[1] ss. 1006.28(1) and 1001.03(1), F.S.
[2] s. 1006.40(2), F.S.
[3] *Id.*
[4] s. 1006.40(3)(b), F.S.
[5] s. 1006.29(1), F.S.
[6] s. 1006.35(3), F.S.
[7] s. 1006.29(1)(b), F.S.
[8] s. 1006.29(3), F.S.
[9] s. 1006.34(2), F.S.
[10] s. 1006.36(1), F.S.
[11] s. 1006.31(2)(e), F.S.

In addition to the standards, materials should also reflect appropriate diversity, include the Constitution and the Declaration of Independence in the social studies content area, and ensure that materials do not reflect unfairly upon people because of their race, color, creed, national origin, ancestry, gender, or occupation.[12] Reviewers must report to the DOE the materials being recommended that meet the guidelines for adoption.[13]

Publishers

Publishers of instructional materials must, in part:

- Submit detailed specifications of the physical characteristics of the instructional materials;
- Provide evidence that the materials address the performance standards;
- Furnish the instructional materials at a price which matches the lowest price offered anywhere else in the United States;
- Guarantee that any instructional materials sold in Florida will be equal in quality to the instructional materials sold elsewhere in the United States and will be kept up-to-date; and
- Maintain or contract with a depository in the state and keep an inventory.[14]

III. Effect of Proposed Changes:

The bill increases flexibility for a school district while requiring instructional materials to align with state standards. The bill authorizes a school district to review, approve and purchase instructional materials, while retaining a DOE statewide instructional materials review process.

District School Board Instructional Materials Program

The bill creates the district school board instructional materials program. The program allows a district school board, or consortium of school districts, to implement an instructional materials program that includes the review, approval, and purchasing of instructional materials. The school district would be able to set and collect fees, not to exceed the amount established in State Board of Education (SBE) rule, from publishers that participate in the instructional materials approval process. The fees would be allocated for the support of the review process, and maintained in a separate line item for auditing purposes. The amount assessed and collected would be posted on the school district's website and reported to the DOE. The school district cannot collect fees for materials that DOE approves and places on its website. The school district would adopt rules to implement the program.

If a school district elected to participate in the program, the school district would notify DOE and provide an annual report to the legislature, and the superintendent would annually certify to the DOE by March 31 that all instructional materials for core courses are aligned with applicable state standards, and include a list of all school district approved core instructional materials that would be used or purchased. Each principal would be required to verify that all instructional materials are fully and properly accounted for as prescribed by school district rule.

[12] s. 1006.31(2)(d), F.S.
[13] s. 1006.31(3), F.S.
[14] s. 1006.38, F.S.

School District Instructional Materials Allocation

School districts would be required to provide current instructional materials to each student with a major tool or assistance in core courses. The bill deletes the requirement for such materials to be purchased within the first 2 years after the effective date of an adoption cycle. By the 2015-2016 school year, school districts could use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards. Remaining funds would be used for the purchase of instructional materials or other items including library and reference books and non-print materials, having intellectual content which assist in the instruction of a subject or course.

State Instructional Review

The bill retains the ability for DOE to have a state instructional material review process, and would increase the number of state instructional material reviewers appointed by the Commissioner, from 3 to up to 5. The 5 members would include: 2 professional content experts; 2 K-12 educators that are active teachers or supervisors and represent the major fields and levels in which instructional materials are used; and 1 layperson. A DOE content expert may be an alternate reviewer. Publishers would have the opportunity to provide a live, virtual, or in-person presentation to the reviewers.

The DOE would adopt a rule to assess and collect fees to support the review process. The fees would be deposited in the DOE Operating Trust Fund. A district school board would be reimbursed for the cost of a substitute teacher for each workday an employee is acting as a state reviewer. Additionally, each reviewer would receive a travel and per diem stipend in accordance with section 112.061, F.S.

The definition of "instructional materials" would be expanded from materials that serve as a "major tool for assisting" to a "major tool or for assisting" in the instruction of a subject or course.

State List of Approved Instructional Materials

By March 1 of each year, the DOE would publish on its website a list of all instructional materials that are approved by the DOE or that are approved by another state, if such materials align with applicable state standards. The list would be maintained and updated, and include sufficient instructional materials or major tools to cover all of the core content areas. The purchase price would be posted. District approved materials would also be posted on the website.

The Commissioner would be able to remove approved instructional materials from the list if a manufacturer refused to correct errors, at the publisher's request, if there is no material impact on the state's education goals, or if the materials do not align with all applicable state standards. If the Commissioner removes materials from the list, a district may not purchase the materials for use in core content areas.

District and State Instructional Materials Reviewer Duties

Instructional material reviewers for both the district and state processes would use certain standards to determine the propriety of materials, such as:

- The age of student who normally could be expected to have access to the material.
- The educational purpose served by the material.
- The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.
- The degree to which the material represents the broad racial, ethnic, socioeconomic, and cultural diversity of students in the state.
- Any instructional material that contains pornography or that is otherwise harmful to minors, may not be used or made available within any public school.

Instructional Material Publishers

The bill authorizes, but no longer requires, school districts to purchase instructional materials from a publisher's book depository. A publisher would provide materials to the school district with most-favored-nations pricing, with automatic reductions, based on materials sold to any other state or school district in the state or nation. The costs for a product would not increase, and would be posted on all marketing materials.

The bill requires publisher duties and responsibilities to apply to both the school district and DOE approval processes. Beginning in 2013-2014, publishers would no longer be required to provide evidence that the instructional materials include specific reference to statewide standards at the point of student use. Publishers would still be required to provide the evidence in the teachers' manual and incorporate the standards into chapter tests and assessments.

The bill deletes the prohibition on a school district or publisher from participating in a pilot program of materials being considered during the 18-month period before the official adoption of the materials by the commissioner.

Commissioner's Report to the Legislature

The bill requires the Commissioner to annually submit by January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the State Board of Education, an annual report regarding district and state instructional material reviews, the impact on the quality and availability of instructional materials, and the cost-effectiveness of the state and district review processes.

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 authorizes school districts to set and collect fees from publishers that participate in the instructional materials approval process. The school district fees may not exceed those set by SBE rule, and the school district may not charge a fee for materials already on the state list.

C. Government Sector Impact:

The bill authorizes school districts to charge publishers that participate in the instructional materials process a fee. The fee revenues are to be used to support the review process, and may offset the costs. The school district fees may not exceed those set by SBE rule, and the school district may not charge a fee for materials already on the state list.

The bill authorizes, but does not require, the DOE to assess a fee of the publishers who participate in the review process. The fee is limited to actual costs for the review, taking into consideration the cost of reviewers, the content area and complexity of the instructional materials to be reviewed, and other relevant factors. Fee revenues are to be used to cover the cost of the review process, including meeting, travel, per diem, and costs for hiring substitute teachers who replace teachers who are selected to be reviewers. Reviewers are entitled to reimbursement for travel and per diem and may be paid a stipend. An estimate of this cost is as much as $750,000 annually based on a $500 stipend for each of the five reviewers for roughly 300 content area submissions that are provided for review. However, the bill is permissive regarding the stipend and, if provided, would be supported by fee revenue.

This bill does not required a state appropriation.

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 Appropriations on April 23, 2013:
CS/CS/SB 1388 differs from CS/SB 1388 in that it:

- Requires school board fees assessed and collected from publishers to be posted on the school district's website and reported to the department. The previous version of the bill required the fees to be advertised and reported to the district school board.
- Prevents said fees from exceeding an amount set by state board rule. The previous version of the bill capped fees at the amount charged during the state review process.
- Allows publishers to present materials during a live virtual or in-person presentation to the department. The previous version of the bill allowed a live, virtual, or in-person presentation to the department.
- Provides that fees for state review may not exceed the actual costs for the review, taking into consideration the cost of reviewers, the content area and complexity of the instructional materials to be reviewed, and other relevant factors. The previous version of the bill capped costs at actual costs necessary to support the cost of reviewing instructional materials, including, but not limited to, the costs associated with reviewers.
- Provides that beginning in 2013-2014 adoption year, the statewide standards may not be included at the point of student use. The previous version of the bill stated "shall" not be included.

CS by Education on April 1, 2013:
CS/SB 1388 differs from SB 1388 in that it:

- Requires a district school board to adopt rules implementing an instructional materials review program, as opposed to identifying specific requirements in law.
- Reinstates statewide adoption of instructional materials by DOE, as opposed to a process by which a school district or publisher may refer review of instructional materials to the DOE.
- Changes the definition of "instructional materials" to include materials that serve as a "tool" that assists, as opposed to simply assisting in the instruction of a subject or course.
- Deletes the prohibition of a school district assessing a fee to review materials that were previously evaluated by the state, but caps the fees a district may collect to be no more than assessed by the state.
- Removes proposed amendments to ss. 1001.10, 1003.55, 1003.621, 1006.28, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.38, and 1011.62, F.S.
- Deletes the proposed repeal of ss. 1006.282, 1006.33, 1006.37, and 1010.82, F.S.

B. Amendments:

None.

By the Committee on Education; and Senator Montford

581-03372-13 20131388c1

A bill to be entitled

An act relating to instructional materials; creating s. 1006.283, F.S.; authorizing a district school board to review, adopt, and purchase instructional materials; requiring the district superintendent to notify the Department of Education if the district school board decides review, adopt and purchase instructional materials and to certify to the department that core instructional materials align with applicable state standards; requiring the district school board to adopt rules; authorizing the district school board to set and collect fees from a publisher that participates in the instructional materials review process; providing a limit on fees; providing pricing requirements for instructional materials; requiring each district school board to submit an annual report to the Governor, the Legislature, and the State Board of Education by a specified date; amending s. 1006.29, F.S.; requiring the Commissioner of Education to appoint state instructional materials reviewers, rather than state or national experts, to review instructional materials; providing requirements, composition, appointments, and terms for state instructional materials reviewers; authorizing the commissioner to remove a reviewer for cause; providing for public disclosure of names and mailing addresses of appointed state instructional materials reviewers; requiring a district school board to be reimbursed for the cost of

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hiring a substitute teacher for each work day that a member of its instructional staff is absent while rendering service as a reviewer; authorizing a stipend for service as a reviewer; requiring entitlement of payment for per diem and reimbursement for travel expenses for service as a reviewer; providing that payments for substitute teachers and reviewers be made from the Textbook Bid Trust Fund; requiring the Department of Education to post certain instructional materials on its website; authorizing the department to contract with a nonprofit organization or association to administer the review process; amending ss. 1006.37 and 1006.40, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 1006.283, Florida Statutes, is created to read:

1006.283 District school board instructional materials program.—

(1) A district school board may determine whether it will be responsible for reviewing, adopting, and purchasing instructional materials submitted by a publisher. If such a determination is made by the district school board, the district school superintendent shall notify the department upon such determination and describe the process by which materials will be reviewed and adopted. The district school superintendent

shall annually certify to the department that all core instructional materials are aligned with the applicable state standards.

(2) The district school board shall adopt rules implementing the district's instructional materials program which must include, but need not be limited to:

(a) Its review, adoption, and purchasing process.

(b) Identification of a term of adoption for instructional materials.

(c) The duties and qualifications of the instructional materials reviewers.

(d) The requirements for an affidavit made by a district instructional materials reviewer, which substantially includes the requirements of s. 1006.30.

(e) Compliance with s. 1006.32 relating to prohibited acts.

(f) A process that certifies the accuracy of instructional materials.

(g) The incorporation of applicable requirements of s. 1006.38 relating to the duties, responsibilities, and requirements of publishers of instructional materials.

(h) The process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.

(3) The district school board may set and collect fees from publishers that participate in the instructional materials approval process. The amount assessed and collected must be reported to the district school board. The fees may not exceed the fees that are assessed by the state for materials submitted for review and shall be allocated in a separate account or

district budget line item for auditing purposes.

(4) A publisher that offers instructional materials to a district school board must provide the materials at a price that, including all costs of electronic transmission, does not exceed the lowest price at which the publisher offers such instructional materials for approval or sale to any other state or school district in this or any other state.

(5) A publisher shall automatically reduce the price of instructional materials to the district school board to the extent that reductions are made elsewhere in the United States.

(6) Each district school board shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Board of Education an annual report regarding the district instructional review, adoption, and purchasing program and the impact on the quality and availability of instructional materials, and the cost effectiveness of the program. The district school board shall submit the report on January 1 following the first fiscal year of implementation of the program and each year thereafter.

Section 2. Section 1006.29, Florida Statutes, is amended to read:

1006.29 State instructional materials reviewers.—

(1) For purposes of this section, the term "instructional materials" means items that have intellectual content and that, by design, serve as a tool for assisting in the instruction of a subject or course.

(2)~~(1)~~(a) The commissioner shall determine annually the areas in which instructional materials shall be submitted for approval ~~adoption~~, taking into consideration the desires of the

district school boards. ~~The commissioner shall also determine the number of titles to be adopted in each area.~~

(b) By April 15 of each school year, the commissioner shall appoint state instructional materials reviewers for ~~three state or national experts in~~ the content areas submitted for approval ~~adoption~~ to review the instructional materials and evaluate the content for alignment with the applicable ~~Next Generation Sunshine~~ state standards. These reviewers shall be designated as state instructional materials reviewers and shall evaluate ~~review~~ the materials for the level of instructional support and the accuracy and appropriateness of the progression of introduced content. Instructional materials must ~~shall~~ be made electronically available to the reviewers. ~~The initial review of the materials shall be made by only two of the three reviewers. If the two reviewers reach different results, the third reviewer shall break the tie. The reviewers shall independently make recommendations to the commissioner regarding materials that should be placed on the list of adopted materials through an electronic feedback review system.~~

(c) Reviewers who are not appointed as laypersons must be actively engaged in teaching, or in the supervision of teaching, in the public elementary, middle, or high schools in the major fields and levels in which instructional materials are used in the public schools. Each reviewer must receive training pursuant to subsection (6) in competencies related to the evaluation and selection of instructional materials ~~The commissioner shall request each district school superintendent to nominate one classroom teacher or district level content supervisor to review two or three of the submissions recommended by the state~~

~~instructional materials reviewers~~. ~~School districts shall ensure that these district reviewers are provided with the support and time necessary to accomplish a thorough review of the instructional materials. District reviewers shall independently rate the recommended submissions on the instructional usability of the resources.~~

(d) The commissioner shall appoint up to five reviewers for each content area submitted for approval pursuant to paragraph (a). At least 50 percent of the reviewers must be classroom teachers who are certified in an area directly related to the academic area or level considered for approval. One reviewer must be a layperson, and one must be a supervisor of teachers. The reviewers must have the capacity or expertise to address the broad racial, ethnic, socioeconomic, and cultural diversity of the state's student population.

(3)(a) All appointments shall be as prescribed in this section. A reviewer may not serve more than two consecutive terms, and appointments are for 18-month terms. The commissioner may remove a reviewer for cause, and any vacancies shall be filled in the manner of the original appointment for only the time remaining in the unexpired term. An employee of the department may be appointed as an additional ex officio reviewer.

(b) The reviewers' names and mailing addresses shall be disclosed to the public when appointments are made.

(c) A district school board shall be reimbursed for the actual cost of hiring a substitute teacher for each workday that a member of its instructional staff is absent from his or her assigned duties for the purpose of rendering service as a state

instructional materials reviewer. Each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings of reviewers which are called by the commissioner. Payment of such substitute teachers, the stipend, applicable travel expenses, and per diem shall be made from the Textbook Bid Trust Fund on warrants to be drawn by the Chief Financial Officer upon requisition approved by the commissioner.

(4)~~(2)~~ For purposes of the review process, instructional materials ~~state adoption, the term "instructional materials" means items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items~~ may be made available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher may also offer sections of state-adopted instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers.

(5)~~(3)~~ Beginning in the 2015-2016 academic year, all adopted instructional materials for students in kindergarten through grade 12 must be provided in an electronic or digital format. For purposes of this section, the term:

(a) "Electronic format" means text-based or image-based content in a form that is produced on, published by, and

readable on computers or other digital devices and is an electronic version of a printed book, whether or not any printed equivalent exists.

(b) "Digital format" means text-based or image-based content in a form that provides the student with various interactive functions; that can be searched, tagged, distributed, and used for individualized and group learning; that includes multimedia content such as video clips, animations, and virtual reality; and that has the ability to be accessed at any time and anywhere.

The terms do not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies.

(6)~~(4)~~ The department shall develop a training program for persons selected as state instructional materials reviewers and school district reviewers. The program shall be structured to assist reviewers in developing the skills necessary to make valid, culturally sensitive, and objective decisions regarding the content and rigor of instructional materials. All persons serving as instructional materials reviewers must complete the training program prior to beginning the review and selection process.

(7) The department shall post on its website a list of department-approved instructional materials, district-approved instructional materials as applicable, and instructional materials approved by other states which align with applicable state standards.

(8) The department may contract with a nonprofit

organization or association to administer the review process.

Section 3. Subsection (1) of section 1006.37, Florida Statutes, is amended to read:

1006.37 Requisition of instructional materials from publisher's depository.—

(1) The district school superintendent shall requisition adopted instructional materials from the depository of the publisher with whom a contract has been made. However, the superintendent shall requisition current instructional materials to provide each student with a textbook or other materials as a ~~major~~ tool of instruction in core courses of the subject areas specified in s. 1006.40(2). These materials must be requisitioned within the first 2 years of the adoption cycle, except for instructional materials related to growth of student membership or instructional materials maintenance needs. The superintendent may requisition instructional materials in the core subject areas specified in s. 1006.40(2) that are related to growth of student membership or instructional materials maintenance needs during the 3rd, 4th, 5th, and 6th years of the original contract period.

Section 4. Subsection (2) of section 1006.40, Florida Statutes, is amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(2) Each district school board shall ~~must~~ purchase current instructional materials to provide each student with a ~~major~~ tool of instruction in core courses of the subject areas of mathematics, language arts, science, social studies, reading,

and literature for kindergarten through grade 12. Such purchase must be made within the first 2 years after the effective date of the adoption cycle. For the 2012-2013 mathematics adoption, a district using a comprehensive mathematics instructional materials program adopted in the 2009-2010 adoption shall be deemed in compliance with this subsection if it provides each student with such additional state-adopted materials as may be necessary to align the previously adopted comprehensive program to common core standards and the other criteria of the 2012-2013 mathematics adoption.

Section 5. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Instructional Materials

Bill Number 1388 *(if applicable)*

Name Joy Frank

Amendment Barcode *(if applicable)*

Job Title General Counsel

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Speaking: [x] For [ ] Against [ ] Information

Representing Fl. Assoc. of District School Superintents

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 23/2013
Meeting Date

Topic _____ Bill Number 1388 *(if applicable)*

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1390
INTRODUCER:	Education Committee and Senator Montford
SUBJECT:	School District Innovation
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Armstrong	Elwell	AED	**Favorable**
3.	Elwell	Hansen	AP	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1390 provides a process by which a school district may receive approval to establish an innovation school within the district, with statutory flexibility, responsibility, and authorization similar to charter schools. The purpose of an innovation school is to utilize innovation and to enhance high academic achievement and accountability in exchange for flexibility and exemptions from specific statutes and rules. Also, the bill allows three or more contiguous school districts to apply to enter into a joint performance contract as a Region of Innovation.

For district schools of choice, the bill exempts facilities leased by the district from ad valorem taxes and changes the compliance calculation for maximum class size from the maximum number of students for each classroom to the school average per classroom. District schools of choice are schools such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, dual enrollment, and the innovation schools created in this bill.

The bill has no fiscal impact on state appropriations.
Calculating compliance for maximum class size, based on the average of all classrooms in the school instead of the maximum for each classroom, would make it easier for the schools of

choice to meet the requirement and would help the school district to avoid or minimize the fiscal penalty for noncompliance. This would not change the total funds allocated to school districts to meet the maximum class size requirement.

If a school district leases a private facility for an innovation school the provision of the bill that exempts innovation schools from ad valorem taxes and State Requirements for Educational Facilities for leased facilities will provide a cost savings to school districts to lease a private facility, however, any savings can be determined only at the time a lease is executed.

The effective date of the bill is July 1, 2013.

This bill substantially amends sections 196.1983 and 1002.31, Florida Statutes.

The bill creates section 1003.622, Florida Statutes.

II. Present Situation:

Academically High-Performing School Districts

To be designated as an academically high-performing school district, a school district must:

- Earn a grade of "A" for two consecutive years and have no grade "F" schools;
- Comply with the class size requirements; and
- Have no material weaknesses or instances of material noncompliance noted in the annual financial audit.[1]

An academically high-performing school district is exempt from many statutes in the Florida K-20 Education Code (Education Code) and related state board of education rules.[2] However, each academically high-performing school district must comply with the provisions in the Education Code pertaining to:[3]

- Services to students with disabilities;
- Civil rights and discrimination;
- Student health, safety, and welfare;
- The election or compensation of district school board members;
- The student assessment program and the school grading system;
- Financial matters;
- Planning and budgeting;
- Differentiated pay and performance-pay policies for school administrators and instructional personnel;
- Education facilities; and

[1] s. 1003.621(1)(a), F.S.
[2] s. 1003.621(1)(b), F.S. Chapters 1000 through 1013, F.S., are known as the "Florida K-20 Education Code." s. 1000.01(1), F.S.
[3] s. 1003.621(2)(a)-(j), F.S.

- Instructional materials.[4]

An academically high-performing designation lasts for three years.[5] The school district may renew the designation if it continues to meet the eligibility requirements and earns an "A" grade for two years within a three-year period.[6] A school district must notify the State Board of Education (SBE) if it no longer meets eligibility requirements.[7]

For 2011-2012, there were 19 academically high-performing school districts, of which 10 waived some provisions of law.[8] For comparison, in 2010-2011 there were 13 academically high-performing school districts, of which 9 waived some provision of law.[9] The vast majority of the waivers for 2010-2011 and 2011-2012 related to the school opening and closing dates (i.e., opening schools earlier than 14 days before Labor Day).

III. Effect of Proposed Changes:

The bill provides a process by which a school district may receive approval to establish an innovation school within the district, with statutory flexibilities, responsibilities, and authorities similar to those authorized for charter schools. The purpose of an innovation school is to utilize innovation and to enhance high academic achievement and accountability in exchange for flexibility and exemptions from specific statutes. The bill allows three or more contiguous school districts to apply to enter into a joint performance contract as a Region of Innovation.

Also, the bill exempts facilities leased by the district from ad valorem taxes, and changes the compliance calculation for maximum class size, from maximum for each classroom to the school average per classroom, for district schools or programs that are schools of choice (such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment).

District Innovation Schools

The bill creates district innovation schools and authorizes school districts that meet specified requirements to apply to the State Board of Education to enter into a performance contract to operate an innovation school within the district.

Purpose and Principles

The purpose of an innovation school is to utilize innovation and enhance high academic achievement and accountability in exchange for flexibility and exemptions from specific statutes.

[4] s. 1003.621(2), F.S.
[5] s. 1003.621(1), F.S.
[6] *Id*.
[7] *Id*.
[8] Email, Florida Department of Education, Re: Chart of Active Waivers By Academically High Performing Districts (March 25, 2013), on file with the Committee of Education Staff. The school districts designated as academic high-performing school districts for the 2011-12 academic year were: Brevard, Calhoun, Charlotte, Citrus, Clay, Flagler, Gilchrist, Gulf, Lee, Leon, Martin, Nassau, Palm Beach, St. Johns, Sarasota, Seminole, Sumter, Wakulla, and Walton.
[9] *Id*.

An innovation school is a school that:

- Operates as a public school of parental choice pursuant to s. 1002.31;
- Focuses on teaching and learning infused with current technology;
- Prepares students for a career or postsecondary education;
- Utilizes innovation and enhances high student academic achievement and accountability;
- Enhances academic success and financial efficiency by aligning responsibility with accountability;
- Provides a parent with information for each year spent in the innovation school regarding the educational progress of his or her child, the child's reading grade level, and the child's performance toward achieving common core standards appropriate for the student's grade level;
- Has a theme or academic focus that is based on innovation and is unique in the district;
- Offers specialized programs and created innovative learning approaches in a diverse environment; and
- Could operate as a virtual school.

The principles of an innovation school are:

- Student learning is aligned with Next Generation Sunshine State Standards;
- Students advance by demonstrating skills, abilities, and knowledge necessary to ensure a successful career;
- Teachers, advisors, students, and parents manage a personalized learning plan that accounts for each student's preferred pace and learning style;
- Each student learns in the way he or she learns best, such as independently, one-on-one with a coach, collaboratively in small groups, online, through internships or early college courses, or in other real-world contexts; and
- Instructional personnel take on roles as learning coaches, advisors, and content and assessment experts.

An innovation school must:

- Meet high standards of student achievement;
- Implement innovative learning methods, including blended learning, and assessment tools to implement a school wide transformation to improve student learning and academic achievement;
- Measure student performance based on student learning growth, or student achievement if student learning growth cannot be measured;
- Incorporate industry certifications and similar recognitions into performance expectations; and
- Tailor the program to students at the school, personalize education for each student, and empower students to plan and manage their own studies in a variety of ways.

Application & Expansion

A school district could apply to the State Board of Education to enter into a performance contract to operate an innovation school if the district:

- Has at least 20% of its total enrollment in public school choice programs or at least 5% of its total enrollment in charter schools;
- Has no material weaknesses or instances of material noncompliance noted in the annual financial audit conducted; and
- Has not received a district grade below B in the past 3 years.

A school district that meets the eligibility requirements could apply to the State Board of Education at any time to enter into a performance contract to operate an innovation school. The State Board of Education would either approve or deny the application within 90 days, or later time if agreed upon by the school district. The application must, at a minimum:

- Demonstrate how the school district meets and will continue to meet applicable requirements;
- Identify how the school will accomplish the purpose and guiding principles;
- Identify the statutes or rules the district is seeking to waive;
- Identify and provide supporting documentation for the purpose and impact of each waiver, how each waiver would enable the school to achieve the purpose and guiding principles of an innovation school, and how the school would not be able to achieve the purpose and guiding principles without each waiver; and
- Confirm that the school board remains responsible for the operation, control and supervision of the school in accordance with all applicable laws, rules and district procedures not waived for the innovation school or waived pursuant to other applicable law.

A school district could apply to the State Board of Education to establish additional innovation schools if each existing innovation school:

- Has a grade of "A" or "B;"
- Meets all requirements of innovation schools and the performance contract; and
- Has at least 50% of its students exceed the state average on the statewide assessment program. This comparison may take student subgroups into specific consideration so that at least 50% of students in each student subgroup meet or exceed the statewide average performance of the subgroups, when rounded to the nearest whole number, of that particular subgroup.

However, the number of innovation schools per school district could not exceed:

- Seven schools in a school district that has 100,000 or more students;
- Five schools in a school district that has 50,000 to 99,999 students; and
- Three schools in a district that has fewer than 50,000 students.

Additionally, three or more contiguous school districts could apply to enter into a joint performance contract as a Region of Innovation.

Performance Contract & Renewal

An innovation school would operate pursuant to a performance contract with the State Board of Education for a period of 5 years. The State Board of Education would monitor the school district and school for compliance with the contract. The performance contract must address, but not be limited to, identifying:

- That an innovation school may plan during the first year, begin at least partial implementation during the second year, and fully implement the program by the third year. However, a district may implement the program sooner than specified if authorized in the performance contract;
- How the school will integrate technology into instruction, assessment, and professional development. The school must restructure the school day or school year in a way that allows it to best accomplish its goals;
- How the school and district will monitor performance progress based on skills that help students succeed in college and careers, including problem solving, research, interpretation, and communication;
- How the school will allow students to advance based on student competency and understanding of the content;
- How the learning environment will allow for innovation and how the resources will enable personalization and increase student achievement and college and career readiness;
- How the school will incorporate industry certifications and similar recognitions into performance expectations; and
- That the State Board of Education may cancel the contract if:
  - The school receives a school grade of "F" as an innovation school for 2 consecutive years;
  - The school or district fails to comply with statutory requirements or the contract; or
  - Other good cause shown.

The school's performance would be evaluated against the eligibility criteria, purpose, guiding principles, and compliance with the contract to determine contract renewal. The contract could be renewed every 5 years.

Student Enrollment

An innovation school would be open to any student covered in an interdistrict agreement or residing in the school district. If the number of student applicants exceed capacity, a public random selection process would be performed. A district could give an enrollment preference to students who identify the innovation school as the student's preferred choice pursuant to the district's controlled open enrollment plan.

Funding

A district school board operating an innovation school would report full-time equivalent students to the department in a manner prescribed by the department. As with other schools in the district, funding would be provided through the Florida Education Finance Program as provided in ss. 1011.61 and 1011.62, F.S. An innovation school could seek and receive additional funding through incentive grants or public or private partnerships.

Exemptions from Statutes

An innovation school would be exempt from many provisions in the Education Code, including, but not limited to:

- Autonomy in the budget, staffing, governance, curriculum, assessment, and school calendar, and
- Exemption from the State Requirements for Educational Facilities when leasing facilities.

However, an innovation school must comply with the following statutes in the Education Code:

- Statutes specifically applying to innovation schools, including this section;
- Statutes pertaining to the student assessment program and school grading system;
- Statutes pertaining to the provision of services to students with disabilities;
- Statutes pertaining to civil rights;
- Statutes pertaining to student health, safety, and welfare;
- Laws governing the election and compensation of district school board members and election or appointment and compensation of district school superintendents;
- Section 1003.03, F.S., relating to the maximum class size, except that the calculation for compliance is the average at the school level; and
- Certain statutes pertaining to contracts with instructional personnel.

Reports

The school district of an innovation school would submit to the State Board of Education and the Legislature an annual report by December 1 of each year which delineates the performance of the school of innovation in regards to the academic performance of students. The annual report would be submitted in a format prescribed by the Department of Education and would include, but need not be limited to, the following:

- Evidence of compliance with this section;
- Efforts to close the achievement gap;
- Longitudinal performance of students, by grade level and subgroup, in mathematics, reading, writing, science, and any other subject that is included as a part of the statewide assessment program;
- Longitudinal performance regarding students who take an Advanced Placement Examination organized by demographic group, specifically by age, gender, and race, and by participation in the National School Lunch Program; and

- Number and percentage of students who take an Advanced Placement Examination.

Class Size

For district schools of choice, the bill changes the compliance calculation for maximum class size from the maximum number of students for each classroom to the school average per classroom. District schools of choice are schools such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, dual enrollment, and they include the district innovation schools created in this bill.

Article IX, Section 1 of the Florida Constitution states in part that "[t]o assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that… there are a sufficient number of classrooms so that" the maximum number of students who are assigned to each teacher who is teaching in public school classrooms for various grades do not exceed a specific number. The Legislature implements the constitutional provision through responsibilities and penalties specified in s. 1003.03, F.S.

Ad Valorem Taxes

The bill specifically exempts property leased by districts from ad valorem taxes pursuant to s. 196.1983, F. S; the landlord must certify by affidavit that lease payments are reduced to the extent of the exemption. The owner of the property also must disclose the full amount of the benefit derived from the exemption and ensure that the district receives the benefit through a credit to lease payments. The practical effect is to provide to school districts the same exemption provided to charter schools regarding leased property.

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:

C. Government Sector Impact:

There is no fiscal impact to state appropriations.

Calculating compliance for maximum class size, based on the average of all classrooms in the school instead of the maximum for each classroom, would make it easier for the schools of choice to meet the requirement and would help the school district to avoid or minimize the fiscal penalty for noncompliance. This would not change the total funds allocated to school districts to meet the maximum class size requirement.

If a school district leases a private facility for an innovation school the provision of the bill that exempts innovation schools from ad valorem taxes and State Requirements for Educational Facilities for leased facilities will provide a cost savings to school districts to lease a private facility, however, any savings can be determined only at the time a lease is executed.

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 on April 1, 2013:
CS/SB 1390 differs from SB 1390 in that it:

- Deletes all references to charter schools and academically high performing school districts.
- Expands upon the creation of a district school of innovation.
- Requires a school district that seeks an innovation school to apply to the State Board of Education for approval to enter into a performance contract to create a school of innovation.
- Contains necessary provisions related to the creation of an innovation school, such as the purpose and definition of a school of innovation, the application and contract process, the operation of the school, and renewal and termination provisions.
- Authorizes three or more contiguous school districts to apply to enter into a joint performance contract as a Region of Innovation.

B. Amendments:

None.

By the Committee on Education; and Senator Montford

581-03373-13 20131390c1

A bill to be entitled

An act relating to school district innovation; providing a short title; amending s. 196.1983, F.S.; granting school districts the ad valorem tax exemption given to charter schools; requiring a landlord to certify compliance by affidavit; amending s. 1002.31, F.S.; providing a calculation for compliance with class size maximums for a public school of choice; creating s. 1003.622, F.S.; creating innovation schools to allow school districts to earn flexibility for high academic achievement; specifying school and student eligibility requirements; limiting the number of innovation schools that may be operated and established in a school district; providing guiding principles for innovation schools; requiring innovation schools to personalize education for each student; establishing an application process; specifying requirements of a performance contract between the State Board of Education and a school district; establishing the term of the performance contract; providing for a Region of Innovation in which three or more school districts enter into a joint performance contract; requiring the State Board of Education to monitor innovation schools for compliance with the act and performance contracts; requiring the State Board of Education to adopt rules; providing that a participating school district has autonomy in certain areas; exempting innovation schools from ch. 1000-1013, F.S., subject to certain

581-03373-13 20131390c1

exceptions; exempting such districts from certain ad valorem taxes and other requirements; providing for funding; requiring a school district with an innovation school to submit an annual report to the State Board of Education and the Legislature; specifying requirements for such report; providing an effective date.

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

Section 1. SHORT TITLE.—This act may be cited as the "Florida Innovation Schools Act."

Section 2. Section 196.1983, Florida Statutes, is amended to read:

196.1983 Charter school and school district exemption from ad valorem taxes.—Any facility, or portion thereof, used to house a school district or a charter school whose charter has been approved by the sponsor and the governing board pursuant to s. 1002.33(7) is ~~shall be~~ exempt from ad valorem taxes. For leasehold properties, the landlord must certify by affidavit to the district or the charter school sponsor that the lease payments shall be reduced to the extent of the exemption received. The owner of the property shall disclose ~~to a charter school~~ the full amount of the benefit derived from the exemption and the method for ensuring that the district or charter school receives such benefit. The charter school shall receive the full benefit derived from the exemption through either an annual or monthly credit to the district's or charter school's lease payments.

Section 3. Subsection (9) is added to section 1002.31, Florida Statutes, to read:

1002.31 Public school parental choice.—

(9) For a school or program that is a public school of choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03 is the average number of students at the school level.

Section 4. Section 1003.622, Florida Statutes, is created to read:

1003.622 District innovation schools.—

(1) PURPOSE AND ELIGIBILITY.—

(a) The purpose of an innovation school is to utilize innovation and enhance high academic achievement and accountability in exchange for flexibility and exemptions from specific statutes.

(b) An innovation school is a school that:

1. Operates as a public school of parental choice pursuant to s. 1002.31;

2. Focuses on teaching and learning infused with current technology;

3. Prepares students for a career or postsecondary education;

4. Utilizes innovation and enhances high student academic achievement and accountability;

5. Enhances academic success and financial efficiency by aligning responsibility with accountability;

6. Provides a parent with sufficient information for each year spent in the innovation school regarding the educational progress of his or her child, the child's reading grade level,

and the child's performance toward achieving common core standards appropriate for the student's grade level;

7. Has a theme or academic focus that is based on innovation and is unique in the district; and

8. Offers specialized programs and creates innovative learning approaches in a diverse environment.

(c) A district school board may apply to the State Board of Education for an innovation school if the district:

1. Has at least 20 percent of its total enrollment in public choice programs or at least 5 percent of its total enrollment in charter schools;

2. Has no material weaknesses or instances of material noncompliance noted in the annual financial audit conducted pursuant to s. 218.39; and

3. Has not received a district grade below B in the past 3 years.

(d) A district school board may operate one innovation school upon an application being approved by the State Board of Education.

1. A district school board may apply to the State Board of Education to establish additional innovation schools if each existing innovation school in the district:

a. Meets all requirements in this section and in the performance contract;

b. Has a grade of "A" or "B"; and

c. Has at least 50 percent of its students exceed the state average on the statewide assessment program pursuant to s. 1008.22. This comparison may take student subgroups, as defined in the federal Elementary and Secondary Education Act (ESEA), 20

U.S.C. s. 6311(b)(2)(C)(v)(II), into specific consideration so that at least 50 percent of students in each student subgroup meet or exceed the statewide average performance, rounded to the nearest whole number, of that particular subgroup.

2. Notwithstanding subparagraph 1., the number of innovation schools in a school district may not exceed:

a. Seven in a school district that has 100,000 or more students.

b. Five in a school district that has 50,000 to 99,999 students.

c. Three in a school district that has fewer than 50,000 students.

(e) An innovation school must be open to any student covered in an interdistrict agreement or residing in the school district in which the innovation school is located. An innovation school shall enroll an eligible student who submits a timely application if the number of applications does not exceed the capacity of a program, class, grade level, or building. If the number of applications exceeds capacity, all applicants shall have an equal chance of being admitted through a public random selection process. However, a district may give enrollment preference to students who identify the innovation school as the student's preferred choice pursuant to the district's controlled open enrollment plan.

(2) GUIDING PRINCIPLES.—

(a) An innovation school shall be guided by the following principles:

1. Student learning is aligned with the Next Generation Sunshine State Standards.

2. Students advance by demonstrating skills, abilities, and knowledge necessary to ensure a successful career.

3. Teachers, advisors, students, and parents manage a personalized learning plan that accounts for each student's preferred pace and learning style.

4. Each student learns in the way he or she learns best, such as independently, one-on-one with a coach, collaboratively in small groups, online, through internships or early college courses, or in other real-world contexts.

5. Instructional personnel take on roles as learning coaches, advisors, and content and assessment experts.

(b) An innovation school shall:

1. Meet high standards of student achievement.

2. Implement innovative learning methods, including blended learning, and assessment tools to implement a schoolwide transformation to improve student learning and academic achievement.

3. Measure student performance based on student learning growth, or based on student achievement if student learning growth cannot be measured.

4. Incorporate industry certifications and similar recognitions into performance expectations.

5. Tailor the program to students at the school, personalize education for each student, and empower students to plan and manage their own studies in a variety of ways.

(c) Classroom teachers, as defined in s. 1012.01(2)(a), shall be evaluated based on performance pursuant to s. 1012.34. However, an innovation school may use an equally appropriate formula pursuant to s. 1012.34(7)(b) to make such evaluation.

(d) An innovation school may operate as a virtual school.

(3) APPLICATION PROCESS AND PERFORMANCE CONTRACT.—A school district that meets the eligibility requirements of subsection (1) may apply to the State Board of Education at any time to enter into a performance contract to operate an innovation school.

(a) The application must, at a minimum:

1. Demonstrate how the school district meets and will continue to meet the requirements of this section;

2. Identify how the school will accomplish the purposes and guiding principles of this section;

3. Identify the statutes or rules from which the district is seeking a waiver for the school;

4. Identify and provide supporting documentation for the purpose and impact of each waiver, how each waiver would enable the school to achieve the purpose and guiding principles of this section, and how the school would not be able to achieve the purpose and guiding principles of this section without each waiver; and

5. Confirm that the school board remains responsible for the operation, control, and supervision of the school in accordance with all applicable laws, rules, and district procedures not waived pursuant to this section or waived pursuant to other applicable law.

(b) The State Board of Education shall approve or deny the application within 90 days or, with the agreement of the school district, at a later date.

(c) The performance contract must address the terms under which the State Board of Education may cancel the contract and,

at a minimum, the methods by which:

1. Upon execution of the performance contract, the school district will plan the program during the first year, begin at least partial implementation of the program during the second year, and fully implement the program by the third year. A district may implement the program sooner than specified in this paragraph if authorized in the performance contract.

2. The school will integrate technology into instruction, assessment, and professional development. The school may also restructure the school day or school year in a way that allows it to best accomplish its goals.

3. The school and district will monitor performance progress based on skills that help students succeed in college and careers, including problem solving, research, interpretation, and communication.

4. The school will allow students to advance based on student competency and understanding of the content.

5. The learning environment will allow for innovation.

6. The resources will enable personalization and increase student achievement and college and career readiness.

7. The school will incorporate industry certifications and similar recognitions into performance expectations.

(d) Three or more contiguous school districts may apply to enter into a joint performance contract as a Region of Innovation, subject to terms and conditions contained in this section for a single school district.

(e) The State Board of Education shall monitor innovation schools to ensure that the respective school district is in compliance with this section and the performance contract.

(f) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including, but not limited to, an application, evaluation instrument, and renewal evaluation instrument.

(g) This section does not supersede the provisions of s. 768.28.

(4) TERM OF PERFORMANCE CONTRACT.—An innovation school may operate pursuant to a performance contract with the State Board of Education for a period of 5 years.

(a) Before expiration of the performance contract, the school's performance shall be evaluated against the eligibility criteria, purpose, guiding principles, and compliance with the contract to determine whether the contract may be renewed. The contract may be renewed every 5 years.

(b) The performance contract shall be terminated by the State Board of Education if:

1. The school receives a school grade as an innovation school of "F" for 2 consecutive years;

2. The school or district fails to comply with the criteria in this section;

3. The school or district does not comply with terms of the contract which specify that a violation results in termination; or

4. Other good cause is shown.

(5) EXEMPTION FROM STATUTES.—

(a) An innovation school is generally exempt from chapters 1000-1013, and shall have autonomy in the budget, staffing, governance, curriculum, assessment, and school calendar. However, an innovation school shall comply with the following

provisions of those chapters:

1. Laws pertaining to the following:

a. Innovation schools, including this section.

b. Student assessment program and school grading system.

c. Services to students who have disabilities.

d. Civil rights, including s. 1000.05, relating to discrimination.

e. Student health, safety, and welfare.

2. Laws governing the election and compensation of district school board members and election or appointment and compensation of district school superintendents.

3. Section 1003.03, governing maximum class size, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level.

4. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

(b) An innovation school shall also comply with chapter 119 and section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

(c) An innovation school is exempt from ad valorem taxes and the State Requirements for Educational Facilities when leasing facilities.

(6) FUNDING.—A district school board operating an innovation school shall report full-time equivalent students to the department in a manner prescribed by the department. As with other schools in the district, funding shall be provided through

the Florida Education Finance Program described in ss. 1011.61 and 1011.62. An innovation school may seek and receive additional funding through incentive grants or public or private partnerships.

(7) REPORTS.—The school district of an innovation school shall submit to the State Board of Education, the President of the Senate, and the Speaker of the House of Representatives an annual report by December 1 of each year which delineates the performance of the innovation school as it relates to the academic performance of students. The annual report shall be submitted in a format prescribed by the Department of Education and must include, but need not be limited to, the following:

(a) Evidence of compliance with this section.

(b) Efforts to close the achievement gap.

(c) Longitudinal performance of students, by grade level and subgroup, in mathematics, reading, writing, science, and any other subject that is included as a part of the statewide assessment program in s. 1008.22.

(d) Longitudinal performance for students who take an Advanced Placement Examination, organized by age, gender, and race, and for students who participate in the National School Lunch Program.

(e) Number and percentage of students who take an Advanced Placement Examination.

Section 5. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 1408
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senator Richter
SUBJECT:	Captive Insurance
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.	Siples	Hrdlicka	CM	**Favorable**
3.	Betta	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 1408 removes the reference to "satisfactory non-approved reinsurer" from the definition of a qualifying reinsurer parent company, and replaces it with a reference to "trusteed reinsurer," as being considered a qualifying reinsurer parent company. The bill removes the current allowance for a qualifying reinsurer parent company to hold a letter of eligibility as an acceptable alternative to holding a certificate of authority.

The bill allows an industrial insured captive insurance company to insure risks of its stockholders or members, and affiliates thereof, or the stockholders or affiliates of the parent corporation of the captive insurance company. The bill allows an industrial insured captive insurance company with unencumbered capital and surplus of at least $20 million to be licensed to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate.

The bill has no state fiscal impact.

The bill exempts captive insurance company from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance. A

pure captive insurance company must submit to the Office of Insurance Regulation its standards to ensure a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business that is to be insured by the pure captive insurance company. The bill deletes the current authorization for the Financial Services Commission to adopt rules establishing such standards.

This bill substantially amends the following sections of the Florida Statutes: 628.901, 628.905, 628.907, 628.909, 628.9142, 628.915, 628.917, and 628.919, F.S.

II. Present Situation:

A captive insurance company is one that is created to insure the risks of its owners.[1] A captive insurance company acts similarly to a commercial insurer in that it will issue an insurance policy and in exchange, the insured entity will pay an insurance premium.[2]

Under current law, captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a "captive insurance company" as a domestic insurer established under part V, and includes a pure captive insurance company, a special purpose captive insurance company, or an industrial captive insurance company, with each of these formations also separately defined. Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,[3] meaning that the captive is a wholly-owned subsidiary that insures the risks of its parent and affiliates.[4]

An "industrial insured captive insurance company"[5] is defined as a captive insurance company that provides insurance only to industrial insureds[6] that are its stockholders or members, or affiliates of the stockholders or members, or to the stockholders of its parent corporation, or their affiliates. An industrial insured captive insurance company can also provide reinsurance, but only on risks written by a direct insurer for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurance company, or to the stockholders of the parent corporation, or their affiliates, of the industrial insured captive insurance company.

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[1] Insurance Information Institute, *Captives and Other Risk Financing Options* (April 2013), *available at* http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html (last visited Apr. 12, 2013).
[2] Theriault, Patrick. *What to Consider When Establishing and Operating Captives*, 3 (2008), *available at* http://www.captive.com/service/WilmingtonTrust/images%20and%20pdf/captive101whitepaper.pdf (last visited Apr.12, 2013).
[3] *Id* at 9.
[4] Section 628.901(12), F.S.
[5] Section 628.901(9), F.S.
[6] Section 628.901(8), F.S., defines an industrial insured as an insured that has gross assets in excess of $50 million, procures insurance through a full-time employee of the insured who acts as an insurance manager or buyer or through a person licensed as a property and casualty insurance agent, broker or consultant, has at least 100 full-time employees, and pays annual premiums in excess of specified amounts.

A "captive reinsurance company"[7] is defined as a stock corporation reinsurer formed under part V of ch. 628, F.S., which is wholly owned by a qualifying reinsurance parent company. A "qualifying reinsurance parent company"[8] is defined as a reinsurer that:

- Holds a certificate of authority or a letter of eligibility; or
- Is an accredited or a satisfactory non-approved reinsurer in Florida and possesses consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

A captive insurance arrangement can provide a number of benefits, depending on the type of business arrangement, the domicile of the insured business and the captive insurance company, and the coverages involved. Some benefits of captive insurance may include:

- Lower insurance cost.[9] Two elements that an arm's length insurer must recover are acquisition cost (often in the form of agent commissions and advertising) and profit. A captive insurance company would not need to factor these elements into the premium it charges.
- Potential tax savings.[10] The premium paid by the insured entity is a deductible expense for federal income tax purposes and; under some circumstances, a portion of the captive insurance company's income from the collected premium may not be recognized as taxable. Further, a captive insurance company may be domiciled in a country where its investment income may receive more favorable tax treatment than in the United States.
- More tailored insurance plan.[11] A captive insurance company may be able to create overall savings through coverage and policy provisions that are unique to the individual business being insured.
- Cohesion of interest. Because the control of the insured and the insurer would reside in a single entity, there could be a reduction in some of the areas of potential disagreement over claim verification, investigation, and valuation.

Potential disadvantages of a captive insurance arrangement may include:

- Administrative Costs.[12] Forming a captive insurance company may require extra personnel and management as well as time and attention that can distract from the core business of the parent company or companies. Administering a possible acquisition or merger may also become more complicated when a captive is involved. Regulatory compliance is an additional component that may impose added administrative costs.
- Long-term Financial Risks.[13] The formation of a captive insurance company is a long-term investment with benefits that often are not realized immediately. Captive insurance

[7] Section 628.901(3), F.S.
[8] Section 628.901(13), F.S.
[9] Captive.com, *Reasons to Form a Captive*, *available* at http://captive.com/service/SCG/ProsAndCons.html (last visited Apr. 12, 2013).
[10] *Id.*
[11] Captive Insurance Council of the District of Columbia, *Frequently Asked Questions, available at* http://www.dccaptives.org/i4a/pages/index.cfm?pageid=3382 (last visited Apr. 12, 2013).
[12] *Reasons to Form a Captive*.
[13] *Id.*

companies may also expose a company to increased risk and exposure to volatile capital and reinsurance markets. The financial commitment to a captive insurance company is less flexible than the simple purchase of an annual policy through a commercial insurer.

In 2012, the Legislature passed and the Governor signed CS/CS/HB 1101 into law,[14] which made significant changes to Florida's captive insurance statute. These changes were intended to modernize the statute and make Florida more attractive to companies seeking to domicile captive insurance companies in the state, which could help generate new jobs and revenues. Among its numerous provisions, the law:

- Adopted new definitions for pure captive insurance companies, special purpose captive insurance companies, and industrial insured captive insurance companies;
- Allowed the formation and incorporation of different varieties of captive insurance and reinsurance companies;
- Substantially reduced the capital and surplus requirements for industrial insured and pure captive insurance companies;
- Established new procedures for licensure of captive insurance or reinsurance companies by the OIR;
- Fixed annual reporting requirements applicable to captive insurance companies;
- Provided net asset requirements for nonprofit captive insurance companies formed as pure captive and special purpose captive insurance companies;
- Required the Financial Services Commission to set standards ensuring that a parent or affiliated company exercises risk management control of any unaffiliated business to be insured by a pure captive insurance company; and
- Restricted the allowable coverage a captive insurance or reinsurance company may provide. Prior to CS/CS/HB 1101, an industrial insured captive insurance company was permitted to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate. CS/CS/HB 1101 removed that provision. This provision negatively affected the ability of at least one currently existing captive insurance company to write new policies for workers' compensation and excess employer liability coverage.

III. Effect of Proposed Changes:

Section 1 amends s. 628.901, F.S., to revise the definition of "qualifying reinsurer parent company" by replacing "satisfactory non-approved" reinsurer with "trusteed" insurer as an entity that is considered to be a qualifying reinsurer parent company. The bill also removes the current allowance for a qualifying reinsurer parent company to hold a letter of eligibility as an acceptable alternative to holding a certificate of authority.

Section 2 amends s. 628.905, F.S., to allow an industrial insured captive insurance company to insure risks of its stockholders or members, and affiliates thereof, or the stockholders or affiliates of the parent corporation of the captive insurance company. The bill also allows an industrial insured captive insurance company with unencumbered capital and surplus of at least $20 million to be licensed to provide workers' compensation and employer's liability insurance in

[14] Sections 19 – 34, ch. 2012-151, L.O.F.

excess of $25 million in the annual aggregate. Such firms must maintain unencumbered capital and surplus of at least $20 million to continue writing excess workers' compensation insurance.

Section 4 amends s. 628.909, F.S., to exempt captive insurance companies from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance.

Sections 3, 5, 6, and 7 conform language in and make technical amendments language to ss. 628.907, 628.9142, 628.915, and 628.917, F.S., related to captive insurance companies.

Section 8 amends s. 628.919, F.S., to remove the authority of the Financial Services Commission to adopt rules establishing the standards for risk management control. The bill requires a pure captive insurance company to submit standards to the Office of Insurance Regulation that ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business that is to be insured by the pure captive insurance company.

Section 9 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Appropriations on April 23, 2013:
The committee substitute makes a technical amendment to the definition of "Qualifying reinsurer parent company".

CS by Banking and Insurance on April 9, 2013:
The CS removes the original bill's redefinition of "captive insurance company," and the bill's new definitions for "incorporated protected cell," "participant," "protected cell," "incorporated protected cell, and" "protected cell subsidiary company."

The CS removes the original bill's provision to allow that a protected cell subsidiary company can insure or reinsure risks.

The CS removes the original bill's provision to provide that a protected cell subsidiary company must possess and maintain unimpaired paid-in capital of at least $200,000 and unimpaired surplus of at least $300,000.

The CS removes the original bill's provision to make conforming changes to add protected cell subsidiary companies to the applicability of specific provisions of the Insurance Code.

The CS removes the original bill's provision to provide that a protected cell subsidiary company must be incorporated as a stock insurer with its capital divided into shares that are held by its industrial insured captive insurance company parent.

The CS removes the original bill's provision to provide that a ceding captive insurance company can reinsure risks with an assuming insurer for the limited purpose of assuming risk from a protected cell subsidiary company with respect to one or more protected cells.

The CS removes the original bill's provision to remove current language that provides that an industrial insured captive insurer is prohibited from joining or from receiving any benefit from a joint underwriting association or guaranty fund.

The CS removes the original bill's creation of new s. 628.921, F.S., governing the establishment of protected cells, the formation of and requirements for protected cell subsidiary companies, defining the term "incorporated protected cell," and establishing provisions for the formation of and requirements for incorporated protected cells.

The CS amends the definition of "qualifying reinsurer parent company," to delete a reference to a "satisfactory non-approved reinsurer," and replace it with a reference to "trusteed reinsurer."

The CS removes the current allowance for a qualifying reinsurer parent company to hold a letter of eligibility as an acceptable alternative to holding a certificate of authority.

The CS requires that an industrial insured captive insurer must have unencumbered capital and surplus of at least $20 million to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate.

The CS exempts captive insurers from the statutory trust deposit required as a condition of obtaining a certificate of authority to transact insurance.

The CS requires a pure captive insurance company to submit to the OIR for approval its standards to ensure a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business that is to be insured by the pure captive insurance company. The CS deletes the current authorization for the Financial Services Commission to adopt rules establishing these standards.

B. Amendments:

None.

683692

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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	.	
	.	

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete lines 51 - 57
and insert:
(13) "Qualifying reinsurer parent company" means a reinsurer that ~~which~~ currently holds a certificate of authority, or qualifies for credit for reinsurance under s. 624.610(3), and possesses ~~letter of eligibility or is an accredited or a satisfactory non-approved reinsurer in this state possessing~~ a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

By the Committee on Banking and Insurance; and Senator Richter

597-03997-13 20131408c1

A bill to be entitled

An act relating to captive insurance; replacing the term "captive insurer" with "captive insurance company" in part V of ch. 628, F.S.; amending s. 628.901, F.S.; revising definitions; amending s. 628.905, F.S.; expanding the risks that an industrial insured capital insurance company may insure; providing that an industrial insured captive insurance company may provide certain insurance if the company has and maintains unencumbered capital and surplus of a certain amount; amending s. 628.907, F.S.; conforming terms; amending s. 628.909, F.S.; conforming terms and requiring captive insurance companies to deposit and maintain securities for the protection of policyholders; amending ss. 628.9142, 628.915, 628.917, and 628.919, F.S.; conforming terms; providing an effective date.

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

Section 1. Subsections (8), (9), and (13) of section 628.901, Florida Statutes, are amended to read:

628.901 Definitions.—As used in this part, the term:

(8) "Industrial insured" means an insured that:

(a) Has gross assets in excess of $50 million;

(b) Procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or buyer or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in such

597-03997-13 20131408c1

person's state of domicile;

(c) Has at least 100 full-time employees; and

(d) Pays annual premiums of at least $200,000 for each line of insurance purchased from the industrial insured captive insurance company ~~insurer~~ or at least $75,000 for any line of coverage in excess of at least $25 million in the annual aggregate. The purchase of umbrella or general liability coverage in excess of $25 million in the annual aggregate shall be deemed to be the purchase of a single line of insurance.

(9) "Industrial insured captive insurance company" means a ~~captive insurance~~ company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial insured captive insurance company may ~~can~~ also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurance company ~~insurer~~, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurance company ~~insurer~~.

(13) "Qualifying reinsurer parent company" means a reinsurer that ~~which~~ currently holds a certificate of authority~~,~~ ~~letter of eligibility~~ or is an accredited or trusteed ~~a satisfactory non approved~~ reinsurer under s. 624.610(3)(c) in this state possessing a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

Section 2. Subsections (1) and (2), paragraph (b) of

subsection (4), and subsection (5) of section 628.905, Florida Statutes, are amended to read:

628.905 Licensing; authority.—

(1) A captive insurance company ~~insurer~~, if permitted by its charter or articles of incorporation, may apply to the office for a license to do any ~~and all~~ insurance authorized under the insurance code, other than workers' compensation and employer's liability, life, health, personal motor vehicle, and personal residential property insurance, except that:

(a) A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(b) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies, or its stockholders or members and affiliates thereof of the industrial insured captive, or the stockholders or affiliates of the parent corporation of the industrial insured captive insurance company.

(c) A special purpose captive insurance company may insure only the risks of its parent.

(d) A captive insurance company may not accept or cede reinsurance except as provided under ~~in~~ this part.

(e) An industrial insured captive insurance company that has unencumbered capital and surplus of at least $20 million may be licensed to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate. An industrial insured captive insurance company must maintain unencumbered capital and surplus of at least $20

million in order to continue to write excess workers' compensation insurance in this state.

(2) To conduct insurance business in this state, a captive insurance company ~~insurer~~ must:

(a) Obtain from the office a license authorizing it to conduct insurance business in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Chief Financial Officer is ~~of this state must be~~ an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(4) A captive insurance company or captive reinsurance company must pay to the office a nonrefundable fee of $1,500 for processing its application for license.

(b) The office may charge a fee of $5 for any document requiring certification of authenticity or the signature of the office ~~commissioner or his or her designee~~.

(5) If the office ~~commissioner~~ is satisfied that the documents and statements filed by the captive insurance company comply with this chapter, the office ~~commissioner~~ may grant a license authorizing the company to conduct insurance business in this state until the next succeeding March 1, at which time the

license may be renewed.

Section 3. Subsection (1) of section 628.907, Florida Statutes, is amended to read:

628.907 Minimum capital and net assets requirements; restriction on payment of dividends.—

(1) A captive insurance company ~~insurer~~ may not be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital of:

(a) In the case of a pure captive insurance company, at least $100,000.

(b) In the case of an industrial insured captive insurance company incorporated as a stock insurer, at least $200,000.

(c) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

Section 4. Section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code does not apply to captive insurance companies ~~insurers~~ or industrial insured captive insurance companies ~~insurers~~ except as provided under ~~in~~ this part and subsections (2) and (3).

(2) The following provisions of the Florida Insurance Code apply to captive insurance companies that ~~insurers who~~ are not industrial insured captive insurance companies ~~insurers~~ to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,

624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405, if ~~when~~ no-fault coverage is provided.

(e) Chapter 628.

(3) The following provisions of the Florida Insurance Code apply to industrial insured captive insurance companies ~~insurers~~ to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance company ~~insurer~~ is incorporated in this state.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405 if ~~when~~ no-fault coverage is provided.

(e) Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 5. Subsection (2) of section 628.9142, Florida Statutes, is amended to read:

628.9142 Reinsurance; effect on reserves.—

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with s. 624.610. A captive insurance company ~~insurer~~ may not take credit for reserves on risks or portions of risks ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610.

Section 6. Section 628.915, Florida Statutes, is amended to read:

628.915 Exemption from compulsory association.—

(1) A ~~No~~ captive insurance company may not ~~insurer shall be permitted to~~ join or contribute financially to a ~~any~~ joint underwriting association or guaranty fund in this state; nor may a ~~shall any~~ captive insurance company ~~insurer~~, its insured, or its parent or any affiliated company receive any benefit from any ~~such~~ joint underwriting association or guaranty fund for claims arising out of the operations of such captive insurance company ~~insurer~~.

(2) An ~~No~~ industrial insured captive insurance company may not ~~insurer shall be permitted to~~ join or contribute financially to a ~~any~~ joint underwriting association or guaranty fund in this state; nor may an ~~shall any~~ industrial insured captive insurance company ~~insurer~~, its industrial insured, or its parent or any affiliated company receive any benefit from any ~~such~~ joint underwriting association or guaranty fund for claims arising out of the operations of such industrial insured captive insurance company ~~insurer~~.

Section 7. Section 628.917, Florida Statutes, is amended to read:

628.917 Insolvency and liquidation.—If ~~In the event that~~ a captive insurance company ~~insurer~~ is insolvent as defined in chapter 631, the office shall liquidate the captive insurance company ~~insurer~~ pursuant to ~~the provisions of~~ part I of chapter 631~~,~~ ~~,~~ except that the office may ~~shall~~ make no attempt to rehabilitate such company ~~insurer~~.

Section 8. Section 628.919, Florida Statutes, is amended to

read:

628.919 Standards to ensure risk management control by parent company.—A pure captive insurance company must submit ~~The Financial Services Commission shall adopt rules establishing~~ standards to the office which ensure that a parent or affiliated company is able to exercise control of the risk management function of a ~~any~~ controlled unaffiliated business to be insured by the pure captive insurance company.

Section 9. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

April 9, 2013

The Honorable Joe Negron, Chair
Committee Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Negron:

Senate Bill 1408 relating to Captive Insurance is scheduled to be heard in the committee on Commerce and Toruism this upcoming Monday, April 15th. The next committee of refernce is Appropriations. I expect the bill will be reported favorably out of Commerce and Tourism with no amendments. I would appreciate the placing of this bill on the Thursday, April 18th agenda of the Appropriations committee.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Mike Hansen, Staff Director

SENATE APPROPRIATIONS
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REPLY TO:
☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1482
INTRODUCER:	Judiciary Committee; Health Policy Committee; and Senator Hays
SUBJECT:	Skilled Nursing Facilities
DATE:	April 19, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Brown	Hansen	AP	**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 1482 provides for a certificate of need (CON) exemption for the construction of a licensed skilled nursing facility for the addition of skilled nursing facility beds within a deed-restricted retirement community if:

- The retirement community is located in a county that has 25 percent or more of its population consisting of persons aged 65 or older;
- The retirement community is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
- The retirement community is zoned for a mix of residential and non-residential uses;
- The residential use of the retirement community is deed-restricted as housing for older persons; and
- The retirement community has a population of at least 8,000 residents.

The bill has an indeterminate fiscal impact on the Medicaid program.

The bill takes effect upon becoming a law.

The bill creates section 408.0362 of the Florida Statutes.

II. Present Situation:

Certificates of Need

A CON is a written statement issued by the Agency for Health Care Administration (AHCA) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.[1] Under this regulatory program, a provider cannot legally establish a new nursing home or add nursing home beds to an existing facility without first receiving approval from the AHCA through the CON review and approval process.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.[2] The nursing home projects addressed in s. 408.036, F.S., related to CONs are as follows:

Projects Subject to Full Comparative Review[3]

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include skilled nursing facilities.[4]

Projects Subject to Expedited Review[5]

- Replacing a nursing home within the same district; and
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

Exemptions from CON Review[6]

- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital;
- Adding nursing home beds at a skilled nursing facility that is part of a retirement community which had been in operation on or before July 1, 1949, for the exclusive use of the community residents;
- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;[7]
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;

[1] *See* s. 408.032(3), F.S.
[2] *See* s. 408.036, F.S.
[3] *See* s. 408.036(1), F.S.
[4] Section 408.032(16), F.S., defines a skilled nursing facility as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
[5] *See* s. 408.036(2), F.S.
[6] *See* s. 408.036(3), F.S.
[7] This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;
- Adding no more than 10 total beds or 10 percent of the licensed nursing home beds of that facility, whichever is greater; or if the nursing home is designated as a Gold Seal nursing home, no more than 20 total beds or 10 percent of the licensed nursing home beds of that facility for a facility with a prior 12-month occupancy rate of 96 percent or greater; and
- Replacing a licensed nursing home on the same site, or within three miles, if the number of licensed beds does not increase.

Section 408.036(3), F.S., contains 19 separate exemptions to the CON review process, eight of which are related to nursing homes. Unless a project is exempt, the CON program applies to all nursing home beds, regardless of the source of payment for the beds (private funds, insurance, Medicare, Medicaid, or other funding sources).

Determination of Need

A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the AHCA as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is three years. Need determinations are calculated for subdistricts within the AHCA's 11 service districts[8] based on a formula[9] and estimates of current and projected population as published by the Executive Office of the Governor.

Moratorium on Nursing Home CONs

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds which was in effect until July 1, 2006.[10] The Legislature reenacted the moratorium in 2006[11] and did so again in 2011.[12] The current moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide pursuant to ss. 409.961-409.985, F.S., whichever is earlier.[13]

The Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise including:

- Adding sheltered nursing home beds;
- Beds may be added in a county that has no community nursing home beds and the lack of beds is the result of the closure of nursing homes that were licensed on July 1, 2001;[14]

[8] The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.
[9] *See* Rule 59C-1.036, F.A.C.
[10] *See* s. 52, ch. 2001-45, L.O.F.
[11] *See* ch. 2006-161, L.O.F.
[12] *See* ch. 2011-135, L.O.F.
[13] *See* s. 408.0435(1), F.S.
[14] The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:
  - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; or
  - For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:
  - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
  - The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
  - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.[15]

County Populations

According to the AHCA's population estimates from 2012,[16] 10 counties have populations of 25 percent or more persons aged 65 or over. [17] Of those counties, five currently also have ratios of 16.1 or less nursing home beds per 1,000 persons aged 65 or older.[18] Within those five counties, only The Villages retirement community, located in Sumter County, and On Top of the World retirement community, located in Marion County, currently meet the remaining criteria for the bill's exemption from the CON process.

Housing for Older Persons

Section 760.29(4), F.S., defines housing for older persons as housing that:
- Is provided under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;
- Is intended for, and solely occupied by, persons age 62 or older; or
- Is intended for, and solely occupied by, persons age 55 or older if:
  - At least 80 percent of the occupied units are occupied by at least one person age 55 or older;
  - The housing facility or community meets policy requirements to demonstrate the intent to restrict the facility to older persons and the facility or community's governing documents meet certain criteria; and

[15] The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.
[16] On file with staff of the Senate Committee on Health Policy.
[17] Sumter, Charlotte, Citrus, Highlands, Sarasota, Martin, Indian River, Collier, Marion, and Hernando counties.
[18] Sumter, Indian River, Collier, Marion, and Hernando counties.

- The housing facility or community complies with federal law.

Additionally, s. 760.29(4)(c), F.S., states that housing will not fail to be considered housing for older persons if some current residents[19] do not meet the age requirements or if some housing units are vacant as long as any new residents meet the age requirement.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 408.0362, F.S., to provide for a CON exemption for the construction of a licensed skilled nursing facility for the addition of skilled nursing facility beds within a deed-restricted retirement community if:

- The retirement community is located in a county that has 25 percent or more of its population consisting of persons aged 65 or older;
- The retirement community is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
- The retirement community is zoned for a mix of residential and non-residential uses;
- The residential use of the retirement community is deed-restricted as housing for older persons as defined in 760.29, F.S.; and
- The retirement community has a population of at least 8,000 residents.

The bill caps the maximum number of beds which may be added within the community to the lesser of 240 or the maximum number of beds required to reach a ratio of 16.1 beds per 1,000 residents aged 65 or older in the county where the community is located. To determine the percentage of older persons in a county, and the ratio of 16.1 beds per person aged 65 or older, the AHCA must use county population estimates for three years in the future.

The bill also requires that, in order to receive the CON exemption, a retirement community must make a written request for the exemption in accordance with applicable rules.[20] The request must provide evidence of population, mixed-use status, and the results of the calculation showing the gross and net numbers of community skilled nursing home beds in the county in which the requestor intends for a skilled nursing facility to be built. Any skilled nursing facility built pursuant to the exemption, and all new skilled nursing facility beds, must be certified under both Medicare and Medicaid programs. And, the bill provides that s. 408.0362, F.S., as created by the bill, will not authorize more than one skilled nursing facility within a single retirement community.

Section 2 of the bill provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[19] Residents who have lived in the housing on or after Oct. 1, 1989.
[20] *See* 59C-1.005, F.A.C.

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 may have a positive fiscal impact for persons or entities that may be able to construct and open a skilled nursing facility that is currently restricted by the CON process.

The bill may have a negative fiscal impact on skilled nursing facilities that are currently serving the area where new nursing facilities are opened if demand decreases due to the increase in the number of skilled nursing beds. In addition, if the new skilled nursing facility beds are included in the calculations for future skilled nursing facility bed need, the new facility would impact the ability of other providers to compete for beds in the area.

Both the negative and positive impacts of this bill will be restrained by the 240 bed cap provided for in the bill.

C. Government Sector Impact:

The bill has an indeterminate effect on the Medicaid program. The bill requires a skilled nursing facility constructed under the exemption – and all beds in the facility – to be certified under Medicaid. To the extent that the new facility increases the availability of Medicaid nursing home beds that would not otherwise exist under the moratorium, resulting in Medicaid enrollees who would not otherwise have enrolled in the Medicaid program, the bill will increase the state's Medicaid expenditures to an unknown extent.

VI. Technical Deficiencies:

The bill does not provide a definition of the term "deed-restricted retirement community." The definition of "housing for older persons" in s. 760.29, F.S., as referenced on lines 30-32 of the bill, makes no mention of deed restrictions, and the term "deed-restricted retirement community" does not appear in the Florida Statutes.

VII. Related Issues:

The AHCA advises that the bill may result in lawsuits filed by nursing home associations or individual nursing homes within the same planning area (county, counties, or districts) as that in which an exemption would be granted under the bill.[21]

One of the criteria for the CON exemption is for the retirement community requesting the exemption to have a population of at least 8,000 residents, based on a population data source accepted by the AHCA. Currently the AHCA possesses no precise or definitive method or tool for gauging the number of residents in a retirement community and would have to rely on the community's self-attestation, followed by confirmation of that self-attestation to the extent possible.

Another criterion for the exemption is for the retirement community to be located in a county that has 25 percent or more of its population consisting of persons aged 65 or older. The bill also requires the AHCA to use a prospective county population estimate three years in the future for certain required calculations. The bill does not specify the source the AHCA must use for these demographic data and projections, which could lead to disputes between the AHCA and an exemption requestor, or between the AHCA and an interested third party, as to whether a retirement community qualifies for the exemption.

The bill requires that to qualify for the exemption, a retirement community must be located in "a county" that has 25 percent or more of its population consisting of persons aged 65 or older and must be located in "a county" that has a rate of no more than 16.1 beds per 1,000 persons aged 65 years or older. The bill makes no provision for a retirement community with boundaries that span multiple counties.

The bill requires that any skilled nursing facility built under the exemption, and all beds in the facility, shall be certified under both the Medicare and Medicaid programs. However, the bill does not provide parameters for this requirement in terms of when the certification must be obtained, what actions the AHCA should take to enforce the requirement, and how the AHCA should sanction a facility that fails to meet the requirement or fails to maintain the certifications after initially obtaining them.

The bill provides that s. 408.0362, F.S., as created under the bill, does not authorize more than one skilled nursing facility within a single retirement community. The effect of this provision is unclear because the bill does not authorize facilities. Skilled nursing facilities are licensed under part II of ch. 400, F.S. The bill provides for an exemption from the CON review process for the construction of a skilled nursing facility, and the provision that s. 408.0362, F.S., will not authorize more than one facility within a single retirement community might have no effect on whether the AHCA is required to grant more than one exemption under the bill.

[21] The Agency for Health Care Administration, *2013 Bill Analysis & Economic Impact Statement, HB 1159 and SB 1482,* on file with the Senate Committee on Appropriations.

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 15, 2013
The committee substitute clarifies that the bill does not authorize more than one additional nursing home in a single retirement community.

CS by Health Policy on April 2, 2013:
The committee substitute substantially amends SB 1482 to:

- Conform the bill to the language in CS/HB 1159;
- Exempt the construction of a skilled nursing facility located in a retirement community from the CON process if the retirement community:
  - Is located in a county that has 25 percent or more of its population aged 65 or older;
  - Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
  - Is zoned for mixed use;
  - Is deed restricted for older persons; and
  - Has a population of at least 8,000 residents.
- Caps the number of additional beds at the lesser of either the maximum number of beds to reach a ratio of 16.1 beds per 1,000 persons aged 65 or older in the county where the community is located or 240 beds per community;
- Details how retirement communities can apply for the exemption, what beds qualify, and how the 16.1 beds per 1,000 persons aged 65 or older ratio must be determined.

B. Amendments:

None.

206088

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.—

(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), projects subject to an expedited review shall include, but not be limited to:

(a) A transfer of a certificate of need, except that when an existing hospital is acquired by a purchaser, all

certificates of need issued to the hospital which are not yet operational shall be acquired by the purchaser, without need for a transfer.

(b) Replacement of a nursing home within the same district, if the proposed project site is located within a geographic area that contains at least 65 percent of the facility's current residents and is within a 30-mile radius of the replaced nursing home.

(c) Relocation of a portion of a nursing home's licensed beds to a facility within the same district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the district does not increase.

(d) The new construction of a community nursing home in a retirement community as further provided in this paragraph.

1. Expedited review under this paragraph is available if all of the following criteria are met:

a. The residential use area of the retirement community is deed-restricted as housing for older persons as defined in s. 760.29(4)(b).

b. The retirement community is located in a county in which 25 percent or more of the population is age 65 years and older.

c. The retirement community is located in a county that has a rate of no more than 16.1 beds per 1,000 persons age 65 years or older. The rate shall be determined by using the current number of licensed and approved community nursing home beds in the county per the agency's most recent published inventory.

d. The retirement community has a population of at least 8,000 residents within the county, based on a population data

source accepted by the agency.

e. The number of proposed community nursing home beds in the application does not exceed the projected bed need after applying the rate of 16.1 beds per 1,000 persons age 65 years and older projected for the county 3 years into the future using the estimates adopted by the agency, after subtracting the inventory of licensed and approved community nursing home beds in the county per the agency's most recent published inventory.

2. No more than 120 community nursing home beds may be approved for a qualified retirement community under each request for application for expedited review. Subsequent requests for expedited review under this process may not be made until 2 years after construction of the facility has commenced or 1 year after the beds approved through the initial request are licensed, whichever occurs first.

3. The total number of community nursing home beds which may be approved for any single deed-restricted community pursuant to this paragraph may not exceed 240, regardless of whether the retirement community is located in more than one qualifying county.

4. Each nursing home facility approved under this paragraph must be dually certified for participation in the Medicare and Medicaid programs.

5. Each nursing home facility approved under this paragraph must be at least 1 mile from an existing approved and licensed community nursing home, measured over publicly owned roadways.

6. Section 408.0435 does not apply to this paragraph.

7. A retirement community requesting expedited review under this paragraph shall submit a written request to the agency for

206088

an expedited review in accordance with the agency's applicable rules. The request must include the number of beds to be added and provide evidence of compliance with the criteria specified in subparagraph 1.

8. After verifying that the retirement community meets the criteria for expedited review specified in subparagraph 1., the agency shall publicly notice in the Florida Administrative Register that a request for an expedited review has been submitted by a qualifying retirement community and that the qualifying retirement community intends to make land available for the construction and operation of a community nursing home. The agency's notice must identify where potential applicants can obtain information describing the sales price of, or the terms of the land lease for, the property on which the project will be located and the requirements established by the retirement community for the project, including, but not limited to, patient care and architectural standards, and qualifications for financing and operations. The agency notice must also specify the deadline for submission of any certificate-of-need application, which may not be earlier than the 91st day and not be later than the 125th day after the date the notice appears in the Florida Administrative Register.

9. The qualified retirement community shall make land available to applicants that meet the requirements established by the retirement community for the project.

a. A certificate-of-need application submitted pursuant to this paragraph must identify the intended site for the project within the retirement community and the anticipated cost of the project based on that site. The application must also include

206088

written evidence that the retirement community has determined that the provider submitting the application and the project proposed by that provider satisfies all requirements for the project.

b. The retirement community's determination that more than one provider satisfies all requirements for the project does not preclude the retirement community from notifying the agency of the provider it prefers.

The agency shall develop rules to implement the provisions for expedited review, including time schedule, application content which may be reduced from the full requirements of s. 408.037(1), and application processing.

Section 2. 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 community nursing homes; providing the criteria and procedure for expedited review of applications for a certificate of need for the construction of a community nursing home in a retirement community; providing an effective date.

707638

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (206088)

Delete lines 93 - 95
and insert:
9. The qualified retirement community shall determine in writing whether potential applicants meet the requirements established by the retirement community for the project and shall make land available to the applicant that is issued a certificate of need by the agency under the provisions of this paragraph.

870048

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2013	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment

Delete lines 19 - 72
and insert:
(a) The residential use area of the retirement community is deed-restricted as housing for older persons as defined in s. 760.29(4)(b).
(b) The retirement community is located in a county that has 25 percent or more of its population age 65 and older.
(c) The retirement community is located in a county that has a rate of no more than 16.1 beds per thousand persons age 65 years or older. The rate shall be determined by using the


870048

current number of licensed and approved community nursing home beds in the county per the agency's most recent published inventory.

(d) The retirement community has a population of at least 8,000 residents within the county, based on a population data source accepted by the agency.

(e) The number of proposed community nursing home beds sought in a request for application of this exemption may not exceed the projected bed need after applying the rate of 16.1 per 1,000 persons aged 65 years and older projected for the county three years into the future using the estimates adopted by the agency, after subtracting the inventory of licensed and approved community nursing home beds in the county per the agency's most recent published inventory.

(f) No more than 120 community nursing home beds may be approved for a qualified retirement community under each request for application of this exemption. Subsequent requests may not occur until this process until 2 years after construction of the facility has commenced or 1 year after the beds approved through the initial request are licensed, whichever time period elapses first.

(g) The total number of community nursing home beds eligible for this exemption in any single deed-restricted community pursuant to this section may not exceed 240 regardless of whether the retirement community is located in more than one qualifying county.

(h) All nursing home facilities approved under this section shall be dually certified for participation in the Medicare and Medicaid programs.


870048

(i) All nursing home facilities approved under this section shall be no closer than one mile from any existing approved and licensed community nursing home, measured over publicly owned roadways.

(2) A retirement community that qualifies for the exemption provided in this section shall provide a written request for an exemption in accordance with applicable rules. In the request, the retirement community shall provide evidence of compliance with the criteria set forth in subsection (1).

730272

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2013	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (870048)

Delete line 30
and insert:
occur under this process until 2 years after construction of the

By the Committees on Judiciary; and Health Policy; and Senator Hays

590-04360-13 20131482c2

A bill to be entitled

An act relating to skilled nursing facilities; creating s. 408.0362, F.S.; providing an exemption from certificate-of-need requirements for construction of a licensed skilled nursing facility in a retirement community; providing an effective date.

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

Section 1. Section 408.0362, Florida Statutes, is created to read:

408.0362 Skilled nursing facility in retirement community; exempt from review.—

(1) Upon request by a deed-restricted retirement community, the construction of a skilled nursing facility licensed under part II of chapter 400 for the addition of community skilled nursing home beds located within the retirement community is exempt from s. 408.036 if:

(a) The retirement community is located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;

(b) The retirement community is located in a county that has a rate of no more than 16.1 beds per thousand persons aged 65 years or older. The rate shall be determined by using the current number of licensed and approved community skilled nursing home beds in the agency's most recent published inventory;

(c) The retirement community is zoned for a mix of residential and nonresidential uses;

590-04360-13 20131482c2

(d) The residential use area of the retirement community is deed-restricted as housing for older persons as defined in s. 760.29; and

(e) The retirement community has a population of at least 8,000 residents, based on a population data source accepted by the agency.

(2) The number of community skilled nursing home beds allowed in a retirement community under the exemption shall be calculated at a rate of 16.1 beds per thousand persons aged 65 years and older in the county in which the retirement community is located. To determine whether or not the county in which the retirement community is located is at or above the rate of 16.1 beds per 1,000 elderly, the agency must use a prospective county population estimate 3 years in the future to demonstrate:

(a) That the number of persons aged 65 years and older will comprise at least 25 percent of the county's population at the end of the 3 years. From this result, the current number of licensed community skilled nursing home beds in the agency's published inventory shall be subtracted to determine the net number of additional community skilled nursing home beds that the agency shall grant for development under the exemption; and

(b) That the rate of community skilled nursing home beds in the county will either remain at 16.1 beds per thousand persons aged 65 years or older or will be less after 3 years, prior to approval of additional community skilled nursing home beds under the exemption.

(3) A retirement community that qualifies for the exemption provided in this section shall provide a written request for an exemption in accordance with the applicable rules. In the

request, the retirement community shall provide evidence of population, mixed-use status, and the results of the calculation showing the gross and net numbers of community skilled nursing home beds in the county.

(4) The number of community skilled nursing home beds that are added pursuant to the exemption shall at no time exceed 240 in any qualifying retirement community.

(5) Any skilled nursing home facility built pursuant to the exemption shall be certified under both the Medicare and Medicaid programs. All beds in the skilled nursing home facility shall be certified under both the Medicare and Medicaid programs.

(6) This section does not authorize more than one skilled nursing facility within a single retirement community.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Skilled Nursing Facilities- CON

Bill Number 1482 *(if applicable)*

Name Laura Cantwell

Amendment Barcode *(if applicable)*

Job Title Associate State Director

Address 200 W College Avenue, Suite 304
Street
Tallahassee FL 32317
City *State* *Zip*

Phone 577-5163

E-mail lcantwell@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

CC: Mike Hansen, Staff Director
Alicia Weiss, Administrative Assistant

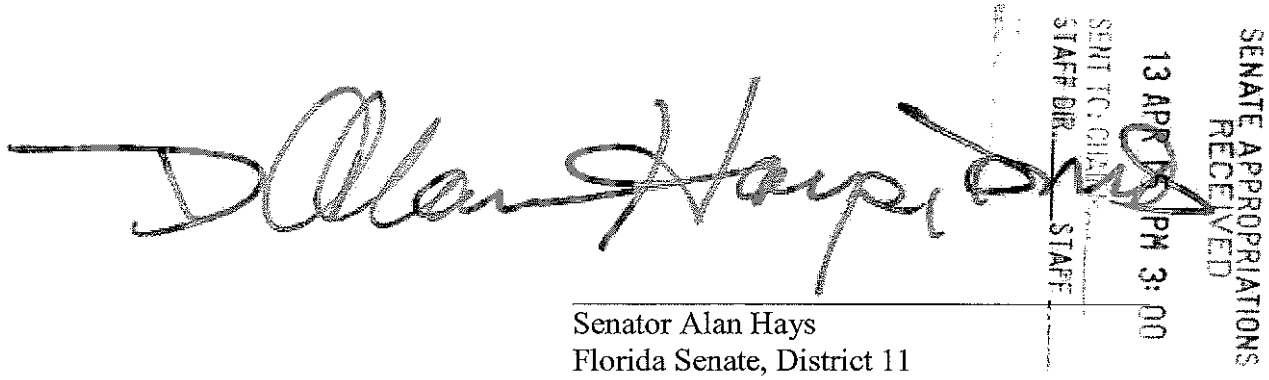
Subject: Committee Agenda Request

Date: April 15, 2013

I respectfully request that **Senate Bill #1482**, relating to Skilled Nursing Facilities, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.



Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

File signed original with committee office

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 Committee on Appropriations

BILL:	CS/SB 1630
INTRODUCER:	Appropriations Committee and Senator Legg
SUBJECT:	Education
DATE:	April 25, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Favorable**
2.	Armstrong	Elwell	AED	**Favorable**
3.	Elwell	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

I. Summary:

CS/SB 1630, provides various measures to strengthen financial and performance accountability of charter schools. The bill would also expand charter school growth and flexibility. These measures would occur in the application process, the contract process, charter school operations, and in the shape of additional consequences a charter school would face.

High-performing charter schools would be able to increase enrollment once per school year up to facility capacity. The bill would create deadlines for a sponsor to provide a high-performing charter school a draft charter agreement and to negotiate the charter agreement, when a high-performing charter school requests to consolidate charters.

The full implementation of online Next Generation Sunshine State Standards in English/Language Arts and Mathematics assessments for all kindergarten through grade 12 public school students would be contingent upon an independent third party verifying that the technology infrastructure, connectivity, and capacity of all public schools and school districts is capable of successfully deploying and implementing the assessments.

This bill has no fiscal impact on appropriations.

The effective date of the bill is upon becoming a law.

This bill substantially amends sections 1002.33 and 1002.331 of the Florida Statutes, and creates two undesignated sections of law.

II. Present Situation:

Charter Schools

Charter schools are governed in law by s. 1002.33, F.S. Charter schools are public schools that operate under a charter agreement with a sponsor.[1] A charter school is typically sponsored by a district school board.[2] Charter schools are primarily owned by non-profit governing board and may be operated on the governing board's behalf by a management company.[3]

Application

Various individuals and entities are authorized to file an application for a new charter school, including teachers, parents, a group of individuals, a municipality or a legal entity.[4] Sponsors receive and review all applications that are received on or before August 1 of each calendar year for charter schools that will open at the beginning of the next school year. Before approving or denying an application, the sponsor must allow the applicant to make technical corrections, if the errors are identified by the sponsor as cause to deny the application.[5]

Upon approval of an application, the sponsor and the charter school set forth the terms and conditions for the operation of the school in a written contract, called a charter. The sponsor has 60 days to provide an initial contract to the charter school. The sponsor and the charter school then have 75 days to negotiate and notice the contract for final approval.[6]

Operations

The sponsor monitors the progress, revenues and expenditures of the charter school and ensures compliance with state education goals and participation in the educational accountability system.[7] Florida law contains additional requirements aimed toward ensuring financial and performance accountability of charter schools.[8] For example, some of the requirements are:

- Annual reporting and financial audits, and sponsor monitoring of monthly financial statements;[9]
- Participation in statewide assessments and Florida's school grading system;[10]
- Interventions for unsatisfactory academic performance and financial instability;[11]
- Reporting of student performance information to parents and the public;[12] and

[1] Section. 1002.33(7), F.S.
[2] Section 1002.33(5), F.S.
[3] Section 1002.33(7), (9)(h)-(j),and (12)(i), F.S. Charter schools may also be owned by a state university, Florida College System institution, or municipality.
[4] Section 1002.33(3), F.S.
[5] Section 1002.33(6)(b), F.S.
[6] Section 1002.33(6)(h), F.S.
[7] Section 1002.33(5)(b), F.S.
[8] Section 1002.33, F.S.
[9] Section 218.39(1)(e) and (f), 1002.33(9)(g)and (j), F.S.
[10] Section 1002.33(7)(a)4. and (16)(a)2., F.S.
[11] Section 1002.33(9)n. and 1002.345, F.S.
[12] Section 1002.33(21)(b) and (23), F.S.

- Compliance with ethical standards for employees and governing board members.[13]

Additionally, Florida law requires the disclosure of the identity of all relatives employed by the charter school who are related to individuals with certain decision-making authority, including governing board members.[14]

Charter schools must enroll all eligible students who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade, level, or building. In this case, the school conducts a random selection process.[15]

Consequences

When a charter school is terminated or not renewed, unencumbered public funds revert to the sponsor, while unencumbered capital outlay funds and federal charter school program grant funds revert to the Department of Education (DOE) to be redistributed among eligible charter schools. [16] The charter school is responsible for all debts of the charter school.[17] The district may not assume the debt from any contract made between the governing body of the school and a third party, unless previously agreed upon in writing by both parties.[18]

There are no specific prohibitions on contractual services to be performed, or on escalation clauses, if the charter agreement expires or the school closes before the agreement expires.

Next Generation Sunshine State Standards

The Next Generation Sunshine State Standards (NGSS) in English/Language Arts (which includes reading standards) and in Mathematics were adopted by the Florida State Board of Education on July 27, 2010, and codified in statute during the 2013 Legislative session.[19] The standards in both English/Language Arts and in Mathematics must be fully implemented beginning in the 2013-2014 school year.[20]

In Florida, school districts are concerned about the following challenges related to the implementation of the new NGSS standards:[21]

- Preparedness concerns regarding the pedagogical knowledge needed by teachers to effectively deliver content at the level of rigor required by the standards.

[13] Section 1002.33(24) and (26), F.S.
[14] Section 1002.33(7)(a)18., F.S.
[15] Section 1002.33(10)(b), F.S.
[16] Section 1002.33(8)(e) and (f), F.S.
[17] *Id*.
[18] *Id*.
[19] *See* http://www.fldoe.org/bii/curriculum/sss/. (last visited March 15, 2013). Section 11 of ch. 2013-27, L.O.F., codified the NGSS standards in s. 1003.41, F.S.
[20] Florida Department of Education, *Next Generation Sunshine State Standards*, http://www.fldoe.org/bii/curriculum/sss/ (last visited March 15, 2013).
[21] State Board of Education, (Feb. 18, 2013), *See* http://www.fldoe.org/board/meetings/2013_02_18/common.pdf. Florida is a member of PARCC.

- Assessment concerns regarding how students with special needs will be assessed, how students and teachers must be prepared for the assessments, and whether data from the assessments will be available and sufficiently reliable to inform instruction.
- Technology concerns regarding capacity to facilitate teaching and learning with technology, assessing students with next-generation assessments, time required to test students, and the volume of students who will be tested at a given time. Availability of required infrastructure, devices, and professional development are critical to successful implementation of the standards.
- Timeline and alignment of reform efforts and policy expectations concerns regarding teacher evaluations based on current state assessments which are not aligned to the standards.

Based on a self-reported annual survey of public schools and school district technology needs,[22] the State Board of Education submitted a legislative budget request for $441.8 million for a "K-12 Technology Modernization Initiative."[23] Governor Scott's proposed budget recommendations for Fiscal Year 2013-2014 reflect a similar $100 million technology initiative.[24]

Some states are handling technology needs by joining together to purchase a comprehensive set of educational-technology devices and services, in a compact that lays the foundation for cooperative efforts by state and local governments to turn the digital-procurement process to such states' advantage.[25] The initial partners of the multi-state venture, known as the Multi-State Learning Technology Initiative, include Hawaii and Vermont in addition to Maine which has taken the lead. Additional states have indicated interest in joining the multi-state venture. The multi-state venture is structured to allow individual districts and other government entities, such as charter schools, to participate in the digital-procurement process with the approval of state procurement officials.[26]

III. Effect of Proposed Changes:

Charter School Financial and Performance Accountability

Application and Contract Process

The bill would reduce existing timeframes so that a sponsor would provide a proposed charter agreement within 30 days, and the parties would have 40 days to negotiate the agreement.

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[22] The Florida Department of Education collects information from schools annually in the Florida Innovates Technology Resource Survey, which solicits responses from K-12 principals on the use of technology in their respective schools. The data collected includes the number and location of each school's computers meeting certain specifications. However, this survey does not provide detailed information on how schools are using computers and provides limited information on the use of digital instructional materials. *See Use of Instructional Technology and Digital Instructional Materials in Fifteen Florida Schools*, OPPAGA, September 28, 2012.

[23] 2013-2014 SBE LBR, readable at: http://www.flsenate.gov/UserContent/Topics/IntensiveBudgetReview/AED/DOEAgencyLBR.pdf. *See also* http://www.fldoe.org/board/meetings/2012_10_09/lbr.pdf. (Page 7: K-12 Education Technology Modernization Initiative)

[24] 2013-2014 Governor's Budget Recommendations, readable at: http://letsgettowork.state.fl.us/content/current/reports/Budget-Presentation-FY-14.pdf. (Slide 28: Technology Initiative).

[25] Education Week, *Maine Leading Initiative for Multistate Tech Buys*, http://www.edweek.org/ew/articles/2013/03/13/24maine.h32.html (last visited March 15, 2013).

[26] *Id.*

The bill would require the DOE to create a standard charter agreement by September 1, 2014. The charter school and sponsor would be required to use the agreement; however, the parties would be able to attach an addendum to make changes to the agreement. The addendum would have a page limit set by State Board of Education (SBE) rule.

Operations

The bill would require a charter school to provide a uniform monthly financial statement. The bill would also require a charter school to provide to the public information regarding the school, including programs, management company, the school's annual budget, annual independent fiscal audit, school grade, and the school's governing board meeting minutes.

Starting August 31, 2013, a sponsor would be required to submit an annual report to the DOE. The report would identify: the number of draft and final applications received; the date the applications were approved, denied, or withdrawn; and the date each contract was executed. The DOE would compile this information from each district into an annual report and post the report on its website by November 1 of each year.

A member of a charter school board (or spouse) would be prohibited from being an employee of the charter school, or its educational service provider or management organization. The bill would amend certain requirements relating to at-will employees and evaluation procedures.

Unless otherwise agreed, a sponsor would reimburse a charter school on a monthly basis for all invoices submitted by the charter school for available federal funds.

The bill would comply with federal grant requirements by requiring student academic achievement for all students to be the most important factor in determining whether to renew or terminate a charter agreement.

The bill would prohibit a sponsor from requiring a certificate of occupancy, or temporary certificate of occupancy, before the first day of school.

A school district would be authorized to enter into an interlocal agreement to inspect and issue a permit or license to a charter school. The charter school would have the ability to choose between using the school district or permitting agency.

Consequences

Upon notification of nonrenewal or termination of a charter, a charter school would be prohibited from spending more than $35,000 without prior written approval from the sponsor, unless the expenditure was included in the annual budget or is for attorney fees and costs for an appeal.

A charter agreement would immediately terminate when a charter school closes.

A service contract would not be able to extend beyond the term of a charter agreement, and payments would only be able to be made for services provided before the closure, nonrenewal termination, or immediate termination of the charter school.

High-Performing Charter Schools

A high-performing charter school would be able to increase enrollment once per school year, up to current facility capacity. A sponsor would be required to modify the charter agreement within 90 days of notification of the new enrollment. A sponsor would deny the request if the charter school no longer qualified as a high-performing charter school.

If a high-performing charter school requests consolidation of a charter agreement, the sponsor would have to provide an initial draft of the charter agreement to the charter school within 40 days. The parties would have 50 days to negotiate a charter agreement.

Next Generation Sunshine State Standards

Under the bill, the technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments, including online assessments, would be load tested and independently verified as appropriate, adequate, efficient, and sustainable. The independent verification will supplement the self-reported data collected by the DOE.

Additionally, the full implementation of online (i.e., computer-based) Next Generation Sunshine State Standards in English/Language Arts and Mathematics assessments for all kindergarten through grade 12 public school students would be contingent upon an independent third party determination that the technology infrastructure, connectivity, and capacity of all public schools and school districts are verified as ready for successful deployment and implementation.

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:

This bill has no fiscal impact on appropriations.

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 Appropriations on April 23, 2013:
The committee substitute:

- Reduces existing timeframes so that a sponsor would provide a proposed charter agreement within 30 days.
  - The parties would have 40 days to negotiate the agreement.
- Requires the DOE to create a standard charter agreement by September 1, 2014.
  - The charter school and sponsor would be required to use the agreement.
  - The parties would be able to attach an addendum to make changes to the agreement.
  - The addendum would have a page limit set by SBE rule.
- Requires a charter school to provide a uniform monthly financial statement.
- Requires a charter school to provide to the public information regarding the school, including programs, management company, the school's annual budget, annual independent fiscal audit, school grade, and the school's governing board meeting minutes.
- Requires a sponsor to submit an annual report to the DOE, starting August 31, 2013.
- Prohibits a member of a charter school board (or spouse) from being an employee of the charter school or its educational service provider or management organization.
- Revises the requirements relating to at-will employees and performance evaluation procedures.

- Requires a sponsor to reimburse a charter school on a monthly basis for all invoices submitted by the charter school for available federal funds, unless otherwise agreed by the sponsor and charter school.
- Complies with federal grant requirements by requiring student academic achievement for all students to be the most important factor in determining whether to renew or terminate a charter agreement.
- Prohibits a sponsor from requiring a certificate of occupancy, including a temporary certificate of occupancy, before the first day of school.
- Authorizes a school district to enter into an interlocal agreement to inspect and issue a permit or license to a charter school.
- Prohibits, upon notification of nonrenewal or termination of a charter, a charter school from spending more than $35,000 without prior written approval from the sponsor, with two exceptions.
- Requires a charter agreement to immediately terminate when a charter school closes.
- Prohibits a service contract from extending beyond the term of a charter agreement.
  - Prohibits payments for services provided after the closure, nonrenewal termination, or immediate termination of the charter school.
- Authorizes a high-performing charter school to increase enrollment once per school year, up to facility capacity.
  - Requires a sponsor to modify the charter agreement within 90 days of notification of the new enrollment.
  - Authorizes a sponsor to deny the request if the charter school no longer qualifies as a high-performing charter school.
- Requires a sponsor to provide an initial draft of the charter agreement to the charter school within 40 days of a request by a high-performing charter school to consolidate charter agreements.
  - The parties would have 50 days to negotiate a charter agreement.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2013	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (5), paragraph (h) of subsection (6), paragraph (a) of subsection (7), paragraph (a) of subsection (8), paragraph (g) of subsection (9), paragraph (b) of subsection (16), paragraph (a) of subsection (21), and subsection (27) of section 1002.33, Florida Statutes, are amended, paragraphs (o) and (p) are added to subsection (9) of that section, paragraph (c) is added to subsection (26) of that section, and subsection (28) is added to that section, to

read:

1002.33 Charter schools.—

(5) SPONSOR; DUTIES.—

(b) *Sponsor duties.*—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor's policies shall not apply to a charter school unless mutually agreed to by both the sponsor and the charter school.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a district school board's sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

5. A school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties,

municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. A charter school may use, but may not be required to use, a school district for these services. The interlocal agreement must include, but need not be limited to, the identification of fees that charter schools will be charged for such services. The fees must consist of the governmental entity's fees plus a fee for the school district to recover no more than actual costs for providing such services. These services and fees are not included within the services to be provided pursuant to subsection (20).

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

(h) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor may ~~shall~~ not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The sponsor has 30 ~~shall have 60~~ days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and sponsor shall use the standard charter adopted in state board rule pursuant to subsection (27) and the application submitted by the applicant. If agreed to by the sponsor and the charter school, the parties may file an addendum to the standard charter

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contract, not to exceed a page limit prescribed by the department, that identifies mutually agreed upon changes to the standard charter contract. Otherwise, neither the sponsor nor the charter school may modify the standard charter contract or otherwise insert or append attachments, addenda, or exhibits to the standard charter contract. The applicant and the sponsor have 40 ~~shall have 75~~ days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days prior to the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge may rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal and shall award the prevailing party reasonable attorney's fees and costs incurred to be paid by the losing party. The costs of the administrative hearing shall be paid by the party whom the administrative law judge rules

against.

(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 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 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. 1003.428, s. 1003.429, or s. 1003.43.

6. A method for resolving conflicts between the governing board 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. The sponsor may not require a charter school to have a temporary certificate of occupancy or certificate of occupancy for such a facility earlier than the first day of school.

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

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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.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(a) The sponsor shall make student academic achievement for all students the most important factor when determining whether to renew or terminate the charter. The sponsor may also choose

not to renew or may terminate the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.

2. Failure to meet generally accepted standards of fiscal management.

3. Violation of law.

4. Other good cause shown.

(9) CHARTER SCHOOL REQUIREMENTS.—

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a.~~1.~~ In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

b.~~2.~~ At the discretion of the charter school's governing board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in district reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit

organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. ~~A charter school shall provide a monthly financial statement to the sponsor unless the charter school is designated as~~ A high-performing charter school pursuant to s. 1002.331~~, in which case the high-performing charter school~~ may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet. ~~The financial statement required under this paragraph shall be in a form prescribed by the Department of Education.~~

4. A charter school shall maintain and provide financial information as required in this paragraph. The information required in this paragraph must be in a form prescribed by the Department of Education.

(o)1. Upon notification of nonrenewal or termination of its charter, a charter school may not expend more than $35,000 without prior written approval from the sponsor, unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract or is for reasonable attorney fees and costs during the pendency of an appeal.

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2. The charter agreement must immediately terminate when the charter school closes.

3. Charter school contracts with employees, service providers, management companies, and other types of service contracts may not extend beyond the term of the charter agreement. Payments may be made only for services provided before the closure, nonrenewal, termination, or immediate termination of the charter school.

4. If the charter school closes or if the charter agreement is terminated before the term of the charter agreement expires, the remainder of a service contract is void.

(p) Each charter school shall maintain a website that enables the public to obtain information regarding the school; the school's academic performance; names of the governing board members; programs at the school; any management companies, service providers, or education management corporations associated with the school; the school's annual budget and its annual independent fiscal audit; school grade pursuant to s. 1008.34; and, on a quarterly basis, minutes of governing board meetings.

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

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4. Section 1012.22(1)(c)5.b. ~~1012.22(1)(c)~~, relating to the implementation of a compensation system that requires annual salary adjustments for instructional personnel to be based upon performance ~~and salary schedules~~.

5. Section 1012.33(5), relating to workforce reductions, if the charter school awards contracts to instructional personnel and the term of a contract exceeds 1 year.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011, if the charter school awards contracts to instructional personnel and the term of a contract exceeds 1 year.

7. Section 1012.34(2), (3), and (7) ~~1012.34~~, relating to ~~the substantive requirements for~~ performance evaluations for instructional personnel and school administrators. For purposes of compliance with this subparagraph, the duties assigned to a district school superintendent apply to a charter school administrative personnel or equivalent as specified by the governing board, and the duties assigned to a district school board apply to a charter school's governing board.

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include a model ~~standard~~ application form ~~format~~, standard charter contract ~~format~~, standard evaluation instrument, and standard charter renewal contract ~~format~~, which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with both school districts and charter schools

before implementation. The charter and charter renewal contracts ~~formats~~ shall be used by charter school sponsors.

(26) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.—

(c) An employee of the charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, may not be a member of the governing board of the charter school.

(27) RULEMAKING.—The Department of Education, after consultation with school districts and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules must ~~shall~~ require minimum paperwork and may ~~shall~~ not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts ~~formats~~ in accordance with this section. The standard charter and charter renewal contracts must be implemented by September 1, 2014.

(28) DEFINITIONS.—As used in chapters 1000-1013 and where the context allows in other provisions of law, the term "management company" means an entity retained by a public school's governing body pursuant to a written contract to administer or direct the operations of the school, subject to the policies, directives, and oversight of the public school's governing body. A public school's governing body may not retain a management company of which the governing body is a component unit. This definition also applies to the term:

(a) "Service provider" as the term is used in this section;

(b) "Education management corporation" as the term is used in s. 1002.332; and

(c) "Outside entity" as the term is used in s. 1008.33.

Section 2. Full implementation of online assessments for Next Generation Sunshine State Standards in English/language arts and mathematics adopted under s. 1003.41 for all kindergarten through grade 12 public school students shall occur only after the technology infrastructure, connectivity, and capacity of all public schools and school districts have been load tested and independently verified as ready for successful deployment and implementation.

Section 3. The technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments pursuant to s. 1008.22, Florida Statutes, including online assessments, shall be load tested and independently verified as appropriate, adequate, efficient, and sustainable.

Section 4. 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 education; amending s. 1002.33, F.S.; allowing a school district to enter into certain interlocal agreements and allowing charter schools to use the school district for certain related services; modifying the application process for charter schools;


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prohibiting a sponsor from requiring a charter school to have a certificate of occupancy before the first day of school; requiring a sponsor to make student academic achievement for all students a priority in deciding whether to renew a charter; modifying charter school requirements for financial records; imposing rules that follow the closing of a charter school or termination of a charter; requiring a charter school to maintain a public website with certain information; modifying statutory exemptions for charter schools; restricting the membership of a charter school governing board; providing definitions; requiring that full implementation of online assessments for Next Generation Sunshine State Standards in English/language arts and mathematics for all kindergarten through grade 12 public school students occur only after the technology infrastructure, connectivity, and capacity of all public schools and school districts have been load tested and independently verified as ready for successful deployment and implementation; requiring that the technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments pursuant to s. 1008.22, F.S., be load tested and independently verified as appropriate, adequate, efficient, and sustainable; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (5), paragraph (h) of subsection (6), paragraph (a) of subsection (7), paragraph (a) of subsection (8), paragraph (g) of subsection (9), paragraph (b) of subsection (16), paragraph (a) of subsection (21), and subsection (27) of section 1002.33, Florida Statutes, are amended, paragraphs (o) and (p) are added to subsection (9) of that section, paragraph (c) is added to subsection (26) of that section, present paragraphs (e) and (f) of subsection (17)

of that section are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to that subsection, to read:

1002.33 Charter schools.—

(5) SPONSOR; DUTIES.—

(b) *Sponsor duties.*—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor's policies shall not apply to a charter school unless mutually agreed to by both the sponsor and the charter school.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death

resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a district school board's sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

5. A school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. A charter school may use, but may not be required to use, a school district for these services. The interlocal agreement must include, but need not be limited to, the identification of fees that charter schools will be charged for such services. The fees must consist of the governmental entity's fees plus a fee for the school district to recover no more than actual costs for providing such services. These services and fees are not included within the services to be provided pursuant to subsection (20).

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

(h) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor may ~~shall~~ not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The sponsor has 30 ~~shall have 60~~ days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and sponsor shall use the standard charter adopted in state board rule pursuant to subsection (27) and the application submitted

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by the applicant. The parties may file an addendum to the standard charter contract, not to exceed a page limit prescribed by the department, that identifies changes to the standard charter contract. Otherwise, neither the sponsor nor the charter school may modify the standard charter contract or otherwise insert or append attachments, addenda, or exhibits to the standard charter contract. The applicant and the sponsor have 40 ~~shall have 75~~ days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days prior to the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge may rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal and shall award the prevailing party reasonable attorney's fees and costs incurred to be paid by the losing party. The costs of the administrative hearing shall be

paid by the party whom the administrative law judge rules against.

(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 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 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. 1003.428, s. 1003.429, or s. 1003.43.

6. A method for resolving conflicts between the governing board 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. The sponsor may not require a charter school to have a temporary certificate of occupancy or certificate of occupancy for such a facility earlier than the first day of school.

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.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(a) The sponsor shall make student academic achievement for all students the most important factor when determining whether

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to renew or terminate the charter. The sponsor may also choose not to renew or may terminate the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.

2. Failure to meet generally accepted standards of fiscal management.

3. Violation of law.

4. Other good cause shown.

(9) CHARTER SCHOOL REQUIREMENTS.—

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a.~~1.~~ In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

b.~~2.~~ At the discretion of the charter school's governing board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in district reporting in compliance with s. 1011.60(1). Charter schools that are operated by a

municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. ~~A charter school shall provide a monthly financial statement to the sponsor unless the charter school is designated as~~ A high-performing charter school pursuant to s. 1002.331~~, in which case the high-performing charter school~~ may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet. ~~The financial statement required under this paragraph shall be in a form prescribed by the Department of Education.~~

4. A charter school shall maintain and provide financial information as required in this paragraph. The information required in this paragraph must be in a form prescribed by the Department of Education.

(o)1. Upon notification of nonrenewal or termination of its charter, a charter school may not expend more than $35,000 without prior written approval from the sponsor, unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract or is for reasonable attorney fees and costs during the pendency of an

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appeal.

2. The charter agreement must immediately terminate when the charter school closes.

3. Charter school contracts with employees, service providers, management companies, and other types of service contracts may not extend beyond the term of the charter agreement. Payments may be made only for services provided before the closure, nonrenewal, termination, or immediate termination of the charter school.

4. If the charter school closes or if the charter agreement is terminated before the term of the charter agreement expires, the remainder of the contract is void. This subparagraph applies to new contracts and to amendments to existing contracts that are executed after July 1, 2013.

(p) Each charter school shall maintain a website that enables the public to obtain information regarding the school; the school's academic performance; the names of the governing board members; the programs at the school; any management companies, service providers, or education management corporations associated with the school; the school's annual budget and its annual independent fiscal audit; the school's grade pursuant to s. 1008.34; and, on a quarterly basis, the minutes of governing board meetings.

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

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3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions, for charter school annual contracts to instructional personnel. This subparagraph does not apply to charter school instructional personnel who are at-will employees.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011, for charter school annual contracts to instructional personnel. This subparagraph does not apply to charter school instructional personnel who are at-will employees.

7. Section 1012.34(2), (3), and (7) ~~1012.34~~, relating to ~~the substantive requirements for~~ performance evaluations for instructional personnel and school administrators. For purposes of compliance with this subparagraph, the duties assigned to a district school superintendent apply to a charter school administrative personnel or equivalent as specified by the governing board, and the duties assigned to a district school board apply to a charter school's governing board.

(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.

(e) Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal

rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds.

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include a model ~~standard~~ application form ~~format~~, standard charter contract ~~format~~, standard evaluation instrument, and standard charter renewal contract ~~format~~, which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with both school districts and charter schools before implementation. The charter and charter renewal contracts ~~formats~~ shall be used by charter school sponsors.

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(c) An employee of the charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, may not be a member of the governing board of the charter school.

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implement specific subsections of this section. Such rules must ~~shall~~ require minimum paperwork and may ~~shall~~ not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts ~~formats~~ in accordance with this section. The standard charter and charter renewal contracts must be implemented by September 1, 2014.

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Section 4. This act shall take effect upon becoming a law.

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and insert:

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A bill to be entitled

An act relating to education; amending s. 1002.33, F.S.; allowing a school district to enter into certain interlocal agreements and allowing charter schools to use the school district for certain related services; modifying the application process for charter schools; prohibiting a sponsor from requiring a charter school to have a certificate of occupancy before the first day of school; requiring a sponsor to make student academic achievement for all students a priority in deciding whether to renew a charter; modifying charter school requirements for financial records; imposing rules that follow the closing of a charter school or termination of a charter; requiring a charter school to maintain a public website with certain information; modifying statutory exemptions for charter schools; restricting the membership of a charter school governing board; requiring that full implementation of online assessments for Next Generation Sunshine State Standards in English/language arts and mathematics for all kindergarten through grade 12 public school students occur only after the technology infrastructure, connectivity, and capacity of all public schools and school districts have been load tested and independently verified as ready for successful deployment and implementation; requiring that the technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments

pursuant to s. 1008.22, F.S., be load tested and independently verified as appropriate, adequate, efficient, and sustainable; providing an effective date.

821630

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (640620) (with title amendment)

Between lines 456 and 457
insert:

Section 2. Subsection (2) of section 1002.331, Florida Statutes, is amended to read:

1002.331 High-performing charter schools.—

(2) A high-performing charter school is authorized to:

(a) Increase its student enrollment once per school year ~~by~~ up to ~~15 percent~~ more than the capacity identified in the charter, but student enrollment may not exceed the current

facility capacity.

(b) Expand grade levels within kindergarten through grade 12 to add grade levels not already served if any annual enrollment increase resulting from grade level expansion is within the limit established in paragraph (a).

(c) Submit a quarterly, rather than a monthly, financial statement to the sponsor pursuant to s. 1002.33(9)(g).

(d) Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the charter schools' governing board regardless of the renewal cycle.

(e) Receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a shorter term at the option of the high-performing charter school. The charter must be consistent with s. 1002.33(7)(a)19. and (10)(h) and (i), is subject to annual review by the sponsor, and may be terminated during its term pursuant to s. 1002.33(8).

A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable. If a charter school notifies the sponsor of its intent to expand, the sponsor shall modify the charter within 90 days to include the new enrollment maximum. The sponsor may deny a request to increase the enrollment of a high-performing charter school if, after requesting to expand, the charter school no longer qualifies as

821630

a high-performing charter school under subsection (1). If a high-performing charter school requests to consolidate multiple charters, the sponsor shall have 40 days after receipt of that request to provide an initial draft charter to the charter school. The sponsor and charter school shall have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

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

And the title is amended as follows:

Delete line 494

and insert:

governing board; amending s. 1002.331, F.S.; modifying a limitation for increasing student enrollment; providing that the sponsor may deny a request to increase enrollment under certain circumstances; establishing timeframes for a charter school requesting that multiple charters be consolidated; requiring that full implementation of

941478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (640620) (with title amendment)

Between lines 51 and 52
insert:

k. The sponsor shall submit an annual report to the Department of Education in a web-based format to be determined by the department.

(I) The report shall include the following information:

(A) The number of draft applications received on or before May 1 and each applicant's contact information.

(B) The number of final applications received on or before

941478

August 1 and each applicant's contact information.

(C) The date each application was approved, denied, or withdrawn.

(D) The date each final contract was executed.

(II) Beginning August 31, 2013, and each year thereafter, the sponsor shall submit to the department the information for the applications submitted the previous year.

(III) The department shall compile an annual report, by district, and post the report on its website by November 1 of each year.

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

And the title is amended as follows:

Delete line 479

and insert:

F.S.; requiring a charter school sponsor to submit an annual report that includes specified information; allowing a school district to enter into certain

By Senator Legg

17-01287D-13 20131630__

A bill to be entitled

An act relating to education; requiring that the technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments pursuant to s. 1008.22, F.S., be load tested and independently verified as appropriate, adequate, efficient, and sustainable; requiring that full implementation of online common core assessments for all kindergarten through grade 12 public school students occur only after the technology infrastructure, connectivity, and capacity of all public schools and school districts have been load tested and independently verified as ready for successful deployment and implementation; amending s. 1000.21, F.S.; modifying a definition; providing that certain common core standards are part of the Next Generation Sunshine State Standards; directing the Division of Law Revision and Information to change the term "Sunshine State Standards" to "Next Generation Sunshine State Standards" wherever the term appears in Florida Statutes; providing an effective date.

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

Section 1. The technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments pursuant to s. 1008.22, Florida Statutes, including online assessments, shall

17-01287D-13 20131630__

be load tested and independently verified as appropriate, adequate, efficient, and sustainable.

Section 2. Full implementation of online common core assessments for all kindergarten through grade 12 public school students shall occur only after the technology infrastructure, connectivity, and capacity of all public schools and school districts have been load tested and independently verified as ready for successful deployment and implementation.

Section 3. Subsection (7) of section 1000.21, Florida Statutes, is amended to read:

1000.21 Systemwide definitions.—As used in the Florida K-20 Education Code:

(7) ~~"Sunshine State Standards" or the~~ "Next Generation Sunshine State Standards" means the state's public K-12 curricular standards, including common core standards in English/Language Arts and Mathematics, adopted under s. 1003.41. ~~The term includes the Sunshine State Standards that are in place for a subject until the standards for that subject are replaced under s. 1003.41 by the Next Generation Sunshine State Standards.~~

Section 4. The Division of Law Revision and Information shall change "Sunshine State Standards" to "Next Generation Sunshine State Standards" wherever it appears in Florida Statutes.

Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Education - Charter Schools

Bill Number SB 1630 *(if applicable)*

Name David Shepp

Amendment Barcode 821630 *(if applicable)*

Job Title Consultant

Address P.O. Box 3739
Street

Phone 863 683-3900

Lakeland FL 33802
City *State* *Zip*

E-mail dave@fsg-llc.net

Speaking: ☑ For ☐ Against ☐ Information

Representing McKeel Academy of Technology

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2013
Meeting Date

WAIVE IN SUPPORT

Topic _____ Bill Number 1630 *(if applicable)*

Name JIM HORNE Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 200 W College Phone 904-759-4596
Street

TAL FL 32301 E-mail JIM@strategospublic affairs.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Charter Acct'y

Bill Number SB1630 *(if applicable)*

Name Nikki Lowrey

Amendment Barcode *(if applicable)*

Job Title State Director, StudentsFirst

Address 1705 Choctaw Trl
Street

Phone 850.251.0009

Maitland, FL 32751
City *State* *Zip*

E-mail nlowrey@studentsfirst.org

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

Representing StudentsFirst

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

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

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

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

S-001 (10/20/11)

The Florida Senate

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 Committee on Appropriations

BILL:	CS/CS/SB 1636
INTRODUCER:	Judiciary Committee; Health Policy Committee; and Senator Flores
SUBJECT:	Infants Born Alive
DATE:	April 24, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Brown	Hansen	AP	**Favorable**
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 1636 amends chapter 390, Florida Statutes, relating to termination of pregnancies.

The bill may have indeterminate negative fiscal impact.

The bill:

- Creates a definition of "born alive;"
- Grants an infant who is born alive during or immediately after an attempted abortion the same rights as infants born naturally;
- Requires healthcare professionals to apply the same level of care towards the infant born alive as they would for an infant born naturally of the same gestational age;
- Requires that the infant born alive as part of an attempted abortion be immediately transported and admitted to a hospital;
- Requires health care practitioners to report violations to the Department of Health (DOH);
- Causes violations of these requirements to be punishable as a first degree misdemeanor; and
- Requires facilities that perform abortions to report monthly the number of infants born alive to the Agency for Health Care Administration (AHCA).

The bill has an effective date of July 1, 2013.

The bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, and 390.0112.

II. Present Situation:

Case Law on Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*, was decided by the U.S. Supreme Court.[1] Using strict scrutiny, the Court determined that a woman's right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.[2] Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[3] The Court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman's life or health was not at risk.[4]

In *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe,* recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.[5]

Abortion in Florida

Article I, Section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[6]

In *In re T.W.*, the Florida Supreme Court determined that:

> [p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests. . . . Under our Florida Constitution, the state's interest becomes compelling upon viability. . . . Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

[1] 410 U.S. 113 (1973).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] 505 U.S. 833 (1992).
[6] *See In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989)(holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

The Florida Supreme Court recognized that after viability, the state can regulate termination in the interest of the unborn child so long as the mother's health is not in jeopardy.[7]

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[8] A termination of pregnancy must be performed by a physician[9] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[10]

A termination of pregnancy may not be performed in the third trimester unless there is a medical emergency.[11] Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week.[12] A medical emergency is a situation in which:

- To a reasonable degree of medical certainty, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman[13] and is a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death; or
- In the good faith clinical judgment of the physician, a delay in the termination of the pregnant woman's pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.[14]

Section 390.0111(4), F.S., provides that if a termination of pregnancy is performed during viability, the person who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Viability is defined in this provision to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

Born Alive

The federal Born Alive Infants Protection Act (BAIPA) of 2002 states that in determining the meaning of any act of Congress or of any ruling, regulation, or interpretation of the various federal administrative bureaus and agencies, the words "person," "human being," "child," and "individual" shall include every infant member of the species homo sapiens who is born alive at any stage of development.[15] The BAIPA defined "born alive" as:

[7] *Id.*
[8] Section 390.011(1), F.S.
[9] Section 390.0111(2), F.S.
[10] Section 390.011(7), F.S.
[11] Section 390.0111(1), F.S.
[12] Section 390.011(7), F.S.
[13] Section 390.0111(1)(a), F.S.
[14] Section 390.01114(2)(d), F.S.
[15] 1 U.S.C. 8(a).

> the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section or induced abortion.[16]

The BAIPA was initially viewed as a symbolic act which did not alter the treatment that physicians already provided to extremely premature infants.[17] A change occurred in 2005 when the U.S. Department of Health and Human Services (HHS) issued a program instruction to state and territorial agencies administering or supervising the administration of the federal Child Abuse Prevention and Treatment Act (CAPTA) Program. The program instruction stated that regulations affected by the BAIPA were to be enforced under CAPTA.[18] Specifically, states must ensure that implementation of section 106(b)(2)(B) of CAPTA, which requires states to have procedures for responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), applies to born-alive infants.[19] This created an obligation to provide medical services to a born-alive infant as well as an obligation to report when such treatment is withheld.[20] Thus, the failure to provide medical services to a born-alive infant may subject a physician to criminal neglect and abuse charges under applicable state law.[21] However, since the applicable portions of CAPTA do not have specific provisions requiring the prosecution of child abusers, it is unclear whether BAIPA would apply to the prosecution of physicians who do not treat infants born alive under Florida's child abuse laws.

The federal Emergency Medical Treatment and Labor Act (EMTALA) places potential provider obligations on hospitals and physicians when presented with an individual who may have an emergency medical condition, irrespective of that individual's ability to pay.[22] The federal Centers for Medicare and Medicaid Services (CMS), a division of the HHS, issued its "Guidance on the interaction of the BAIPA and the EMTALA" in 2005. According to the CMS, born-alive infants as "individuals" were entitled to protection under the EMTALA.[23] Thus, individuals who

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[16] 1 U.S.C. 8(b).
[17] Am. Acad. of Ped. Neonatal Resuscitation Prog. Steering Comm., *Born-Alive Infants Protection Act of 2001, Public Law No. 107-207*, 111 PEDIATRICS 680 (Mar. 2003).
[18] U.S. Department of Health and Human Services, Administration of Children, Youth and Families- Program Instruction; Log No- ACYF-CB-PI-05-01; Issuance Date- April 22, 2005.
[19] *Id.*
[20] Conway, Craig, *What Will Become of the Born-Alive Infants Protection Act?* www.law.uh.edu/healthlaw/perspectives/2009/(CC)%20BAIPA.pdf (last visited on April 5, 2013).
[21] Hermer, Laura, *The "Born-Alive Infants Protection Act" and its Potential Impact on Medical Care and Practice.* www.law.uh.edu/healthlaw/perspectives/2006/(LH)BAIPA.pdf (last visited on April 5, 2013).
[22] *See* Sadath A. Sayeed, *Baby Doe Redux? The Department of Health and Human Services and the Born-Alive Infants Protection Act of 2002: A Cautionary Note on Normative Neonatal Practice*, 116:4 PEDIATRICS e576 (Oct. 2005). http://pediatrics.aappublications.org/content/116/4/e576.full.pdf+html (last visited on April 5, 2013).
[23] *Id.*

failed to provide stabilizing treatment to a born-alive infant may be subject to penalties under the EMTALA.[24]

Voluntary Surrender of Infants

Florida law provides for the treatment and protection of a surrendered newborn.[25] Under Florida law, a "newborn infant" means a child who a licensed physician reasonably believes is approximately seven days old or younger at the time the child is left at a hospital, emergency medical services (EMS) station, or a fire station.[26] Hospitals are authorized to admit and provide all necessary services and care to a surrendered new born infant.[27] Likewise, EMS technicians, paramedics, and firefighters are also authorized to render EMS to a newborn infant.[28] However, EMS technicians, paramedics, and firefighters have a secondary obligation of arranging for the immediate transport of the newborn infant to a hospital for admittance.[29]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 390.011, F.S., to define "born alive" as the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, Cesarean section, induced abortion, or other method.

Section 2 of the bill amends s. 390.0111, F.S., to:

- Grant an infant who is born alive during or immediately after an attempted abortion the same rights as infants born naturally;
- Require healthcare professionals to apply the same level of skill, care, and diligence towards the infant as they would for an infant born naturally at the same gestational age;
- Require that the infant born alive during or immediately after an attempted abortion be immediately transported and admitted to a hospital;[30]
- Require health care practitioners and employees of hospitals, physician's offices, and abortion clinics with knowledge of a violation of these provisions to report the violation to the DOH;
- Cause violations of these requirements to be punishable as a first degree misdemeanor;
- Clarify that these provisions do not preclude the prosecution of a more general offense; and
- Clarify that these provisions do not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive.

[24] *Id.* at n. 21.
[25] Section 383.50, F.S.
[26] Section 383.50(1), F.S.
[27] Section 383.50(4), F.S.
[28] Section 383.50(3)(a), F.S.
[29] Section 383.50(3)(b), F.S.
[30] Pursuant to s. 390.012(3)(c), F.S., which requires abortion clinics to designate a medical director who is a physician with privileges at a licensed hospital or has a transfer agreement with a licensed hospital in place.

Section 3 of the bill amends s. 390.0112, F.S., to require medical facilities that terminate pregnancies to add the number of infants born alive during or immediately after an attempted abortion to a monthly report of all abortions currently required to be reported to the AHCA.

Section 4 of the bill provides an effective date of July 1, 2013.

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 may have an indeterminate negative fiscal impact on hospitals by requiring that hospitals provide for medical care for infants who fall under the definition of "born alive" if such care becomes classified as uncompensated charity care.[31]

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the state if infants who fall under the definition of "born alive" are transported to hospitals under the bill and become enrolled in Medicaid or if such infants are provided other social services by the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[31] *See* s. 409.911(1)(c), F.S.

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 15, 2013:
The CS corrects a cross-reference to the definition of the term "born alive."

CS by Health Policy on April 9, 2013:
The CS:

- Clarifies that practitioners must exercise the same efforts to preserve the life and health of an infant born alive as they would for a infant born naturally at the same gestational age;
- Removes provisions related to the presumed surrender of the infant upon transportation to a hospital.
- Clarifies that the provisions in the section 2 of the bill do not preclude prosecution of more general provisions of law.
- Clarifies that the provisions in section 2 of the bill do not affect the legal status or legal rights of the species homo sapiens at any point prior to being born alive.
- Requires health care facilities performing abortions to include the number of infants born alive during or immediately after an attempted abortion in the monthly report of abortions submitted to the AHCA.

B. Amendments:

None.

By the Committees on Judiciary; and Health Policy; and Senator Flores

590-04362-13 20131636c2

A bill to be entitled

An act relating to infants born alive; amending s. 390.011, F.S.; defining the term "born alive"; amending s. 390.0111, F.S.; providing that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth; requiring health care practitioners to preserve the life and health of such an infant born alive, if possible; providing for the transport and admittance of an infant born alive to a hospital; requiring a health care practitioner or certain employees who have knowledge of any violations with respect to infants born alive after an attempted abortion to report those violations to the Department of Health; providing a penalty; providing for construction; amending s. 390.0112, F.S.; revising a reporting requirement; providing an effective date.

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

Section 1. Subsections (4) through (8) of section 390.011, Florida Statutes, are renumbered as subsections (5) through (9), respectively, and a new subsection (4) is added to that section to read:

390.011 Definitions.—As used in this chapter, the term:

(4) "Born alive" means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a

590-04362-13 20131636c2

beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, Cesarean section, induced abortion, or other method.

Section 2. Subsections (12) and (13) of section 390.0111, Florida Statutes, are renumbered as subsections (13) and (14), respectively, subsection (10) is amended, and a new subsection (12) is added to that section to read:

390.0111 Termination of pregnancies.—

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), ~~and~~ (7), and (12):

(a) Any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or actively participates in, a termination of pregnancy procedure in violation of the provisions of this section which results in the death of the woman commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) INFANTS BORN ALIVE.—

(a) An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive in the course of natural birth.

(b) If an infant is born alive during or immediately after an attempted abortion, any health care practitioner present at

the time shall humanely exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive at the same gestational age in the course of natural birth.

(c) An infant born alive during or immediately after an attempted abortion must be immediately transported and admitted to a hospital pursuant to s. 390.012(3)(c) or rules adopted thereunder.

(d) A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a violation of this subsection must report the violation to the department.

(e) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This subsection shall not be construed as a specific provision of law relating to a particular subject matter that would preclude prosecution of a more general offense, regardless of the penalty.

(f) This subsection does not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive as defined in s. 390.011.

Section 3. Subsection (1) of section 390.0112, Florida Statutes, is amended to read:

390.0112 Termination of pregnancies; reporting.—

(1) The director of any medical facility in which any pregnancy is terminated shall submit a monthly report to the agency which contains the number of procedures performed, the

reason for same, ~~and~~ the period of gestation at the time such procedures were performed, and the number of infants born alive during or immediately after an attempted abortion ~~to the agency~~. The agency shall be responsible for keeping such reports in a central place from which statistical data and analysis can be made.

Section 4. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Infants Born Alive

Bill Number 1636 *(if applicable)*

Name Sheila Hopkins

Amendment Barcode *(if applicable)*

Job Title Director for Social Concerns / Respect Life

Address 201 W. Park Ave. *Street*

Phone 205-6826

Tallahassee FL 32301
City *State* *Zip*

E-mail shopkins@flacathconf.org

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

Representing Fl. Conference of Catholic Bishops

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Infants Born Alive

Bill Number 1636 *(if applicable)*

Name Sara Johnson

Amendment Barcode *(if applicable)*

Job Title Legislative Assistant to the President

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Street

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City *State* *Zip*

E-mail saraj@flfamily.org

Speaking: [1] For [ ] Against [ ] Information

Representing Florida Family Policy Council

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

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 17, 2013

I respectfully request that **Senate Bill #1636**, relating to Infants Born Alive, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

SENT TO CHAIR
STAFF DIR. STAFF

13 APR 17 PM 2:14

SENATE APPROPRIATIONS
RECEIVED

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	CS/CS/CS/SB 1644
INTRODUCER:	Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Flores
SUBJECT:	Victims of Human Trafficking
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Sadberry	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 1644 creates section 943.0583, F.S., relating to the expunction of criminal records for victims of human trafficking.

There is an expected fiscal impact of $99,275 to the Florida Department of Law Enforcement; the bill appropriates nonrecurring general revenue funds in that amount for Fiscal Year 2013-2014 to fund the programming costs associated with this bill. The Office of the State Courts Administrator indicates a fiscal impact is expected; however, the impact is indeterminate.

Specifically, the bill:

- Defines "human trafficking," "official documentation," and "victim of human trafficking."
- Provides a process for victims of human trafficking to petition the court for expunction of the criminal history record of certain crimes committed while a petitioner was the victim of human trafficking;
- Specifies that the standard of proof on an expunction petition is a preponderance of the evidence;

- Treats an expunged conviction as a vacated conviction due to a substantive defect in the underlying criminal proceedings;
- Requires a petitioner to file the petition with due diligence after the victim is no longer a victim of human trafficking or has sought services for victims of human trafficking subject to specified reasonable concerns;
- Creates a presumption that a person participated in an offense as the result of human trafficking if official documentation of the person's status as a victim of human trafficking exists. Otherwise, a person must show clear and convincing evidence that he or she was a victim of human trafficking.
- Provides a list of criteria for an expunction petition; and
- Provides requirements for judicial proceedings related to expunction of records.

The bill has an effective date of October 1, 2013.

In reference to admissibility of hearsay statements under the hearsay exception provided in s. 90.803(23), F.S., this bill increases the age of child victims from 11 to 16 years old.

This bill substantially amends the following sections of the Florida Statutes: 90.803, 943.0582, 943.0585, 943.059, and 961.06.

This bill creates section 943.0583, Florida Statutes.

II. Present Situation:

Human Trafficking

In 2000, the United States enacted the Trafficking Victims Protection Act (TVPA), and the United Nations adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol.[1]

The Palermo Protocol focused the attention of the global community on combating human trafficking. For the first time, an international instrument called for the criminalization of all acts of trafficking, including forced labor, slavery, and slavery-like practices. The Palermo Protocol also proposed a victim-centered approach to governmental response through prevention, criminal prosecution, and victim protection.[2] These protection efforts seek to provide appropriate services to the survivors, maximizing their opportunity for a comprehensive recovery.[3]

Survivors of human trafficking often face both criminalization and stigmatization long after they escape from their trafficking situations. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and related offenses. Trafficked persons are not often recognized or treated as victims by law enforcement agencies and prosecutors, and are therefore pressured into pleading guilty or do not understand the consequences of the charges. Multiple

[1] U.S. Department of State, *Trafficking in Persons Report 2010*, *available at* http://www.state.gov/documents/organization/142980.pdf.
[2] *Id*.
[3] U.S. Department of State, *Trafficking in Persons Report 2012*, available at http://www.state.gov/documents/organization/192587.pdf.

arrests, incarceration, police violence, deportation, and employment and housing discrimination may result.[4]

In 2010, New York became the first state to enact legislation that allows survivors of trafficking to vacate their convictions for prostitution offenses.[5, 6] While every state has a slightly different criminal procedure into which this type of remedy must fit, the central purpose of the law is to give survivors the ability to live their lives unhindered by a criminal record: "Even after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve."[7]

The Urban Justice Center in New York, instrumental in drafting the law, recommends that a strong state law on vacating convictions should:

- Not be limited to vacating only certain prostitution offenses;
- Not require the survivor to present official documentation certifying them as a victim of trafficking;
- Not require the survivor to prove that he or she has left the sex industry or been "rehabilitated;"
- Offer confidentiality provisions to protect the client's identity;
- Be the most complete remedy possible under the law;
- State that the court must vacate the convictions and dismiss the accusatory instrument if an individual meets the elements;
- Allow the court to take additional appropriate action beyond the mandate of the statute;
- Be retroactive and inclusive of victims with older convictions; and
- Ensure availability of the remedy by funding legal services attorneys.

Penalties for Human Trafficking in Florida Law

The Florida Legislature established penalties for crimes involving human trafficking in 2004.[8] Along with establishing human trafficking as a crime, the Legislature introduced the concept of coercion as a critical element to the crime of human trafficking. Today, s. 787.06(2)(a), F.S., defines coercion as:

- Using or threatening to use physical force against any person;

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[4] Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April 3, 2012) available at http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf.

[5] N.Y. CRIM. PROC. LAW § 440.10(1)(i)

[6] As of June 2012, Hawaii became the sixth state to implement a law to allow criminal records related to human trafficking to be vacated. The Washington Times. *Hawaii: New law allows trafficking victims to vacate prostitution convictions* (June 11, 2012) *available at* http://communities.washingtontimes.com/neighborhood/rights-so-divine/2012/jul/11/hawaii-new-law-allows-trafficking-victims-expunge-/.

[7] Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April 2012) available at http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf.

[8] Chapter 2004-391, L.O.F.

- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services is not applied toward the liquidation of the debt, or the length and nature of labor or services is not proportional to the debt;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance listed in the schedule of controlled substances to any person to exploit them.

Expungement

Section 943.0585, F.S., provides the courts considerable discretion in the expunction of criminal history records, provided that certain requirements are met.

Requirements for Eligibility of Expunction

- The person seeking expunction must apply for and receive a certificate of eligibility.
- Criminal history records of certain violations are ineligible for expunction, which are charges of:
  - Sexual misconduct by staff with a client at a facility serving developmentally disabled persons (s. 393.135, F.S.)
  - Sexual misconduct by a public health employee with a patient (s. 394.4593, F.S.)
  - Luring or enticing a child (s. 787.05, F.S.)
  - Sexual battery (ch. 794, F.S.)
  - Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.)
  - Lewd or lascivious offenses upon or in the presence of persons under 16 (s. 800.04, F.S.); Lewd or lascivious against or in the presence of the elderly or a disabled person (s. 825.1025, F.S.)
  - Voyeurism (s. 810.04, F.S.)
  - Violations of the Florida Communications Fraud Act (s. 817.034, F.S.)
  - Use or viewing of a child in a sexual performance (s. 827.071, F.S.)
  - Offenses by county or municipal officers or employees (ch. 839, F.S.)
  - Showing obscene material to a minor (s. 847.0133, F.S.)
  - Violations of the Computer Pornography and Child Exploitation Prevention Act (s. 847.0135, F.S.)
  - Selling or buying of minors (s. 847.0145, F.S.)
  - Drug trafficking (s. 893.135, F.S.)
  - Sexual misconduct with a client at a civil or forensic facility (s. 916.1075, F.S.)
  - One of the enumerated, dangerous crimes justifying pretrial detention (s. 907.041, F.S.)
  - Sexual offender crimes (s. 775.21, F.S.)[9]

[9] Section 943.0585, F.S.

The court is limited to expunging one criminal record of an arrest or incident, unless additional arrests relate directly to the original arrest.[10]

Petitions for Expunction

Petitions for expunction must include:

- A valid certificate of eligibility for expunction issued by the Florida Department of Law Enforcement (Department).
- A sworn statement from the petitioner attesting that the petitioner has never been adjudicated guilty or delinquent of an offense that would require fingerprinting as a juvenile; has not been adjudicated guilty or delinquent of any of the acts stemming from the arrest or criminal activity to which the petition pertains; has never secured a prior sealing or expunction, unless it is for a record previously sealed for 10 years; and believes him or herself to be eligible for an expunction.[11]

Certificate of Eligibility

The Department must issue a certificate of eligibility if:

- The petitioner submits a written, certified copy of the disposition of the charge at issue and a statement from the prosecutor which provides that no charging document was filed or issued in the case; if a prosecutor filed a charging document, the case was dismissed or the state entered a nolle prosequi, and that none of the charges at issue resulted in a trial;
- The criminal history record does not contain one of the prohibited offenses;
- The petitioner pays the $75 processing fee;
- The petitioner meets the requirements for expunction such as prior sealing and expunction;
- The petitioner is not under court supervision; and
- The petitioner has previously received a 10 year court order sealing the record at issue.[12]

Effect of Criminal History Record Expunction

When the court orders expunction of a record, any criminal justice agency with custody of the record other than the department must destroy the record. The Department is required to retain the record; however, the record remains confidential and exempt from disclosure as a public record.[13]

Upon expunction, the person identified as a perpetrator in an expunged record may lawfully deny or fail to acknowledge the arrests, except when the person:

- Is a candidate for employment with a criminal justice agency;

[10] *Id*.
[11] Section 943.0585(1)(b), F.S.
[12] Section 943.0585(2), F.S.
[13] Section 943.0585(4), F.S.

- Is a criminal defendant;
- Is petitioning for a sealing or expunction of records;
- Is a candidate for admission to The Florida Bar;
- Is seeking employment, licensure, or a contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elder Affairs, the Department of Juvenile Justice, the Department of Education, or a local education entity or government entity that licenses child care facilities.
- Is seeking authorization for employment from a seaport.[14]

Vacation or Motions for Vacatur

The principle behind vacatur is that of a legal action being undone. Vacatur is defined as "the act of annulling or setting aside."[15]

Hearsay Evidence

Chapter 90, F.S., provides the Florida Code on Evidence. Section 90.802, F.S., provides that hearsay evidence is generally inadmissible. Section 90.803, F.S., provides exceptions to inadmissibility, irrespective of whether a declarant is available. One of the exceptions is for out-of-court statements made by a child victimized by child abuse or neglect, including sexual abuse.[16] These statements are admissible as evidence unless the source of information is unreliable, provided that a child victim is of an actual, mental, emotional, or developmental age of 11 years old or younger.[17]

III. Effect of Proposed Changes:

This bill creates s. 943.0583, F.S., to address expunction of criminal records for offenses committed while a person is a victim of human trafficking:

- Defines "human trafficking," "official documentation," and "victim of human trafficking."
- Authorizes, but does not require, the courts to order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements for expunction.
  - Authorizes a person to petition for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking, unless the offense is for an enumerated crime listed in s. 775.084(1)(b)1., F.S.[18]
  - Provides a standard of proof for the petition as a preponderance of the evidence.

[14] Section 943.0585(4)(a), F.S.
[15] BLACK'S LAW DICTIONARY (9th ed. 2009).
[16] Section 90.803(23)(a), F.S.
[17] *Id*.
[18] Section 775.084(1)(b)1., F.S., lists the crimes of arson, sexual battery, robbery, kidnapping; aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

  - Treats a conviction expunged under this section as vacated due to a substantive defect in the underlying criminal proceedings.
- Requires a petitioner to file a petition with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking through bringing the petition.
- Creates a presumption that official documentation of status as a victim of human trafficking shows that participation in the offense was a result of having been a victim of human trafficking.
- Provides that a determination made without official documentation requires clear and convincing evidence.
- Requires petitions for expunction to contain:
  - The petitioner's sworn statement attesting that the petitioner is eligible for expunction to and does not have any other petition to expunge or seal pending before any court.
  - Official documentation of the petitioner's status as a victim of human trafficking, if any exists.

Any person who knowingly provides false information on a sworn statement to the court commits a third degree felony.

- In judicial proceedings relating to expunction:
  - The clerk must serve a copy of the completed petition to expunge to the appropriate state attorney or the statewide prosecutor and the arresting agency. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court;
  - The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means;
  - If the court grants the expunction, the clerk of the court is required to certify copies of the order to the appropriate prosecutor's office and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information. The Florida Department of Law Enforcement (Department) must forward the order to expunge to the Federal Bureau of Investigation (FBI). The clerk of the court must certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.
- When any criminal history record of a minor or an adult is ordered expunged by the court:
  - The record must be physically destroyed by any criminal justice agency with custody of the record, except that the Department must retain the criminal history record;
  - The petitioner of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record; and
  - A person who has been granted an expunction may not be charged with perjury or the making of a false statement for failure to acknowledge an expunged record.

Key differences provided in this bill for victims of human trafficking, compared to the traditional expunction process currently in law are that this bill:

- Creates a new basis for expunction, which is that the petitioner was a victim of human trafficking at the time of the offense.
- Extends the opportunity to expunge to convictions, rather than just arrests or dismissals.
- Treats an expunction as a vacation due to a substantive defect in the underlying criminal proceedings.
- Provides a different set of offenses for which the petitioner may not seek expunction, although some offenses overlap.
- Does not appear to require the Florida Department of Law Enforcement to issue a certificate of eligibility, and instead only requires the petitioner to file a sworn statement with the court.
- Does not require a person who is granted an expunction to disclose the underlying offense or offenses to anyone, irrespective of future employment involving contact with vulnerable persons, unless they are a candidate for employment with a criminal justice agenda or a defendant in a criminal prosecution case.

This bill increases the age of child victims from 11 to 16 years old, in reference to admissibility of hearsay statements under the hearsay exception provided in s. 90.803(23), F.S.

The bill takes effect July 1, 2013.

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 addition to addressing expunctions of convictions for victims of human trafficking, this bill increases the age of child victims from 11 to 16 years old, in reference to admissibility of hearsay statements under the hearsay exception provided in s. 90.803(23), F.S. Article III, Section 6, of the State Constitution provides, in part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The title of the bill reads: "An act relating to the victims of human trafficking." The title of the bill does not appear to capture the language addressing the hearsay exception. Additionally, the bill may contain multiple subjects, in violation of the constitutional single-subject requirement.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement (Department) indicates an expected fiscal impact for programming, relating to dissemination of information, pursuant to this bill. The Department estimates a fiscal impact of $99,275, related to programming costs, as a result of the bill. That amount of nonrecurring general revenue is appropriated in the bill for Fiscal Year 2013-2014 to fund these costs. The Department also indicates a need for additional time to implement the provisions of this bill, and requests an effective date of October 1, 2014.[19]

The Office of State Courts Administrator (OSCA) indicates that an impact is expected. The extent of filings for expunction on the basis of status as a victim of human trafficking is speculative, however. The OSCA acknowledges that while some increase in judicial workload is likely, the OSCA can absorb the workload with existing resources.[20]

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/CS by Appropriations on April 23, 2013:
This committee substitute:

- Appropriates the sum of $99,275 in nonrecurring general revenue to the FDLE to fund programming costs for the 2013-2014 fiscal year.

[19] Florida Dept. of Law Enforcement, *Senate Fiscal Note for CS/SB 1644* (March 22, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs and the Committee on Judiciary).
[20] Office of the State Courts Administrator, *2013 Judicial Impact Statement for CS/SB 1644* (March 26, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs and the Committee on Judiciary).

- Except as otherwise provides, adds an effective date of January 1, 2014, except that the FDLE or any other criminal justice agency is not required to comply with an order to expunge a criminal history record as required before March 1, 2014.
- Clarifies that a person may lawfully deny or fail to acknowledge any arrest covered by the expunged records, except when the person is a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution case.

CS/CS by Judiciary Committee on April 8, 2013:
This committee substitute:

- Corrects a technical error.
- Increases the age of a child victim from 11 to 16, under the hearsay exception provided in s. 90.803(23).

CS by Children, Families, and Elder Affairs on March 18, 2013:
The committee substitute amends the term "victim of human trafficking" to remove the provision that minors who are victims of human trafficking are victims based on coercion.

B. Amendments:

None.

872226

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment

Delete lines 179 - 180
and insert:

fail to acknowledge the arrests covered by the expunged record, except when the subject of the record is a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.

(c) Subject to the exceptions in paragraph (b), a person who has been granted an expunction under this

926568

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2013	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete line 412
and insert:
Section 7. Effective July 1, 2013, the sum of $99,275 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Law Enforcement to fund the programming costs associated with this act during the 2013-2014 fiscal year.
Section 8. Except as otherwise expressly provided in this act, this act shall take effect January 1, 2014, except that, before March 1, 2014, the Department of Law Enforcement or any other criminal justice agency is not required to comply with an

926568

order to expunge a criminal history record as required by this act.

Section 9. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete line 34

and insert:

made by the act; providing for an appropriation to the Department of Law Enforcement; providing that the department or any other criminal justice agency is not required to comply with certain requirements relating to expunging criminal history records until a specified date; providing effective dates.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Flores

590-03880-13 20131644c2

A bill to be entitled

An act relating to victims of human trafficking; amending s. 90.803, F.S.; revising the mental, emotional, or developmental age of a child victim whose out-of-court statement describing specified criminal acts is admissible in evidence in certain instances; creating s. 943.0583, F.S.; providing definitions; providing for the expungement of the criminal history record of a victim of human trafficking; designating what offenses may be expunged; providing exceptions; providing that an expunged conviction is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings; providing for a period in which such expungement must be sought; providing that official documentation of the victim's status as a human trafficking victim creates a presumption; providing a standard of proof absent official documentation; providing requirements for petitions; providing criminal penalties for false statements on such petitions; providing for parties to and service of such petitions; providing for electronic appearances of petitioners and attorneys at hearings; providing for orders of relief; providing for physical destruction of certain records; authorizing a person whose records are expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record; providing that such lawful denial does not constitute perjury or subject the person to liability;

590-03880-13 20131644c2

providing that cross-references are considered general reference for the purpose of incorporation by reference; amending ss. 943.0582, 943.0585, 943.059, and 961.06, F.S.; conforming provisions to changes made by the act; providing an effective date.

WHEREAS, victims of trafficking may be forced to engage in a variety of illegal acts beyond prostitution, and

WHEREAS, trafficked persons are not always recognized as victims by the police and prosecutors and are thus pressured into pleading guilty or do not understand the consequences of criminal charges, and

WHEREAS, all persons with criminal records reflecting their involvement in the sex industry may face barriers to employment and other life opportunities long after they escape from their trafficking situations, and

WHEREAS, there is a genuine need for a workable solution to alleviate the impact of the collateral consequences of conviction for victims of human trafficking, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (23) of section 90.803, Florida Statutes, is amended to read:

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 ~~11~~ or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:

a. Testifies; or

b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).

Section 2. Section 943.0583, Florida Statutes, is created

to read:

943.0583 Human trafficking victim expunction.—

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

(a) "Human trafficking" has the same meaning as provided in s. 787.06.

(b) "Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

(c) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

(2) Notwithstanding any other provision of law, the court of original jurisdiction over the crime sought to be expunged may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements of this section. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(3) A person who is a victim of human trafficking may petition for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847. However, this section does not apply to any offense listed in s. 775.084(1)(b)1.

Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

(4) A petition under this section must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of this section.

(5) Official documentation of the victim's status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition under this section. A determination made without such official documentation must be made by a showing of clear and convincing evidence.

(6) Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) The petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

(b) Official documentation of the petitioner's status as a victim of human trafficking, if any exists.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third

degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7)(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means.

(c) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.

(8)(a) Any criminal history record of a minor or an adult that is ordered expunged by the court of original jurisdiction over the crime sought to be expunged pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any

criminal history record in the custody of the department must be retained in all cases.

(b) The person who is the subject of a criminal history record that is expunged under this section may lawfully deny or fail to acknowledge the arrests covered by the expunged record.

(c) A person who has been granted an expunction under this section may not be held under any law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(9) Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. Subsection (6) of section 943.0582, Florida Statutes, is amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(6) Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, if the minor is otherwise eligible under those sections.

Section 4. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history

information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the

original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation

indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such

seaports pursuant to s. 311.12.

Section 5. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to

committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective

criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department

of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 6. Paragraph (e) of subsection (1) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to the limitations and procedures prescribed in this section, a person who is found to be entitled to compensation under the provisions of this act is entitled to:

(e) Notwithstanding any provision to the contrary in s. 943.0583 or s. 943.0585, immediate administrative expunction of the person’s criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant’s criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.

The total compensation awarded under paragraphs (a), (c), and (d) may not exceed $2 million. No further award for attorney's fees, lobbying fees, costs, or other similar expenses shall be made by the state.

Section 7. This act shall take effect July 1, 2013.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 16, 2013

I respectfully request that **Senate Bill #1644**, relating to Victims of Human Trafficking, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

SENATE APPROPRIATIONS
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STAFF DIR. ____ STAFF ____

File signed original with committee office

S-020 (03/2004)

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 Committee on Appropriations

BILL:	PCS/CS/SB 1684 (721714)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Altman
SUBJECT:	Environmental Regulation
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Weidenbenner	Halley	AG	**Favorable**
3.	Howard	DeLoach	AGG	**Fav/CS**
4.	Howard	Hansen	AP	**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:

PCS/CS/SB 1684 makes changes to environmental regulation and permitting statutes.

The bill has significant fiscal impacts to several trust funds within the Department of Environmental Protection. See Section V.

The bill:

- Provides that the Department of Environmental Protection (DEP) may adopt rules for the electronic submission of forms, documents, fees or reports.
- Provides that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. It also provides that prior to the third request; a permittee should be offered a meeting to resolve outstanding issues. It allows a permittee to request a final decision on the application if he or she believes the request for

additional information is not supported by any legal authority. Lastly, it stipulates that development permits do not include building permits.

- Provides for an expansion of the definition of "phosphate-related expenses".
- Provides that the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) is authorized to issue leases or consents of use to special event promoters and boat show owners to allow for the installation of temporary structures. The lease or consent of use must include appropriate lease fees and must be for a period not to exceed 45 days and for a duration not to exceed 10 consecutive years.
- Authorizes the DEP to establish general permits for special events relating to boat shows.
- Defines "first-come, first-served basis" as it relates to marinas, provides requirements for the calculation of lease fees for certain marinas, and provides conditions for the discount and waiver of lease fees for certain marinas, boatyards, and marine retailers.
- Provides for the waiver of lease fees for private residential docks and piers over sovereignty submerged lands.
- Provides general permits for local governments to construct certain mooring fields and places a limit on the size of mooring fields.
- Provides that if two or more consumptive use permit (CUP) applications are complete and in conflict, the DEP or WMD may then approve or modify the application that best serves the public interest.
- Provides that permitted water allocations may not be changed under certain circumstances with respect to seawater desalination plants;
- Provides for electronic mail notification of restrictions or changes to permitted water use in the case of a water shortage or emergency.
- Provides that the issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or local county health department, and prohibits government entities from imposing duplicative requirements and fees associated with the installation and abandonment of groundwater wells.
- Provides that licensure of water well contractors by a WMD must be the only water well construction license required for the construction, repair or abandonment of water wells in the state or any political subdivision.
- Exempts certain ponds, ditches and wetlands from regulatory requirements.
- Exempts certain independent water control districts from further wetlands regulations.
- Increases the funds available to DEP to contract for preapproved advanced cleanup work and increases the preapproval amount for contracting with a single facility.
- Provides that a person can bring a cause of action for damages resulting from a discharge of certain types of pollution if not regulated or authorized pursuant to ch. 403, F.S..
- Defines "beneficiary" as it relates to the entities from which a local government may collect stormwater fees, provides for the collection of stormwater utility fees from beneficiaries, and clarifies that the provisions only apply to fees billed on or after July 1, 2013.
- Provides that the DEP may adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees or reports.
- Extends the payment deadline for permit fees for major sources of air pollution and directs that fees must be based on actual emissions and not permitted emissions.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below their existing classification.

- Provides that local governments may not compete with recovered materials dealers for 90 days while an application for engaging in business is pending with the locality and provides relief for a violation of that provision.
- Provides for expedited permitting of interstate natural gas pipelines.
- Provides that a permit is not required for the restoration of seawalls at their previous locations or upland of their previous locations, or within 18 inches, instead of 12 inches, waterward of their previous locations; and
- Ratifies certain leases of land by the Board of Trustees in the Everglades Agricultural Area and provides that the leases are in the public interest and are not contrary to the public interest.

This bill substantially amends the following sections of the Florida Statutes: 20.255, 125.022, 166.033, 211.3103, 253.0345, 253.0347, 373.118, 373.233, 373.236, 373.246, 373.308, 373.323, 373.406, 376.30713, 376.313, 403.031, 403.061, 403.0872, 403.088, 403.0893, 403.7046, 403.813, and 403.973.

The bill creates sections 253.0346 and 403.8141, Florida Statutes.

II. Present Situation:

The statutes affected by this bill are diverse. The present situation of each area affected by the bill will be addressed in Section III – Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 and 18 amend ss. 20.255 and 403.061, F.S., relating to the electronic submission of forms to the DEP.

Present Situation

Section 20.255, F.S., creates the DEP and provides for its organizational structure.
Section 403.061, F.S., authorizes the DEP to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it.

The DEP currently accepts certain types of permit applications on-line. In addition, Florida's five WMDs have developed a shared permitting portal. This portal is designed to direct the user to the appropriate WMD website for obtaining information regarding permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common relate to how much water is used (consumptive use permitting), the construction of wells (well construction permitting), and how new development affects water resources (environmental resource permitting).

Effect of Proposed Changes

The bill amends ss. 20.255 and 403.061, F.S., authorizing the DEP to adopt rules requiring or incentivizing electronic submission of any form, document, fee, or report required under ch. 161, F.S., (relating to beach and shore preservation), ch. 253, F.S., (relating to state lands), ch. 373,

F.S., (relating to water resources), ch. 376, F.S., (relating to pollutant discharge prevention and removal), ch. 377, F.S., (relating to energy resources), or ch. 403, F.S., (relating to environmental control).

Sections 2 and 3 amend ss. 125.022 and 163.033, F.S., respectively, relating to development permits.

Present Situation

A development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[1] Pursuant to ss. 125.022 and 166.033, F.S., when a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.

For any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring, as a condition of processing or issuing a development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit. The issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county or municipality can attach such a disclaimer to the issuance of a development permit and can include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development. This does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Effect of Proposed Changes

The bill amends ss. 125.022 and 163.033, F.S., providing that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county (section 2) or the municipality (section 3) is directed to offer a meeting to try to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at the applicant's request, must proceed with processing the application. These sections do not apply to building permits.

Section 4 amends s. 211.3103, F.S., expanding activities qualifying as "phosphate-related expenses."

[1] Section 163.3164(16), F.S.

Present Situation

Pursuant to s. 211.3103, F.S., an excise tax is levied upon each person engaging in the business of severing phosphate rock from the soils or waters of this state for commercial use. The tax rate is $1.61 per ton severed, except for the time period from January 1, 2015, until December 21, 2022, when it is $1.80 per ton severed.

The proceeds of all taxes, interest and penalties imposed under this section of law are paid into the State Treasury as follows:

- To the credit of the Conservation and Recreation Lands Trust Fund: 25.5 percent.
- To the credit of the General Revenue Fund of the state: 35.7 percent.
- For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 12.8 percent.
- For payment to counties that have been designated as a rural area of critical economic concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 10 percent.

Any such proceeds received by a county must be used only for phosphate-related expenses.

Section 211.3103(6)(c), F.S., defines "phosphate-related expenses" as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Effect of Proposed Changes

The bill amends s. 211.3103, F.S., to expand the activities that qualify as "phosphate-related expenses" to include environmental education, maintenance and restoration of reclaimed lands and county-owned environmental lands which were formerly phosphate lands, and community infrastructure on county owned environmental lands that were formerly phosphate lands.

Sections 5 and 24 amend s. 253.0345, F.S., and create s. 403.8141, F.S., respectively, relating to special events on sovereignty submerged lands.

Present Situation

The Board of Trustees may authorize the use of sovereignty submerged lands for special events. The Board of Trustees is authorized to issue "consents of use" or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings and access walkways on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government owned upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use must be notified by certified mail of any request for such a lease or consent of use prior to approval by the Board of Trustees. The Board of Trustees must balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether a lease or consent of use should be executed over the objection of adjacent

riparian owners. This does not apply to structures for viewing motorboat racing, high-speed motorboat contests or high-speed displays in waters that manatees are known to frequent.[2]

The Board of Trustees' rules contain three classifications for special events:

- Class II Special Events are events of 30 days or less involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline along the affected sovereignty submerged land. These activities require a letter of consent from the DEP but no lease.[3]
- Class III Special Events are single events involving the construction of 50 or fewer new slips or a preempted area of 50,000 square feet or less. A lease is required and the term of the lease is limited to 30 days or less.[4]
- Class IV Special Events are events that do not qualify as Class III events or are events authorized to be conducted more than once during the lease term. A lease is required and the term of the lease may be up to five years.[5]

Any special event must be for 30 days or less. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should both the promoter or riparian owner fail to do so within the time specified in the agreement.[6]

Effect of Proposed Changes

Section 5 of the bill amends s. 253.0345, F.S., to provide that the Board of Trustees is authorized to issue leases or consents of use to special event promoters and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. A lease or consent of use for a special event under this section must include an exemption from lease fees and must be for a period of 45 days or less and for a duration of 10 consecutive years or less.

Section 23 of the bill creates s. 403.8141, F.S., directing the DEP to issue permits for special events as defined in s. 253.0345, F.S. The permits must be for a period that runs concurrently with the letter of consent or lease issued and must allow for the movement of temporary structures within the footprint of the lease area.

Sections 6 and 7 create s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers and amend s. 253.0347, F.S., relating to regarding the lease of sovereignty submerged lands for private residences, respectively.

[2] *See* s. 253.0345, F.S. *See also* Rule 18-21.0082, F.A.C., for information required on applications for leases or consents of use and for provisions concerning limitations on consents of use and leases, depending on the type of event.
[3] Rule 18-21.005(1)(c)17., F.A.C.
[4] Rule 18-21.005(1)(d)10., F.A.C.
[5] Rule 18-21.005(1)(d)11., F.A.C.
[6] Rule 18-21.0082(2)(c), F.A.C.

Present Situation

The Board of Trustees is responsible for the administration and disposition of the state's sovereignty submerged lands. [7] It has the authority to adopt rules and regulations pertaining to anchoring, mooring or otherwise attaching to the bottom. Waterfront landowners must receive the Board of Trustees' authorization to build docks and related structures on sovereignty submerged lands. The DEP administers all staff functions on the Board of Trustees' behalf.

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing and others as defined by law.[8] Riparian landowners must obtain the Board of Trustees' authorization for installation and maintenance of docks, piers and boat ramps on sovereignty submerged land.[9] Under the Board of Trustees' rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[10]

Authorization may be by rule, letter of consent, or lease.[11] All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.[12]

The Board of Trustees has promulgated detailed rules regulating the design of docks and related structures, including determining whether a lease is required and setting the amount of lease fees.[13] The DEP determines whether a lease is required for a person to build a dock or related structure on sovereignty submerged lands based on a number of factors including:

- Location within or outside of an aquatic preserve;
- Area of sovereignty submerged land preempted;
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue; and
- Whether the dock is for "private residential" or other uses.

A property owner who is required to obtain a lease to build a dock or related structure must follow the lease terms and pay applicable fees. Currently, the standard lease term is five years, and sites under lease must be inspected once every five years. Annual lease fees for standard term leases are calculated through a formula based on annual income, square footage or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated like standard lease fees but with

[7] Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.
[8] *See* s. 253.141(1), F.S.
[9] Rule 18-21.005(1)(d), F.A.C.
[10] *See* Rules 18-20.003(2) and (19), F.A.C.
[11] Rule 18-21.005(1), F.A.C.
[12] Rule 18-21.008(1)(b)(2), F.A.C.
[13] *See* Rules 18-20 and 18-21, F.A.C.

a multiplier for the term in years. Site inspections are conducted at least once every five years by the DEP or a WMD to determine compliance with lease conditions.[14]

When determining whether to approve or deny uses for sovereignty submerged land leases, the Board of Trustees must consider whether such uses pass a public interest test. "Public interest" is defined as:

> [T]he demonstrable environmental, social and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands, or severance of materials from sovereignty lands, the Board of Trustees must consider the ultimate project and purpose to be served by said use, sale, lease or transfer of lands or materials.[15]

There are currently three categories of leases identified in Rule 18-21.008, F.A.C.:

- Standard leases are for terms of five years with the exception of leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, which are for ten years.
- Extended Term leases are those with terms in excess of standard leases and are available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
  - Facilities or activities that provide public access;
  - Facilities constructed, operated, or maintained by government or funded by government secured bonds; and
  - Facilities that have other unique operational characteristics as determined by the Board of Trustees.

Florida Clean Marina Program

The Florida Clean Marina Program is a voluntary designation program. Participants receive assistance in implementing best management practices through on-site and distance technical assistance, mentoring by other Clean Marinas and continuing education. To become designated as a Clean Marina, facilities must implement a set of environmental measures designed to protect Florida's waterways. These measures address critical environmental issues such as sensitive habitat, waste management, stormwater control, spill prevention and emergency preparedness.[16]

The Florida Clean Boatyard Program is a voluntary designation program that encourages boatyards to implement environmentally conscious practices. Measures include using dustless sanders, recycling oil and solvents, and re-circulating pressure wash systems to recycle wastewater.[17]

[14] Rule 18-21.008(1)(b)4., F.A.C.
[15] Rule 18-21.003(51), F.A.C.
[16] DEP, *About Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/about.htm (last visited Mar. 29, 2013).
[17] *Id.*

The Florida Clean Marine Retailer Program is a voluntary designation program that encourages marine retailers to educate boaters by providing information to those who purchase vessels on clean boating practices. A Clean Marine Retailer also employs environmental best management practices in its boat and engine service operations and facilities.[18]

As of June 21, 2012, there were 263 designated Clean Marinas, 38 Clean Boatyards and 17 Clean Marine Retailers in Florida.[19]

Effect of Proposed Changes

Section 6 of the bill creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers. The bill defines "first-come, first-served basis" to mean the facility operates on state-owned submerged land for which:

- There is no club membership, stock ownership, equity interest, or other qualifying requirement; and
- Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a 30 percent discount on the annual lease fee must apply if dockage rate sheet publications and dockage advertising clearly state the slips are open for rent to the public on a first-come, first-served basis.

For a facility designated by the DEP as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program, the following requirements apply:

- A 10 percent discount on the annual lease fee must apply if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease; and
  - Does not change use during the term of the lease.
- Extended term lease surcharges must be waived if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease;
  - Does not change use during the term of the lease; and
  - Is available to the public on a first-come, first-served basis.

If the facility has unpaid lease fees or fails to comply with this section, the facility is not eligible for the discount or waiver under this section until the debts have been paid and compliance with the program has been met.

This section only applies to new leases or amendments to leases effective after July 1, 2013.

[18] *Id.*
[19] DEP, *Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/ (last visited Mar. 29, 2013).

Section 7 of the bill provides that lease fees are not required for:

- Private residential single-family docks designed to moor up to four boats so long as the preempted area is equal to or less than 10 times the distance along the riparian shoreline or the square footage allowed for private residential single-family docks under rules adopted by the Board of Trustees, whichever is greater.
- Private residential multi-family docks designed to moor boats up to the number of units within the development that are equal to or less than 10 times the riparian shoreline along the sovereignty submerged land on the affected waterbody multiplied by the number of units with docks in the development.

Section 8 amends s. 373.118, F.S., relating to general permits for marine facilities built by local governments.

Present Situation

Section 373.118(4), F.S., directs the DEP to adopt one or more general permits for local governments to construct, operate and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks and parking facilities located in uplands. A facility authorized under these general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities must be consistent with the local government manatee protection plan required pursuant to ch. 379, F.S., must obtain Clean Marina Program Status prior to opening for operation, and must maintain that status for the life of the facility. Marinas and mooring fields authorized under a general permit cannot exceed an area of 50,000 square feet over wetlands and other surface waters.

Effect of Proposed Changes

The bill amends s. 373.118(4), F.S., removing a provision directing the DEP to adopt rules for one or more general permits for local governments to construct, operate and maintain public marina facilities. The bill removes a provision that local government facilities permitted under s. 373.118(4), F.S., must obtain Clean Marina Program status before opening for operation and must maintain that designation for the life of the facility. The bill also removes a provision limiting such facilities to 50,000 square feet over wetlands and other surface waters.

The bill adds a provision limiting mooring fields permitted under s. 373.118(4), F.S., to 100 vessels and it adds a provision authorizing the Board of Trustees to delegate to the DEP the ability to issue leases for mooring fields that meet the requirements of the general permit per s. 373.118(4), F.S.

Section 9 amends s. 373.233, F.S., relating to consumptive use permitting.

Present Situation

A CUP establishes the duration and type of water an entity may use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with

the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as the "three-prong test." Specifically, the proposed water use:

- Must be a "reasonable-beneficial use," as defined in s. 373.019, F.S.;
- Must not interfere with any presently existing legal use of water; and
- Must be consistent with the public interest.[20]

Section 373.233, F.S., provides that if two or more complete applications that otherwise comply with the provisions of Part II of ch. 373, F.S., are pending for a quantity of water that is inadequate for both or all applications, or that are in conflict for any other reason, the governing board of the DEP or the WMD has the right to approve or modify the application which best serves the public interest.

The Three Prong Test

"Reasonable-beneficial use," the first prong of the test, is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."[21] The Legislature has declared water a public resource. Therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other demands.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and water management needs.[22] These criteria include consideration of the quantity of water requested; the need, purpose and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[23]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[24] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[25]

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[20] Section 373.223(1)(a-c), F.S.
[21] Section 373.019(16), F.S. *See also* Rule 62-410(2), F.A.C., for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.
[22] *See* Rule 62-40, F.A.C.
[23] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).
[24] Section 373.223(1)(b), F.S.
[25] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[26] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the particular WMD or the DEP gives preference to renewal applications.[27]

Effect of Proposed Changes

The bill amends s. 373.233, F.S., to provide that where there are competing CUP applications and a WMD or the DEP has deemed the applications complete, the governing board of a WMD or the DEP has the right to approve or modify the application which best serves the public interest.

Section 10 amends s. 373.236, F.S., relating to the duration of CUPs.

Present Situation

Section 373.236(1), F.S., provides that CUPs must be granted for a period of 20 years if:

- Requested by the applicant; and
- There is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.

If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or DEP may require a permittee to produce a compliance report every 10 years. A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

[26] *Supra* note 23.
[27] *See* s. 373.233, F.S.

Effect of Proposed Changes

The bill amends s. 373.236, F.S., to provide that in order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a WMD may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a seawater desalination plant unless the reduction is a condition of a permit or funding agreement with the WMD. Except as otherwise provided, this does not limit the existing authority of DEP or the governing board of a WMD to modify or revoke a CUP.

Section 11 amends s. 373.246, F.S., relating to declarations of water shortages or emergencies.

Present Situation

Section 373.246, F.S., provides direction for the governing board of a WMD or the DEP during a water shortage. The section, among other things, requires the formulation of a plan for periods of water shortage, allows for the imposition of restrictions on water use, provides for notice to those residing in the areas affected by the water shortage, and provides for the rescission of a declaration of a water shortage.

Effect of Proposed Changes

The bill amends s. 373.246, F.S., to allow a WMD governing board or the DEP to notify permittees by electronic mail of any change in the condition of their permits or any suspension of their permits or any other restriction on permittees' use of water for the duration of the water shortage. This is in addition to the existing option of making such notification by regular mail.

Section 12 amends s. 373.308, F.S., relating to well permits issued by water management districts.

Present Situation

Section 373.308, F.S., directs the DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair and abandonment of water wells. The DEP may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or part of the state. Some local governments also have certain ordinances pertaining to water wells, which have resulted in duplicative regulation at the state and local level.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to provide that upon authorization from the DEP, issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or a local county health department, and that other government entities may not impose additional or duplicate requirements or fees, or establish a separate program for permitting the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13 amends s. 373.323, F.S., relating to licenses for water well contractors.

Present Situation

Any person that wishes to engage in business as a water well contractor must obtain a license from a WMD. Each person must apply to take the licensure examination and the application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. An applicant must:

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells; and
- Show certain proof of experience.[28]

Section 373.323(11), F.S., provides that licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water well systems.

Effect of Proposed Changes

The bill amends s. 373.323, F.S., to provide that licensure under this section by a WMD must be the only water well construction license required for the construction, repair, or abandonment of water wells in the state or any political subdivision.

The bill also expands the types of systems that licensed water well contractors may install pumps, tanks, and water conditioning equipment on. The bill changes the systems water well contractors can work on from "water well systems" to "water systems."

Section 14 amends s. 373.406, F.S., relating to surface water management and storage.

Present Situation

Part IV of ch. 373, F.S., provides for the management and storage of surface water. Part IV also establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the DEP and the WMDs for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, and appurtenant work and works. Individually and collectively these terms are referred to as "surface water management systems."

Certain activities are exempt by statute from the need to obtain an ERP under state law or by agency rule. Section 373.406, F.S., provides for several exemptions from the regulatory requirements in ch. 373, F.S. The DEP's rules also provide for certain exemptions and general

[28] Section 373.323, F.S.

permits for certain activities that cause only minimal individual and cumulative adverse impacts to wetlands and other surface waters. Some examples of exempt activities are:

- Construction, repair, and replacement of private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair, and replacement of seawalls and riprap in artificial waterways;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of noticed general permits for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These include, but are not limited to, the following:

- Construction and modification of boat ramps of certain sizes;
- Installation and repair of riprap at the base of existing seawalls;
- Installation of culverts associated with stormwater discharge facilities; and
- Construction and modification of certain utility and public roadway construction activities.

Anything that does not specifically qualify for an exemption or noticed general permit typically requires an ERP permit.

Effect of Proposed Changes

The bill amends s. 373.406, F.S., to include the following exemptions from regulation under Part IV of ch. 373, F.S.:

- Construction, operation, or maintenance of any wholly owned, manmade ponds or drainage ditches constructed entirely in uplands as long as any alteration or maintenance does not involve any work to connect the pond to, or expand the farm into, other wetlands or surface waters;
- Activities affecting wetlands created solely by the unreasonable and negligent flooding or interference with the natural flow or surface water caused by an adjoining landowner. Requests to qualify for the exemption must be submitted in writing to a WMD or the DEP within seven years after the cause of the unauthorized flooding or diversion occurred. Such activities may not begin before a WMD or DEP confirms in writing that the activity qualifies for the exemption; and
- Any water control district created and operating pursuant to ch. 298, F.S., for which a valid ERP or management and storage of surface waters permit has been issued pursuant to Part IV of ch. 373, F.S., is exempt from further wetlands regulations imposed pursuant to local government regulation under chs. 125, 163, and 166, F.S.

Section 15 amends s. 376.30713, F.S., relating to preapproved advanced cleanup of contaminated sites.

Present Situation

The Preapproved Advanced Cleanup Program is a cost-sharing program designed to provide an opportunity for site rehabilitation, on a limited basis, at contaminated sites in advance of their priority ranking in order to facilitate property transfers or public works projects.[29] Consideration for the program is through an application to the DEP. Applications must contain:

- A commitment to pay no less than 25 percent of total cleanup cost;
- A review fee of $25;
- A limited contamination assessment report; and
- A proposed course of action.[30]

If approved for the program, the applicant enters into a contract with the DEP. If the terms of the preapproved advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.[31]

The DEP is allowed to enter into contracts with approved entities for a total of $10 million of preapproved advanced cleanup work each fiscal year and no facility may be preapproved for more than $500,000.[32]

Effect of Proposed Changes

The bill raises the total funds available for preapproved advanced cleanup work each fiscal year from $10 million to $15 million, and it raises the amount any one facility may be approved for from $500,000 to $5 million.

Section 16 amends s. 376.313, F.S., relating to the nonexclusiveness of remedies and individual causes of action for damages under ss. 376.30 to 376.317, F.S.

Present Situation

Section 376.313(3), F.S., provides that nothing contained in ss. 376.30-376.317, F.S., (relating to petroleum storage discharges, dry cleaning facilities, and wholesale supply facilities) prohibits any person from bringing a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by the referred to sections.

Effect of Proposed Changes

The bill amends s. 376.313(3), F.S., to provide that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S., that is not regulated or authorized pursuant to ch. 403, F.S. (relating to environmental control policies that conserve state water, protect and improve water quality for

[29] DEP, *Preapproved Advanced Cleanup Program (PAC)*, www.dep.state.fl.us/waste/categories/pcp/pages/pac.htm (last visited Apr. 18, 2013).
[30] Section 376.30713(2)(a), F.S.
[31] Section 376.30713(3)(b), F.S.
[32] Section 373.30713(4), F.S.

consumption, and maintain air quality to protect human health). This serves to limit the causes of action currently available under s. 376.313, F.S.

Sections 17, 21 and 27 amend ss. 403.031 and 403.0893, F.S., and creates an unnumbered section of law, respectively, regarding stormwater utility fees.

Present Situation

Section 403.031, F.S., provides definitions for ch. 403, F.S. Section 403.0893, F.S., provides that a county or municipality may:

- Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.;
- Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.; or
- Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, F.S., one or more stormwater management system benefit areas.

Effect of Proposed Changes

Section 17 of the bill amends s. 403.031, F.S., to provide a definition for the term "beneficiary" to mean "any person, partnership, corporation, business entity, charitable organizations, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law." Those entities listed here are responsible for paying stormwater fees assessed by a local government. This definition will make clear the entities from which a local government can collect stormwater fees.

Section 21 of the bill amends s. 403.0893, F.S. to provide that stormwater utility fees may be charged to the beneficiaries of a stormwater utility, and it provides for the collection of delinquent fees.

Section 27 of the bill creates an unnumbered section of law to provide that the two sections only apply to stormwater utility fees billed on or after July 1, 2013, to a beneficiary of a stormwater utility for services provided on or after that date.

Section 19 amends s. 403.0872, F.S., relating to operation permits for majority sources of air pollution and fee calculations.

Present Situation

The Clean Air Act (CAA) was enacted in 1970 as the comprehensive federal law to regulate air emissions from stationary and mobile sources. The law authorizes the U.S. Environmental

Protection Agency (EPA) to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants.[33]

In 1990, Congress amended Title V of the CAA to create the operating permit program. The program streamlines the way federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year pollution activities.[34] Under Title V, the EPA must establish minimum elements to be included in all state and local operating permit programs and then assist the state and local governments in developing their programs.[35] All major stationary sources (power plants, pulp mills, and other facilities) emitting certain air pollutants are required to obtain operating permits.

Pursuant to s. 403.0872, F.S., and as promulgated in ch. 62-4, F.A.C., the DEP is responsible for air permits regulating major and minor facilities. Section 403.0872(11), F.S., provides that each source of air pollution permitted to operate in Florida must pay between January 15 and March 1 of each year, upon written notice from the DEP, an annual operation license fee in an amount determined by DEP rule. The annual fee is assessed based upon the source's previous year's emissions and is calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, and multiplying that by the annual hours of operation allowed by permit conditions provided, however, that:

1. The license fee factor is $25 or another amount determined by DEP rule, which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the Secretary of Environmental Protection affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may not exceed $35.
2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.
3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.

[33] EPA, *Summary of the Clean Air Act*, http://epa.gov/regulations/laws/caa.html (last visited Mar. 29, 2013).
[34] *See* EPA, *Air Pollution Operating Permit Program Update: Key Features and Benefits*, http://www.epa.gov/oaqps001/permits/permitupdate/index.html (last visited Mar. 29, 2013).
[35] *Id.*

4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not operational.
5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a DEP-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the EPA under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the DEP.
6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.
7. If the DEP has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the DEP shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807, F.S. The DEP may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The DEP may waive the collection of underpayment and is not required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The DEP may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty or interest.
8. Notwithstanding the computational provisions of s. 403.0872(a), F.S., the annual operation license fee for any source subject to this section cannot be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814, F.S., shall not exceed $50 per year.
9. Notwithstanding the provisions of s. 403.087(6)(a)5.a., F.S., authorizing air pollution construction permit fees, the DEP may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits are considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873, F.S. The DEP must, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a., F.S., for the construction of a new major source of air pollution that will be subject to the permitting requirements of s. 403.0872, F.S., once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a.[36]

[36] Section 403.0872(11)(a)1.-9., F.S.

Effect of Proposed Changes

The bill amends s. 403.0872, F.S., to extend the annual payment deadline for air pollution permits from March 1 to April 1. In addition, the bill provides that the annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant actually emitted, as calculated in accordance with DEP's emissions computation and reporting rules. The annual fee only applies to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit. This will result in a decrease in fees charged since it is likely that most permitted entities are not discharging up to their permitted limit.

The bill deletes subparagraphs 2-5 from s. 403.0872(11), F.S.

The bill provides that if the DEP has not received the fee by March 1, instead of February 15, the permittee must be sent a written warning concerning the consequences of failing to pay the fee by April 1. If the fee is not postmarked by April 1, the DEP will impose an additional fee.

Section 20 amends s. 403.088, F.S., relating to conditions for the issuance of water pollution permits.

Present Situation

Section 403.088, F.S., provides guidance for the issuance of pollution discharge permits. Generally, if the DEP finds that a proposed discharge will reduce the quality of receiving waters below the classification established for them, the DEP is directed to deny the application and refuse to issue a permit.

Effect of Proposed Changes

The bill amends s. 403.088, F.S., to provide that when testing to determine whether or not a proposed discharge will reduce the quality of the receiving waters below the classification established for them, the DEP may not use results from a field procedure or laboratory method to make the finding or determine compliance unless the procedure or method has been adopted by rule or noticed and approved by DEP order pursuant to DEP rule. Additionally, field procedures and laboratory methods must satisfy quality assurance requirements of DEP rule and must produce data of known and verifiable quality. Lastly, the results of field procedures and laboratory methods must be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

Section 22 amends s. 403.7046, F.S., relating to the regulation of recovered materials.

Present Situation

Section 403.7046, F.S., governs the regulation of recovered materials. It allows the DEP to establish a system whereby recovered materials dealers must be certified by the DEP. At a minimum, the information that needs to be collected from a recovered materials dealer must include:

- The amount and types of recovered materials handled, and
- The amount and disposal site, or the name of the person with whom the disposal was arranged, of any solid waste generated by the recovered materials facility and subsequently disposed of.[37]

It also provides that prior to engaging in business within the jurisdiction of a local government, the dealer must provide the government with the DEP certification and must register with the local government. Local governments are limited to collecting the following information:

- Name, including the owner or operator of the dealer;
- If the dealer is a business entity:
  - Its general or limited partners; and
  - Its corporate officers and directors;
- Its permanent place of business;
- Evidence of its certification from the DEP; and
- A certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of the section.

Local governments may also impose yearly reporting requirements which include:

- Requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period;
- The approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and
- The locations where any recovered materials were disposed of as solid waste.

There are protections for trade secrets and any information that constitutes a trade secret is to be kept confidential.[38]

Effect of Proposed Changes

The bill amends s. 403.7046, F.S., providing that a local government that receives a registration application from a recovered materials dealer may not use the registration information to compete with the recovered materials dealer until 90 days after the registration information is submitted.

The bill also provides for injunctive relief or damages for recovered materials dealers, or associations whose members include recovered materials dealers, in cases where localities violate the prohibition.

[37] Section 403.7046(1), F.S.
[38] Section 403.7046(3)(b), F.S.

Section 23 amends s. 403.813, F.S., relating to conditions under which certain permits are not required for seawall restoration.

Present Situation

Section 403.813(1), F.S., provides that a permit is not required for the restoration of a seawall at its previous locations or upland of, or within 12 inches waterward of, its previous location.

Effect of Proposed Changes

The bill amends s. 403.813, F.S., to provide that a permit is not required for the restoration of a seawall at its previous location or upland of that location, or within 18 inches, instead of 12 inches, waterward of its previous location.

Section 25 amends s. 403.973, F.S., relating to expedited permitting of natural gas pipelines.

Present Situation

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the secretary of the DEP must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where more than one state agency action is challenged, the governor shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Effect of Proposed Changes

The bill amends s. 403.973, F.S., to authorize expedited permitting for projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

Section 26 creates an unnumbered section of law, relating to land leases.

Current Situation

The Everglades Forever Act (EFA) was enacted in 1994 and is codified at s. 373.4592(5), F.S. It offers farmers impacted by the Everglades Restoration Project (Project) leases on several Board of Trustees parcels in the Everglades Agricultural Area in Palm Beach County. The law states that impacted farmers have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. For those parcels that had previously been competitively bid, the rental rate may not be less than the rate the Board of Trustees received at that time. The Board of Trustees can also adjust the rental rate on an annual basis using an appropriate index, and update the appraisal at five-year intervals. If more than one impacted farmer desires to lease the same parcel of land, the one with the greatest number of acres affected by the Project has priority.[39]

The DEP developed new leases to implement the Act. Four of the leases are scheduled to expire on April 1, 2015 and three are scheduled to expire on January 31, 2016, December 31, 2016, and August 25, 2018, respectively. Five leases are issued to companies owned by affiliates of Florida Crystals Corporation (Florida Crystals) and two are issued to A. Duda and Sons, Inc. (Duda) They are located on non-conservation lands and state school lands.[40]

Situation Regarding the Florida Crystal Leases

The South Florida Water Management District (SFWMD) contacted the DEP to request that the five Florida Crystals leases be amended to extend the lease terms for an additional 30 years, and to delete a provision that allows the Board of Trustees to terminate a lease if the lessee ceases to be an impacted farmer. The extensions are a condition of a land exchange between SFWMD and Florida Crystals to secure additional stormwater treatment area that is critical to SFWMD's efforts under the Act[41]

Situation Regarding the Duda Leases

SFWMD contacted the DEP to request that the two Duda leases be extended for additional 30 year terms. The extensions have been requested as a condition of land acquisition negotiations between the SFWMD and Duda to secure property for water storage that is critical to SFWMD's efforts to protect the Caloosahatchee River and Estuary under the Northern Everglades and Estuary Protection Act (NEEP Act). To address water quality and quantity associated with the

[39] Section 373.4592(5)(c), F.S.
[40] Board of Trustees of the Internal Improvement Trust Fund, *Meeting Agenda, January 23, 2013*, http://www.myflorida.com/myflorida/cabinet/agenda13/0123/BOT012313.pdf (last visited Apr. 18, 2013).
[41] *Id.*

existing flows from Lake Okeechobee to the Caloosahatchee River and Estuary, SWFMD will construct a surface water reservoir on the property acquired from Duda. The primary objectives will be to rehydrate Lake Hicpochee and intercept harmful excess flows to the Caloosahatchee River.[42]

Florida Administrative Code

A 20-year term was originally authorized in the Act for Florida Crystals' five leases. Pursuant to Rule 18-2.018(3)(a)1.b., F.A.C., the standard lease term for agricultural leases is six years. The DEP offered the following to assist the Board of Trustees in affirming that the Florida Crystals' leases are not standard leases:

- The leases are critical to SFWMD's acquisition of the 4,700 acres of private property adjacent to Stormwater Treatment Area 1W. Unless the leases are extended, the SFWMD will have to seek condemnation at great cost to the state. No other fiscally reasonable and technologically practical site exists for acquisition;
- The specific project that will be constructed on the exchanged lands is included in enforceable state and federal water quality consent orders issued by the DEP to the SFWMD and was mandated by the permits issued by the DEP under the federal Clean Water Act to improve the quality of water flowing into the Everglades;
- The five lessees are the farmers most impacted by acquisition of land for Everglades restoration and hydroperiod purposes as identified in the EFA; and
- The EFA recognizes the need to maintain the quality of life for South Florida residents, including those in agricultural-related jobs, which contribute to the regional economy.[43]

For the Duda leases, the DEP offered the following to assist the Board of Trustees in affirming that the leases are not standard leases:

- the lease extensions are critical to the SFWMD's acquisition of the lands needed for water storage and treatment as a component of both the NEEP Act and Caloosahatchee Plan;
- Duda remains one of the farmers most impacted by acquisition of land for Everglades restoration as identified in the EFA; and
- if the leases are not extended, SFWMD will have to seek alternative lands at significant additional costs with uncertain results.[44]

Public Interest

Pursuant to rule 18-2.018(1), F.A.C., the decision to authorize the use of Board of Trustees owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, must be considered.

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

The DEP offered information to the Board of Trustees to aid in making a determination that the leases for Florida Crystals and Duda are in the public interest, and not contrary to the public interest.[45]

Pursuant to rule 18-2.018(2)(i), F.A.C., equitable compensation is required when the use of uplands will limit or preempt use by the general public or will generate income or revenue for a private user. The rule directs the Board of Trustees to award authorization for such uses on the basis of competitive bidding rather than negotiation, unless it is determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use.

The DEP offered information to assist the Board of Trustees to make the determination that waiving the competitive bid requirements for Florida Crystals and Duda were in the public interest.

There have been at least two objections to the Duda leases from other farmers. One was received from Hundley Farms, Inc., and one from Roth Farms, Inc. Both object to the Duda lease extensions being granted without being competitively bid.[46]

On April 11, 2013, the Florida Wildlife Federation petitioned for a formal administrative hearing challenging whether several of the leases are typical agricultural leases, whether they represent the greatest combination of benefits to the public, whether the lease extensions are necessary for the project proposed by the SFWMD, and other aspects of the leases and the process by which they were awarded.[47]

Effect of Proposed Changes

The bill:

- Creates an unnumbered section of law that ratifies the decisions of the Board of Trustees with respect to the Florida Crystal and Duda leases, numbered 1447, 1971S, 3420, 3433, 3543, 3422 and 1935/1935-S.
- States the legislative finding that the decision to authorize the use of Board of Trustees-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest, that it is in the public interest to waive the competitive bid process, that the leases are not standard agricultural leases, and that the leases should be amended on the terms and conditions approved by the Board of Trustees.
- States the legislative finding that notwithstanding any other provision of law, the Legislature finds that the lease amendments and extensions approved by the Board or Trustees are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.
- Will effectively render the administrative hearing request by the Florida Wildlife Foundation moot.

[45] *Id.*
[46] *Id.*
[47] Florida Wildlife Federation, Inc., v. Florida Department of Environmental Protection and Board of Trustees of the Internal Improvement Trust Fund, Amended Petition for Administrative Hearing, OGC Case No.: 13-0065, Apr. 11, 2013.

Section 28 provides an effective date of July 1, 2013

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:

Section 4 Expanding the use of the phosphate tax for education could benefit the private sector but the benefits cannot be quantified.

Sections 5 and 24 The Special Event promoter would benefit from structuring lease fees around the actual size of the preemption and the flexibility provided for restructuring of temporary structures. The public would not benefit from this reduction because the promoter charges the vendor to participate in the event. Substantial savings are expected but cannot be calculated at this time.

Section 6 There would be a positive impact from the annual reduction or elimination of the annual fee for leases of sovereignty submerged land.

Section 7 The private sector will benefit from reduced lease fees related to docks and piers. The savings cannot be calculated at this time.

Section 9 According to the DEP, if a private sector entity is a CUP applicant, the proposed language may result in increased costs resulting from litigation. The bill envisions a WMD issuing proposed affirmative agency action for two applications, even though there is not adequate water for both. Therefore, it would appear that a private entity seeking a permit would either be forced to challenge a competing permit or be subject to such a challenge.

Section 12 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain a separate local government water well construction permit, including any required fees.

Section 13 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain any local government water well contractor licenses. It also expands the license to apply to all water systems, not just water well systems. The impact of this expansion is unknown and may create additional competition in the water systems business.

Section 14 The bill will ease some of the regulatory requirements for farm ponds, created wetlands, and certain water control districts. This will result in a positive but indeterminate affect on the private sector.

Section 15 There will be increased funds available for contamination cleanup so there could be increased participation in the program. By raising the individual facility limit, it could result in a lower number of facilities being able to take advantage of the program.

Section 16 Currently, if a person or entity is damaged as a result of a discharge or other condition of pollution covered in ss. 376.30 – 376.317, F.S., he or she has a cause of action to sue for damages. This bill limits those causes of action to situations where the offending party's activities are not regulated or authorized pursuant to ch. 403, F.S.

Section 19 According to the DEP, this legislation will save over 400 of Florida's manufacturing and industrial businesses an estimated $2 million per year. Approximately $1.4 million would be saved in Title V permit fees because they would be paying fees based on their "actual emissions" instead of their "adjusted allowable emissions." Synchronizing the Title V fee and annual operating report requirements will save the sources an additional estimated $600,000 by eliminating the need to compute and submit different emission calculations.

Section 22 The bill will provide more certainty for recovered materials dealers when applying for permits to operate with a locality. Ultimately, this will have a positive but indeterminate impact.

Section 25 The bill will have a sizeable impact on entities that wish to build natural gas pipelines in the state. The effect is indeterminate. Giving one party the option to force summary judgment could have a positive but indeterminate impact on judicial awards for parties. For parties suing the entities building natural gas pipelines, summary judgment could result in an indeterminate effect on awards.

C. Government Sector Impact:

Section 1 and 18 Electronic submissions should have an indeterminate reduction in paper costs for the DEP.

Section 4 By expanding the definition of "phosphate related expenses," local governments may have more flexibility in how they spend phosphate related fees, taxes, and penalties.

Sections 5 and 24 The fees for special event fees are calculated based on the number of event days multiplied by the annual rent, or five percent of any revenue generated from the special event, whichever is greater. The loss of revenue would be approximately $187,000 annually, based on data from seven fiscal years. The lease term would exceed the standard term of five years.

Section 7 The DEP will see a reduction in lease fees from certain private docks and piers. The negative effect on revenues is estimated at $1.24 million to the Internal Improvement Trust Fund; however, recurring revenue currently exceeds recurring expenditures by over $2 million and this recurring revenue reduction should not impact the trust fund's ability to meet department's needs. Also, this provision would require enhancement of the department's database at a cost of $13,000.

Section 8 According to the DEP, there would be costs incurred due to the rulemaking requirement, estimated at $50,000 for mooring field expansion. After the general permits are developed, there would be a revenue loss in permit fees in the Permit Fee Trust Fund. The DEP is expected to absorb any minor negative impact to permit fees with existing resources.

Section 10 According to the DEP, local governments may avoid some transactional costs associated with a permit modification.

Section 11 The DEP or a WMD could saving funds on postage if notifications are sent via electronic mail.

Section 13 Local governments would lose any fees currently charged as part of a local government requirement for obtaining a local water well contractor license.

Section 14 The exemptions for farm ponds and wetlands apply to all of Part IV of Chapter 373, F.S. These exemptions would have an insignificant fiscal impact to the department's Permit Fee Trust Fund.

Sections 17, 21, and 27 Allow stormwater utilities to collect fees from specific beneficiaries and delinquent fees as of July 1, 2013.

Section 19

Effect on the DEP

According to the DEP, the bill would enable the agency to synchronize the federally required emissions computation and reporting obligation with the Title V air operation permit fee calculation requirement. This would save the department significant time that goes into reviewing and processing two separate calculations that serve the same underlying purpose - to identify emissions.

Pursuant to s. 403.0873, F.S., all permit fees received under the DEP's federally approved Title V permitting program are deposited in the Air Pollution Control Trust Fund. Those fees must be used for the sole purpose of paying the direct and indirect costs of the DEP's Title V permitting program, which are enumerated under 40 CFR part 70. The DEP estimates that those costs to be $5.3 million in Fiscal Year 2012-2013 and that they will decline to $4.9 million by Fiscal Year 2017-2018. The trust fund reserve balance for the Title V program was $4.1 million in July 2012. With the estimated $1.4 million annual reduction in fee receipts that would occur as a result of the bill, the DEP estimates that the fund balance will increase to $4.9 million by Fiscal Year 2017-2018. This increase is related to several efficiencies that have occurred in the DEP's air program. In the event that unforeseeable circumstances arise and program costs exceed revenues, the DEP can adjust its fee by rule as provided under s. 403.0872, F.S.

Effect on Local Governments

The Title V permit fees in the Air Pollution Control Trust Fund must be used for the sole purpose of paying the direct and indirect costs of the DEP's federally approved Title V permitting program. The DEP may contract with local governments (or any other public or private entity) to perform Title V program services on its behalf. The DEP currently contracts with seven local governments to perform certain Title V program services. The above agency impact projections accommodate the maintenance of the 2012 contracts with these entities, so there are no local government impacts.

Total Revenue Impacts by Fund[48]:

Internal Improvement Trust Fund	($1.4) million (sections 5 and 7)
Air Pollution Trust Fund	($1.4) million (section 19)
Permit Fee Trust Fund	($0.05) million (section 8)
Service Charge to General Revenue	($231,200)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 15 Provisions contained in the CS conflict with provisions contained in CS/SB 1416.

VIII. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 17, 2013:

[48] Senate Subcommittee on General Government, *Senate Bill 1684 Fiscal Summary* (Apr. 18, 2013) (on file with Senate Committee on Environmental Preservation and Conservation).

- For both counties and municipalities, the bill provides clarifying language regarding requests for additional information for pending development permits and stipulates that the limit on requests for additional information does not apply to building permits.
- Clarifies that marinas with slips that are open for rent to the public are able to receive a discount of 30 percent on their annual lease fees.
- Specifies that only seawater desalination plants are protected from having their water allocation reduced.
- Clarifies that it is the DEP or a WMD that has authority to deem an application for a water application complete.
- Allows for electronic mail notification of changes to a water permit during water shortage.
- Includes local county health departments in the list of entities that may have sole responsibility for issuing well permits if authorized by the DEP.
- Clarifies that manmade, excavated farm ponds may not be altered or maintained in a way that connects or expands that farm pond to an existing wetland.
- Exempts certain water control districts from wetland or water quality regulations.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below what it is classified as.
- Clarifies that beneficiaries of stormwater utilities may be charged fees for those services and provides a cause of action for recovering those fees.
- Removes a 90 day processing deadline from the requirement for local governments to process recovered materials dealers registrations with the locality.
- Provides a cause of action for recovered materials dealers alleging a violation of the section regarding recovered materials dealers.
- Removes provisions related to a Department of Agriculture and Consumer Services regional water supply planning program.
- Ratifies certain leases by the Board of Trustees and states the legislative finding that the leases are in the public interest and not contrary to the public interest.

CS by Environmental Preservation and Conservation on April 2, 2013:

- Adds two sections related to the electronic submission of forms to the DEP, authorizing the DEP to adopt rules regarding electronic submission of forms to the DEP;
- Adds one section that expands the types of activities qualifying as "phosphate-related expenses";
- Regarding special events on sovereignty submerged lands, the bill expands the allowable period of a lease under that section of law from 30 days or less to 45 days or less. The bill also provides that the lease or consent of use should include a lease fee (if applicable) based solely on the period and size of the preemption. The lease or consent of use should also include conditions to reconfigure temporary structures within the lease area;
- Rather than amend s. 403.814, F.S., as in the original bill, the bill creates s. 403.8141, F.S. The bill expands the allowable period of leases from 30 to 45 days. The bill also removes provisions from the original bill limiting the number of seagrass studies and

removes a provision requiring an excess of 25 percent of the preempted area from a previous lease to be added to a new lease to accommodate economic expansion;
- Removes a provision stipulating that dock lease fees for standard term leases are 6 percent of the annual gross dockage income;
- Adds a section relating to the lease of sovereignty submerged lands for private residential docks. The bill provides that lease fees are not required for private residential single-family docks or private residential multifamily docks, given certain circumstances;
- Removes an existing provision directing the DEP to adopt by rule one or more general permits for local governments to construct, operate, and maintain public marina facilities in s. 373.118, F.S. The bill also removes existing provisions from s. 373.118, F.S., that limit general permits for marinas and mooring fields authorized under the general permits described in that section of statute to an area of 50,000 feet or less and that require a marina or mooring field permitted under that section of statute to obtain Clean Marina Program status prior to opening for operation and to maintain it for the life of the facility;
- Adds a provision authorizing the Board of Trustees to delegate authority to the DEP to issue leases for mooring fields under the general permit described in s. 373.118, F.S.;
- Adds a section that limits the ability of a WMD to reduce existing permitted allocations of water for drought resistant water supplies, including water desalination plants;
- Adds a provision to the bill stating that the issuance of well permits is the sole responsibility of the WMDs. The bill adds that a local government may have the responsibility for permitting water wells delegated to it;
- Removes a section from the bill defining the term "mean annual flood line";
- Removes a provision from the bill exempting water control districts operating pursuant to ch. 298, F.S., from further wetland or water quality regulations imposed pursuant to chapters 125, 163, and 166, F.S., under certain conditions;
- Adds a section that provides that cooperative water planning efforts include utility companies, private landowners, water consumers and the DACS. It also encourages municipalities, counties and special districts to create multijurisdictional water supply entities;
- Adds a section that includes "self-suppliers" to the list of entities the WMDs must help with meeting water supply needs;
- Adds a provision directing the WMDs, in developing water supply plans, to describe any adjustment or deviation from information provided by the DACS regarding agricultural water demand projections and present the original data along with the adjusted data;
- Makes changes to section 18 of the bill to conform language to CS/SB 948, regarding agricultural water supply planning;
- Removes a section from the bill regarding testing procedures for measuring deviations from water quality standards;
- Adds a section defining the term "beneficiary," as it relates to what entities a local government can collect stormwater fees from; and

- Adds a section that prevents localities from competing with recovered materials dealers when a dealer submits a registration application with the locality and that locality has it under review. It also directs localities to process such applications within 90 days.

B. Amendments:

None.

455738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment

Delete lines 470 - 473
and insert:
(15) Any independent water control district created before July 1, 2013, and operating pursuant to chapter 298 for which a valid environmental resource permit has been issued pursuant to this part is

212288

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2013	.	
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	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment

Delete lines 416 - 417
and insert:
abandonment of water wells. Issuance of well permits will be the sole


721714

576-04585-13

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to environmental regulation; amending s. 20.255, F.S.; authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees, and reports; amending ss. 125.022 and 166.033, F.S.; providing requirements for the review of development permit applications by counties and municipalities; amending s. 211.3103, F.S.; revising the definition of the term "phosphate-related expenses" to include maintenance and restoration of certain lands; amending s. 253.0345, F.S.; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; providing conditions for fees relating to such leases and letters of consent; creating s. 253.0346, F.S.; defining the term "first-come, first-served basis"; providing conditions for the discount and waiver of lease fees and surcharges for certain marinas, boatyards, and marine retailers; providing applicability; amending s. 253.0347, F.S.; providing exemptions from lease fees for certain lessees; amending s. 373.118, F.S.; deleting provisions requiring the department to adopt general permits for public marina facilities; deleting certain requirements under general permits for public marina


721714

576-04585-13

facilities and mooring fields; limiting the number of vessels for mooring fields authorized under such permits; authorizing the department to issue certain leases; amending s. 373.233, F.S.; clarifying conditions for competing applications for consumptive use of water permits; amending s. 373.236, F.S.; prohibiting water management districts from reducing certain allocations as a result of activities involving a new seawater desalination plant that does not receive funding from a water management district; providing an exception; amending s. 373.246, F.S.; allowing the governing board or the department to notify a permittee by electronic mail of any change in the condition of his or her permit during a declared water shortage or emergency; amending s. 373.308, F.S.; providing that issuance of well permits is the sole responsibility of water management districts, delegated local governments, and local county health departments; prohibiting other local governmental entities from imposing requirements and fees or establishing programs for installation and abandonment of groundwater wells; amending s. 373.323, F.S.; providing that licenses issued by water management districts are the only water well contractor licenses required for location, construction, repair, or abandonment of water wells; authorizing licensed water well contractors to install equipment for all water systems; amending s. 373.406, F.S.; exempting specified ponds and wetlands from surface water

management and storage requirements; requiring that a request for an exemption be made within a certain time period and that activities not begin until such exemption is made; exempting certain water control districts from certain wetlands regulation; amending s. 376.30713, F.S.; increasing maximum costs for preapproved advanced cleanup in a fiscal year; amending s. 376.313, F.S.; holding harmless a person who discharges pollution pursuant to ch. 403, F.S.; amending s. 403.031, F.S.; defining the term "beneficiary"; amending s. 403.061, F.S.; authorizing the department to adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees, and reports; amending s. 403.0872, F.S.; extending the payment deadline of permit fees for major sources of air pollution and conforming the date for related notice by the department; revising provisions for the calculation of such annual fees; amending s. 403.088, F.S.; revising conditions for water pollution operation permits; requiring the department to meet certain standards in making determinations; amending s. 403.0893, F.S.; authorizing stormwater utility fees to be charged to the beneficiaries of the stormwater utility; amending s. 403.7046, F.S.; providing requirements for the review of recovered materials dealer registration applications; providing that a recovered materials dealer may seek injunctive relief or damages for certain violations; amending s. 403.813, F.S.;

revising conditions under which certain permits are not required for seawall restoration projects; creating s. 403.8141, F.S.; requiring the Department of Environmental Protection to establish permits for special events; providing permit requirements; amending s. 403.973, F.S.; authorizing expedited permitting for natural gas pipelines, subject to specified certification; providing that natural gas pipelines are subject to certain requirements; ratifying and approving certain leases approved by the Board of Trustees of the Internal Improvement Trust Fund; provided findings that the decision to authorize the use of board of trustees-owned uplands and the use of those lands as set forth in certain leases is not contrary to the public interest; providing that changes made by this act to ss. 403.031 and 403.0893, F.S., apply only to stormwater utility fees billed on or after July 1, 2013, to a stormwater utility's beneficiary for services provided on or after that date; providing an effective date.

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

Section 1. Subsection (8) is added to section 20.255, Florida Statutes, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(8) The department may adopt rules requiring or incentivizing electronic submission of forms, documents, fees,

or reports required under chapter 161, chapter 253, chapter 373, chapter 376, chapter 377, or chapter 403. The rules must reasonably accommodate technological or financial hardship and must provide procedures for obtaining an exemption due to such hardship.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (4), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164 but does not include building permits.

(4) For any development permit application filed with the county after July 1, 2012, a county may not require as a

condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(5) Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such a disclaimer to the issuance of a development permit and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection

(4), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164 but does not include building permits.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality may attach such a disclaimer to the issuance of development permits and may

include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Paragraph (c) of subsection (6) of section 211.3103, Florida Statutes is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(6)

(c) For purposes of this section, "phosphate-related expenses" means those expenses that provide for infrastructure or services in support of the phosphate industry, including environmental education, reclamation or restoration of phosphate lands, maintenance and restoration of reclaimed lands and county owned environmental lands which were formerly phosphate lands, community infrastructure on such reclaimed lands and county owned environmental lands which were formerly phosphate lands, and similar expenses directly related to support of the industry.

Section 5. Section 253.0345, Florida Statutes, is amended to read:

253.0345 Special events; submerged land leases.—

(1) The trustees may ~~are authorized to~~ issue leases or letters of consent ~~consents of use or leases~~ to riparian landowners, special ~~and~~ event promoters, and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged

lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned ~~government owned~~ upland property. Riparian owners of adjacent uplands who are not seeking a lease or letter of consent ~~of use~~ shall be notified by certified mail of any request for such a lease or letter of consent before ~~of use prior to~~ approval by the trustees. The trustees shall balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether ~~if~~ a lease or letter of consent ~~of use~~ should be executed over the objection of adjacent riparian owners. This section does ~~shall~~ not apply to structures for viewing motorboat racing, high-speed motorboat contests, or high-speed displays in waters where manatees are known to frequent.

(2) A lease or letter of consent for a ~~Any~~ special event under ~~provided for in~~ subsection (1):

(a) Shall be for a period not to exceed 45 ~~30~~ days and a duration not to exceed 10 consecutive years.

(b) Shall include a lease fee, if applicable, based solely on the period and actual size of the preemption and conditions to allow reconfiguration of temporary structures within the lease area with notice to the department of the configuration and size of preemption within the lease area.

(c) The lease or letter of consent ~~of use~~ may ~~also~~ contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

(3) ~~Nothing in~~ This section does not ~~shall be construed to~~ allow any lease or letter of consent ~~of use~~ that would result in harm to the natural resources of the area as a result of the structures or the activities of the special events agreed to.

Section 6. Section 253.0346, Florida Statutes, is created to read:

253.0346 Lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.—

(1) For purposes of this section, the term "first-come, first-served basis" means the facility operates on state-owned submerged land for which:

(a) There is not a club membership, stock ownership, equity interest, or other qualifying requirement.

(b) Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

(2) For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a discount of 30 percent on the annual lease fee shall apply if dockage rate sheet publications and dockage advertising clearly state that slips are open for rent to the public on a first-come, first-served basis.

(3) For a facility designated by the department as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program:

(a) A discount of 10 percent on the annual lease fee shall apply if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

(b) Extended-term lease surcharges shall be waived if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

4. Is available to the public on a first-come, first-served basis.

(c) If the facility is in arrears on lease fees or fails to comply with paragraph (b), the facility is not eligible for the discount or waiver under this subsection until arrears have been paid and compliance with the program has been met.

(4) This section applies to new leases or amendments to leases effective after July 1, 2013.

Section 7. Paragraphs (e) and (f) are added to subsection (2) of section 253.0347, Florida Statutes, to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)

(e) A lessee of sovereignty submerged land for a private residential single-family dock designed to moor up to four boats is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody or the square footage authorized for a private residential single-family dock under rules adopted by the Board of Trustees of the Internal Improvement Trust Fund for the management of sovereignty submerged lands, whichever is greater.

(f) A lessee of sovereignty submerged land for a private

residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily development.

Section 8. Subsection (4) of section 373.118, Florida Statutes, is amended to read:

373.118 General permits; delegation.—

(4) The department shall adopt by rule one or more general permits for local governments to construct, operate, and maintain ~~public marina facilities,~~ public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. Such general permits adopted by rule shall include provisions to ensure compliance with part IV of this chapter, subsection (1), and the criteria necessary to include the general permits in a state programmatic general permit issued by the United States Army Corps of Engineers under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq. A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities shall be consistent with the local government manatee protection plan required pursuant to chapter 379 ~~and shall obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility~~. ~~Marinas and mooring fields authorized under any such general permit shall not exceed an area of 50,000 square feet over~~

~~wetlands and other surface waters~~. Mooring fields authorized under such general permits may not exceed 100 vessels. All facilities permitted under this section shall be constructed, maintained, and operated in perpetuity for the exclusive use of the general public. The Board of Trustees of the Internal Improvement Trust Fund may delegate to the department authority to issue leases for mooring fields that meet the requirements of permits issued under this subsection. The department shall initiate the rulemaking process within 60 days after the effective date of this act.

Section 9. Subsection (1) of section 373.233, Florida Statutes, is amended to read:

373.233 Competing applications.—

(1) If two or more applications that ~~which~~ otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or that ~~which~~ for any other reason are in conflict, and the water management district or department has deemed the applications complete, the governing board or the department has ~~shall have~~ the right to approve or modify the application that ~~which~~ best serves the public interest.

Section 10. Subsection (4) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the

term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection are ~~shall~~ not ~~be~~ subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. In order to promote the sustainability of natural systems through the diversification of water supplies through the development of seawater desalination plants, a water management district shall not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a new seawater desalination plant that does not receive funding from a water management district. Except as expressly provided herein, nothing in this subsection may ~~shall not~~ be construed to alter a district's ~~limit the~~ existing authority ~~of the department or the governing board~~ to modify ~~or revoke~~ a consumptive use permit pursuant to chapter 373.

Section 11. Subsection (6) of section 373.246, Florida Statutes, is amended to read:

373.246 Declaration of water shortage or emergency.—

(6) The governing board or the department shall notify each permittee in the district by electronic mail or regular mail of

any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on the permittee's use of water for the duration of the water shortage.

Section 12. Subsection (1) of section 373.308, Florida Statutes, is amended to read:

373.308 Implementation of programs for regulating water wells.—

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from the department, issuance of well permits will be the sole responsibility of the water management district, delegated local government, or local county health department. Other local governmental entities may not impose additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13. Subsections (1) and (10) of section 373.323, Florida Statutes, are amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business. Licensure under this part by a water management district shall be the only water well contractor license required for the location, construction,

repair, or abandonment of water wells in the state or any political subdivision thereof.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water ~~well~~ systems.

Section 14. Subsections (13) through (15) are added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to the construction, alteration, operation, or maintenance of any wholly owned, manmade, excavated farm ponds, as defined in s. 403.927, constructed entirely in uplands. Alteration or maintenance may not involve any work to connect the farm pond to, or expand the farm pond into, other wetlands or other surface waters.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. Requests to qualify for this exemption must be made within 7 years after the cause of such unauthorized flooding or unauthorized interference with the natural flow of surface water and must be submitted in writing to the district or department. Such activities may not begin without a written determination from the district or

department confirming that the activity qualifies for the exemption. This exemption does not expand the jurisdiction of the department or water management districts and does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under section 404 of the Clean Water Act, 33 U.S.C. s. 1344.

(15) Any independent water control district created and operating pursuant to chapter 298 for which a valid environmental resource permit or management and storage of surface waters permit has been issued pursuant to this part is exempt from further wetlands regulations imposed pursuant to chapters 125, 163, and 166.

Section 15. Subsection (4) of section 376.30713, Florida Statutes, is amended to read:

376.30713 Preapproved advanced cleanup.—

(4) The department is authorized to enter into contracts ~~contract~~ for a total of up to $15 ~~$10~~ million of preapproved advanced cleanup work in each fiscal year. However, no facility shall be preapproved for more than $5 million ~~$500,000~~ of cleanup activity in each fiscal year. For the purposes of this section the term "facility" shall include, but not be limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 16. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause

of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 which was not authorized pursuant to chapter 403. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

Section 17. Subsection (22) is added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Beneficiary" means any person, partnership, corporation, business entity, charitable organization, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law.

Section 18. Subsection (43) is added to section 403.061,

Florida Statutes, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(43) Adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, or reports required under chapter 161, chapter 253, chapter 373, chapter 376, chapter 377, or this chapter. The rules must reasonably accommodate technological or financial hardship and provide procedures for obtaining an exemption due to such hardship.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 19. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit

for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April ~~March~~ 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall apply only to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in ~~(except carbon monoxide) allowed to be emitted per hour by specific condition of~~ the source's most recent construction or operation permit~~, times the annual hours of operation allowed by permit condition~~; provided,

however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

~~2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.~~

~~3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.~~

~~4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.~~

~~5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the United States Environmental Protection Agency under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the department for purposes of this section.~~

2.~~6.~~ The amount of each regulated air pollutant in excess of 4,000 tons per year ~~allowed to be~~ emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3.~~7.~~ If the department has not received the fee by March 1 ~~February 15~~ of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April ~~March~~ 1. If the fee is not postmarked by April ~~March~~ 1

of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4.~~8.~~ Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

5.~~9.~~ Notwithstanding the provisions of s. 403.087(6)(a)5.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit

program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 20. Paragraph (b) of subsection (2) of section 403.088, Florida Statutes, is amended to read:

403.088 Water pollution operation permits; conditions.—

(2)

(b)1. If the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. The department may not use the results from a field procedure or laboratory method to make such a finding or to determine facility compliance unless the field procedure or laboratory method has been adopted by rule or noticed and approved by department order pursuant to department rule. Field procedures and laboratory methods must satisfy the quality assurance requirements of department rule and must produce data of known and verifiable quality. The results of field procedures and laboratory methods shall be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

2. If the department finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it may issue an operation

permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest.

Section 21. Section 403.0893, Florida Statutes, is amended to read:

403.0893 Stormwater funding; dedicated funds for stormwater management.—In addition to any other funding mechanism legally available to local government to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3). Stormwater utility fees adopted pursuant to this subsection may be charged to the beneficiaries of a stormwater utility. If stormwater utility fees charged to a beneficiary of a stormwater utility are not paid when due, the county or municipality may file suit in a court of competent jurisdiction or utilize any lawful method to collect delinquent fees;

(2) Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3); or

(3) Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, one or more stormwater management system benefit areas. All property owners within said area may be assessed a per acreage fee to fund the planning, construction, operation, maintenance, and administration of a

public stormwater management system for the benefited area. Any benefit area containing different land uses which receive substantially different levels of stormwater benefits shall include stormwater management system benefit subareas which shall be assessed different per acreage fees from subarea to subarea based upon a reasonable relationship to benefits received. The fees shall be calculated to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems called for in the local program required pursuant to s. 403.0891(3). For fees assessed pursuant to this section, counties or municipalities may use the non-ad valorem levy, collection, and enforcement method as provided for in chapter 197.

Section 22. Paragraph (b) of subsection (3) of section 403.7046, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

403.7046 Regulation of recovered materials.—

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator’s right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial

establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b) Before ~~Prior to~~ engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government before ~~prior to~~ engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. A local government may not use the registration information to compete with the recovered materials dealer until 90 days after the registration information is submitted. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials

reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules adopted ~~promulgated~~ pursuant thereto.

(4) A recovered materials dealer, or an association whose members include recovered materials dealers, may initiate an action for injunctive relief or damages for alleged violations of this section. The court may award to the prevailing party or parties reasonable attorney fees and costs.

Section 23. Paragraph (e) of subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, nothing in this

subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches ~~1 foot~~ waterward of, their previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

Section 24. Section 403.8141, Florida Statutes, is created to read:

403.8141 Special event permits.—The department shall issue permits for special events under s. 253.0345. The permits must be for a period that runs concurrently with the lease or letter of consent issued pursuant to s. 253.0345 and must allow for the movement of temporary structures within the footprint of the lease area.

Section 25. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraph (g) is added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects to construct interstate natural gas pipelines

subject to certification by the Federal Energy Regulatory Commission are eligible for the expedited permitting process.

(14)

(b) Projects identified in paragraph (3)(f) or paragraph (3)(g) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 26. (1) The Legislature ratifies and approves the actions of the Board of Trustees of the Internal Improvement Trust Fund regarding lease numbers 1447, 1971S, 3420, 3433, and

3543, and lease numbers 3422 and 1935/1935-S as approved on January 23, 2013, subject to the terms and conditions established by the board of trustees as approved on January 23, 2013.

(2) The Legislature finds that the decision to authorize the use of board of trustees-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest; that it is in the public interest to waive the competitive bid process; that the leases are not standard agricultural leases; and that such leases should be amended on the terms and conditions as approved by the board of trustees.

(3) Notwithstanding any other provision of law, the Legislature finds that the lease amendments and extensions approved by the board of trustees are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.

Section 27. The changes made by this act to ss. 403.031 and 403.0893 apply only to stormwater utility fees billed on or after July 1, 2013, to a beneficiary of a stormwater utility for services provided on or after that date.

Section 28. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 1684
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Altman
SUBJECT:	Environmental Regulation
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Weidenbenner	Halley	AG	**Favorable**
3.	Howard	DeLoach	AGG	**Fav/CS**
4.	Howard	Hansen	AP	**Fav/CS**
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 1684 makes changes to environmental regulation and permitting statutes.

The bill has a fiscal impact to several trust funds within the Department of Environmental Protection. See Section V.

The bill:

- Provides that the Department of Environmental Protection (DEP) may adopt rules for the electronic submission of forms, documents, fees or reports.
- Provides that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. It also provides that prior to the third request; a permittee should be offered a meeting to resolve outstanding issues. It allows a permittee to request a final decision on the application if he or she believes the request for

additional information is not supported by any legal authority. Lastly, it stipulates that development permits do not include building permits.

- Provides for an expansion of the definition of "phosphate-related expenses".
- Provides that the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) is authorized to issue leases or consents of use to special event promoters and boat show owners to allow for the installation of temporary structures. The lease or consent of use must include appropriate lease fees and must be for a period not to exceed 45 days and for a duration not to exceed 10 consecutive years.
- Authorizes the DEP to establish general permits for special events relating to boat shows.
- Defines "first-come, first-served basis" as it relates to marinas, provides requirements for the calculation of lease fees for certain marinas, and provides conditions for the discount and waiver of lease fees for certain marinas, boatyards, and marine retailers.
- Provides for the waiver of lease fees for private residential docks and piers over sovereignty submerged lands.
- Provides general permits for local governments to construct certain mooring fields and places a limit on the size of mooring fields.
- Provides that if two or more consumptive use permit (CUP) applications are complete and in conflict, the DEP or WMD may then approve or modify the application that best serves the public interest.
- Provides that permitted water allocations may not be changed under certain circumstances with respect to seawater desalination plants;
- Provides for electronic mail notification of restrictions or changes to permitted water use in the case of a water shortage or emergency.
- Provides that the issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or local county health department, and prohibits government entities from imposing duplicative requirements and fees associated with the installation and abandonment of groundwater wells.
- Provides that licensure of water well contractors by a WMD must be the only water well construction license required for the construction, repair or abandonment of water wells in the state or any political subdivision.
- Exempts certain ponds, ditches and wetlands from regulatory requirements.
- Exempts certain independent water control districts created before July 1, 2013, from further wetlands regulations.
- Increases the funds available to DEP to contract for preapproved advanced cleanup work and increases the preapproval amount for contracting with a single facility.
- Provides that a person can bring a cause of action for damages resulting from a discharge of certain types of pollution if not regulated or authorized pursuant to ch. 403, F.S..
- Defines "beneficiary" as it relates to the entities from which a local government may collect stormwater fees, provides for the collection of stormwater utility fees from beneficiaries, and clarifies that the provisions only apply to fees billed on or after July 1, 2013.
- Provides that the DEP may adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees or reports.
- Extends the payment deadline for permit fees for major sources of air pollution and directs that fees must be based on actual emissions and not permitted emissions.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below their existing classification.

- Provides that local governments may not compete with recovered materials dealers for 90 days while an application for engaging in business is pending with the locality and provides relief for a violation of that provision.
- Provides for expedited permitting of interstate natural gas pipelines.
- Provides that a permit is not required for the restoration of seawalls at their previous locations or upland of their previous locations, or within 18 inches, instead of 12 inches, waterward of their previous locations; and
- Ratifies certain leases of land by the Board of Trustees in the Everglades Agricultural Area and provides that the leases are in the public interest and are not contrary to the public interest.

This bill substantially amends the following sections of the Florida Statutes: 20.255, 125.022, 166.033, 211.3103, 253.0345, 253.0347, 373.118, 373.233, 373.236, 373.246, 373.308, 373.323, 373.406, 376.30713, 376.313, 403.031, 403.061, 403.0872, 403.088, 403.0893, 403.7046, 403.813, and 403.973.

The bill creates sections 253.0346 and 403.8141, Florida Statutes.

II. Present Situation:

The statutes affected by this bill are diverse. The present situation of each area affected by the bill will be addressed in Section III – Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 and 18 amend ss. 20.255 and 403.061, F.S., relating to the electronic submission of forms to the DEP.

Present Situation

Section 20.255, F.S., creates the DEP and provides for its organizational structure.
Section 403.061, F.S., authorizes the DEP to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it.

The DEP currently accepts certain types of permit applications on-line. In addition, Florida's five WMDs have developed a shared permitting portal. This portal is designed to direct the user to the appropriate WMD website for obtaining information regarding permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common relate to how much water is used (consumptive use permitting), the construction of wells (well construction permitting), and how new development affects water resources (environmental resource permitting).

Effect of Proposed Changes

The bill amends ss. 20.255 and 403.061, F.S., authorizing the DEP to adopt rules requiring or incentivizing electronic submission of any form, document, fee, or report required under ch. 161, F.S., (relating to beach and shore preservation), ch. 253, F.S., (relating to state lands), ch. 373,

F.S., (relating to water resources), ch. 376, F.S., (relating to pollutant discharge prevention and removal), ch. 377, F.S., (relating to energy resources), or ch. 403, F.S., (relating to environmental control).

Sections 2 and 3 amend ss. 125.022 and 163.033, F.S., respectively, relating to development permits.

Present Situation

A development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[1] Pursuant to ss. 125.022 and 166.033, F.S., when a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.

For any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring, as a condition of processing or issuing a development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit. The issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county or municipality can attach such a disclaimer to the issuance of a development permit and can include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development. This does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Effect of Proposed Changes

The bill amends ss. 125.022 and 163.033, F.S., providing that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county (section 2) or the municipality (section 3) is directed to offer a meeting to try to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at the applicant's request, must proceed with processing the application. These sections do not apply to building permits.

Section 4 amends s. 211.3103, F.S., expanding activities qualifying as "phosphate-related expenses."

[1] Section 163.3164(16), F.S.

Present Situation

Pursuant to s. 211.3103, F.S., an excise tax is levied upon each person engaging in the business of severing phosphate rock from the soils or waters of this state for commercial use. The tax rate is $1.61 per ton severed, except for the time period from January 1, 2015, until December 21, 2022, when it is $1.80 per ton severed.

The proceeds of all taxes, interest and penalties imposed under this section of law are paid into the State Treasury as follows:

- To the credit of the Conservation and Recreation Lands Trust Fund: 25.5 percent.
- To the credit of the General Revenue Fund of the state: 35.7 percent.
- For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 12.8 percent.
- For payment to counties that have been designated as a rural area of critical economic concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 10 percent.

Any such proceeds received by a county must be used only for phosphate-related expenses.

Section 211.3103(6)(c), F.S., defines "phosphate-related expenses" as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Effect of Proposed Changes

The bill amends s. 211.3103, F.S., to expand the activities that qualify as "phosphate-related expenses" to include environmental education, maintenance and restoration of reclaimed lands and county-owned environmental lands which were formerly phosphate lands, and community infrastructure on county owned environmental lands that were formerly phosphate lands.

Sections 5 and 24 amend s. 253.0345, F.S., and create s. 403.8141, F.S., respectively, relating to special events on sovereignty submerged lands.

Present Situation

The Board of Trustees may authorize the use of sovereignty submerged lands for special events. The Board of Trustees is authorized to issue "consents of use" or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings and access walkways on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government owned upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use must be notified by certified mail of any request for such a lease or consent of use prior to approval by the Board of Trustees. The Board of Trustees must balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether a lease or consent of use should be executed over the objection of adjacent

riparian owners. This does not apply to structures for viewing motorboat racing, high-speed motorboat contests or high-speed displays in waters that manatees are known to frequent.[2]

The Board of Trustees' rules contain three classifications for special events:

- Class II Special Events are events of 30 days or less involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline along the affected sovereignty submerged land. These activities require a letter of consent from the DEP but no lease.[3]
- Class III Special Events are single events involving the construction of 50 or fewer new slips or a preempted area of 50,000 square feet or less. A lease is required and the term of the lease is limited to 30 days or less.[4]
- Class IV Special Events are events that do not qualify as Class III events or are events authorized to be conducted more than once during the lease term. A lease is required and the term of the lease may be up to five years.[5]

Any special event must be for 30 days or less. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should both the promoter or riparian owner fail to do so within the time specified in the agreement.[6]

Effect of Proposed Changes

Section 5 of the bill amends s. 253.0345, F.S., to provide that the Board of Trustees is authorized to issue leases or consents of use to special event promoters and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. A lease or consent of use for a special event under this section must include an exemption from lease fees and must be for a period of 45 days or less and for a duration of 10 consecutive years or less.

Section 23 of the bill creates s. 403.8141, F.S., directing the DEP to issue permits for special events as defined in s. 253.0345, F.S. The permits must be for a period that runs concurrently with the letter of consent or lease issued and must allow for the movement of temporary structures within the footprint of the lease area.

Sections 6 and 7 create s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers and amend s. 253.0347, F.S., relating to regarding the lease of sovereignty submerged lands for private residences, respectively.

[2] *See* s. 253.0345, F.S. *See also* Rule 18-21.0082, F.A.C., for information required on applications for leases or consents of use and for provisions concerning limitations on consents of use and leases, depending on the type of event.
[3] Rule 18-21.005(1)(c)17., F.A.C.
[4] Rule 18-21.005(1)(d)10., F.A.C.
[5] Rule 18-21.005(1)(d)11., F.A.C.
[6] Rule 18-21.0082(2)(c), F.A.C.

Present Situation

The Board of Trustees is responsible for the administration and disposition of the state's sovereignty submerged lands. [7] It has the authority to adopt rules and regulations pertaining to anchoring, mooring or otherwise attaching to the bottom. Waterfront landowners must receive the Board of Trustees' authorization to build docks and related structures on sovereignty submerged lands. The DEP administers all staff functions on the Board of Trustees' behalf.

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing and others as defined by law.[8] Riparian landowners must obtain the Board of Trustees' authorization for installation and maintenance of docks, piers and boat ramps on sovereignty submerged land.[9] Under the Board of Trustees' rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[10]

Authorization may be by rule, letter of consent, or lease.[11] All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.[12]

The Board of Trustees has promulgated detailed rules regulating the design of docks and related structures, including determining whether a lease is required and setting the amount of lease fees.[13] The DEP determines whether a lease is required for a person to build a dock or related structure on sovereignty submerged lands based on a number of factors including:

- Location within or outside of an aquatic preserve;
- Area of sovereignty submerged land preempted;
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue; and
- Whether the dock is for "private residential" or other uses.

A property owner who is required to obtain a lease to build a dock or related structure must follow the lease terms and pay applicable fees. Currently, the standard lease term is five years, and sites under lease must be inspected once every five years. Annual lease fees for standard term leases are calculated through a formula based on annual income, square footage or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated like standard lease fees but with

[7] Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.
[8] *See* s. 253.141(1), F.S.
[9] Rule 18-21.005(1)(d), F.A.C.
[10] *See* Rules 18-20.003(2) and (19), F.A.C.
[11] Rule 18-21.005(1), F.A.C.
[12] Rule 18-21.008(1)(b)(2), F.A.C.
[13] *See* Rules 18-20 and 18-21, F.A.C.

a multiplier for the term in years. Site inspections are conducted at least once every five years by the DEP or a WMD to determine compliance with lease conditions.[14]

When determining whether to approve or deny uses for sovereignty submerged land leases, the Board of Trustees must consider whether such uses pass a public interest test. "Public interest" is defined as:

> [T]he demonstrable environmental, social and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands, or severance of materials from sovereignty lands, the Board of Trustees must consider the ultimate project and purpose to be served by said use, sale, lease or transfer of lands or materials.[15]

There are currently three categories of leases identified in Rule 18-21.008, F.A.C.:

- Standard leases are for terms of five years with the exception of leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, which are for ten years.
- Extended Term leases are those with terms in excess of standard leases and are available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
  - Facilities or activities that provide public access;
  - Facilities constructed, operated, or maintained by government or funded by government secured bonds; and
  - Facilities that have other unique operational characteristics as determined by the Board of Trustees.

Florida Clean Marina Program

The Florida Clean Marina Program is a voluntary designation program. Participants receive assistance in implementing best management practices through on-site and distance technical assistance, mentoring by other Clean Marinas and continuing education. To become designated as a Clean Marina, facilities must implement a set of environmental measures designed to protect Florida's waterways. These measures address critical environmental issues such as sensitive habitat, waste management, stormwater control, spill prevention and emergency preparedness.[16]

The Florida Clean Boatyard Program is a voluntary designation program that encourages boatyards to implement environmentally conscious practices. Measures include using dustless sanders, recycling oil and solvents, and re-circulating pressure wash systems to recycle wastewater.[17]

[14] Rule 18-21.008(1)(b)4., F.A.C.
[15] Rule 18-21.003(51), F.A.C.
[16] DEP, *About Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/about.htm (last visited Mar. 29, 2013).
[17] *Id.*

The Florida Clean Marine Retailer Program is a voluntary designation program that encourages marine retailers to educate boaters by providing information to those who purchase vessels on clean boating practices. A Clean Marine Retailer also employs environmental best management practices in its boat and engine service operations and facilities.[18]

As of June 21, 2012, there were 263 designated Clean Marinas, 38 Clean Boatyards and 17 Clean Marine Retailers in Florida.[19]

Effect of Proposed Changes

Section 6 of the bill creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers. The bill defines "first-come, first-served basis" to mean the facility operates on state-owned submerged land for which:

- There is no club membership, stock ownership, equity interest, or other qualifying requirement; and
- Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a 30 percent discount on the annual lease fee must apply if dockage rate sheet publications and dockage advertising clearly state the slips are open for rent to the public on a first-come, first-served basis.

For a facility designated by the DEP as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program, the following requirements apply:

- A 10 percent discount on the annual lease fee must apply if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease; and
  - Does not change use during the term of the lease.
- Extended term lease surcharges must be waived if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease;
  - Does not change use during the term of the lease; and
  - Is available to the public on a first-come, first-served basis.

If the facility has unpaid lease fees or fails to comply with this section, the facility is not eligible for the discount or waiver under this section until the debts have been paid and compliance with the program has been met.

This section only applies to new leases or amendments to leases effective after July 1, 2013.

[18] *Id.*
[19] DEP, *Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/ (last visited Mar. 29, 2013).

Section 7 of the bill provides that lease fees are not required for:

- Private residential single-family docks designed to moor up to four boats so long as the preempted area is equal to or less than 10 times the distance along the riparian shoreline or the square footage allowed for private residential single-family docks under rules adopted by the Board of Trustees, whichever is greater.
- Private residential multi-family docks designed to moor boats up to the number of units within the development that are equal to or less than 10 times the riparian shoreline along the sovereignty submerged land on the affected waterbody multiplied by the number of units with docks in the development.

Section 8 amends s. 373.118, F.S., relating to general permits for marine facilities built by local governments.

Present Situation

Section 373.118(4), F.S., directs the DEP to adopt one or more general permits for local governments to construct, operate and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks and parking facilities located in uplands. A facility authorized under these general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities must be consistent with the local government manatee protection plan required pursuant to ch. 379, F.S., must obtain Clean Marina Program Status prior to opening for operation, and must maintain that status for the life of the facility. Marinas and mooring fields authorized under a general permit cannot exceed an area of 50,000 square feet over wetlands and other surface waters.

Effect of Proposed Changes

The bill amends s. 373.118(4), F.S., removing a provision directing the DEP to adopt rules for one or more general permits for local governments to construct, operate and maintain public marina facilities. The bill removes a provision that local government facilities permitted under s. 373.118(4), F.S., must obtain Clean Marina Program status before opening for operation and must maintain that designation for the life of the facility. The bill also removes a provision limiting such facilities to 50,000 square feet over wetlands and other surface waters.

The bill adds a provision limiting mooring fields permitted under s. 373.118(4), F.S., to 100 vessels and it adds a provision authorizing the Board of Trustees to delegate to the DEP the ability to issue leases for mooring fields that meet the requirements of the general permit per s. 373.118(4), F.S.

Section 9 amends s. 373.233, F.S., relating to consumptive use permitting.

Present Situation

A CUP establishes the duration and type of water an entity may use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with

the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as the "three-prong test." Specifically, the proposed water use:

- Must be a "reasonable-beneficial use," as defined in s. 373.019, F.S.;
- Must not interfere with any presently existing legal use of water; and
- Must be consistent with the public interest.[20]

Section 373.233, F.S., provides that if two or more complete applications that otherwise comply with the provisions of Part II of ch. 373, F.S., are pending for a quantity of water that is inadequate for both or all applications, or that are in conflict for any other reason, the governing board of the DEP or the WMD has the right to approve or modify the application which best serves the public interest.

The Three Prong Test

"Reasonable-beneficial use," the first prong of the test, is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."[21] The Legislature has declared water a public resource. Therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other demands.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and water management needs.[22] These criteria include consideration of the quantity of water requested; the need, purpose and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[23]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[24] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[25]

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[20] Section 373.223(1)(a-c), F.S.
[21] Section 373.019(16), F.S. *See also* Rule 62-410(2), F.A.C., for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.
[22] *See* Rule 62-40, F.A.C.
[23] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).
[24] Section 373.223(1)(b), F.S.
[25] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[26] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the particular WMD or the DEP gives preference to renewal applications.[27]

Effect of Proposed Changes

The bill amends s. 373.233, F.S., to provide that where there are competing CUP applications and a WMD or the DEP has deemed the applications complete, the governing board of a WMD or the DEP has the right to approve or modify the application which best serves the public interest.

Section 10 amends s. 373.236, F.S., relating to the duration of CUPs.

Present Situation

Section 373.236(1), F.S., provides that CUPs must be granted for a period of 20 years if:

- Requested by the applicant; and
- There is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.

If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or DEP may require a permittee to produce a compliance report every 10 years. A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

[26] *Supra* note 23.
[27] *See* s. 373.233, F.S.

Effect of Proposed Changes

The bill amends s. 373.236, F.S., to provide that in order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a WMD may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a seawater desalination plant unless the reduction is a condition of a permit or funding agreement with the WMD. Except as otherwise provided, this does not limit the existing authority of DEP or the governing board of a WMD to modify or revoke a CUP.

Section 11 amends s. 373.246, F.S., relating to declarations of water shortages or emergencies.

Present Situation

Section 373.246, F.S., provides direction for the governing board of a WMD or the DEP during a water shortage. The section, among other things, requires the formulation of a plan for periods of water shortage, allows for the imposition of restrictions on water use, provides for notice to those residing in the areas affected by the water shortage, and provides for the rescission of a declaration of a water shortage.

Effect of Proposed Changes

The bill amends s. 373.246, F.S., to allow a WMD governing board or the DEP to notify permittees by electronic mail of any change in the condition of their permits or any suspension of their permits or any other restriction on permittees' use of water for the duration of the water shortage. This is in addition to the existing option of making such notification by regular mail.

Section 12 amends s. 373.308, F.S., relating to well permits issued by water management districts.

Present Situation

Section 373.308, F.S., directs the DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair and abandonment of water wells. The DEP may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or part of the state. Some local governments also have certain ordinances pertaining to water wells, which have resulted in duplicative regulation at the state and local level.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to provide that upon authorization from the DEP, issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or a local county health department, and that other government entities may not impose additional or duplicate requirements or fees, or establish a separate program for permitting the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13 amends s. 373.323, F.S., relating to licenses for water well contractors.

Present Situation

Any person that wishes to engage in business as a water well contractor must obtain a license from a WMD. Each person must apply to take the licensure examination and the application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. An applicant must:

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells; and
- Show certain proof of experience.[28]

Section 373.323(11), F.S., provides that licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water well systems.

Effect of Proposed Changes

The bill amends s. 373.323, F.S., to provide that licensure under this section by a WMD must be the only water well construction license required for the construction, repair, or abandonment of water wells in the state or any political subdivision.

The bill also expands the types of systems that licensed water well contractors may install pumps, tanks, and water conditioning equipment on. The bill changes the systems water well contractors can work on from "water well systems" to "water systems."

Section 14 amends s. 373.406, F.S., relating to surface water management and storage.

Present Situation

Part IV of ch. 373, F.S., provides for the management and storage of surface water. Part IV also establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the DEP and the WMDs for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, and appurtenant work and works. Individually and collectively these terms are referred to as "surface water management systems."

Certain activities are exempt by statute from the need to obtain an ERP under state law or by agency rule. Section 373.406, F.S., provides for several exemptions from the regulatory requirements in ch. 373, F.S. The DEP's rules also provide for certain exemptions and general

[28] Section 373.323, F.S.

permits for certain activities that cause only minimal individual and cumulative adverse impacts to wetlands and other surface waters. Some examples of exempt activities are:

- Construction, repair, and replacement of private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair, and replacement of seawalls and riprap in artificial waterways;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of noticed general permits for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These include, but are not limited to, the following:

- Construction and modification of boat ramps of certain sizes;
- Installation and repair of riprap at the base of existing seawalls;
- Installation of culverts associated with stormwater discharge facilities; and
- Construction and modification of certain utility and public roadway construction activities.

Anything that does not specifically qualify for an exemption or noticed general permit typically requires an ERP permit.

Effect of Proposed Changes

The bill amends s. 373.406, F.S., to include the following exemptions from regulation under Part IV of ch. 373, F.S.:

- Construction, operation, or maintenance of any wholly owned, manmade ponds or drainage ditches constructed entirely in uplands as long as any alteration or maintenance does not involve any work to connect the pond to, or expand the farm into, other wetlands or surface waters;
- Activities affecting wetlands created solely by the unreasonable and negligent flooding or interference with the natural flow or surface water caused by an adjoining landowner. Requests to qualify for the exemption must be submitted in writing to a WMD or the DEP within seven years after the cause of the unauthorized flooding or diversion occurred. Such activities may not begin before a WMD or DEP confirms in writing that the activity qualifies for the exemption; and
- Any water control district created before July 1, 2013, and operating pursuant to ch. 298, F.S., for which a valid ERP or management and storage of surface waters permit has been issued pursuant to Part IV of ch. 373, F.S., is exempt from further wetlands regulations imposed pursuant to local government regulation under chs. 125, 163, and 166, F.S.

Section 15 amends s. 376.30713, F.S., relating to preapproved advanced cleanup of contaminated sites.

Present Situation

The Preapproved Advanced Cleanup Program is a cost-sharing program designed to provide an opportunity for site rehabilitation, on a limited basis, at contaminated sites in advance of their priority ranking in order to facilitate property transfers or public works projects.[29] Consideration for the program is through an application to the DEP. Applications must contain:

- A commitment to pay no less than 25 percent of total cleanup cost;
- A review fee of $25;
- A limited contamination assessment report; and
- A proposed course of action.[30]

If approved for the program, the applicant enters into a contract with the DEP. If the terms of the preapproved advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.[31]

The DEP is allowed to enter into contracts with approved entities for a total of $10 million of preapproved advanced cleanup work each fiscal year and no facility may be preapproved for more than $500,000.[32]

Effect of Proposed Changes

The bill raises the total funds available for preapproved advanced cleanup work each fiscal year from $10 million to $15 million, and it raises the amount any one facility may be approved for from $500,000 to $5 million.

Section 16 amends s. 376.313, F.S., relating to the nonexclusiveness of remedies and individual causes of action for damages under ss. 376.30 to 376.317, F.S.

Present Situation

Section 376.313(3), F.S., provides that nothing contained in ss. 376.30-376.317, F.S., (relating to petroleum storage discharges, dry cleaning facilities, and wholesale supply facilities) prohibits any person from bringing a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by the referred to sections.

Effect of Proposed Changes

The bill amends s. 376.313(3), F.S., to provide that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S., that is not regulated or authorized pursuant to ch. 403, F.S. (relating to environmental control policies that conserve state water, protect and improve water quality for

[29] DEP, *Preapproved Advanced Cleanup Program (PAC)*, www.dep.state.fl.us/waste/categories/pcp/pages/pac.htm (last visited Apr. 18, 2013).
[30] Section 376.30713(2)(a), F.S.
[31] Section 376.30713(3)(b), F.S.
[32] Section 373.30713(4), F.S.

consumption, and maintain air quality to protect human health). This serves to limit the causes of action currently available under s. 376.313, F.S.

Sections 17, 21 and 27 amend ss. 403.031 and 403.0893, F.S., and creates an unnumbered section of law, respectively, regarding stormwater utility fees.

Present Situation

Section 403.031, F.S., provides definitions for ch. 403, F.S. Section 403.0893, F.S., provides that a county or municipality may:

- Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.;
- Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.; or
- Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, F.S., one or more stormwater management system benefit areas.

Effect of Proposed Changes

Section 17 of the bill amends s. 403.031, F.S., to provide a definition for the term "beneficiary" to mean "any person, partnership, corporation, business entity, charitable organizations, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law." Those entities listed here are responsible for paying stormwater fees assessed by a local government. This definition will make clear the entities from which a local government can collect stormwater fees.

Section 21 of the bill amends s. 403.0893, F.S. to provide that stormwater utility fees may be charged to the beneficiaries of a stormwater utility, and it provides for the collection of delinquent fees.

Section 27 of the bill creates an unnumbered section of law to provide that the two sections only apply to stormwater utility fees billed on or after July 1, 2013, to a beneficiary of a stormwater utility for services provided on or after that date.

Section 19 amends s. 403.0872, F.S., relating to operation permits for majority sources of air pollution and fee calculations.

Present Situation

The Clean Air Act (CAA) was enacted in 1970 as the comprehensive federal law to regulate air emissions from stationary and mobile sources. The law authorizes the U.S. Environmental

Protection Agency (EPA) to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants.[33]

In 1990, Congress amended Title V of the CAA to create the operating permit program. The program streamlines the way federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year pollution activities.[34] Under Title V, the EPA must establish minimum elements to be included in all state and local operating permit programs and then assist the state and local governments in developing their programs.[35] All major stationary sources (power plants, pulp mills, and other facilities) emitting certain air pollutants are required to obtain operating permits.

Pursuant to s. 403.0872, F.S., and as promulgated in ch. 62-4, F.A.C., the DEP is responsible for air permits regulating major and minor facilities. Section 403.0872(11), F.S., provides that each source of air pollution permitted to operate in Florida must pay between January 15 and March 1 of each year, upon written notice from the DEP, an annual operation license fee in an amount determined by DEP rule. The annual fee is assessed based upon the source's previous year's emissions and is calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, and multiplying that by the annual hours of operation allowed by permit conditions provided, however, that:

1. The license fee factor is $25 or another amount determined by DEP rule, which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the Secretary of Environmental Protection affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may not exceed $35.
2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.
3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.

[33] EPA, *Summary of the Clean Air Act*, http://epa.gov/regulations/laws/caa.html (last visited Mar. 29, 2013).
[34] *See* EPA, *Air Pollution Operating Permit Program Update: Key Features and Benefits*, http://www.epa.gov/oaqps001/permits/permitupdate/index.html (last visited Mar. 29, 2013).
[35] *Id.*

4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not operational.
5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a DEP-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the EPA under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the DEP.
6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.
7. If the DEP has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the DEP shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807, F.S. The DEP may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The DEP may waive the collection of underpayment and is not required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The DEP may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty or interest.
8. Notwithstanding the computational provisions of s. 403.0872(a), F.S., the annual operation license fee for any source subject to this section cannot be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814, F.S., shall not exceed $50 per year.
9. Notwithstanding the provisions of s. 403.087(6)(a)5.a., F.S., authorizing air pollution construction permit fees, the DEP may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits are considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873, F.S. The DEP must, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a., F.S., for the construction of a new major source of air pollution that will be subject to the permitting requirements of s. 403.0872, F.S., once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a.[36]

[36] Section 403.0872(11)(a)1.-9., F.S.

Effect of Proposed Changes

The bill amends s. 403.0872, F.S., to extend the annual payment deadline for air pollution permits from March 1 to April 1. In addition, the bill provides that the annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant actually emitted, as calculated in accordance with DEP's emissions computation and reporting rules. The annual fee only applies to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit. This will result in a decrease in fees charged since it is likely that most permitted entities are not discharging up to their permitted limit.

The bill deletes subparagraphs 2-5 from s. 403.0872(11), F.S.

The bill provides that if the DEP has not received the fee by March 1, instead of February 15, the permittee must be sent a written warning concerning the consequences of failing to pay the fee by April 1. If the fee is not postmarked by April 1, the DEP will impose an additional fee.

Section 20 amends s. 403.088, F.S., relating to conditions for the issuance of water pollution permits.

Present Situation

Section 403.088, F.S., provides guidance for the issuance of pollution discharge permits. Generally, if the DEP finds that a proposed discharge will reduce the quality of receiving waters below the classification established for them, the DEP is directed to deny the application and refuse to issue a permit.

Effect of Proposed Changes

The bill amends s. 403.088, F.S., to provide that when testing to determine whether or not a proposed discharge will reduce the quality of the receiving waters below the classification established for them, the DEP may not use results from a field procedure or laboratory method to make the finding or determine compliance unless the procedure or method has been adopted by rule or noticed and approved by DEP order pursuant to DEP rule. Additionally, field procedures and laboratory methods must satisfy quality assurance requirements of DEP rule and must produce data of known and verifiable quality. Lastly, the results of field procedures and laboratory methods must be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

Section 22 amends s. 403.7046, F.S., relating to the regulation of recovered materials.

Present Situation

Section 403.7046, F.S., governs the regulation of recovered materials. It allows the DEP to establish a system whereby recovered materials dealers must be certified by the DEP. At a minimum, the information that needs to be collected from a recovered materials dealer must include:

- The amount and types of recovered materials handled, and
- The amount and disposal site, or the name of the person with whom the disposal was arranged, of any solid waste generated by the recovered materials facility and subsequently disposed of.[37]

It also provides that prior to engaging in business within the jurisdiction of a local government, the dealer must provide the government with the DEP certification and must register with the local government. Local governments are limited to collecting the following information:

- Name, including the owner or operator of the dealer;
- If the dealer is a business entity:
  - Its general or limited partners; and
  - Its corporate officers and directors;
- Its permanent place of business;
- Evidence of its certification from the DEP; and
- A certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of the section.

Local governments may also impose yearly reporting requirements which include:

- Requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period;
- The approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and
- The locations where any recovered materials were disposed of as solid waste.

There are protections for trade secrets and any information that constitutes a trade secret is to be kept confidential.[38]

Effect of Proposed Changes

The bill amends s. 403.7046, F.S., providing that a local government that receives a registration application from a recovered materials dealer may not use the registration information to compete with the recovered materials dealer until 90 days after the registration information is submitted.

The bill also provides for injunctive relief or damages for recovered materials dealers, or associations whose members include recovered materials dealers, in cases where localities violate the prohibition.

[37] Section 403.7046(1), F.S.
[38] Section 403.7046(3)(b), F.S.

Section 23 amends s. 403.813, F.S., relating to conditions under which certain permits are not required for seawall restoration.

Present Situation

Section 403.813(1), F.S., provides that a permit is not required for the restoration of a seawall at its previous locations or upland of, or within 12 inches waterward of, its previous location.

Effect of Proposed Changes

The bill amends s. 403.813, F.S., to provide that a permit is not required for the restoration of a seawall at its previous location or upland of that location, or within 18 inches, instead of 12 inches, waterward of its previous location.

Section 25 amends s. 403.973, F.S., relating to expedited permitting of natural gas pipelines.

Present Situation

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the secretary of the DEP must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where more than one state agency action is challenged, the governor shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Effect of Proposed Changes

The bill amends s. 403.973, F.S., to authorize expedited permitting for projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

Section 26 creates an unnumbered section of law, relating to land leases.

Current Situation

The Everglades Forever Act (EFA) was enacted in 1994 and is codified at s. 373.4592(5), F.S. It offers farmers impacted by the Everglades Restoration Project (Project) leases on several Board of Trustees parcels in the Everglades Agricultural Area in Palm Beach County. The law states that impacted farmers have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. For those parcels that had previously been competitively bid, the rental rate may not be less than the rate the Board of Trustees received at that time. The Board of Trustees can also adjust the rental rate on an annual basis using an appropriate index, and update the appraisal at five-year intervals. If more than one impacted farmer desires to lease the same parcel of land, the one with the greatest number of acres affected by the Project has priority.[39]

The DEP developed new leases to implement the Act. Four of the leases are scheduled to expire on April 1, 2015 and three are scheduled to expire on January 31, 2016, December 31, 2016, and August 25, 2018, respectively. Five leases are issued to companies owned by affiliates of Florida Crystals Corporation (Florida Crystals) and two are issued to A. Duda and Sons, Inc. (Duda) They are located on non-conservation lands and state school lands.[40]

Situation Regarding the Florida Crystal Leases

The South Florida Water Management District (SFWMD) contacted the DEP to request that the five Florida Crystals leases be amended to extend the lease terms for an additional 30 years, and to delete a provision that allows the Board of Trustees to terminate a lease if the lessee ceases to be an impacted farmer. The extensions are a condition of a land exchange between SFWMD and Florida Crystals to secure additional stormwater treatment area that is critical to SFWMD's efforts under the Act[41]

Situation Regarding the Duda Leases

SFWMD contacted the DEP to request that the two Duda leases be extended for additional 30 year terms. The extensions have been requested as a condition of land acquisition negotiations between the SFWMD and Duda to secure property for water storage that is critical to SFWMD's efforts to protect the Caloosahatchee River and Estuary under the Northern Everglades and Estuary Protection Act (NEEP Act). To address water quality and quantity associated with the

[39] Section 373.4592(5)(c), F.S.
[40] Board of Trustees of the Internal Improvement Trust Fund, *Meeting Agenda, January 23, 2013*, http://www.myflorida.com/myflorida/cabinet/agenda13/0123/BOT012313.pdf (last visited Apr. 18, 2013).
[41] *Id.*

existing flows from Lake Okeechobee to the Caloosahatchee River and Estuary, SWFMD will construct a surface water reservoir on the property acquired from Duda. The primary objectives will be to rehydrate Lake Hicpochee and intercept harmful excess flows to the Caloosahatchee River.[42]

Florida Administrative Code

A 20-year term was originally authorized in the Act for Florida Crystals' five leases. Pursuant to Rule 18-2.018(3)(a)1.b., F.A.C., the standard lease term for agricultural leases is six years. The DEP offered the following to assist the Board of Trustees in affirming that the Florida Crystals' leases are not standard leases:

- The leases are critical to SFWMD's acquisition of the 4,700 acres of private property adjacent to Stormwater Treatment Area 1W. Unless the leases are extended, the SFWMD will have to seek condemnation at great cost to the state. No other fiscally reasonable and technologically practical site exists for acquisition;
- The specific project that will be constructed on the exchanged lands is included in enforceable state and federal water quality consent orders issued by the DEP to the SFWMD and was mandated by the permits issued by the DEP under the federal Clean Water Act to improve the quality of water flowing into the Everglades;
- The five lessees are the farmers most impacted by acquisition of land for Everglades restoration and hydroperiod purposes as identified in the EFA; and
- The EFA recognizes the need to maintain the quality of life for South Florida residents, including those in agricultural-related jobs, which contribute to the regional economy.[43]

For the Duda leases, the DEP offered the following to assist the Board of Trustees in affirming that the leases are not standard leases:

- the lease extensions are critical to the SFWMD's acquisition of the lands needed for water storage and treatment as a component of both the NEEP Act and Caloosahatchee Plan;
- Duda remains one of the farmers most impacted by acquisition of land for Everglades restoration as identified in the EFA; and
- if the leases are not extended, SFWMD will have to seek alternative lands at significant additional costs with uncertain results.[44]

Public Interest

Pursuant to rule 18-2.018(1), F.A.C., the decision to authorize the use of Board of Trustees owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, must be considered.

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

The DEP offered information to the Board of Trustees to aid in making a determination that the leases for Florida Crystals and Duda are in the public interest, and not contrary to the public interest.[45]

Pursuant to rule 18-2.018(2)(i), F.A.C., equitable compensation is required when the use of uplands will limit or preempt use by the general public or will generate income or revenue for a private user. The rule directs the Board of Trustees to award authorization for such uses on the basis of competitive bidding rather than negotiation, unless it is determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use.

The DEP offered information to assist the Board of Trustees to make the determination that waiving the competitive bid requirements for Florida Crystals and Duda were in the public interest.

There have been at least two objections to the Duda leases from other farmers. One was received from Hundley Farms, Inc., and one from Roth Farms, Inc. Both object to the Duda lease extensions being granted without being competitively bid.[46]

On April 11, 2013, the Florida Wildlife Federation petitioned for a formal administrative hearing challenging whether several of the leases are typical agricultural leases, whether they represent the greatest combination of benefits to the public, whether the lease extensions are necessary for the project proposed by the SFWMD, and other aspects of the leases and the process by which they were awarded.[47]

Effect of Proposed Changes

The bill:

- Creates an unnumbered section of law that ratifies the decisions of the Board of Trustees with respect to the Florida Crystal and Duda leases, numbered 1447, 1971S, 3420, 3433, 3543, 3422 and 1935/1935-S.
- States the legislative finding that the decision to authorize the use of Board of Trustees-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest, that it is in the public interest to waive the competitive bid process, that the leases are not standard agricultural leases, and that the leases should be amended on the terms and conditions approved by the Board of Trustees.
- States the legislative finding that notwithstanding any other provision of law, the Legislature finds that the lease amendments and extensions approved by the Board or Trustees are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.
- Will effectively render the administrative hearing request by the Florida Wildlife Foundation moot.

[45] *Id.*
[46] *Id.*
[47] Florida Wildlife Federation, Inc., v. Florida Department of Environmental Protection and Board of Trustees of the Internal Improvement Trust Fund, Amended Petition for Administrative Hearing, OGC Case No.: 13-0065, Apr. 11, 2013.

Section 28 provides an effective date of July 1, 2013

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:

Section 4 Expanding the use of the phosphate tax for education could benefit the private sector but the benefits cannot be quantified.

Sections 5 and 24 The Special Event promoter would benefit from structuring lease fees around the actual size of the preemption and the flexibility provided for restructuring of temporary structures. The public would not benefit from this reduction because the promoter charges the vendor to participate in the event. Substantial savings are expected but cannot be calculated at this time.

Section 6 There would be a positive impact from the annual reduction or elimination of the annual fee for leases of sovereignty submerged land.

Section 7 The private sector will benefit from reduced lease fees related to docks and piers. The savings cannot be calculated at this time.

Section 9 According to the DEP, if a private sector entity is a CUP applicant, the proposed language may result in increased costs resulting from litigation. The bill envisions a WMD issuing proposed affirmative agency action for two applications, even though there is not adequate water for both. Therefore, it would appear that a private entity seeking a permit would either be forced to challenge a competing permit or be subject to such a challenge.

Section 12 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain a separate local government water well construction permit, including any required fees.

Section 13 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain any local government water well contractor licenses. It also expands the license to apply to all water systems, not just water well systems. The impact of this expansion is unknown and may create additional competition in the water systems business.

Section 14 The bill will ease some of the regulatory requirements for farm ponds, created wetlands, and certain water control districts. This will result in a positive but indeterminate affect on the private sector.

Section 15 There will be increased funds available for contamination cleanup so there could be increased participation in the program. By raising the individual facility limit, it could result in a lower number of facilities being able to take advantage of the program.

Section 16 Currently, if a person or entity is damaged as a result of a discharge or other condition of pollution covered in ss. 376.30 – 376.317, F.S., he or she has a cause of action to sue for damages. This bill limits those causes of action to situations where the offending party's activities are not regulated or authorized pursuant to ch. 403, F.S.

Section 19 According to the DEP, this legislation will save over 400 of Florida's manufacturing and industrial businesses an estimated $2 million per year. Approximately $1.4 million would be saved in Title V permit fees because they would be paying fees based on their "actual emissions" instead of their "adjusted allowable emissions." Synchronizing the Title V fee and annual operating report requirements will save the sources an additional estimated $600,000 by eliminating the need to compute and submit different emission calculations.

Section 22 The bill will provide more certainty for recovered materials dealers when applying for permits to operate with a locality. Ultimately, this will have a positive but indeterminate impact.

Section 25 The bill will have a sizeable impact on entities that wish to build natural gas pipelines in the state. The effect is indeterminate. Giving one party the option to force summary judgment could have a positive but indeterminate impact on judicial awards for parties. For parties suing the entities building natural gas pipelines, summary judgment could result in an indeterminate effect on awards.

C. Government Sector Impact:

Section 1 and 18 Electronic submissions should have an indeterminate reduction in paper costs for the DEP.

Section 4 By expanding the definition of "phosphate related expenses," local governments may have more flexibility in how they spend phosphate related fees, taxes, and penalties.

Sections 5 and 24 The fees for special event fees are calculated based on the number of event days multiplied by the annual rent, or five percent of any revenue generated from the special event, whichever is greater. The loss of revenue would be approximately $187,000 annually, based on data from seven fiscal years. The lease term would exceed the standard term of five years.

Section 7 The DEP will see a reduction in lease fees from certain private docks and piers. The negative effect on revenues is estimated at $1.24 million to the Internal Improvement Trust Fund; however, recurring revenue currently exceeds recurring expenditures by over $2 million and this recurring revenue reduction should not impact the trust fund's ability to meet department's needs. Also, this provision would require enhancement of the department's database at a cost of $13,000.

Section 8 According to the DEP, there would be costs incurred due to the rulemaking requirement, estimated at $50,000 for mooring field expansion. After the general permits are developed, there would be a revenue loss in permit fees in the Permit Fee Trust Fund. The DEP is expected to absorb any minor negative impact to permit fees with existing resources.

Section 10 According to the DEP, local governments may avoid some transactional costs associated with a permit modification.

Section 11 The DEP or a WMD could saving funds on postage if notifications are sent via electronic mail.

Section 13 Local governments would lose any fees currently charged as part of a local government requirement for obtaining a local water well contractor license.

Section 14 The exemptions for farm ponds and wetlands apply to all of Part IV of Chapter 373, F.S. These exemptions would have an insignificant fiscal impact to the department's Permit Fee Trust Fund.

Sections 17, 21, and 27 Allow stormwater utilities to collect fees from specific beneficiaries and delinquent fees as of July 1, 2013.

Section 19

Effect on the DEP

According to the DEP, the bill would enable the agency to synchronize the federally required emissions computation and reporting obligation with the Title V air operation permit fee calculation requirement. This would save the department significant time that goes into reviewing and processing two separate calculations that serve the same underlying purpose - to identify emissions.

Pursuant to s. 403.0873, F.S., all permit fees received under the DEP's federally approved Title V permitting program are deposited in the Air Pollution Control Trust Fund. Those fees must be used for the sole purpose of paying the direct and indirect costs of the DEP's Title V permitting program, which are enumerated under 40 CFR part 70. The DEP estimates that those costs to be $5.3 million in Fiscal Year 2012-2013 and that they will decline to $4.9 million by Fiscal Year 2017-2018. The trust fund reserve balance for the Title V program was $4.1 million in July 2012. With the estimated $1.4 million annual reduction in fee receipts that would occur as a result of the bill, the DEP estimates that the fund balance will increase to $4.9 million by Fiscal Year 2017-2018. This increase is related to several efficiencies that have occurred in the DEP's air program. In the event that unforeseeable circumstances arise and program costs exceed revenues, the DEP can adjust its fee by rule as provided under s. 403.0872, F.S.

Effect on Local Governments

The Title V permit fees in the Air Pollution Control Trust Fund must be used for the sole purpose of paying the direct and indirect costs of the DEP's federally approved Title V permitting program. The DEP may contract with local governments (or any other public or private entity) to perform Title V program services on its behalf. The DEP currently contracts with seven local governments to perform certain Title V program services. The above agency impact projections accommodate the maintenance of the 2012 contracts with these entities, so there are no local government impacts.

Total Revenue Impacts by Fund[48]:

Internal Improvement Trust Fund	($1.4) million (sections 5 and 7)
Air Pollution Trust Fund	($1.4) million (section 19)
Permit Fee Trust Fund	($0.05) million (section 8)
Service Charge to General Revenue	($231,200)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 15 Provisions contained in the CS conflict with provisions contained in CS/SB 1416.

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 Appropriations on April 23, 2013:

- For both counties and municipalities, the bill provides clarifying language regarding requests for additional information for pending development permits and stipulates

[48] Senate Subcommittee on General Government, *Senate Bill 1684 Fiscal Summary* (Apr. 18, 2013) (on file with Senate Committee on Environmental Preservation and Conservation).

that the limit on requests for additional information does not apply to building permits.
- Clarifies that marinas with slips that are open for rent to the public are able to receive a discount of 30 percent on their annual lease fees.
- Specifies that only seawater desalination plants are protected from having their water allocation reduced.
- Clarifies that it is the DEP or a WMD that has authority to deem an application for a water application complete.
- Allows for electronic mail notification of changes to a water permit during water shortage.
- Includes local county health departments in the list of entities that may have sole responsibility for issuing well permits if authorized by the DEP.
- Clarifies that manmade, excavated farm ponds may not be altered or maintained in a way that connects or expands that farm pond to an existing wetland.
- Exempts certain water control districts created before July 1, 2013 from wetland or water quality regulations.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below what it is classified as.
- Clarifies that beneficiaries of stormwater utilities may be charged fees for those services and provides a cause of action for recovering those fees.
- Removes a 90 day processing deadline from the requirement for local governments to process recovered materials dealers registrations with the locality.
- Provides a cause of action for recovered materials dealers alleging a violation of the section regarding recovered materials dealers.
- Removes provisions related to a Department of Agriculture and Consumer Services regional water supply planning program.
- Ratifies certain leases by the Board of Trustees and states the legislative finding that the leases are in the public interest and not contrary to the public interest.

CS by Environmental Preservation and Conservation on April 2, 2013:
- Adds two sections related to the electronic submission of forms to the DEP, authorizing the DEP to adopt rules regarding electronic submission of forms to the DEP;
- Adds one section that expands the types of activities qualifying as "phosphate-related expenses";
- Regarding special events on sovereignty submerged lands, the bill expands the allowable period of a lease under that section of law from 30 days or less to 45 days or less. The bill also provides that the lease or consent of use should include a lease fee (if applicable) based solely on the period and size of the preemption. The lease or consent of use should also include conditions to reconfigure temporary structures within the lease area;
- Rather than amend s. 403.814, F.S., as in the original bill, the bill creates s. 403.8141, F.S. The bill expands the allowable period of leases from 30 to 45 days. The bill also removes provisions from the original bill limiting the number of seagrass studies and

removes a provision requiring an excess of 25 percent of the preempted area from a previous lease to be added to a new lease to accommodate economic expansion;
- Removes a provision stipulating that dock lease fees for standard term leases are 6 percent of the annual gross dockage income;
- Adds a section relating to the lease of sovereignty submerged lands for private residential docks. The bill provides that lease fees are not required for private residential single-family docks or private residential multifamily docks, given certain circumstances;
- Removes an existing provision directing the DEP to adopt by rule one or more general permits for local governments to construct, operate, and maintain public marina facilities in s. 373.118, F.S. The bill also removes existing provisions from s. 373.118, F.S., that limit general permits for marinas and mooring fields authorized under the general permits described in that section of statute to an area of 50,000 feet or less and that require a marina or mooring field permitted under that section of statute to obtain Clean Marina Program status prior to opening for operation and to maintain it for the life of the facility;
- Adds a provision authorizing the Board of Trustees to delegate authority to the DEP to issue leases for mooring fields under the general permit described in s. 373.118, F.S.;
- Adds a section that limits the ability of a WMD to reduce existing permitted allocations of water for drought resistant water supplies, including water desalination plants;
- Adds a provision to the bill stating that the issuance of well permits is the sole responsibility of the WMDs. The bill adds that a local government may have the responsibility for permitting water wells delegated to it;
- Removes a section from the bill defining the term "mean annual flood line";
- Removes a provision from the bill exempting water control districts operating pursuant to ch. 298, F.S., from further wetland or water quality regulations imposed pursuant to chapters 125, 163, and 166, F.S., under certain conditions;
- Adds a section that provides that cooperative water planning efforts include utility companies, private landowners, water consumers and the DACS. It also encourages municipalities, counties and special districts to create multijurisdictional water supply entities;
- Adds a section that includes "self-suppliers" to the list of entities the WMDs must help with meeting water supply needs;
- Adds a provision directing the WMDs, in developing water supply plans, to describe any adjustment or deviation from information provided by the DACS regarding agricultural water demand projections and present the original data along with the adjusted data;
- Makes changes to section 18 of the bill to conform language to CS/SB 948, regarding agricultural water supply planning;
- Removes a section from the bill regarding testing procedures for measuring deviations from water quality standards;
- Adds a section defining the term "beneficiary," as it relates to what entities a local government can collect stormwater fees from; and

- Adds a section that prevents localities from competing with recovered materials dealers when a dealer submits a registration application with the locality and that locality has it under review. It also directs localities to process such applications within 90 days.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Altman

592-03473B-13 20131684c1

A bill to be entitled

An act relating to environmental regulation; amending s. 20.255, F.S.; authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; amending ss. 125.022 and 166.033, F.S.; providing requirements for the review of development permit applications by counties and municipalities; amending s. 211.3103, F.S.; revising the definition of "phosphate-related expenses" to include maintenance and restoration of certain lands; amending s. 253.0345, F.S.; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; providing conditions for fees relating to such leases and letters of consent; creating s. 253.0346, F.S.; defining the term "first-come, first-served basis"; providing conditions for the discount and waiver of lease fees and surcharges for certain marinas, boatyards, and marine retailers; providing applicability; amending s. 253.0347, F.S.; exempting lessees of certain docks from lease fees; amending s. 373.118, F.S.; deleting provisions requiring the department to adopt general permits for public marina facilities; deleting certain requirements under general permits for public marina facilities and mooring fields; limiting the number of vessels for mooring fields authorized under such permits; amending

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s. 373.233, F.S.; clarifying conditions for competing consumptive use of water applications; amending s. 373.236, F.S.; prohibiting water management districts from reducing certain allocations as a result of activities relating to sources that are resistant to drought; providing an exception; amending s. 373.308, F.S.; providing that issuance of well permits is the sole responsibility of water management districts; prohibiting government entities from imposing requirements and fees and establishing programs for installation and abandonment of groundwater wells; amending s. 373.323, F.S.; providing that licenses issued by water management districts are the only water well construction licenses required for construction, repair, or abandonment of water wells; authorizing licensed water well contractors to install equipment for all water systems; amending s. 373.406, F.S.; exempting specified ponds, ditches, and wetlands from surface water management and storage requirements; amending s. 373.701, F.S.; providing a legislative declaration that efforts to adequately and dependably meet water needs; requiring the cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services; amending s. 373.703, F.S.; requiring the governing boards of water management districts to assist self-suppliers, among others, in meeting water supply demands; authorizing the governing boards to contract with self-suppliers for

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

the purpose of carrying out its powers; amending s.373.709, F.S.; requiring water management districts to coordinate and cooperate with the Department of Agriculture and Consumer Services for regional water supply planning; providing criteria and requirements for determining agricultural water supply demand projections; amending s. 376.313, F.S.; holding harmless a person who discharges pollution pursuant to ch. 403, F.S.; amending s. 403.031, F.S.; defining the term "beneficiaries"; amending s. 403.061, F.S.; authorizing the department to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; amending s. 403.0872, F.S.; extending the payment deadline of permit fees for major sources of air pollution and conforming the date for related notice by the department; revising provisions for the calculation of such annual fees; amending s. 403.7046, F.S.; revising requirements relating to recovered materials; amending s. 403.813, F.S.; revising conditions under which certain permits are not required for seawall restoration projects; creating s. 403.8141, F.S.; requiring the Department of Environmental Protection to establish general permits for special events; providing permit requirements; amending s. 403.973, F.S.; authorizing expedited permitting for natural gas pipelines, subject to specified certification; providing that natural gas pipelines are subject to certain requirements;

providing that natural gas pipelines are eligible for certain review; amending s. 570.076, F.S.; conforming a cross-reference; amending s. 570.085, F.S.; requiring the Department of Agriculture and Consumer Services to establish an agricultural water supply planning program; providing program requirements; providing an effective date.

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

Section 1. Subsection (8) is added to section 20.255, Florida Statutes, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(8) The department may adopt rules requiring or incentivizing electronic submission of forms, documents, fees, or reports required for permits under chapter 161, chapter 253, chapter 373, chapter 376, or chapter 403. The rules must reasonably accommodate technological or financial hardship and must provide procedures for obtaining an exemption due to such hardship.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Prior to a third request for additional

information, the applicant shall be offered a meeting to try and resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

(4) For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(5) Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such a disclaimer to the issuance of a development permit and may include a permit

condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Prior to a third request for additional information, the applicant shall be offered a meeting to try and resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit

that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Paragraph (c) of subsection (6) of section 211.3103, Florida Statutes is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(6)

(c) For purposes of this section, "phosphate-related expenses" means those expenses that provide for infrastructure or services in support of the phosphate industry, including environmental education, reclamation or restoration of phosphate lands, maintenance and restoration of reclaimed lands and county

owned environmental lands which were formerly phosphate lands, community infrastructure on such reclaimed lands and county owned environmental lands which were formerly phosphate lands, and similar expenses directly related to support of the industry.

Section 5. Section 253.0345, Florida Statutes, is amended to read:

253.0345 Special events; submerged land leases.—

(1) The trustees may ~~are authorized to~~ issue leases or consents of use ~~or leases~~ to riparian landowners, special ~~and~~ event promoters, and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned ~~government owned~~ upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use shall be notified by certified mail of any request for such a lease or consent of use before ~~prior to~~ approval by the trustees. The trustees shall balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether ~~if~~ a lease or consent of use should be executed over the objection of adjacent riparian owners. This section does ~~shall~~ not apply to structures for viewing motorboat racing, high-speed motorboat contests, or high-speed displays in waters where manatees are known to frequent.

(2) A lease or consent of use for a ~~Any~~ special event under ~~provided for in~~ subsection (1):

(a) Shall be for a period not to exceed 45 ~~30~~ days and a

duration not to exceed 10 consecutive years.

(b) Shall include a lease fee, if applicable, based solely on the period and actual size of the preemption and conditions to allow reconfiguration of temporary structures within the lease area with notice to the department of the configuration and size of preemption within the lease area.

(c) The lease or letter of consent ~~of use~~ may ~~also~~ contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

(3) ~~Nothing in~~ This section does not ~~shall be construed to~~ allow any lease or consent of use that would result in harm to the natural resources of the area as a result of the structures or the activities of the special events agreed to.

Section 6. Section 253.0346, Florida Statutes, is created to read:

253.0346 Lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.—

(1) For purposes of this section, the term "first-come, first-served basis" means the facility operates on state-owned submerged land for which:

(a) There is not a club membership, stock ownership, equity interest, or other qualifying requirement.

(b) Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

(2) For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of

the slips are open to the public, a discount of 30 percent on the annual lease fee shall apply if dockage rate sheet publications and dockage advertising clearly state that slips are open to the public on a first-come, first-served basis.

(3) For a facility designated by the department as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program:

(a) A discount of 10 percent on the annual lease fee shall apply if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

(b) Extended-term lease surcharges shall be waived if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

4. Is available to the public on a first-come, first-served basis.

(c) If the facility is in arrears on lease fees or fails to comply with paragraph (b), the facility is not eligible for the discount or waiver under this subsection until arrears have been paid and compliance with the program has been met.

(4) This section applies to new leases or amendments to leases effective after July 1, 2013.

Section 7. Subsection (2) of section 253.0347, Florida Statutes, is amended to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)(a) A standard lease contract for sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.

(b) If private residential multifamily docks or piers, private residential multislip docks, and other private residential structures pertaining to the same upland parcel include a total of no more than one wet slip for each approved upland residential unit, the lessee is not required to pay a lease fee on a preempted area of 10 square feet or less of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest as determined by the Board of Trustees of the Internal Improvement Trust Fund.

(c) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership of private residential property that is entitled to a homestead exemption pursuant to s. 196.031 at the time of transfer.

(d) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must pay a lease fee on any income derived from a wet slip, dock, or pier in the preempted area under lease in an amount determined by the Board of Trustees of the Internal Improvement Trust Fund.

(e) A lessee of sovereignty submerged land for a private residential single-family dock designed to moor up to four boats is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody or the square footage authorized for a private residential single-family dock under rules adopted by the Board of Trustees of the Internal Improvement Trust Fund for the management of sovereignty submerged lands, whichever is greater.

(f) A lessee of sovereignty submerged land for a private residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily development providing for existing docks.

Section 8. Subsection (4) of section 373.118, Florida Statutes, is amended to read:

373.118 General permits; delegation.—

(4) The department shall adopt by rule one or more general permits for local governments to construct, operate, and maintain ~~public marina facilities,~~ public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. Such general permits adopted by rule shall include provisions to ensure compliance with part IV of this chapter, subsection (1), and the criteria necessary to include the general permits in a state programmatic general permit issued by the United States Army Corps of

Engineers under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq. A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities shall be consistent with the local government manatee protection plan required pursuant to chapter 379 ~~and shall obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility~~. ~~Marinas and mooring fields authorized under any such general permit shall not exceed an area of 50,000 square feet over wetlands and other surface waters~~. Mooring fields authorized under such general permits may not exceed 100 vessels. All facilities permitted under this section shall be constructed, maintained, and operated in perpetuity for the exclusive use of the general public. The department is authorized to have delegation from the Board of Trustees to issue leases for mooring fields that meet the requirements of this general permit. The department shall initiate the rulemaking process within 60 days after the effective date of this act.

Section 9. Subsection (1) of section 373.233, Florida Statutes, is amended to read:

373.233 Competing applications.—

(1) If two or more applications that ~~which~~ otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, and the governing board or department has deemed the application complete, the governing board or the department has ~~shall have~~ the right to approve or modify the

application which best serves the public interest.

Section 10. Subsection (4) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. In order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a water management district may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, sources that are resistant to drought, including, but not limited to, a seawater desalination plant, unless such reductions are conditions of a

permit with the water management district. Except as otherwise provided in this subsection, this subsection does ~~shall~~ not ~~be construed to~~ limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

Section 11. Subsection (1) of section 373.308, Florida Statutes, is amended to read:

373.308 Implementation of programs for regulating water wells.—

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from the department, issuance of well permits will be the sole responsibility of the water management district or delegated local government. Other government entities may not impose additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 12. Subsections (1) and (10) of section 373.323, Florida Statutes, are amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business. Licensure under this part by a water management district shall be the only water well construction license required for the construction, repair,

or abandonment of water wells in the state or any political subdivision thereof.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water ~~well~~ systems.

Section 13. Subsections (13) and (14) are added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade farm ponds as defined in s. 403.927 constructed entirely in uplands.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. This exemption does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under section 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.

Section 14. Subsection (3) of section 373.701, Florida Statutes, is amended to read:

373.701 Declaration of policy.—It is declared to be the policy of the Legislature:

(3) Cooperative efforts between municipalities, counties, utility companies, private landowners, water consumers, water management districts, ~~and~~ the Department of Environmental Protection, and the Department of Agriculture and Consumer Services are necessary ~~mandatory~~ in order to meet the water needs of rural and rapidly urbanizing areas in a manner that will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from which ~~such~~ water is withdrawn. Such efforts should employ ~~use~~ all practical means of obtaining water, including, but not limited to, withdrawals of surface water and groundwater, reuse, and desalination, and will require ~~necessitate not only~~ cooperation and ~~but also~~ well-coordinated activities. Municipalities, counties, and special districts are encouraged to create multijurisdictional water supply entities or regional water supply authorities as authorized in s. 373.713 ~~or multijurisdictional water supply entities~~.

Section 15. Subsections (1), (2), and (9) of section 373.703, Florida Statutes, are amended to read:

373.703 Water production; general powers and duties.—In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to this chapter:

(1) Shall engage in planning to assist counties, municipalities, special districts, publicly owned and privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse

environmental effects of improper or excessive withdrawals of water from concentrated areas. As used in this section and s. 373.707, regional water supply authorities are regional water authorities created under s. 373.713 or other laws of this state. As used in part VII of this chapter, self-suppliers are persons who obtain surface or groundwater from a source other than a public water supply.

(2) Shall assist counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.

(9) May join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance, provided such contracts are consistent with the public interest. The contract may provide for contributions to be made by each party to the contract ~~thereto~~, for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and apportionment of resulting the benefits, services, and products ~~therefrom~~. The contracts may contain other covenants and agreements necessary and

appropriate to accomplish their purposes.

Section 16. Subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 373.709, Florida Statutes, are amended to read:

373.709 Regional water supply planning.—

(1) The governing board of each water management district shall conduct water supply planning for a ~~any~~ water supply planning region within the district identified in the appropriate district water supply plan under s. 373.036, where it determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period. The planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and other affected and interested parties. The districts shall actively engage in public education and outreach to all affected local entities and their officials, as well as members of the public, in the planning process and in seeking input. During preparation, but before ~~prior to~~ completion of the regional water supply plan, the district shall ~~must~~ conduct at least one public workshop to discuss the technical data and modeling tools anticipated to be used to support the regional water supply plan. The district shall also hold several public meetings to communicate the status, overall conceptual intent, and impacts

of the plan on existing and future reasonable-beneficial uses and related natural systems. During the planning process, a local government may choose to prepare its own water supply assessment to determine if existing water sources are adequate to meet existing and projected reasonable-beneficial needs of the local government while sustaining water resources and related natural systems. The local government shall submit such assessment, including the data and methodology used, to the district. The district shall consider the local government's assessment during the formation of the plan. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed pursuant to this section is ~~shall be~~ subject to s. 120.569. The governing board shall reevaluate the ~~such a~~ determination at least once every 5 years and shall initiate a regional water supply plan, if needed, pursuant to this subsection.

(2) Each regional water supply plan must ~~shall~~ be based on at least a 20-year planning period and must ~~shall~~ include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses must ~~shall~~ be based upon meeting those needs for a 1-in-10-year drought event.

a. Population projections used for determining public water

supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.085. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of ~~alternative~~ water supply development project options ~~projects~~. If such users propose a

project to be listed as a ~~an alternative~~ water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must ~~shall~~ exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following must ~~shall~~ be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects the water management districts shall provide funding assistance in accordance with s. 373.707(8).

d. Identification of the entity that should implement each

project option and the current status of project implementation.

(3) The water supply development component of a regional water supply plan which deals with or affects public utilities and public water supply for those areas served by a regional water supply authority and its member governments within the boundary of the Southwest Florida Water Management District shall be developed jointly by the authority and the district. In areas not served by regional water supply authorities, or other multijurisdictional water supply entities, and where opportunities exist to meet water supply needs more efficiently through multijurisdictional projects identified pursuant to paragraph (2)(a), water management districts are directed to assist in developing multijurisdictional approaches to water supply project development jointly with affected water utilities, special districts, self-suppliers, and local governments.

Section 17. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 which was not authorized pursuant to chapter 403. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution

conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

Section 18. Subsection (22) is added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Beneficiary" means any person, partnership, corporation, business entity, charitable organization, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law.

Section 19. Subsection (43) is added to section 403.061, Florida Statutes, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(43) Adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, or reports required for permits issued under chapter 161, chapter 253, chapter 373, chapter 376, or this chapter. The rules must reasonably accommodate technological or financial hardship and provide

procedures for obtaining an exemption due to such hardship.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 20. Subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April

~~March~~ 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, ~~(~~except carbon monoxide~~)~~ and greenhouse gases, for which an allowable numeric emission limiting standard is specified in ~~allowed to be emitted per hour by specific condition of~~ the source's most recent construction or operation permit~~, times the annual hours of operation allowed by permit condition~~; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never

exceed $35.

~~2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.~~

~~3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.~~

~~4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.~~

~~5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department approved certified continuous emissions monitor or from an emissions monitoring method which has been~~

~~approved by the United States Environmental Protection Agency under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the department for purposes of this section.~~

2.~~6.~~ The amount of each regulated air pollutant in excess of 4,000 tons per year ~~allowed to be~~ emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3.~~7.~~ If the department has not received the fee by March 1 ~~February 15~~ of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April ~~March~~ 1. If the fee is not postmarked by April ~~March~~ 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air

pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4.~~8.~~ Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

5.~~9.~~ Notwithstanding the provisions of s. 403.087(6)(a)5.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

(b) Annual operation license fees collected by the department must be sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program, which shall

consist of the following elements to the extent that they are reasonably related to the regulation of major stationary air pollution sources, in accordance with United States Environmental Protection Agency regulations and guidelines:

1. Reviewing and acting upon any application for such a permit.

2. Implementing and enforcing the terms and conditions of any such permit, excluding court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

7. Implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

8. Any audits conducted under paragraph (c).

(c) An audit of the major stationary source air-operation permit program must be conducted 2 years after the United States Environmental Protection Agency has given full approval of the program to ascertain whether the annual operation license fees collected by the department are used solely to support any reasonable direct and indirect costs as listed in paragraph (b). A program audit must be performed biennially after the first audit.

Section 21. Section 403.7046, Florida Statutes, is amended to read:

403.7046 Regulation of recovered materials.—

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually

certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials; persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(2) Information reported pursuant to the requirements of this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 119.07(1). For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(a) The local government may require that the recovered materials generated at the commercial establishment be source separated at the premises of the commercial establishment.

(b) Prior to engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its

certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. A registration application must be acted on by the local government within 90 days of receipt. During the pendency of the local government's review, a local government may not use the registration information to unfairly compete with the recovered materials dealer seeking registration. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting

or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules promulgated pursuant thereto.

(c) A local government may establish a process in which the local government may temporarily or permanently revoke the authority of a recovered materials dealer to do business within the local government if the local government finds the recovered materials dealer, after reasonable notice of the charges and an opportunity to be heard by an impartial party, has consistently and repeatedly violated state or local laws, ordinances, rules, and regulations.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

(e) Nothing in this section shall prohibit a local

government from enacting ordinances designed to protect the public's general health, safety, and welfare.

(f) As used in this section:

1. "Commercial establishment" means a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multifamily residential uses.

2. "Local government" means a county or municipality.

3. "Certified recovered materials dealer" means a dealer certified under this section.

Section 22. Paragraph (e) of subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, ~~nothing in~~ this subsection does not relieve ~~relieves~~ an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a ~~any~~ water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches ~~1 foot~~ waterward of, their

previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

Section 23. Section 403.8141, Florida Statutes, is created to read:

403.8141 Special event permits.—The department shall issue permits for special events as defined in s. 253.0345. The permits must be for a period that runs concurrently with the letter of consent or lease issued pursuant to that section and must allow for the movement of temporary structures within the footprint of the lease area.

Section 24. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraph (g) is added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

(14)

(b) Projects identified in paragraph (3)(f) or paragraph (3)(g) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that,

notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 25. Subsection (2) of section 570.076, Florida Statutes, is amended to read:

570.076 Environmental Stewardship Certification Program.—The department may, by rule, establish the Environmental Stewardship Certification Program consistent with this section. A rule adopted under this section must be developed in consultation with state universities, agricultural organizations, and other interested parties.

(2) The department shall provide an agricultural certification under this program for implementation of one or more of the following criteria:

(a) A voluntary agreement between an agency and an

agricultural producer for environmental improvement or water-resource protection.

(b) A conservation plan that meets or exceeds the requirements of the United States Department of Agriculture.

(c) Best management practices adopted by rule pursuant to s. 403.067(7)(c) or s. 570.085(1)(b) ~~570.085(2)~~.

Section 26. Section 570.085, Florida Statutes, is amended to read:

570.085 Department of Agriculture and Consumer Services; agricultural water conservation and water supply planning.—

(1) The department shall establish an agricultural water conservation program that includes the following:

(a) ~~(1)~~ A cost-share program, coordinated where appropriate with the United States Department of Agriculture and other federal, state, regional, and local agencies, for irrigation system retrofit and application of mobile irrigation laboratory evaluations for water conservation as provided in this section and, where applicable, for water quality improvement pursuant to s. 403.067(7)(c).

(b) ~~(2)~~ The development and implementation of voluntary interim measures or best management practices, adopted by rule, which provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, the department shall consult with the Department of Environmental Protection and the water management districts. Such rules may also include a system to assure the implementation of the practices, including recordkeeping requirements. As new information regarding efficient

agricultural water use and management becomes available, the department shall reevaluate and revise as needed, the interim measures or best management practices. The interim measures or best management practices may include irrigation retrofit, implementation of mobile irrigation laboratory evaluations and recommendations, water resource augmentation, and integrated water management systems for drought management and flood control and should, to the maximum extent practicable, be designed to qualify for regulatory incentives and other incentives, as determined by the agency having applicable statutory authority.

(c) ~~(3)~~ Provision of assistance to the water management districts in the development and implementation of a consistent, to the extent practicable, methodology for the efficient allocation of water for agricultural irrigation.

(2)(a) The department shall establish an agricultural water supply planning program that includes the development of appropriate data indicative of future agricultural water needs, which must be:

1. Based on at least a 20-year planning period.

2. Provided to each water management district.

3. Considered by each water management district in accordance with ss. 373.036(2) and 373.709(2)(a)1.b.

(b) The data on future agricultural water supply demands which are provided to each district must include, but need not be limited to:

1. Applicable agricultural crop types or categories.

2. Historic estimates of irrigated acreage, current estimates of irrigated acreage, and future projections of

irrigated acreage for each applicable crop type or category, spatially for each county, including the historic and current methods and assumptions used to generate the spatial acreage estimates and projections.

3. Crop type or category water use coefficients for a 1-in-10 year drought and average year used in calculating historic and current water demands and projected future water demands, including data, methods, and assumptions used to generate the coefficients. Estimates of historic and current water demands must take into account actual metered data as available. Projected future water demands shall incorporate appropriate potential water conservation factors based upon data collected as part of the department's agricultural water conservation program pursuant to s. 570.085(1).

4. An evaluation of significant uncertainties affecting agricultural production which may require a range of projections for future agricultural water supply needs.

(c) In developing the data on future agricultural water supply needs described in paragraph (a), the department shall consult with the agricultural industry, the University of Florida Institute of Food and Agricultural Sciences, the Department of Environmental Protection, the water management districts, the United States Department of Agriculture, the National Agricultural Statistics Service, and the United States Geological Survey.

(d) The department shall coordinate with each water management district to establish a schedule for provision of data on agricultural water supply needs in order to comply with water supply planning provisions in ss. 373.036(2) and

373.709(2)(a)1.b.

Section 27. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/13
Meeting Date

Topic Environmental Permitting/Regulation Bill Number SB 1684 *(if applicable)*

Name Mary Jean Yon Amendment Barcode 455738 *(if applicable)*

Amendment Only!

Job Title Legislative Director

Address 3324 Charleston Road Phone 850/519-7859
Street

Tallahassee FL 32309 E-mail maryjeanyon@comcast.net
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Audubon Florida

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic SB 1684 Bill Number SB 1684 *(if applicable)*

Name Lisa Rinaman Amendment Barcode 721714 *(if applicable)*

PCS

Job Title St. Johns Riverkeeper

Address 2800 University Blvd. Phone (904) 509-3260
Street

Jacksonville FL 32211 E-mail lisa@stjohns riverkeeper.org
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing St. Johns Riverkeeper

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-13
Meeting Date

Topic Environmental Regulation Bill Number 1684 *(if applicable)*

Name Missy Timmins Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2910 Kerry Forest Pkwy Ste-365 Phone 264-3225
Street

TLH FL 32309 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Marine Industries Assoc. of Fla.

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic environmental permitting

Bill Number 1684 *(if applicable)*

Name CHARLES PATTISON

Amendment Barcode *(if applicable)*

Job Title PRESIDENT

Address 308 N. Monroe
Street
TALLAHASSEE
City *State* *Zip*

Phone 222-6277

E-mail cpattison@1000fof.org

Speaking: ☐ For ☑ Against ☐ Information

Representing 1000 FRIENDS OF FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic ENVIRONMENTAL REGULATIONS Bill Number SB 1684 *(if applicable)*

Name KEYNA CORY Amendment Barcode *(if applicable)*

Job Title

Address 110 E COLLEGE AVE Phone 850 681-1065
Street

TALLAHASSEE FL 32301 E-mail keynacory@cpaconsultants.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing NATIONAL SOLID WASTES MANAGEMENT ASSN - FL CHAPTER

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

Topic Environmental Regulation

Bill Number SB 684 *(if applicable)*

Name Jerry Sansom

Amendment Barcode *(if applicable)*

Job Title

Address PO Box 98

Phone 321-777-8130

Street

Cocoa FL 32923

E-mail FISHAWK@AOL.COM

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing Cities of Cocoa, Rockledge - Melbourne

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Env. Reg. Bill Number 1684 *(if applicable)*

Name Leticia Adams Amendment Barcode *(if applicable)*

Job Title Policy Director

Address *Street* Phone 8505446866

City Tall *State* FL *Zip* 32301 E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic Environmental Regulation

Bill Number 1684 *(if applicable)*

Name Chris Lyon

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 315 S. Calhoun St., Suite 830 *Street*

Phone 222-5702

Tallahassee *City* FL *State* 32301 *Zip*

E-mail clyon@llw-law.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Assn. of Special Districts / Range Drainage District

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic ENVIRONMENTAL REGULATION Bill Number 1684 *(if applicable)*

Name DAVID CULLEN Amendment Barcode *(if applicable)*

Job Title

Address 1674 UNIVERSITY PKWY #296 Phone 941-323-2404
Street

SARASOTA FL 34243 E-mail CULLENASORE@AOL.COM
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-13
Meeting Date

Topic Reg's

Bill Number SB 1689 *(if applicable)*

Name Doug Mann

Amendment Barcode *(if applicable)*

Job Title

Address 310 W. College Ave.
Street

Phone 222-7535

Tallahassee FL 32301
City *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic ~~Ryan Matthews~~ Environmental Regulation

Bill Number SB 1684 *(if applicable)*

Name Ryan Matthews

Amendment Barcode *(if applicable)*

Job Title Leg Advocate

Address PO Box 1757 *Street*

Phone 222 9684

Tallahassee FL 32302
City *State* *Zip*

E-mail rmatthews@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

Representing FL League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic PERMITTING Bill

Bill Number 1684 *(if applicable)*

Name KURT SPITZER

Amendment Barcode *(if applicable)*

Job Title EXEC. DIRECTOR

Address 719 E. PARK
Street

Phone 561-0904

T 32301
City *State* *Zip*

E-mail

Speaking: [X] For [ ] Against [X] Information

Representing FLA. STORMWATER ASSOCIATION

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR THAD ALTMAN
16th District

April 17, 2013

The Honorable Joe Negron
Senate Committee on Appropriations, Chair
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that SB 1684, related to *Environmental Regulation,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/rk

CC: Mike Hansen, Staff Director, 201 The Capitol

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Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1722 (428226)
INTRODUCER:	Appropriations Committee; (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Legg
SUBJECT:	Early Learning
DATE:	April 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Frye	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**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:

PCS/CS/SB 1722 changes the governance structure of the Office of Early Learning.

The bill has an insignificant fiscal impact on the Office of Early Learning. See Section V. The bill increases accountability and transparency in the administration of early learning programs:

- Moving the School Readiness program from Chapter 411 to the school code under Chapter 1002.
- Establishing the Office of Early Learning within the Department of Education's Office of Independent Education and Parental Choice; providing powers and duties.
- Providing that the Office of Early Learning must independently exercise all power, duties, and functions prescribed by law and must not be construed as part of the K-20 education system.
- Clarifying that participation in the School Readiness program does not expand the regulatory authority of the state, its officers, or an early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements outlined for this program.

- Requiring the Office of Early Learning to: adopt a list of approved curricula and a process for the review and approval of a provider's curriculum that meets the performance standards; identify a preassessment and postassessment for school readiness program participants; adopt a statewide, standardized contract to be used by coalitions with each school readiness program provider; coordinate with other agencies to perform data matches on individuals or families participating in the School Readiness program.
- Revising procurement and expenditure requirements for early learning coalitions.
- Removing the requirement for the annual submission of a funding formula by the Office of Early Learning.
- Revising the methodology for calculating the market rate schedule to require that the Office of Early Learning biennially calculate the market rate at the average of the market rate by program care level and provider type in a predetermined geographic market.
- Revising the eligibility criteria for the enrollment of children in the School Readiness program.
- Providing for the allocation of School Readiness program funds as specified in the General Appropriations Act.
- Requiring the Office of Early Learning and each early learning coalition to limit expenditures to no more than 22 percent of funds for any combination of administrative costs, nondirect services, and quality activities in any fiscal year.
- Including provisions for fraud investigations and penalties for School Readiness program providers and parents who knowingly submit false information related to child eligibility and attendance in a school readiness program.
- Requiring private providers to maintain a minimum level of general liability insurance consistent with the requirements of private school readiness program providers, including any required workers' compensation and any required reemployment assistance or unemployment compensation.
- Requiring the Early Learning Advisory Council to periodically analyze and provide recommendations to the office on the effective and efficient use of local, state and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans.

The effective date of the bill is July 1, 2013.

The bill substantially amends sections 11.45, 20.15, 196.198, 216.136, 402.281, 402.302, 402.305, 445.023, 490.014, 491.014, 1001.11, 1002.51, 1002.53, 1002.55, 1002.57, 1002.59, 1002.61, 1002.63, 1002.66, 1002.67, 1002.69, 1002.71, 1002.72, 1002.75, 1002.77, 1002.79, Florida Statutes.

The bill transfers, renumbers, and amends section 411.011 as 1002.97, Florida Statutes.

The bill creates section 1001.213 and part VI of chapter 1002, consisting of sections 1002.81-1002.96, F.S.

The bill repeals the following sections of the Florida Statutes: 411.01, 411.0101, 411.01013, 411.01014, 411.01015, 411.0102, 411.0103, 411.0104, 411.0105, and 411.0106.

II. Present Situation:

Early learning programs consist of the Voluntary Prekindergarten Education program and the School Readiness program.

Florida's Office of Early Learning

In 2011, the Legislature transferred the Office of Early Learning, currently called Florida's Office of Early Learning (Fl's OEL), from the Agency for Workforce Innovation to the Department of Education (DOE) as a separate budget entity, not subject to control, supervision, or direction by the DOE or the State Board of Education in any manner including, but not limited to, personnel, purchasing, transactions involving personal property, and budgetary matters. The office director is appointed by the Governor and confirmed by the Senate, serves at the pleasure of the Governor, and is the agency head of the office for all purposes. The office is subject to review and oversight by the Chief lnspector General or his or her designee.[1]

Florida's OEL is Florida's lead agency for administering the federal Child Care and Development Fund (CCDF) block grant from which funds are used to implement the school readiness program.[2]

Current law directs the Florida's OEL to establish a unified approach to the state's school readiness efforts by adopting specific system support services for the state's school readiness programs.[3] System support services include, but are not limited to:

- Child care resource and referral services.
- Warm-Line services.4
- Eligibility determinations.
- Child performance standards.
- Child screening and assessment.
- Developmentally appropriate curricula.
- Health and safety requirements.
- Statewide data system requirements.
- Rating and improvement systems.5

Additionally, Florida's OEL must develop and adopt performance standards and outcome measures for school readiness programs. Child performance standards must describe age-appropriate progress of children in the development of school readiness skills. The performance

[1] Section 12, ch. 2011-142, codified at s. 20.15(3)(h), F.S. Florida's OEL is distinct from DOE's Office of Early Learning. Department of Education, Early Learning/Prekindergarten, http://www.fldoe.org/earlyLearning/ (last visited March 28, 2013).
[2] The law directs the Governor to designate Florida's OEL as the lead agency for administering the Child Care and Development Fund (CCDF). Section 411.01(4)(c), F.S.
[3] Section 411.01(4)(d)3., F.S.
[4] OEL is required to contract with the "statewide resource information and referral agency" to establish a statewide toll-free Warm-line for the purpose of assisting child care providers in serving children with disabilities and special needs. Section 402.3018, F.S.
[5] Section 411.01(4)(d)3.a.-i., F.S.

standards for children from birth to age five must be integrated with the performance standards adopted by the DOE for the VPK program.[6] Florida's OEL has developed and adopted a "robust set of child expectations for children, birth to five years of age."[7]

Florida's OEL administers the School Readiness program at the state level and coordinates with the ELCs in providing school readiness services on a full-day, full-year, full-choice basis to enable parents to work and be financially self-sufficient.[8] The office must, every two years, review ELCs and school readiness plans and approve such plans.[9] Additionally, Florida's OEL must provide technical assistance and training to the Early Learning Coalitions (ELCs or coalitions) and monitor and evaluate the ELCs' administration of the School Readiness and VPK programs.[10] Florida's OEL must also work with the ELCs to provide training and support for parental involvement in children's early education and to provide family literacy activities and services.[11]

Voluntary Prekindergarten Education Program

In 2004, the Legislature established the Voluntary Prekindergarten Education program (VPK program), a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.[12] A child must be a Florida resident and attain four years of age on or before September 1 of the academic year to be eligible for the VPK program.[13] Parents may choose either a school year or summer program offered by either a public school or private prekindergarten provider.[14] The child remains eligible for the VPK program until he or

[6] Section 411.01(4)(d)8., F.S.; *see also* Florida's Office of Early Learning, *Early Learning Services – Birth to Five Standards*, http://flbt5.floridaearlylearning.com/Default.aspx (last visited April 16, 2013).The performance standards address the following school readiness skills: compliance with rules, limitations, and routines; ability to perform tasks; interactions with adults; interactions with peers; ability to cope with challenges; self-help skills; ability to express the child's needs; verbal communication skills; problem-solving skills; following of verbal directions; demonstration of curiosity, persistence, and exploratory behavior; interest in books and other printed materials; paying attention to stories; participation in art and music activities; and ability to identify colors, geometric shapes, letters of the alphabet, numbers, and spatial and temporal relationships. Section 411.01(4)(j), F.S.

[7] Email, Florida's Office of Early Learning (April 5, 2013), on file with the Appropriations Subcommittee on Education staff; *see also* Florida's Office of Early Learning, *Early Learning Services – Birth to Five Standards*, http://flbt5.floridaearlylearning.com/Default.aspx (last visited April 16, 2013).

[8] Section 411.01(4)(a), F.S.

[9] Section 411.01(4)(d)2., F.S.

[10] Section 411.01(4)(d)6., (l) and (n), F.S.; *see also* ss. 1002.55(1) and 1002.61(1)(b), F.S. Florida's OEL and the ELCs must coordinate with the Department of Children and Family Services to minimize duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing. Section 411.01(4)(d)7., F.S.

[11] Section 411.01(4)(n), F.S.

[12] Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.; *see also* Art. IX, s. 1(b)-(c), Fla. Const. The VPK program originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. The amendment required the Legislature to establish a free prekindergarten education program for every four-year old child residing in Florida by the 2005 academic year. Voters approved the amendment by a total of 59 percent for to 41 percent against. Art. IX, s. 1(b)-(c), Fla. Const.; *see also* Florida Department of State, Division of Elections, *Voluntary Universal Prekindergarten Education*, http://election.dos.state.fl.us/reports/pdf/02annrpt.pdf (last visited March 28, 20 13).

[13] Section 1002.53(2), F.S.

[14] Section 1002.53(3), F.S. In 2010, the Legislature established a specialized instructional services program for children with disabilities as an option under the VPK program. Section 3, ch. 2010-227, *codified at* s. 1002.53(3)(d), F.S. Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK program and has a current Individual Education Plan (IEP) developed by the district school board. Specialized

she is eligible for kindergarten in a public school or is admitted to kindergarten, whichever occurs first.[15] A child may not attend the summer VPK program earlier than the summer immediately before the academic year in which the child becomes eligible for kindergarten.[16]

Department of Education (DOE, through its Office of Early Learning, distinct from Florida's Office of Early Learning), Florida's OEL, and Department of Children and Families (DCF) each play a role in the state-level oversight of the VPK program. DOE is responsible for the programmatic requirements for the VPK program.[17] Florida's OEL governs the day-to-day operations of the VPK program.[18] DCF administers the state's child care provider licensing program and posts VPK program provider profiles on its Internet website.[19]

School Readiness Program

Established in 1999,[20] the School Readiness program provides subsidies for early childhood education and child care services to children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.[21]

The School Readiness program is a state-federal partnership between Florida's OEL and the Office of Child Care of the United States Department of Health and Human Services.[22]

Federal regulations governing the CCDF block grant,[23] the primary funding source for the School Readiness program, authorize states to use grant funds for child care services, if: [24]

- The child is under 13 years of age, or at the state's option, under age 19 if the child is physically or mentally incapable of caring for himself or herself or under court supervision;
- The child's family income does not exceed 85 percent of the state's median income for a family of the same size; and

---

instructional services include applied behavior analysis, speech-language pathology, occupational therapy, and physical therapy. The Florida Department of Education is responsible for approving public and private program providers. Section 1002.66, F .S. Once this program is implemented, children who participate in the program will be eligible to receive a McKay Scholarship to enroll in and attend a private school. Section 1002.39(2)(a)l., F.S.

[15] Section 1002.53(2), F.S. Children who attain five years of age on or before September 1 of the academic year are eligible for admission to public kindergartens. Section 1003.21(1)(a)2., F.S.

[16] Section 1002.61(2)(c), F.S.

[17] Sections 1002.57(1), 1002.59, 1002.67(1)-(2) and (4), 1002.69(1) and (5), 1002.73, and 1007.23(6), F.S.

[18] Section 1002.75(2), F.S.

[19] Sections 402.301-402.319, F.S.; *see also* Florida Department of Children and Family Services, *Provider Search*, http://dcfsanswrite.state.fl.us/Childcare/provider (last visited March 28, 2013).

[20] *Section* 1, ch. 99-357, L.O.F.

[21] Section 411.01(6), F.S.

[22] U.S. Department of Health and Human Services, *Office of Child Care: About*, http://www.acf.hhs.gov/programs/occ/about (last visited March 28, 2013).

[23] 45 C.F.R. parts 98 and 99.

[24] 45 C.F.R. s. 98.20(a). Florida's CCDF state plan for FY 2012-2013 defines physical or mental incapacity as "a developmental delay or established physical or mental condition. Mild or moderate emotional problems as certified by a licensed psychiatrist, psychologist, or licensed mental health professional." Florida's Office of Early Learning, Child Care and Development Fund State Plan, *CCDF Plan FFY 2012/13 Part 2-CCDF Subsidy Program Administration, available at* http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012_2013Part2-CCDFSubsidyProgramAdministration.pdf*; see also* rule 6M-4.200(1), F.A.C.

- The child:
  - Resides with a parent or parents who work or attend job training or educational programs; or
  - Receives, or needs to receive, protective services.

Within these broad federal eligibility categories, Florida law specifies that the School Readiness program is established for children from birth to school entry.[25]

Florida's OEL administers the program at the state level, including statewide coordination of the ELCs.

Funding

Funding for the School Readiness program is provided annually in the General Appropriations Act (GAA).[26] For the 2012-2013 fiscal year, a total of $581.5 million was appropriated for the School Readiness Program from state and federal funds, including $341.7 million from the CCDF block grant, $98 million from the TANF block grant, $141.3 million from the state's General Revenue Fund, and $500,000 from other federal fund sources. Florida statute requires that the OEL shall establish a formula for the allocation of all state and federal school readiness program funds provided for children participating in the School Readiness program. The formula is required to be based on equity and must be submitted to the Governor and the Legislature by January 1 of each year.[27] Funding allocations for the 2012-2013 fiscal year were derived from the formula submitted to the Governor and Legislature as of January 1, 2012.

Market Rate

Florida's OEL is responsible for annually calculating a prevailing market rate schedule as a provision of the Child Care and Development Block Grant that must include county by county rates by provider type including licensed child care facilities; religious exempt facilities, public and non-public schools, large family day care homes, family day care homes and those who hold a Gold Seal quality Care Designation under section 402.281, Florida Statutes. The prevailing market rate must also differentiate rates by care level to include infants, toddlers, pre-school age, and school-age children. The prevailing market rate schedule is required to be set at the 75th percentile of a reasonable frequency distribution based exclusively on the prices charged for child care services. Each ELC must utilize the prevailing market rate schedule to set the coalition's School Readiness program provider payment rates.

Early Learning Coalitions

Each ELC administers the School Readiness program,[28] the VPK program,[29] and the state's child care resource and referral network in its county or multicounty region.[30] There are currently 31

[25] Section 411.01(6), F.S.
[26] Specific Appropriation 75, ch. 2012-118, Laws of Florida.
[27] Section 411.01(9), Florida Statutes.
[28] Section 411.01(5), F.S.
[29] Sections 1002.55(1) and 1002.61(1)(b), F.S.
[30] Section 411.0101, F.S.

ELCs.[31] Each ELC is governed by a board of directors comprised of various stakeholders and community representatives. Three members of each board, including the chair, are appointed by the Governor.[32]

Each ELC must serve a minimum of 2,000 children based upon the average number of children served per month by the coalition's School Readiness program during the previous 12 months.[33] If an ELC serves fewer than 2,000 children, "the coalition must merge with another county to form a multicounty coalition."[34] Florida's OEL must waive the merger requirement if certain criteria are met.[35]

An ELC may participate in the School Readiness program if the coalition's School Readiness plan is approved by Florida's OEL.[36] The plan must, at a minimum, contain the following elements: alignment to the statutory requirements and system support services, performance standards, and outcome measures; instruction to enable children from birth through five years of age to meet the performance standards; and feedback regarding the plan from the local community.[37] Florida's OEL must adopt rules establishing school readiness program plan approval criteria[38] which must include the following minimum standards for the School Readiness program:[39]

- A community plan that addresses the needs of eligible children and providers within the coalition's county or multicounty region.
- A sliding fee scale establishing a copayment for parents based upon their ability to pay, which is the same for all program providers.[40]
- A choice of settings and locations in licensed, registered, religious-exempt, or school-based programs to be provided to parents.
- Specific eligibility priorities for children in accordance with the law.
- Performance standards and outcome measures adopted by Florida's OEL.

[31] Florida's Office of Early Learning, *Early Learning Coalition Directory (Revised 4/3/2013)* , *http://www.floridaearlylearning.com/Documents/All-Contact/CoalitionDirectory.pdf* , (last visited April 9, 2013). Florida law permits the establishment of 31 or fewer ELCs. Section 411.01(5)(a)2.a., F.S.
[32] Section 411.01(5)(a)4.-6., F.S.
[33] Section 411.01(5)(a)2.b., F.S.
[34] Section 411.01(5)(a)3., F.S. Florida's OEL must adopt procedures for merging ELCs.
[35] Section 411.01(5)(a)3.a.-c., F.S. Florida's OEL must waive the merger requirement if it determines that the ELC has substantially implemented its school readiness plan; the ELC demonstrates to Florida's OEL its ability to effectively and efficiently implement the VPK Program; and the ELC demonstrates to Florida's OEL its ability to perform its duties in accordance with the law.
[36] Section 411.01(5)(d)1., F.S.
[37] Section 411.01(5)(d)2.a.-c., F.S.
[38] Florida's OEL held rule workshops for the school readiness plan in February 2012 and received the transcript from the workshop on March 14, 2012. Florida's OEL staffs are in the process of analyzing comments and preparing rule. E-mail, Florida's Office of Early Learning (Aug. 21, 2012), on file with the Appropriations Subcommittee on Education staff.
[39] Section 411.01(5)(d)4., F.S.
[40] Each ELC is required to adopt, subject to approval by Florida's OEL, a copayment charged to the parent of a child enrolled in the School Readiness Program. Section 411.01(5)(d)4.b., F.S. The co-payment is based on the parent's income and family size. Rule 6M-4.400(1), F.A.C. A School Readiness Program provider receives payment for school readiness services from the ELC and is responsible for collecting the co-payment directly from the parent. Rule 6M-4.401, F.A.C. A School Readiness Program provider is not prohibited from charging parent fees in addition to the co-payment. Rule 6M-4.400(4), F.A.C.

- Payment rates adopted by the ELCs and approved by Florida's OEL.
- Direct enhancement services for families and children.[41]
- The business organization of the ELC.
- The implementation of locally developed quality programs in accordance with the requirements adopted by Florida's OEL regarding the expenditure of funds for improving the quality of child care within the state.

Each ELC must implement a comprehensive program of school readiness services to achieve the performance standards and outcome measures. At a minimum, the comprehensive program must contain the following system support service elements: use of a developmentally appropriate curriculum, character development education; age appropriate screening and assessment; appropriate staff to children ratio; a healthy and safe learning environment; and a resource and referral network[42] and a regional Warm-Line.[43,44]

Florida law requires each ELC to include a "choice of settings and locations in licensed, registered, religious-exempt, or school-based programs."[45] A wide range of public and private providers of early childhood education and child care services participate in the School Readiness program, including:

- Public and private schools;
- Licensed child care facilities and large family child care homes;
- Licensed and registered family day care homes;
- Faith-based child care facilities and after-school programs, which are both exempt from licensure; and
- Informal providers[46] (e.g., in-home and relative care).[47]

In FY 2011-2012, a total of 10,844 child care providers participated in the School Readiness program, including 1,013 public schools; 6,508 private providers; and 3,043 family day care homes. Of these providers, 836 were faith-based.[48]

Child care providers who provide school readiness services are regulated by the DCF.[49]

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[41] "Direct enhancement services for families may include parent training and involvement activities and strategies to meet the needs of unique populations and local eligibility priorities. Enhancement services for children may include provider supports and professional development approved in the plan by [Florida's] OEL." Section 411.01(5)(d)4.g., F.S.

[42] The statewide child resource and referral network is established to assist parents in making an informed choice regarding child care. Section 411.0101(1), F.S.

[43] The statewide toll-free Warm-Line is established to provide assistance to child care centers and family day care homes regarding health, developmental, disability, and special needs issues of children served by such providers. Section 411.01015(1), F.S.

[44] Section 411.01(5)(c)2., F.S.

[45] Section 411.01(5)(d)4.c., F.S.

[46] Florida's Office of Early Learning, Child Care and Development Fund State Plan, *CCDF Plan FFY 2012/13 Part 3-Health and Safety and Quality Improvement Activities*, *available at* http://www.floridaearlylearning.com/EarlyLearning/OEL_SysDev_CCDF.html.

[47] Section 411.01(5)(d)4.c., F.S. Federal regulations governing the CCDF block grant, in effect, require the School Readiness Program to serve children in center-based child care, group home child care, family child care, and in-home child care. 45 C.F.R. s. 98.30(e)(1).

[48] Email, Office of Early Learning (April 4, 2013), on file with the Appropriations Subcommittee on Education staff.

[49] Chapter 402, F.S.

Child Care Executive Partnership

The purpose of the Child Care Executive Partnership Program is to utilize state and federal funds as incentives for matching local funds derived from local governments, employers, charitable foundations, and other sources so that Florida communities may create local flexible partnerships with employers.[50] The Child Care Executive Partnership governs this program.[51] Current duties and responsibilities of the partnership include:[52]

- Assisting in the formulation and coordination of the Florida's child care policy.
- Adopting an official seal.
- Soliciting, accepting, receiving, investing, and expending funds from public or private sources.
- Contracting with public or private entities as necessary.
- Approving an annual budget.
- Carrying forward any unexpended state appropriations into succeeding fiscal years.
- Providing a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, on or before December 1 of each year.

Educational Property

An educational institution and its property are exempt from ad valorem tax in Florida. Educational institutions often separate their property into separate corporate entities for business planning purposes. In an effort to address this situation, Florida also exempts property that is not directly owned by the educational institution, as long as the property is used exclusively for educational purposes and is owned by the identical owners of the educational institution.[53] A recent Attorney General's opinion concluded that this exemption does not apply if both the property and the educational institution are in separate corporations and those corporations are owned by the identical people.[54]

Gold Seal Quality Care Designation

In order to be approved by the Department of Children and Families for participation in the Gold Seal Quality Care program, a child care facility, large family child care home, or family day care home must be accredited by a nationally recognized accrediting association approved by the Department of Children and Families.[55]

In approving accrediting associations, the Department of Children and Families must consult with the Department of Education, the Florida Head Start Directors Association, the Florida Association of Child Care Management, the Florida Family Day Care Association, the Florida Children's Forum, the Early Childhood Association of Florida, the Child Development

[50] Section 411.0102(2), F.S.
[51] Section 411.0102(3), F.S.
[52] Section 411.0102(4)(d), F.S.
[53] Section 196.198, F.S.
[54] Op. Att'y Gen. Fla. 2012-15
[55] Section 402.281(1)(b), F.S.

Education Alliance, providers receiving exemptions under section 402.316, Florida Statutes, and parents.[56]

Afterschool Meals Program

The federally funded Afterschool Meal Program (AMP) was expanded to Florida and the rest of the nation by Congress in December 2010. Prior to that time, pilot programs existed in only 13 states and the District of Columbia. The federal regulations governing the program do not require child care licensure but do require AMP sites to meet state and local health and safety standards to participate.[57]

III. Effect of Proposed Changes:

The bill changes the governance structure of the Office of Early Learning (OEL) and increases accountability and transparency in the administration of early learning programs: Voluntary Prekindergarten Education program (VPK program) and School Readiness program.

Governance

The bill creates the Office of Early Learning (OEL or office) within the DOE's Office of Independent Education and Parental Choice. The OEL will be administered by an Executive Director who is fully accountable to the Commissioner of Education. The office will be responsible for administering both the VPK and the school readiness programs at the state level and will independently exercise all powers, duties, and functions prescribed by law, but is not to be construed to be a part of the K-20 education system. Moreover, participation in the School Readiness program must not expand the regulatory authority of the state, its officers, or any ELC to impose any additional regulation on providers beyond those necessary to enforce the requirements of law.

The bill requires the OEL, in collaboration with the Commissioner of Education, to develop a reorganization plan for the office by October 1, 2013. The plan must include the following:

- Any changes made prior to July 1, 2013;
- Personnel, purchasing, and budgetary matters and their alignment with the duties and responsibilities of the office;
- A report of all outstanding contractual obligations; and
- Recommendations for statutory and budgetary changes.

The plan must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

[56] Section 402.281(3)(b), F.S.

[57] The Healthy, Hunger-Free Kids Act of 2010 (P.L. 111-296)

Accountability

The bill includes several accountability provisions for the OEL, ELCs, and VPK and School Readiness program providers.

Office of Early Learning

The bill requires the OEL to:
- Administer requirements of the VPK program.
- Adopt by rule a standard statewide provider contract for the VPK and School Readiness programs. The contract must include provisions for probation, termination for cause, and emergency termination of a provider's contract.
- Adopt a uniform chart of accounts for budgeting and financial reporting.
- Coordinate with other state and federal agencies to perform data matches to verify children's eligibility to participate in the School Readiness program.
- Establish procedures for the annual calculation of the average market rate.
- Adopt specific program support services.
- Provide technical assistance to coalitions on anti-fraud plans.
- Develop and adopt a health and safety checklist for license exempt providers that does not exceed current licensing standards for child care facilities.
- Select valid, reliable, and developmentally appropriate assessments for use as pre- and post-assessment for the age ranges specified in the coalition's plans.
- Adopt standardized monitoring procedures for coalitions to use to monitor providers.
- Collaborate with the Bureau of Federal Education Programs within the Department of Education to coordinate readiness and voluntary prekindergarten services to the populations served by the bureau, including students served through the homeless education program.
- Provide for the administration of the statewide toll-free Warm-Line.

The OEL must continue to establish a unified approach to coordinate a comprehensive early learning program and adopt specific program support services for the School Readiness program, including:

- A statewide data information program that includes:
  - Eligibility requirements.
  - Financial reports.
  - Program accountability measures.
  - Child progress reports.

- Child care resource and referral services
- A single point of entry and uniform waiting list.

In addition, the OEL may provide technical assistance and guidance on additional support services to complement the School Readiness program, including:

- Rating and improvement systems.
- Warm-Line services.

- Anti-fraud plans.
- School readiness program standards.
- Child screening and assessments.
- Training and support for parental involvement in children's early education.
- Family literacy activities and services.

Early Learning Coalitions

The bill revises the membership of the ELCs by updating terminology used to refer to Florida College System institution president, instead of a community college president. The bill also requires the ELCs to:

- Implement an age-appropriate pre- and post-assessment of children, if specified in the coalition's approved school readiness plan. ELCs cannot require providers to administer pre- and post-assessments.
- Require a parent to be in good standing on copayment obligations with a school readiness program provider prior to transferring to another school readiness program provider.
- Provide a timeframe within which attendance records may be altered or amended.
- Comply with federal and state procurement requirements.
- Provide proper information technology controls.
- Develop written policies, procedures, and standards for monitoring vendor contracts.
- Monitor providers in accordance with the applicable coalition's plan, or in response to complaints from parents, using the standard monitoring tool adopted by the office. Providers to be determined high-risk as demonstrated by substantial findings of violations of federal law or general or local laws of the state must be monitored more frequently. Providers with three consecutive years of compliance may be monitored biennially.
- Implement an anti-fraud plan addressing specific components.
- Specify components for the annual report that is submitted to the office by October 1.
- Requiring each ELC to use a coordinated, professional development system that supports the achievement and maintenance of core competencies by school readiness program teachers in helping children attain the performance standards adopted by the office.

ELCs must maintain direct enhancement services at the local level and provide access to such services in all 67 counties. The required annual report to the OEL must include an evaluation of the ELC's direct enhancement services.

School Readiness Program Plans

The OEL must adopt rules prescribing the standardized format and required content of school readiness program plans. The bill provides additional accountability by:

- Requiring ELCs to submit a school readiness program plans biennially before the expenditure of funds.
- Prohibiting an ELC from implementing the coalition's school readiness program until the plan is approved.

- Prohibiting an ELC from implementing any changes to its plan, until the changes are approved by the OEL. Each ELC plan must include:
  - The coalition's operations, including the coalition's membership and business organization.
  - The coalition's articles of incorporation and bylaws, as appropriate.
  - The minimum number of students to be served.
  - The coalition's procedures for implementing all requirements of administering the School Readiness program.
  - A detailed description of the coalition's quality activities and services.
  - A detailed budget outlining the estimated expenditures for state, federal, and local maintenance of effort and matching funds at a specific level of detail.
  - A detailed accounting of all revenues and expenditures during the previous state fiscal year, in a format described by the OEL.
  - Updated policies and procedures.
  - A description of the procedures for monitoring school readiness program providers or for responding to complaints from parents.
  - Documentation that the coalition has solicited and considered comments regarding the proposed school readiness program plan from the local community.

If the OEL determines during the review of school readiness program plans, or through monitoring and performance evaluations, that an ELC has not substantially implemented the coalition's plan, has not substantially met the performance standards and outcome measures, or has not effectively administered the School Readiness or VPK program, the office may temporarily contract with a qualified entity to continue providing services until the ELC is reestablished and a new school readiness program plan is approved.

Annual Report

The bill requires the OEL to collect and report data on coalition delivery of early learning programs to be implemented beginning July 1, 2014, and results included in the OEL's annual report. The OEL report must include, but not be limited to, the following elements:

- Progress toward reducing the number of children on the waiting list.
- The percentage of students served compared to the number of administrative staff and overhead.
- The percentage of students served compared to the total number of children under the age of five years below 150 percent of the federal poverty level.
- Provider payment process.
- Fraud intervention.
- Child attendance and stability.
- Use of child care resource and referral.
- Kindergarten readiness outcomes.

School Readiness Program Participation Eligibility

The bill establishes, effective August 1, 2013, or upon reevaluation of eligibility of children served, the following priorities for participation in the School Readiness Program:

- First priority must be a child under 13 from a family that includes a parent who is receiving Temporary Assistance for Needy Families (TANF) and is subject to the federal work requirements.
- Second priority must be an at-risk child under 9 years of age.
- Third priority must be a child from, birth to beginning of school year for which the child is eligible for kindergarten, from a working family that is economically disadvantaged and may include such children's eligible siblings who are eligible to enter kindergarten through the summer before sixth grade, provided that the ELC uses local revenues first; The child's eligibility ceases if the child's family income exceeds 200 percent of the federal poverty level.
- Fourth priority must be a child aged 9 through 13, who is at risk; a child eligible under this priority whose sibling is enrolled in the School Readiness program shall be given priority over other children.
- Fifth priority must be a child younger than 13 years of age from a working family that is economically disadvantaged; a child eligible under this priority whose sibling is enrolled in the School Readiness program shall be given priority over other children. The child's eligibility is no longer eligible if the family income exceeds 200 percent of the federal poverty level.
- Sixth priority must be a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. The child remains eligible until he or she is eligible for admission to kindergarten.
- Seventh priority must be a child of a parent who transitions from the work program into employment as described in s. 445.032, F.S.
- Last priority must be for a child who is also concurrently enrolled in the Head Start program and the VPK program.

Additionally, the bill requires:

- Coalitions to enroll children in accordance with the specified eligibility priorities;
- Parents the opportunity to reestablish employment within 60 days (instead of the current 30 days for break in employment or 60 days for temporary break in employment due to medical reasons[58]);
- Disenrollment of children to occur in reverse order of the specified eligibility priorities, beginning with children from families with the highest family incomes;
- A notice of disenrollment be sent to the parent and school readiness program provider at least 2 weeks before disenrollment; and

[58] Florida's Office of Early Learning, *Part 2: CCDF Subsidy Program Administration*, *available at* http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012_2013Part2-CCDFSubsidyProgramAdministration.pdf.

- Providers to report to the coalition for determination of need for continued care if a child has been absent for five consecutive days without any parental notification.

Provider Standards and Eligibility

In addition to current standards and requirements for providers, the bill requires that providers:

- Maintain a minimum general liability insurance coverage of $100,000 and general aggregate coverage of $300,000 that includes coverage of transportation if students are transported by the provider. The OEL may authorize lower limits upon request, as appropriate.
- Must add the coalition as a named certificateholder and as an additional insured.
- Maintain any required worker's compensation insurance and any required unemployment compensation insurance.
- Maintain the coverage for the entire period of the provider contract with the coalition.
- Notify the coalition, with a minimum of ten calendar days' advance written notice, of cancellation or changes to coverage.
- Make provisions for coalitions to revoke provider's eligibility for five years if the provider fails of refuses to comply with the law or the statewide contract.
- Include school readiness program activities to foster brain development in infants and toddlers by providing an environment rich in language and music; stimulating visual, tactile, auditory, and linguistic senses; and include 30 minutes of reading to children each day.
- Administer preassessments and postassessments that are approved by the OEL, if such providers choose to administer such assessments.

School Readiness Program Funding

The bill provides that School Readiness program funding shall be allocated to the ELCs as provided in the General Appropriations Act (GAA). The bill also removes the requirement for the annual submission of a funding formula by the OEL. Beginning in the 2014-2015, fiscal year all funding appropriated in the GAA shall be allocated using the average prior year enrollment and the uniform waiting list, as adopted by the School Readiness Estimating conference, and the average market rate.[59]

The bill requires the OEL and each ELC to limit its expenditures to no more than 22 percent of funds for any combination of administrative costs, nondirect services, and quality activities for any fiscal year. No more than 5 percent may be used for administrative costs. Coalitions must place the highest priority for the expenditure of funds on providing direct services for eligible children in the School Readiness program.

The bill specifies that activities to improve the quality of child care must be limited to:

- Developing, operating, expanding, and coordinating resource and referral program.
- Awarding grants to School Readiness program providers to assist the providers in meeting the state requirements for child care performance standards, implementing developmentally

[59] Section 216.136(8)(a), F.S.

appropriate curricula and related classroom supports, providing literacy supports, and providing professional development.
- Providing training and technical assistance for School Readiness program providers, staff, and parents on standards, child screenings, child assessments, curricula, charter development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, recognition of communicable diseases, and child abuse detection and prevention.
- Funding for quality activities for infants and toddler care, to meet applicable federal requirements.
- Improving the monitoring of compliance with state and local requirements.
- Responding to Warm Line requests by providers and parents regarding children in the School Readiness program.

The bill defines nondirect services to include, but not be limited to:

- Assisting families in completing the required application.
- Determining child and family eligibility.
- Recruiting eligible child care providers.
- Processing and tracking attendance records.
- Developing and maintaining a statewide information system.

The bill prohibits the use of state funds for the purchase or improvement of land or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading of child care facilities so that School Readiness program providers are able to meet the state and local child care standards including health and safety requirements.

School Readiness Program Prevailing Market Rate

The bill defines market rate as the price that a child care or early childhood education provider charges for full-time or part-time daily, weekly, or monthly child care or early childhood education services. Additionally, average market rate is defined in the bill as the biennially determined average of the market rate by program care level and provider type in a predetermined geographic market. The bill requires the funding for the School Readiness program to be allocated to the ELCs in accordance with the specified requirements and the GAA.

Investigations of Fraud

The bill requires the OEL to coordinate with federal and state agencies to perform data matches to verify the eligibility of individual and families regarding participation in the School Readiness program. Fraudulent information submitted by a school readiness program provider or parent must be considered a misdemeanor of the first degree, which may include a fine up to $1,000 and imprisonment not exceeding 1 year. Additionally, the bill:

- Defines “fraud” and the processes to investigate and refer fraud to Department of Financial Services for criminal investigation or to the applicable coalition.
- Applies the provisions and consequences regarding fraud to coalitions, recipients and providers.

- Provides that coalitions may suspend or terminate a provider from participation in School Readiness or the Voluntary Prekindergarten program if it has reasonable cause to believe that the provider has committed fraud.
- Removes a provider from eligibility to deliver program services or receive federal or state funds for a period of 5 years if the provider is convicted of fraud.
- Prohibits coalitions from contracting with a provider who is on the U.S. Department of Agriculture disqualified list.
- Requires coalitions to adopt an anti-fraud plan.
- Specifies that a person who commits an act of fraud is subject to the penalties provided in s. 414.39, F.S.[60]

The bill also requires the Early Learning Advisory Council (ELAC) to periodically analyze and provide recommendations to the OEL regarding the effective and efficient use of local, state and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans.

The bill requires that the chair of the ELAC appointed by the Governor and members appointed by the presiding officers of the Legislature be from the business community.

Transparency

The bill includes several provisions that increase transparency by:

- Requiring the OEL to publish an annual report on the office's website by January 1. The report must include a summary of coalitions' annual report, a statewide summary, an analysis of early learning activities throughout the state with specified components, and a summary of activities and expenditures regarding the Child Care Executive Partnership Program.
- Requiring the OEL to review ELCs' delivery of the early learning programs.
- Requiring the OEL to review and adopt minimum performance standards for VPK.
- Requiring the OEL to include a summary of activities and expenditures related to the Child Care Executive Partnership Program in the annual report.
- Requiring ELCs to comply with specific requirements before contracting with a member of the coalition or a relative which includes approval of the contract by the office.
- Requiring the ELCs to comply with the tangible personal property requirements of chapter 274 and rules there under.
- Requiring VPK instructors to complete an online training course on the performance standards by July 1, 2014.
- Clarifying that participation in the School Readiness program does not expand the regulatory authority of the state, its officers, or any early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements set forth for administration of the School Readiness program.
- Revising provisions regarding the accrediting organizations recognized under the Gold Seal Quality Care program.

[60] Fraud of less than $200 is a misdemeanor of the first degree and $200 or more is a felony of the third degree.

Child Care Executive Partnership

The bill removes from duties of the Child Care Executive Partnership, requirements regarding formulation and coordination of the state's child care policy and adopting an official seal, and instead, directs the partnership to make recommendations concerning the implementation and coordination of the School Readiness program.

Educational Property

The bill extends the educational institution exemption to include situations when the property and the educational institution are owned by separate legal entities and those legal entities are owned by the identical people.

Gold Seal Quality Care Designation

The bill removes the requirement for the accrediting association to be "nationally recognized," but it must still be approved by the Department of Children and Families. In approving accrediting associations, the Department of Children and Families must consult with the Florida Association of Academic Nonpublic Schools and the Association of Early Learning Coalitions in addition to the entities specified in Section 402.281(3)(b), Florida Statutes.

After School Meals Program

The bill authorizes after-school programs that are excluded from licensure to provide snacks and meals through the federally funded After School Meal Program (AMP) meals administered by the Department of Health if the programs are in good standing with the Department of Health and the meals meet the AMP requirements.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not completed its review of the provisions of this bill that exempt certain commonly-owned property used for educational purposes.

Staff estimates that these changes will reduce local government property tax revenue by an insignificant amount (less than $50,000).[61]

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of this bill on the Department of Education and the Office of Early Learning is 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/CS by Appropriations Subcommittee on Education on April 17, 2013:
The committee substitute differs from CS/SB 1722 in that the committee substitute:

- Changes the governance structure of the Office of Early Learning by establishing the office within the Department of Education's Office of Independent Education and Parental Choice.
- Includes several accountability and transparency provisions to promote effective and efficient administration of VPK program and School Readiness programs.
- Includes provisions regarding educational property and after-school meals program.

CS by Committee on Education on April 1, 2013:
The committee substitute differs from SB 1722 in that the committee substitute:

- Changes the governance structure of the Office of Early Learning by establishing the Office of Early Learning within the Office of the Commissioner of Education.
- Enhances the accountability of early learning programs by requiring the Office of Early Learning to administer the School Readiness and VPK programs and keeping the administrative staff for such programs to the minimum necessary to administer the duties of the office.
- Provides roles and responsibilities for the Office of Early Learning and early learning coalitions.

[61]Staff analysis, Senate Bill 1830, April 15, 2013.

B. Amendments:

None.

959928

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment

Delete lines 1478 - 1502
and insert:
(d) Priority shall be given next to a child of a parent who transitions from the work program into employment, as described in s. 445.032, from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.
(e) Priority shall be given next to an at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness

program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children who are eligible under this paragraph.

(f) Priority shall be given next to a child who is younger than 13 years of age from a working family that is economically disadvantaged. A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph. However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

(g) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 if the child is younger than 13 years of age.

(h) Priority shall be given next to a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(i) Notwithstanding paragraphs (a)-(d), priority shall be

671062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment

Delete lines 1777 - 1783.

117748

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2013	.	
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	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2270 - 2323.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 74 - 76

and insert:

conforming provisions; amending s. 216.136, F.S.; conforming a

416810

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2270 - 2323.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 74 - 76

and insert:

conforming provisions; amending s. 216.136, F.S.; conforming a

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to early learning; creating s. 1001.213, F.S.; creating the Office of Early Learning within the Department of Education's Office of Independent Education and Parental Choice; providing duties relating to the establishment and operation of the school readiness program and the Voluntary Prekindergarten Education Program; amending s. 1002.51, F.S.; conforming a cross-reference; providing a definition; amending s. 1002.53, F.S.; clarifying Voluntary Prekindergarten Education Program student enrollment provisions; amending s. 1002.55, F.S.; providing additional requirements for private prekindergarten providers and instructors; providing duties of the office; amending s. 1002.57, F.S.; requiring the office to adopt standards for a prekindergarten director credential; amending s. 1002.59, F.S.; requiring the office to adopt standards for training courses; amending s. 1002.61, F.S.; providing a requirement for a public school delivering the summer prekindergarten program; amending s. 1002.63, F.S.; providing a requirement for a public school delivering the school-year prekindergarten program; amending s. 1002.66, F.S.; deleting obsolete provisions; amending s. 1002.67, F.S.; requiring the office to adopt performance standards for students in the Voluntary Prekindergarten Education Program and

approve curricula; revising provisions relating to removal of provider eligibility, submission of an improvement plan, and required corrective actions; amending s. 1002.69, F.S.; providing duties of the office relating to statewide kindergarten screening, kindergarten readiness rates, and good cause exemptions for providers; amending s. 1002.71, F.S.; revising provisions relating to payment of funds to providers; amending s. 1002.72, F.S.; providing for the release of Voluntary Prekindergarten Education Program student records for the purpose of investigations; amending s. 1002.75, F.S.; revising duties of the office for administering the Voluntary Prekindergarten Education Program; amending s. 1002.77, F.S.; revising provisions relating to the Florida Early Learning Advisory Council; amending s. 1002.79, F.S.; deleting certain State Board of Education rulemaking authority for the Voluntary Prekindergarten Education Program; creating part VI of ch. 1002, F.S., consisting of ss. 1002.81-1002.96, relating to the school readiness program; providing definitions; providing powers and duties of the Office of Early Learning; providing for early learning coalitions; providing early learning coalition powers and duties for the school readiness program; providing requirements for early learning coalition plans; providing a school readiness program education component; providing school readiness program eligibility and enrollment requirements; providing

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school readiness program provider standards and eligibility to deliver the school readiness program; providing school readiness program funding; providing a market rate schedule; providing for the investigation of fraud or overpayment; providing penalties; providing for child care and early childhood resource and referral; providing for school readiness program transportation services; providing for the Child Care Executive Partnership Program; providing for the Teacher Education and Compensation Helps scholarship program; providing for Early Head Start collaboration grants; transferring, renumbering, and amending s. 411.011, F.S., relating to the confidentiality of records of children in the school readiness program; revising provisions with respect to the release of records; amending s. 11.45, F.S.; conforming a cross-reference; amending s. 20.15, F.S.; conforming provisions; amending s. 196.198, F.S.; revising provisions relating to educational property tax exemption; amending s. 216.136, F.S.; conforming a cross-reference; amending s. 402.281, F.S.; revising requirements relating to receipt of a Gold Seal Quality Care designation; amending s. 402.302, F.S.; conforming a cross-reference; amending s. 402.305, F.S.; providing that certain child care after-school programs may provide meals through a federal program; amending ss. 445.023, 490.014, and 491.014, F.S.; conforming cross-references; amending s. 1001.11, F.S.; providing a duty of the Commissioner of

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Education relating to early learning programs; repealing s. 411.01, F.S., relating to the school readiness program and early learning coalitions; repealing s. 411.0101, F.S., relating to child care and early childhood resource and referral; repealing s. 411.01013, F.S., relating to the prevailing market rate schedule; repealing s. 411.01014, F.S., relating to school readiness transportation services; repealing s. 411.01015, F.S., relating to consultation to child care centers and family day care homes; repealing s. 411.0102, F.S., relating to the Child Care Executive Partnership Act; repealing s. 411.0103, F.S., relating to the Teacher Education and Compensation Helps scholarship program; repealing s. 411.0104, relating to Early Head Start collaboration grants; repealing s. 411.0105, F.S., relating to the Early Learning Opportunities Act and Even Start Family Literacy Programs; repealing s. 411.0106, F.S., relating to infants and toddlers in state-funded education and care programs; authorizing specified positions for the Office of Early Learning; requiring the office to develop a reorganization plan for the office and submit the plan to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1001.213, Florida Statutes, is created to read:

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1001.213 Office of Early Learning.—The Office of Early Learning is created within the Department of Education's Office of Independent Education and Parental Choice. The Office of Early Learning, which shall be administered by an executive director, is fully accountable to the Commissioner of Education but shall:

(1) Independently exercise all powers, duties, and functions prescribed by law and shall not be construed as part of the K-20 education system.

(2) Adopt rules for the establishment and operation of the school readiness program and the Voluntary Prekindergarten Education Program. The office shall submit the rules to the State Board of Education for approval or disapproval. If the state board does not act on a rule within 60 days after receipt, the rule shall be filed immediately with the Department of State.

(3) In compliance with part VI of chapter 1002 and its powers and duties under s. 1002.82, administer the school readiness program at the state level for the state's eligible population described in s. 1002.87 and provide guidance to early learning coalitions in the implementation of the program.

(4) In compliance with parts V and VI of chapter 1002 and its powers and duties under s. 1002.75, administer the Voluntary Prekindergarten Education Program at the state level.

(5) Administer the operational requirements of the child care resource and referral network at the state level.

(6) Keep administrative staff to the minimum necessary to administer the duties of the office.

Section 2. Subsection (4) of section 1002.51, Florida

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Statutes, is amended, and subsection (8) is added to that section, to read:

1002.51 Definitions.—As used in this part, the term:

(4) "Early learning coalition" or "coalition" means an early learning coalition created under s. 1002.83 ~~411.01~~.

(8) "Office" means the Office of Early Learning within the Department of Education's Office of Independent Education and Parental Choice.

Section 3. Paragraph (a) of subsection (4) and paragraph (b) of subsection (6) of section 1002.53, Florida Statutes, are amended to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(4)(a) Each parent enrolling a child in the Voluntary Prekindergarten Education Program must complete and submit an application to the early learning coalition through the single point of entry established under s. 1002.82 ~~411.01~~.

(6)(b) A parent may enroll his or her child with any public school within the school district which is eligible to deliver the Voluntary Prekindergarten Education Program under this part, subject to available space. Each school district may limit the number of students admitted by any public school for enrollment in the school-year program; however, the school district must provide for the admission of every eligible child within the district whose parent enrolls the child in a summer prekindergarten program delivered by a public school under s. 1002.61.

Section 4. Paragraphs (c) and (g) of subsection (3) of section 1002.55, Florida Statutes, are amended, present

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paragraph (i) of that subsection is redesignated as paragraph (m), and new paragraphs (i), (j), (k), and (l) are added to that subsection, to read:

1002.55 School-year prekindergarten program delivered by private prekindergarten providers.—

(3) To be eligible to deliver the prekindergarten program, a private prekindergarten provider must meet each of the following requirements:

(c) The private prekindergarten provider must have, for each prekindergarten class of 11 children or fewer, at least one prekindergarten instructor who meets each of the following requirements:

1. The prekindergarten instructor must hold, at a minimum, one of the following credentials:

a. A child development associate credential issued by the National Credentialing Program of the Council for Professional Recognition; or

b. A credential approved by the Department of Children and Families ~~Family Services~~ as being equivalent to or greater than the credential described in sub-subparagraph a.

The Department of Children and Families ~~Family Services~~ may adopt rules under ss. 120.536(1) and 120.54 which provide criteria and procedures for approving equivalent credentials under sub-subparagraph b.

2. The prekindergarten instructor must successfully complete an emergent literacy training course and a student performance standards training course approved by the office ~~department~~ as meeting or exceeding the minimum standards adopted

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under s. 1002.59. The requirement for completion of the standards training course shall take effect July 1, 2014, and the course shall be available online. ~~This subparagraph does not apply to a prekindergarten instructor who successfully completes approved training in early literacy and language development under s. 402.305(2)(d)5., s. 402.313(6), or s. 402.3131(5) before the establishment of one or more emergent literacy training courses under s. 1002.59 or April 1, 2005, whichever occurs later.~~

(g) ~~Before the beginning of the 2006-2007 school year,~~ The private prekindergarten provider must have a prekindergarten director who has a prekindergarten director credential that is approved by the office ~~department~~ as meeting or exceeding the minimum standards adopted under s. 1002.57. Successful completion of a child care facility director credential under s. 402.305(2)(f) before the establishment of the prekindergarten director credential under s. 1002.57 or July 1, 2006, whichever occurs later, satisfies the requirement for a prekindergarten director credential under this paragraph.

(i) The private prekindergarten provider must execute the statewide provider contract prescribed under s. 1002.75, except that an individual who owns or operates multiple private prekindergarten providers within a coalition's service area may execute a single agreement with the coalition on behalf of each provider.

(j) The private prekindergarten provider must maintain general liability insurance and provide the coalition with written evidence of general liability insurance coverage, including coverage for transportation of children if

prekindergarten students are transported by the provider. A provider must obtain and retain an insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. A provider must add the coalition as a named certificateholder and as an additional insured. A provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider contract with the coalition.

(k) The private prekindergarten provider must obtain and maintain any required workers' compensation insurance under chapter 440 and any required reemployment assistance or unemployment compensation coverage under chapter 443.

(l) Notwithstanding paragraph (j), for a private prekindergarten provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), the provider must agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

Section 5. Subsection (1) of section 1002.57, Florida Statutes, is amended to read:

1002.57 Prekindergarten director credential.—

(1) ~~By July 1, 2006,~~ The office, in consultation with the Department of Children and Families, ~~department~~ shall adopt minimum standards for a credential for prekindergarten directors

of private prekindergarten providers delivering the Voluntary Prekindergarten Education Program. The credential must encompass requirements for education and onsite experience.

Section 6. Section 1002.59, Florida Statutes, is amended to read:

1002.59 Emergent literacy and performance standards training courses.—

(1) ~~By April 1, 2005,~~ The office ~~department~~ shall adopt minimum standards for one or more training courses in emergent literacy for prekindergarten instructors. Each course must comprise 5 clock hours and provide instruction in strategies and techniques to address the age-appropriate progress of prekindergarten students in developing emergent literacy skills, including oral communication, knowledge of print and letters, phonemic and phonological awareness, and vocabulary and comprehension development. Each course must also provide resources containing strategies that allow students with disabilities and other special needs to derive maximum benefit from the Voluntary Prekindergarten Education Program. Successful completion of an emergent literacy training course approved under this section satisfies requirements for approved training in early literacy and language development under ss. 402.305(2)(d)5., 402.313(6), and 402.3131(5).

(2) The office shall adopt minimum standards for one or more training courses on the performance standards adopted under s. 1002.67(1). Each course must comprise at least 3 clock hours, provide instruction in strategies and techniques to address age-appropriate progress of each child in attaining the standards, and be available online.

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Section 7. Subsections (3), (4), and (8) of section 1002.61, Florida Statutes, are amended to read:

1002.61 Summer prekindergarten program delivered by public schools and private prekindergarten providers.—

(3)(a) Each district school board shall determine which public schools in the school district are eligible to deliver the summer prekindergarten program. The school district shall use educational facilities available in the public schools during the summer term for the summer prekindergarten program.

(b) Each public school delivering the summer prekindergarten program must execute the statewide provider contract prescribed under s. 1002.75, except that the school district may execute a single agreement with the early learning coalition on behalf of all district schools.

(c) ~~(b)~~ Except as provided in this section, to be eligible to deliver the summer prekindergarten program, a private prekindergarten provider must meet each requirement in s. 1002.55.

(4) Notwithstanding ss. 1002.55(3)(c)1. and 1002.63(4), each public school and private prekindergarten provider must have, for each prekindergarten class, at least one prekindergarten instructor who~~:~~

~~(a)~~ is a certified teacher~~;~~ or

~~(b)~~ holds one of the educational credentials specified in s. 1002.55(4)(a) or (b). As used in this subsection, the term "certified teacher" means a teacher holding a valid Florida educator certificate under s. 1012.56 who has the qualifications required by the district school board to instruct students in the summer prekindergarten program. In selecting instructional

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staff for the summer prekindergarten program, each school district shall give priority to teachers who have experience or coursework in early childhood education.

(8) Each public school delivering the summer prekindergarten program must also~~:~~

~~(a)~~ register with the early learning coalition on forms prescribed by the Office of Early Learning~~;~~ and

~~(b)~~ deliver the Voluntary Prekindergarten Education Program in accordance with this part.

Section 8. Subsections (3) and (8) of section 1002.63, Florida Statutes, are amended to read:

1002.63 School-year prekindergarten program delivered by public schools.—

(3)(a) The district school board of each school district shall determine which public schools in the district may deliver the prekindergarten program during the school year.

(b) Each public school delivering the school-year prekindergarten program must execute the statewide provider contract prescribed under s. 1002.75, except that the school district may execute a single agreement with the early learning coalition on behalf of all district schools.

(8) Each public school delivering the school-year prekindergarten program must~~:~~

~~(a)~~ register with the early learning coalition on forms prescribed by the Office of Early Learning~~;~~ and

~~(b)~~ deliver the Voluntary Prekindergarten Education Program in accordance with this part.

Section 9. Subsection (1) of section 1002.66, Florida Statutes, is amended to read:

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1002.66 Specialized instructional services for children with disabilities.—

(1) ~~Beginning with the 2012-2013 school year,~~ A child who has a disability and enrolls with the early learning coalition under s. 1002.53(3)(d) is eligible for specialized instructional services if:

(a) The child is eligible for the Voluntary Prekindergarten Education Program under s. 1002.53; and

(b) A current individual educational plan has been developed for the child by the local school board in accordance with rules of the State Board of Education.

Section 10. Subsection (1), paragraph (c) of subsection (2), and subsection (4) of section 1002.67, Florida Statutes, are amended to read:

1002.67 Performance standards; curricula and accountability.—

(1)(a) The office ~~department~~ shall develop and adopt performance standards for students in the Voluntary Prekindergarten Education Program. The performance standards must address the age-appropriate progress of students in the development of:

1. The capabilities, capacities, and skills required under s. 1(b), Art. IX of the State Constitution; and

2. Emergent literacy skills, including oral communication, knowledge of print and letters, phonemic and phonological awareness, and vocabulary and comprehension development.

By October 1, 2013, the office shall examine the existing performance standards in the area of mathematical thinking and

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develop a plan to make appropriate professional development and training courses available to prekindergarten instructors.

(b) The office ~~State Board of Education~~ shall periodically review and revise the performance standards for the statewide kindergarten screening administered under s. 1002.69 and align the standards to the standards established by the state board for student performance on the statewide assessments administered pursuant to s. 1008.22.

(2)

(c) The office ~~department~~ shall review and approve curricula for use by private prekindergarten providers and public schools that are placed on probation under paragraph (4)(c). The office ~~department~~ shall maintain a list of the curricula approved under this paragraph. Each approved curriculum must meet the requirements of paragraph (b).

(4)(a) Each early learning coalition shall verify that each private prekindergarten provider delivering the Voluntary Prekindergarten Education Program within the coalition's county or multicounty region complies with this part. Each district school board shall verify that each public school delivering the program within the school district complies with this part.

(b) If a private prekindergarten provider or public school fails or refuses to comply with this part, or if a provider or school engages in misconduct, the office ~~of Early Learning~~ shall require the early learning coalition to remove the provider~~,~~ and ~~the Department of Education shall~~ require the school district to remove the school from eligibility to deliver the Voluntary Prekindergarten Education Program and receive state funds under this part for a period of 5 years.

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(c)1. If the kindergarten readiness rate of a private prekindergarten provider or public school falls below the minimum rate adopted by the office ~~State Board of Education~~ as satisfactory under s. 1002.69(6), the early learning coalition or school district, as applicable, shall require the provider or school to submit an improvement plan for approval by the coalition or school district, as applicable, and to implement the plan; ~~.~~

~~2. If a private prekindergarten provider or public school fails to meet the minimum rate adopted by the State Board of Education as satisfactory under s. 1002.69(6), the early learning coalition or school district, as applicable,~~ shall place the provider or school on probation; and shall ~~must~~ require the provider or school to take certain corrective actions, including the use of a curriculum approved by the office ~~department~~ under paragraph (2)(c) or a staff development plan to strengthen instruction in language development and phonological awareness approved by the office ~~department~~.

2.~~3.~~ A private prekindergarten provider or public school that is placed on probation must continue the corrective actions required under subparagraph 1. ~~2.~~, including the use of a curriculum or a staff development plan to strengthen instruction in language development and phonological awareness approved by the office ~~department~~, until the provider or school meets the minimum rate adopted by the office ~~State Board of Education~~ as satisfactory under s. 1002.69(6). Failure to implement an approved improvement plan or staff development plan shall result in the termination of the provider's contract to deliver the Voluntary Prekindergarten Education Program for a period of 5

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years.

3.~~4.~~ If a private prekindergarten provider or public school remains on probation for 2 consecutive years and fails to meet the minimum rate adopted by the office ~~State Board of Education~~ as satisfactory under s. 1002.69(6) and is not granted a good cause exemption by the office ~~department~~ pursuant to s. 1002.69(7), the office ~~of Early Learning~~ shall require the early learning coalition or ~~the Department of Education shall require~~ the school district to remove, as applicable, the provider or school from eligibility to deliver the Voluntary Prekindergarten Education Program and receive state funds for the program for a period of 5 years.

(d) Each early learning coalition and~~,~~ the office ~~of Early Learning, and the department~~ shall coordinate with the Child Care Services Program Office of the Department of Children and Families ~~Family Services~~ to minimize interagency duplication of activities for monitoring private prekindergarten providers for compliance with requirements of the Voluntary Prekindergarten Education Program under this part, the school readiness program ~~programs~~ under part VI of this chapter ~~s. 411.01~~, and the licensing of providers under ss. 402.301-402.319.

Section 11. Subsections (2), (5), (6), and (7) of section 1002.69, Florida Statutes, are amended to read:

1002.69 Statewide kindergarten screening; kindergarten readiness rates; state-approved prekindergarten enrollment screening; good cause exemption.—

(2) The statewide kindergarten screening shall provide objective data concerning each student's readiness for kindergarten and progress in attaining the performance standards

adopted by the office ~~department~~ under s. 1002.67(1).

(5) The office ~~State Board of Education~~ shall adopt procedures ~~for the department~~ to annually calculate each private prekindergarten provider's and public school's kindergarten readiness rate, which must be expressed as the percentage of the provider's or school's students who are assessed as ready for kindergarten. The methodology for calculating each provider's kindergarten readiness rate must include student learning gains when available and the percentage of students who meet all state readiness measures. The rates must not include students who are not administered the statewide kindergarten screening. The office ~~state board~~ shall determine learning gains using a value-added measure based on growth demonstrated by the results of the preassessment and postassessment ~~pre- and post-assessment~~ from at least 2 successive years of administration of the preassessment and postassessment ~~pre- and post-assessment~~.

(6) The office ~~State Board of Education~~ shall periodically adopt a minimum kindergarten readiness rate that, if achieved by a private prekindergarten provider or public school, would demonstrate the provider's or school's satisfactory delivery of the Voluntary Prekindergarten Education Program.

(7)(a) Notwithstanding s. 1002.67(4)(c)3. ~~1002.67(4)(c)4.~~, the office ~~State Board of Education~~, upon the request of a private prekindergarten provider or public school that remains on probation for 2 consecutive years or more and subsequently fails to meet the minimum rate adopted under subsection (6) and for good cause shown, may grant to the provider or school an exemption from being determined ineligible to deliver the Voluntary Prekindergarten Education Program and receive state

funds for the program. Such exemption is valid for 1 year and, upon the request of the private prekindergarten provider or public school and for good cause shown, may be renewed.

(b) A private prekindergarten provider's or public school's request for a good cause exemption, or renewal of such an exemption, must be submitted to the office ~~state board~~ in the manner and within the timeframes prescribed by the office ~~state board~~ and must include the following:

1. Submission of data by the private prekindergarten provider or public school which documents the achievement and progress of the children served as measured by the state-approved prekindergarten enrollment screening and the standardized postassessment approved by the office ~~department~~ pursuant to subparagraph (c)1.

2. Submission and review of data available from the respective early learning coalition or district school board, the Department of Children and Families ~~Family Services~~, local licensing authority, or an accrediting association, as applicable, relating to the private prekindergarten provider's or public school's compliance with state and local health and safety standards.

3. Submission and review of data available to the office ~~department~~ on the performance of the children served and the calculation of the private prekindergarten provider's or public school's kindergarten readiness rate.

(c) The office ~~State Board of Education~~ shall adopt criteria for granting good cause exemptions. Such criteria shall include, but are not limited to:

1. Learning gains of children served in the Voluntary

Prekindergarten Education Program by the private prekindergarten provider or public school.

2. Verification that local and state health and safety requirements are met.

(d) A good cause exemption may not be granted to any private prekindergarten provider that has any class I violations or two or more class II violations within the 2 years preceding the provider's or school's request for the exemption. For purposes of this paragraph, class I and class II violations have the same meaning as provided in s. 402.281(4).

(e) A private prekindergarten provider or public school granted a good cause exemption shall continue to implement its improvement plan and continue the corrective actions required under s. 1002.67(4)(c)1. ~~1002.67(4)(c)2.~~, including the use of a curriculum approved by the office ~~department~~, until the provider or school meets the minimum rate adopted under subsection (6).

(f) ~~The State Board of Education shall notify the Office of Early Learning of any good cause exemption granted to a private prekindergarten provider under this subsection.~~ If a good cause exemption is granted to a private prekindergarten provider who remains on probation for 2 consecutive years, the office ~~of Early Learning~~ shall notify the early learning coalition of the good cause exemption and direct that the coalition, notwithstanding s. 1002.67(4)(c)3. ~~1002.67(4)(c)4.~~, not remove the provider from eligibility to deliver the Voluntary Prekindergarten Education Program or to receive state funds for the program, if the provider meets all other applicable requirements of this part.

Section 12. Paragraph (d) of subsection (3) and subsections

(5) and (7) of section 1002.71, Florida Statutes, are amended to read:

1002.71 Funding; financial and attendance reporting.—

(3)

(d) For programs offered by school districts pursuant to s. 1002.61 ~~and beginning with the 2009 summer program~~, each district's funding shall be based on a student enrollment that is evenly divisible by 12. If the result of dividing a district's student enrollment by 12 is not a whole number, the district's enrollment calculation shall be adjusted by adding the minimum number of students to produce a student enrollment calculation that is evenly divisible by 12.

(5)(a) Each early learning coalition shall maintain through the single point of entry established under s. 1002.82 ~~411.01~~ a current database of the students enrolled in the Voluntary Prekindergarten Education Program for each county within the coalition's region.

(b) The Office of Early Learning shall adopt procedures for the payment of private prekindergarten providers and public schools delivering the Voluntary Prekindergarten Education Program. The procedures shall provide for the advance payment of providers and schools based upon student enrollment in the program, the certification of student attendance, and the reconciliation of advance payments in accordance with the uniform attendance policy adopted under paragraph (6)(d). The procedures shall provide for the monthly distribution of funds by the Office of Early Learning to the early learning coalitions for payment by the coalitions to private prekindergarten providers and public schools. ~~The department shall transfer to~~

~~the Office of Early Learning at least once each quarter the funds available for payment to private prekindergarten providers and public schools in accordance with this paragraph from the funds appropriated for that purpose.~~

(7) The Office of Early Learning shall require that administrative expenditures be kept to the minimum necessary for efficient and effective administration of the Voluntary Prekindergarten Education Program. Administrative policies and procedures shall be revised, to the maximum extent practicable, to incorporate the use of automation and electronic submission of forms, including those required for child eligibility and enrollment, provider and class registration, and monthly certification of attendance for payment. A school district may use its automated daily attendance reporting system for the purpose of transmitting attendance records to the early learning coalition in a mutually agreed-upon format. In addition, actions shall be taken to reduce paperwork, eliminate the duplication of reports, and eliminate other duplicative activities. ~~Beginning with the 2011-2012 fiscal year,~~ Each early learning coalition may retain and expend no more than 4.0 percent of the funds paid by the coalition to private prekindergarten providers and public schools under paragraph (5)(b). Funds retained by an early learning coalition under this subsection may be used only for administering the Voluntary Prekindergarten Education Program and may not be used for the school readiness program or other programs.

Section 13. Paragraph (a) of subsection (3) of section 1002.72, Florida Statutes, is amended to read:

1002.72 Records of children in the Voluntary

Prekindergarten Education Program.—

(3)(a) Confidential and exempt Voluntary Prekindergarten Education Program records may be released to:

1. The United States Secretary of Education, the United States Secretary of Health and Human Services, and the Comptroller General of the United States for the purpose of federal audits or investigations.

2. Individuals or organizations conducting studies for institutions to develop, validate, or administer assessments or improve instruction.

3. Accrediting organizations in order to carry out their accrediting functions.

4. Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child or other individuals.

5. The Auditor General in connection with his or her official functions.

6. A court of competent jurisdiction in compliance with an order of that court pursuant to a lawfully issued subpoena.

7. Parties to an interagency agreement among early learning coalitions, local governmental agencies, Voluntary Prekindergarten Education Program providers, or state agencies for the purpose of implementing the Voluntary Prekindergarten Education Program.

Section 14. Subsection (1) and paragraphs (a) and (d) of subsection (2) of section 1002.75, Florida Statutes, are amended to read:

1002.75 Office of Early Learning; powers and duties~~; operational requirements~~.—

(1) The Office of Early Learning shall adopt by rule a standard statewide provider contract to be used with each Voluntary Prekindergarten Education Program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract shall include, at a minimum, provisions for provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of children. The standard statewide contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services. Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable. ~~The Office of Early Learning shall administer the operational requirements of the Voluntary Prekindergarten Education Program at the state level.~~

(2) The Office of Early Learning shall adopt procedures governing the administration of the Voluntary Prekindergarten Education Program by the early learning coalitions and school districts for:

(a) Enrolling children in and determining the eligibility of children for the Voluntary Prekindergarten Education Program under s. 1002.53, which shall include the enrollment of children by public schools and private providers that meet specified requirements.

(d) Determining the eligibility of private prekindergarten providers to deliver the program under ss. 1002.55 and 1002.61 and streamlining the process of provider eligibility whenever

possible.

Section 15. Subsections (1) through (3) of section 1002.77, Florida Statutes, are amended to read:

1002.77 Florida Early Learning Advisory Council.—

(1) There is created the Florida Early Learning Advisory Council within the Office of Early Learning. The purpose of the advisory council is to submit recommendations to the office ~~department~~ on ~~the~~ early learning best practices ~~policy of this state~~, including recommendations relating to the most effective administration of the Voluntary Prekindergarten Education Program under this part and the school readiness program ~~programs~~ under part VI of this chapter ~~s. 411.01~~. The advisory council shall periodically analyze and provide recommendations to the office on the effective and efficient use of local, state, and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans pursuant to s. 1002.85.

(2) The advisory council shall be composed of the following members:

(a) The chair of the advisory council who shall be appointed by and serve at the pleasure of the Governor.

(b) The chair of each early learning coalition.

(c) One member who shall be appointed by and serve at the pleasure of the President of the Senate.

(d) One member who shall be appointed by and serve at the pleasure of the Speaker of the House of Representatives.

The chair of the advisory council appointed by the Governor and

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the members appointed by the presiding officers of the Legislature must be from the business community and be in compliance with s. 1002.83(5) ~~each have a background in early learning~~.

(3) The advisory council shall meet at least quarterly but may meet as often as necessary to carry out its duties and responsibilities. The advisory council may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, only if the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate, participate.

Section 16. Section 1002.79, Florida Statutes, is amended to read:

1002.79 Rulemaking authority.—

~~(1) The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to administer the provisions of this part conferring duties upon the department.~~

~~(2)~~ The Office of Early Learning shall adopt rules under ss. 120.536(1) and 120.54 to administer the provisions of this part conferring duties upon the office.

Section 17. Part VI of chapter 1002, Florida Statutes, consisting of sections 1002.81 through 1002.96, is created to read:

PART VI

SCHOOL READINESS PROGRAM

1002.81 Definitions.—Consistent with the requirements of 45 C.F.R. parts 98 and 99 and as used in this part, the term:

(1) "At-risk child" means:

(a) A child from a family under investigation by the

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Department of Children and Families or a designated sheriff's office for child abuse, neglect, abandonment, or exploitation.

(b) A child who is in a diversion program provided by the Department of Children and Families or its contracted provider and who is from a family that is actively participating and complying in department-prescribed activities, including education, health services, or work.

(c) A child from a family that is under supervision by the Department of Children and Families or a contracted service provider for abuse, neglect, abandonment, or exploitation.

(d) A child placed in court-ordered, long-term custody or under the guardianship of a relative or nonrelative after termination of supervision by the Department of Children and Families or its contracted provider.

(e) A child in the custody of a parent who is a victim of domestic violence residing in a certified domestic violence center.

(f) A child in the custody of a parent who is considered homeless as verified by a Department of Children and Families certified homeless shelter.

(2) "Authorized hours of care" means the hours of care that are necessary to provide protection, maintain employment, or complete work activities or eligible educational activities, including reasonable travel time.

(3) "Average market rate" means the biennially determined average of the market rate by program care level and provider type in a predetermined geographic market.

(4) "Direct enhancement services" means services for families and children that are in addition to payments for the

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placement of children in the school readiness program. Direct enhancement services for families and children may include supports for providers, parent training and involvement activities, and strategies to meet the needs of unique populations and local eligibility priorities. Direct enhancement services offered by an early learning coalition shall be consistent with the activities prescribed in s. 1002.89(6)(b).

(5) "Disenrollment" means the removal either temporary or permanent, of a child from participation in the school readiness program. Removal of a child from the school readiness program may be based on the following events: a reduction in available school readiness program funding, participant's failure to meet eligibility or program participation requirements, fraud, or a change in local service priorities.

(6) "Earned income" means gross remuneration derived from work, professional service, or self-employment. The term includes commissions, bonuses, back pay awards, and the cash value of all remuneration paid in a medium other than cash.

(7) "Economically disadvantaged" means having a family income that does not exceed 150 percent of the federal poverty level and includes being a child of a working migratory family as defined by 34 C.F.R. s. 200.81(d) or (f) or an agricultural worker who is employed by more than one agricultural employer during the course of a year, and whose income varies according to weather conditions and market stability.

(8) "Family income" means the combined gross income, whether earned or unearned, that is derived from any source by all family or household members who are 18 years of age or older who are currently residing together in the same dwelling unit.

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The term does not include income earned by a currently enrolled high school student who, since attaining the age of 18 years, or a student with a disability who, since attaining the age of 22 years, has not terminated school enrollment or received a high school diploma, high school equivalency diploma, special diploma, or certificate of high school completion. The term also does not include food stamp benefits or federal housing assistance payments issued directly to a landlord or the associated utilities expenses.

(9) "Family or household members" means spouses, former spouses, persons related by blood or marriage, persons who are parents of a child in common regardless of whether they have been married, and other persons who are currently residing together in the same dwelling unit as if a family.

(10) "Full-time care" means at least 6 hours, but not more than 11 hours, of child care or early childhood education services within a 24-hour period.

(11) "Market rate" means the price that a child care or early childhood education provider charges for full-time or part-time daily, weekly, or monthly child care or early childhood education services.

(12) "Office" means the Office of Early Learning within the Department of Education's Office of Independent Education and Parental Choice.

(13) "Part-time care" means less than 6 hours of child care or early childhood education services within a 24-hour period.

(14) "Single point of entry" means an integrated information system that allows a parent to enroll his or her child in the school readiness program or the Voluntary

Prekindergarten Education Program at various locations throughout a county, that may allow a parent to enroll his or her child by telephone or through a website, and that uses a uniform waiting list to track eligible children waiting for enrollment in the school readiness program.

(15) "Unearned income" means income other than earned income. The term includes, but is not limited to:

(a) Documented alimony and child support received.

(b) Social security benefits.

(c) Supplemental security income benefits.

(d) Workers' compensation benefits.

(e) Reemployment assistance or unemployment compensation benefits.

(f) Veterans' benefits.

(g) Retirement benefits.

(h) Temporary cash assistance under chapter 414.

(16) "Working family" means:

(a) A single-parent family in which the parent with whom the child resides is employed or engaged in eligible work or education activities for at least 20 hours per week;

(b) A two-parent family in which both parents with whom the child resides are employed or engaged in eligible work or education activities for a combined total of at least 40 hours per week; or

(c) A two-parent family in which one of the parents with whom the child resides is exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459, and one parent is employed or engaged in eligible work or education activities at

least 20 hours per week.

1002.82 Office of Early Learning; powers and duties.—

(1) For purposes of administration of the Child Care and Development Block Grant Trust Fund, pursuant to 45 C.F.R. parts 98 and 99, the Office of Early Learning is designated as the lead agency and must comply with lead agency responsibilities pursuant to federal law. The office may apply to the Governor and Cabinet for a waiver of, and the Governor and Cabinet may waive, any provision of ss. 411.223 and 1003.54 if the waiver is necessary for implementation of the school readiness program. Section 125.901(2)(a)3. does not apply to the school readiness program.

(2) The office shall:

(a) Focus on improving the educational quality delivered by all providers participating in the school readiness program.

(b) Preserve parental choice by permitting parents to choose from a variety of child care categories, including center-based care, family child care, and informal child care to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18. Care and curriculum by a faith-based provider may not be limited or excluded in any of these categories.

(c) Be responsible for the prudent use of all public and private funds in accordance with all legal and contractual requirements, safeguarding the effective use of federal, state, and local resources to achieve the highest practicable level of school readiness for the children described in s. 1002.87, including:

1. The adoption of a uniform chart of accounts for budgeting and financial reporting purposes that provides standardized definitions for expenditures and reporting, consistent with the requirements of 45 C.F.R. part 98 and s. 1002.89 for each of the following categories of expenditure:

a. Direct services to children.

b. Administrative costs.

c. Quality activities.

d. Nondirect services.

2. Coordination with other state and federal agencies to perform data matches on children participating in the school readiness program and their families in order to verify the children's eligibility pursuant to s. 1002.87.

(d) Establish procedures for the biennial calculation of the average market rate.

(e) Review each early learning coalition's school readiness program plan every 2 years and provide final approval of the plan and any amendments submitted.

(f) Establish a unified approach to the state's efforts to coordinate a comprehensive early learning program. In support of this effort, the office:

1. Shall adopt specific program support services that address the state's school readiness program, including:

a. Statewide data information program requirements that include:

(I) Eligibility requirements.

(II) Financial reports.

(III) Program accountability measures.

(IV) Child progress reports.

b. Child care resource and referral services.

c. A single point of entry and uniform waiting list.

2. May provide technical assistance and guidance on additional support services to complement the school readiness program, including:

a. Rating and improvement systems.

b. Warm-Line services.

c. Anti-fraud plans.

d. School readiness program standards.

e. Child screening and assessments.

f. Training and support for parental involvement in children's early education.

g. Family literacy activities and services.

(g) Provide technical assistance to early learning coalitions.

(h) In cooperation with the early learning coalitions, coordinate with the Child Care Services Program Office of the Department of Children and Families to reduce paperwork and to avoid duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing.

(i) Develop, in coordination with the Child Care Services Program Office of the Department of Children and Families, and adopt a health and safety checklist to be completed by license-exempt providers that does not exceed the requirements s. 402.305.

(j) Develop and adopt standards and benchmarks that address the age-appropriate progress of children in the development of school readiness skills. The standards for children from birth


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to 5 years of age in the school readiness program must be aligned with the performance standards adopted for children in the Voluntary Prekindergarten Education Program and must address the following domains:

1. Approaches to learning.

2. Cognitive development and general knowledge.

3. Numeracy, language, and communication.

4. Physical development.

5. Self-regulation.

(k) Select assessments that are valid, reliable, and developmentally appropriate for use as preassessment and postassessment for the age ranges specified in the coalition plans. The assessments must be designed to measure progress in the domains of the performance standards adopted pursuant to paragraph (j), provide appropriate accommodations for children with disabilities and English language learners, and be administered by qualified individuals, consistent with the publisher's instructions.

(l) Adopt a list of approved curricula that meet the performance standards for the school readiness program and establish a process for the review and approval of a provider's curriculum that meets the performance standards.

(m) Adopt by rule a standard statewide provider contract to be used with each school readiness program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract shall include, at a minimum, provisions for provider probation, termination for cause, and emergency termination for those actions or inactions


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of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children. The standard statewide provider contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services. Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable.

(n) Establish a single statewide information system that each coalition must use for the purposes of managing the single point of entry, tracking children's progress, coordinating services among stakeholders, determining eligibility of children, tracking child attendance, and streamlining administrative processes for providers and early learning coalitions.

(o) Adopt by rule standardized procedures for coalitions to use when monitoring the compliance of school readiness program providers with the terms of the standard statewide provider contract.

(p) Monitor and evaluate the performance of each early learning coalition in administering the school readiness program, ensuring proper payments for school readiness program services, implementing the coalition's school readiness program plan, and administering the Voluntary Prekindergarten Education Program. These monitoring and performance evaluations must include, at a minimum, onsite monitoring of each coalition's finances, management, operations, and programs.

(q) Work in conjunction with the Bureau of Federal Education Programs within the Department of Education to

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coordinate readiness and voluntary prekindergarten services to the populations served by the bureau.

(r) Administer a statewide toll-free Warm-Line to provide assistance and consultation to child care facilities and family day care homes regarding health, developmental, disability, and special needs issues of the children they are serving, particularly children with disabilities and other special needs. The office shall:

1. Annually inform child care facilities and family day care homes of the availability of this service through the child care resource and referral network under s. 1002.92.

2. Expand or contract for the expansion of the Warm-Line to maintain at least one Warm-Line in each early learning coalition service area.

(3) If the office determines during the review of school readiness program plans, or through monitoring and performance evaluations conducted under s. 1002.85, that an early learning coalition has not substantially implemented its plan, has not substantially met the performance standards and outcome measures adopted by the office, or has not effectively administered the school readiness program or Voluntary Prekindergarten Education Program, the office may temporarily contract with a qualified entity to continue school readiness program and prekindergarten services in the coalition's county or multicounty region until the office reestablishes the coalition and a new school readiness program plan is approved in accordance with the rules adopted by the office.

(4) The office may request the Governor to apply for a waiver to allow a coalition to administer the Head Start Program

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to accomplish the purposes of the school readiness program.

(5) By January 1 of each year, the office shall publish on its website a report of its activities conducted under this section. The report must include a summary of the coalitions' annual reports, a statewide summary, and the following:

(a) An analysis of early learning activities throughout the state, including the school readiness program and the Voluntary Prekindergarten Education Program.

1. The total and average number of children served in the school readiness program, enumerated by age, eligibility priority category, and coalition, and the total number of children served in the Voluntary Prekindergarten Education Program.

2. A summary of expenditures by coalition, by fund source, including a breakdown by coalition of the percentage of expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

3. A description of the office's and each coalition's expenditures by fund source for the quality and enhancement activities described in s. 1002.89(6)(b).

4. A summary of annual findings and collections related to provider fraud and parent fraud.

5. Data regarding the coalitions' delivery of early learning programs.

6. The total number of children disenrolled statewide and the reason for disenrollment.

7. The total number of providers by provider type.

8. The total number of provider contracts revoked and the reasons for revocation.

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(b) A summary of the activities and detailed expenditures related to the Child Care Executive Partnership Program.

(6)(a) Parental choice of child care providers, including private and faith-based providers, shall be established to the maximum extent practicable in accordance with 45 C.F.R. s. 98.30.

(b) As used in this subsection, the term "payment certificate" means a child care certificate as defined in 45 C.F.R. s. 98.2.

(c) The school readiness program shall, in accordance with 45 C.F.R. s. 98.30, provide parental choice through a payment certificate that provides, to the maximum extent possible, flexibility in the school readiness program and payment arrangements. The payment certificate must bear the names of the beneficiary and the program provider and, when redeemed, must bear the signatures of both the beneficiary and an authorized representative of the provider.

(d) If it is determined that a provider has given any cash or other consideration to the beneficiary in return for receiving a payment certificate, the early learning coalition or its fiscal agent shall refer the matter to the Department of Financial Services pursuant to s. 414.411 for investigation.

(7) Participation in the school readiness program does not expand the regulatory authority of the state, its officers, or an early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements set forth in this part and part V of this chapter.

1002.83 Early learning coalitions.—

(1) Thirty-one or fewer early learning coalitions are

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established and shall maintain direct enhancement services at the local level and provide access to such services in all 67 counties. Two or more early learning coalitions may join for purposes of planning and implementing a school readiness program and the Voluntary Prekindergarten Education Program.

(2) Each early learning coalition shall be composed of at least 15 members but not more than 30 members.

(3) The Governor shall appoint the chair and two other members of each early learning coalition, who must each meet the same qualifications as private sector business members appointed by the coalition under subsection (5).

(4) Each early learning coalition must include the following member positions; however, in a multicounty coalition, each ex officio member position may be filled by multiple nonvoting members but no more than one voting member shall be seated per member position. If an early learning coalition has more than one member representing the same entity, only one of such members may serve as a voting member:

(a) A Department of Children and Families regional administrator or his or her permanent designee who is authorized to make decisions on behalf of the department.

(b) A district superintendent of schools or his or her permanent designee who is authorized to make decisions on behalf of the district.

(c) A regional workforce board executive director or his or her permanent designee.

(d) A county health department director or his or her designee.

(e) A children's services council or juvenile welfare board

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chair or executive director, if applicable.

(f) An agency head of a local licensing agency as defined in s. 402.302, where applicable.

(g) A president of a Florida College System institution or his or her permanent designee.

(h) One member appointed by a board of county commissioners or the governing board of a municipality.

(i) A central agency administrator, where applicable.

(j) A Head Start director.

(k) A representative of private for-profit child care providers, including private for-profit family day care homes.

(l) A representative of faith-based child care providers.

(m) A representative of programs for children with disabilities under the federal Individuals with Disabilities Education Act.

(5) Including the members appointed by the Governor under subsection (3), more than one-third of the members of each early learning coalition must be private sector business members, either for-profit or nonprofit, who do not have, and none of whose relatives as defined in s. 112.3143 has, a substantial financial interest in the design or delivery of the Voluntary Prekindergarten Education Program created under part V of this chapter or the school readiness program. To meet this requirement an early learning coalition must appoint additional members. The office shall establish criteria for appointing private sector business members. These criteria must include standards for determining whether a member or relative has a substantial financial interest in the design or delivery of the Voluntary Prekindergarten Education Program or the school

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readiness program.

(6) A majority of the voting membership of an early learning coalition constitutes a quorum required to conduct the business of the coalition. An early learning coalition may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate, participate.

(7) A voting member of an early learning coalition may not appoint a designee to act in his or her place, except as otherwise provided in this subsection. A voting member may send a representative to coalition meetings but that representative does not have voting privileges. When a regional administrator for the Department of Children and Families appoints a designee to an early learning coalition, the designee is the voting member of the coalition, and any individual attending in the designee's place, including the district administrator, does not have voting privileges.

(8) Each member of an early learning coalition is subject to ss. 112.313, 112.3135, and 112.3143. For purposes of s. 112.3143(3)(a), each voting member is a local public officer who must abstain from voting when a voting conflict exists.

(9) For purposes of tort liability, each member or employee of an early learning coalition shall be governed by s. 768.28.

(10) An early learning coalition serving a multicounty region must include representation from each county.

(11) Each early learning coalition shall establish terms for all appointed members of the coalition. The terms must be

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staggered and must be a uniform length that does not exceed 4 years per term. Coalition chairs shall be appointed for 4 years in conjunction with their membership on the Early Learning Advisory Council pursuant to s. 20.052. Appointed members may serve a maximum of two consecutive terms. When a vacancy occurs in an appointed position, the coalition must advertise the vacancy.

(12) State, federal, and local matching funds provided to the early learning coalitions may not be used directly or indirectly to pay for meals, food, or beverages for coalition members, coalition employees, or for subcontractor employees. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed. Such reimbursement shall be at the standard travel reimbursement rates established in s. 112.061 and must comply with applicable federal and state requirements.

(13) Each early learning coalition shall use a coordinated professional development system that supports the achievement and maintenance of core competencies by school readiness program teachers in helping children attain the performance standards adopted by the office.

(14) Each school district shall, upon request of the coalition, make a list of all individuals currently eligible to act as a substitute teacher within the school district, pursuant to rules adopted by the school district pursuant to s. 1012.35, available to an early learning coalition serving students within the school district. Child care facilities as defined in s. 402.302 may employ individuals listed as substitute instructors for the purpose of offering the school readiness program, the

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Voluntary Prekindergarten Education Program, and all other legally operating child care programs.

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(1) Administer and implement a local comprehensive program of school readiness program services in accordance with this part and the rules adopted by the office, which enhances the cognitive, social, and physical development of children to achieve the performance standards.

(2) Establish a uniform waiting list to track eligible children waiting for enrollment in the school readiness program in accordance with rules adopted by the office.

(3) Establish a resource and referral network operating under s. 1002.92 to assist parents in making an informed choice and provide maximum parental choice of providers and to provide information on available community resources.

(4) Establish a regional Warm-Line as directed by the office pursuant to s. 1002.82(2)(r). Regional Warm-Line staff shall provide onsite technical assistance, when requested, to assist child care facilities and family day care homes with inquiries relating to the strategies, curriculum, and environmental adaptations the child care facilities and family day care homes may need as they serve children with disabilities and other special needs.

(5) Establish an age-appropriate screening, for children ages birth to 5 years, of each child's development and an appropriate referral process for children with identified delays. Such screening shall not be a requirement of entry into the school readiness program and shall be only given with

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parental consent.

(6) Implement an age-appropriate preassessment and postassessment of children if specified in the coalition's approved plan.

(7) Determine child eligibility pursuant to s. 1002.87 and provider eligibility pursuant to s. 1002.88. At a minimum, child eligibility must be redetermined annually. Redetermination must also be conducted twice per year for an additional 50 percent of a coalition's enrollment through a statistically valid random sampling. A coalition must document the reason why a child is no longer eligible for the school readiness program according to the standard codes prescribed by the office.

(8) Establish a parent sliding fee scale that requires a parent copayment to participate in the school readiness program. Providers are required to collect the parent's copayment. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family experiences a natural disaster or an event that limits the parent's ability to pay, such as incarceration, placement in residential treatment, or becoming homeless, or an emergency situation such as a household fire or burglary, or while the parent is participating in parenting classes. A parent may not transfer school readiness program services to another school readiness program provider until the parent has submitted documentation from the current school readiness program provider to the early learning coalition stating that the parent has satisfactorily fulfilled the copayment obligation.

(9) Establish proper maintenance of records related to eligibility and enrollment files, provider payments, coalition

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staff background screenings, and other documents required for the implementation of the school readiness program.

(10) Establish a records retention requirement for sign-in and sign-out records that is consistent with state and federal law. Attendance records may not be altered or amended after December 31 of the subsequent year.

(11) Comply with the tangible personal property requirements of chapter 274 and any rules adopted thereunder.

(12) Comply with federal procurement requirements and the procurement requirements of ss. 215.971, 287.057, and 287.058, except that an early learning coalition is not required to competitively procure direct services for school readiness program and Voluntary Prekindergarten Education Program providers.

(13) Establish proper information technology security controls, including, but not limited to, periodically reviewing the appropriateness of access privileges assigned to users of certain systems; monitoring system hardware performance and capacity-related issues; and ensuring appropriate backup procedures and disaster recovery plans are in place.

(14) Develop written policies, procedures, and standards for monitoring vendor contracts, including, but not limited to, provisions specifying the particular procedures that may be used to evaluate contractor performance and the documentation that is to be maintained to serve as a record of contractor performance. This subsection does not apply to contracts with school readiness program providers or Voluntary Prekindergarten Education Program providers.

(15) Monitor school readiness program providers in

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accordance with its plan, or in response to a parental complaint, to verify that the standards prescribed in ss. 1002.82 and 1002.88 are being met using a standard monitoring tool adopted by the office. Providers determined to be high-risk by the coalition, as demonstrated by substantial findings of violations of federal law or the general or local laws of the state, shall be monitored more frequently. Providers with 3 consecutive years of compliance may be monitored biennially.

(16) Adopt a payment schedule that encompasses all programs funded under this part and part V of this chapter. The payment schedule must take into consideration the average market rate, include the projected number of children to be served, and be submitted for approval by the office. Informal child care arrangements shall be reimbursed at not more than 50 percent of the rate adopted for a family day care home.

(17) Implement an anti-fraud plan addressing the detection, reporting, and prevention of overpayments, abuse, and fraud relating to the provision of and payment for school readiness program and Voluntary Prekindergarten Education Program services and submit the plan to the office for approval, as required by s. 1002.91.

(18) By October 1 of each year, submit an annual report to the office. The report shall conform to the format adopted by the office and must include:

(a) Segregation of school readiness program funds, Voluntary Prekindergarten Education Program funds, Child Care Executive Partnership Program funds, and other local revenues available to the coalition.

(b) Details of expenditures by fund source, including total

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expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

(c) The total number of coalition staff and the related expenditures for salaries and benefits. For any subcontracts, the total number of contracted staff and the related expenditures for salaries and benefits must be included.

(d) The number of children served in the school readiness program, by provider type, enumerated by age and eligibility priority category, reported as the number of children served during the month, the average participation throughout the month, and the number of children served during the month.

(e) The total number of children disenrolled during the year and the reasons for disenrollment.

(f) The total number of providers by provider type.

(g) A listing of any school readiness program provider, by type, whose eligibility to deliver the school readiness program is revoked, including a brief description of the state or federal violation that resulted in the revocation.

(h) An evaluation of its direct enhancement services.

(i) The total number of children served in each provider facility.

(19) Maintain its administrative staff at the minimum necessary to administer the duties of the early learning coalition.

(20) To increase transparency and accountability, comply with the requirements of this section before contracting with a member of the coalition or a relative, as defined in s. 112.3143(1)(b), of a coalition member or of an employee of the coalition. Such contracts may not be executed without the

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approval of the office. Such contracts, as well as documentation demonstrating adherence to this section by the coalition, must be approved by a two-thirds vote of the coalition, a quorum having been established; all conflicts of interest must be disclosed before the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote. A contract under $25,000 between an early learning coalition and a member of that coalition or between a relative, as defined in s. 112.3143(1)(b), of a coalition member or of an employee of the coalition is not required to have the prior approval of the office but must be approved by a two-thirds vote of the coalition, a quorum having been established, and must be reported to the office within 30 days after approval. If a contract cannot be approved by the office, a review of the decision to disapprove the contract may be requested by the early learning coalition or other parties to the disapproved contract.

1002.85 Early learning coalition plans.—

(1) The office shall adopt rules prescribing the standardized format and required content of school readiness program plans as necessary for a coalition or other qualified entity to administer the school readiness program as provided in this part.

(2) Each early learning coalition must biennially submit a school readiness program plan to the office before the expenditure of funds. A coalition may not implement its school readiness program plan until it receives approval from the office. A coalition may not implement any revision to its school readiness program plan until the coalition submits the revised

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plan to and receives approval from the office. If the office rejects a plan or revision, the coalition must continue to operate under its previously approved plan. The plan must include, but is not limited to:

(a) The coalition's operations, including its membership and business organization, and the coalition's articles of incorporation and bylaws if the coalition is organized as a corporation. If the coalition is not organized as a corporation or other business entity, the plan must include the contract with a fiscal agent.

(b) The minimum number of children to be served by care level.

(c) The coalition's procedures for implementing the requirements of this part, including:

1. Single point of entry.

2. Uniform waiting list.

4. Eligibility and enrollment processes.

5. Parent access and choice.

6. Sliding fee scale and policies on applying the waiver or reduction of fees in accordance with 1002.84(8).

7. Use of preassessments and postassessments, as applicable.

8. Payment rate.

(d) A detailed description of the coalition's quality activities and services, including:

1. Resource and referral and school-age child care.

2. Infant and toddler early learning.

3. Inclusive early learning programs.

(e) A detailed budget that outlines estimated expenditures

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for state, federal, and local matching funds at the lowest level of detail available by other-cost-accumulator code number; all estimated sources of revenue with identifiable descriptions; a listing of full-time equivalent positions; contracted subcontractor costs with related annual compensation amount or hourly rate of compensation; and a capital improvements plan outlining existing fixed capital outlay projects and proposed capital outlay projects that will begin during the budget year.

(f) A detailed accounting, in the format prescribed by the office, of all revenues and expenditures during the previous state fiscal year. Revenue sources should be identifiable and expenditures should be reported by three categories: state and federal funds, local matching funds, and Child Care Executive Partnership Program funds.

(g) Updated policies and procedures, including those governing procurement, maintenance of tangible personal property, maintenance of records, information technology security, and disbursement controls.

(h) A description of the procedures for monitoring school readiness program providers, including in response to a parental complaint, to determine that the standards prescribed in ss. 1002.82 and 1002.88 are met using a standard monitoring tool adopted by the office. Providers determined to be high risk by the coalition as demonstrated by substantial findings of violations of law shall be monitored more frequently.

(i) Documentation that the coalition has solicited and considered comments regarding the proposed school readiness program plan from the local community.

(3) The coalition may periodically amend its plan as

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necessary. An amended plan must be submitted to and approved by the office before any expenditures are incurred on the new activities proposed in the amendment.

(4) The office shall publish a copy of the standardized format and required content of school readiness program plans on its website.

(5) The office shall collect and report data on coalition delivery of early learning programs. Elements shall include, but are not limited to, measures related to progress towards reducing the number of children on the waitlist, the percentage of children served by the program as compared to the number of administrative staff and overhead, the percentage of children served compared to total number of children under the age of 5 years below 150 percent of the federal poverty level, provider payment processes, fraud intervention, child attendance and stability, use of child care resource and referral, and kindergarten readiness outcomes for children in the Voluntary Prekindergarten Education Program or the school readiness program upon entry into kindergarten. The office shall request input from the coalitions and school readiness program providers before finalizing the format and data to be used. The report shall be implemented beginning July 1, 2014, and results of the report must be included in the annual report under s. 1002.82.

1002.86 School readiness program; education component.—The education component of the school readiness program should be developmentally appropriate and based on research, involve the parent as the child's first teacher, serve as a preventive measure for children at risk of future school failure, and enhance the educational readiness of eligible children. The

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school readiness program should be of assistance to parents in preparing their at-risk children for educational success, including, as appropriate, health screening and referral.

1002.87 School readiness program; eligibility and enrollment.—

(1) Effective August 1, 2013, or upon reevaluation of eligibility for children currently served, whichever is later, each early learning coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a family that includes a parent who is receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling is eligible to begin 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services. However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

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(d) Priority shall be given next to an at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children who are eligible under this paragraph.

(e) Priority shall be given next to a child who is younger than 13 years of age from a working family that is economically disadvantaged. A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph. However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

(f) Priority shall be given next to a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(g) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032.

(h) Notwithstanding paragraphs (a)-(d), priority shall be given last to a child who otherwise meets one of the eligibility criteria in paragraphs (a)-(d) but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(2) A school readiness program provider may be paid only for authorized hours of care provided for a child in the school readiness program. A child enrolled in the Voluntary Prekindergarten Education Program may receive care from the school readiness program if the child is eligible according to the eligibility priorities in this section.

(3) Contingent upon the availability of funds, a coalition shall enroll eligible children, including those from its waiting list, according to the eligibility priorities in this section.

(4) The parent of a child enrolled in the school readiness program must notify the coalition or its designee within 10 days after any change in employment, income, or family size. Upon notification by the parent, the child's eligibility must be reevaluated.

(5) A child whose eligibility priority category requires the child to be from a working family ceases to be eligible for the school readiness program if a parent with whom the child resides does not reestablish employment within 60 days after becoming unemployed.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive school readiness program services if he or she has ceased to be eligible under this section.

(7) If a coalition disenrolls children from the school readiness program, the coalition must disenroll the children in reverse order of the eligibility priorities listed in subsection (1) beginning with children from families with the highest family incomes. A notice of disenrollment must be sent to the parent and school readiness program provider at least 2 weeks

before disenrollment to provide adequate time for the parent to arrange alternative care for the child. However, an at-risk child may not be disenrolled from the program without the written approval of the Child Welfare Program Office of the Department of Children and Families or the community-based lead agency.

(8) If a child is absent from the program for 5 consecutive days without parental notification to the program of such absence, the school readiness program provider shall report the absence to the early learning coalition for a determination of the need for continued care.

(9) Notwithstanding s. 39.604, a school readiness program provider, regardless of whether the provider is licensed, shall comply with the reporting requirements of the Rilya Wilson Act for each at-risk child under the age of school entry who is enrolled in the school readiness program.

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(a) Be a child care facility licensed under s. 402.305, a family day care home licensed or registered under s. 402.313, a large family child care home licensed under s. 402.3131, a public school or nonpublic school exempt from licensure under s. 402.3025, a faith-based child care provider exempt from licensure under s. 402.316, a before-school or after-school program described in s. 402.305(1)(c), or an informal child care provider to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States

Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18.

(b) Provide instruction and activities to enhance the age-appropriate progress of each child in attaining the child development standards adopted by the office pursuant to s. 1002.82(2)(j). A provider should include activities to foster brain development in infants and toddlers; provide an environment that is rich in language and music and filled with objects of various colors, shapes, textures, and sizes to stimulate visual, tactile, auditory, and linguistic senses; and include 30 minutes of reading to children each day.

(c) Provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program. For a child care facility, a large family child care home, or a licensed family day care home, compliance with s. 402.305, s. 402.3131, or s. 402.313 satisfies this requirement. For a public or nonpublic school, compliance with s. 402.3025 or s. 1003.22 satisfies this requirement. A faith-based child care provider, an informal child care provider, or a nonpublic school, exempt from licensure under ss. 402.316 or 402.3025, shall annually complete the health and safety checklist adopted by the office, post the checklist prominently on its premises in plain sight for visitors and parents, and submit it annually to its local early learning coalition.

(d) Provide an appropriate staff-to-children ratio, pursuant to s. 402.305(4) or s. 402.302(8) or (11), as applicable, and as verified pursuant to s. 402.311.

(e) Provide a healthy and safe environment pursuant to s.

402.305(5), (6), and (7), as applicable, and as verified pursuant to s. 402.311.

(f) Implement one of the curricula approved by the office that meets the child development standards.

(g) Implement a character development program to develop basic values.

(h) Collaborate with the respective early learning coalition to complete initial screening for each child, aged 6 weeks to kindergarten eligibility, within 45 days after the child's first or subsequent enrollment, to identify a child who may need individualized supports.

(i) Implement minimum standards for child discipline practices that are age-appropriate and consistent with the requirements in s. 402.305(12). Such standards must provide that children not be subjected to discipline that is severe, humiliating, or frightening or discipline that is associated with food, rest, or toileting. Spanking or any other form of physical punishment is prohibited.

(j) Obtain and keep on file record of the child's immunizations, physical development, and other health requirements as necessary, including appropriate vision and hearing screening and examination, within 30 days after enrollment.

(k) Implement before-school or after-school programs that meet or exceed the requirements of s. 402.305(5), (6), and (7).

(l) For a provider that is not an informal provider, maintain general liability insurance and provide the coalition with written evidence of general liability insurance coverage, including coverage for transportation of children if school

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readiness program children are transported by the provider. A provider must obtain and retain an insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. A provider must add the coalition as a named certificateholder and as an additional insured. A provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider contract with the coalition.

(m) For a provider that is an informal provider, comply with the provisions of paragraph (l) or maintain homeowner's liability insurance and, if applicable, a business rider. If an informal provider chooses to maintain a homeowner's policy, the provider must obtain and retain a homeowner's insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. An informal provider must add the coalition as a named certificateholder and as an additional insured. An informal provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider's contract with the coalition.

(n) Obtain and maintain any required workers' compensation insurance under chapter 440 and any required reemployment

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assistance or unemployment compensation coverage under chapter 443.

(o) Notwithstanding paragraph (l), for a provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

(p) Execute the standard statewide provider contract adopted by the office.

(q) Operate on a full-time and part-time basis and provide extended-day and extended-year services to the maximum extent possible without compromising the quality of the program to meet the needs of parents who work.

(2) If a school readiness program provider fails or refuses to comply with this part or any contractual obligation of the statewide provider contract under s. 1002.82(2)(m), the coalition may revoke the provider's eligibility to deliver the school readiness program or receive state or federal funds under this chapter for a period of 5 years.

(3) The office and the coalitions may not:

(a) Impose any requirement on a child care provider or early childhood education provider that does not deliver services under the school readiness program or receive state or federal funds under this part;

(b) Impose any requirement on a school readiness program provider that exceeds the authority provided under this part or part V of this chapter or rules adopted pursuant to this part or part V of this chapter; or

(c) Require a provider to administer a preassessment or postassessment.

1002.89 School readiness program; funding.—

(1) Funding for the school readiness program shall be allocated among the early learning coalitions in accordance with this section and the General Appropriations Act.

(2) The office shall administer school readiness program funds and prepare and submit a unified budget request for the school readiness program in accordance with chapter 216.

(3) All instructions to early learning coalitions for administering this section shall emanate from the office in accordance with the policies of the Legislature.

(4) All cost savings and all revenues received through a mandatory sliding fee scale shall be used to increase the number of children served.

(5) All state, federal, and local matching funds provided to an early learning coalition for purposes of this section shall be used for implementation of its approved school readiness program plan, including the hiring of staff to effectively operate the school readiness program.

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(a) Administrative costs as described in 45 C.F.R. s. 98.52, which shall include monitoring providers using the standard methodology adopted under s. 1002.82 to improve compliance with state and federal regulations and law pursuant to the requirements of the statewide provider contract adopted under s. 1002.82(2)(m).

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which shall be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public regarding participation in the school readiness program and parental choice.

2. Awarding grants to school readiness program providers to assist them in meeting applicable state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, and providing professional development. Any grants awarded pursuant to this subparagraph shall comply with the requirements of ss. 215.971 and 287.058.

3. Providing training and technical assistance for school readiness program providers, staff, and parents on standards, child screenings, child assessments, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, the recognition of communicable diseases, and child abuse detection and prevention.

4. Providing from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents related to school readiness program children, including providing developmental and health screenings to school readiness program children.

(c) Nondirect services as described in applicable Office of Management and Budget instructions are those services not defined as administrative, direct, or quality services that are required to administer the school readiness program. Such services include, but are not limited to:

1. Assisting families to complete the required application and eligibility documentation.

2. Determining child and family eligibility.

3. Recruiting eligible child care providers.

4. Processing and tracking attendance records.

5. Developing and maintaining a statewide child care information system.

As used in this paragraph, the term "nondirect services" does not include payments to school readiness program providers for direct services provided to children who are eligible under s. 1002.87, administrative costs as described in paragraph (a), or

quality activities as described in paragraph (b).

(7) Funds appropriated for the school readiness program may not be expended for the purchase or improvement of land, for the purchase, construction, or permanent improvement of any building or facility, or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(8) Beginning in the 2014-2015 fiscal year, all state-appropriated funding for the school readiness program shall be allocated to early learning coalitions based on the average prior year enrollment and the uniform waiting list as adopted by the Early Learning Programs Estimating Conference pursuant to s. 216.136(8) and using the average market rate by program care level and provider type pursuant to s. 1002.895.

1002.895 Market rate schedule.—The school readiness program market rate schedule shall be implemented as follows:

(1) The office shall establish procedures for the adoption of a market rate schedule. The schedule must include, at a minimum, county-by-county rates:

(a) The market rate, including the minimum and the maximum rates for child care providers that hold a Gold Seal Quality Care designation under s. 402.281.

(b) The market rate for child care providers that do not hold a Gold Seal Quality Care designation.

(2) The market rate schedule, at a minimum, must:

(a) Differentiate rates by type, including, but not limited to, a child care provider that holds a Gold Seal Quality Care

designation under s. 402.281, a child care facility licensed under s. 402.305, a public or nonpublic school exempt from licensure under s. 402.3025, a faith-based child care facility exempt from licensure under s. 402.316 that does not hold a Gold Seal Quality Care designation, a large family child care home licensed under s. 402.3131, or a family day care home licensed or registered under s. 402.313.

(b) Differentiate rates by the type of child care services provided for children with special needs or risk categories, infants, toddlers, preschool-age children, and school-age children.

(c) Differentiate rates between full-time and part-time child care services.

(d) Consider discounted rates for child care services for multiple children in a single family.

(3) The market rate schedule must be based exclusively on the prices charged for child care services.

(4) The market rate schedule shall be considered by an early learning coalition in the adoption of a payment schedule. The payment schedule must take into consideration the average market rate, include the projected number of children to be served, and be submitted for approval by the office. Informal child care arrangements shall be reimbursed at not more than 50 percent of the rate adopted for a family day care home.

(5) The office may contract with one or more qualified entities to administer this section and provide support and technical assistance for child care providers.

(6) The office may adopt rules for establishing procedures for the collection of child care providers' market rate, the

calculation of the average market rate by program care level and provider type in a predetermined geographic market, and the publication of the market rate schedule.

1002.91 Investigations of fraud or overpayment; penalties.—

(1) As used in this subsection, the term "fraud" means an intentional deception, omission, or misrepresentation made by a person with knowledge that the deception, omission, or misrepresentation may result in unauthorized benefit to that person or another person, or any aiding and abetting of the commission of such an act. The term includes any act that constitutes fraud under applicable federal or state law.

(2) To recover state, federal, and local matching funds, the office shall investigate early learning coalitions, recipients, and providers of the school readiness program and the Voluntary Prekindergarten Education Program to determine possible fraud or overpayment. If by its own inquiries, or as a result of a complaint, the office has reason to believe that a person, coalition, or provider has engaged in, or is engaging in, a fraudulent act, it shall investigate and determine whether any overpayment has occurred due to the fraudulent act. During the investigation, the office may examine all records, including electronic benefits transfer records, and make inquiry of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys or other items or benefits authorizations to recipients.

(3) Based on the results of the investigation, the office may, in its discretion, refer the investigation to the Department of Financial Services for criminal investigation or refer the matter to the applicable coalition. Any suspected

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criminal violation identified by the office must be referred to the Department of Financial Services for criminal investigation.

(4) An early learning coalition may suspend or terminate a provider from participation in the school readiness program or the Voluntary Prekindergarten Education Program when it has reasonable cause to believe that the provider has committed fraud. The office shall adopt by rule appropriate due process procedures that the early learning coalition shall apply in suspending or terminating any provider, including the suspension or termination of payment. If suspended, the provider shall remain suspended until the completion of any investigation by the office, the Department of Financial Services, or any other state or federal agency, and any subsequent prosecution or other legal proceeding.

(5) If a school readiness program provider or a Voluntary Prekindergarten Education Program provider, or an owner, officer, or director thereof, is convicted of, found guilty of, or pleads guilty or nolo contendere to, regardless of adjudication, public assistance fraud pursuant to s. 414.39, or is acting as the beneficial owner for someone who has been convicted of, found guilty of, or pleads guilty or nolo contendere to, regardless of adjudication, public assistance fraud pursuant to s. 414.39, the early learning coalition shall refrain from contracting with, or using the services of, that provider for a period of 5 years. In addition, the coalition shall refrain from contracting with, or using the services of, any provider that shares an officer or director with a provider that is convicted of, found guilty of, or pleads guilty or nolo contendere to, regardless of adjudication, public assistance

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fraud pursuant to s. 414.39 for a period of 5 years.

(6) If the investigation is not confidential or otherwise exempt from disclosure by law, the results of the investigation may be reported by the office to the appropriate legislative committees, the Department of Children and Families, and such other persons as the office deems appropriate.

(7) The early learning coalition may not contract with a school readiness program provider or a Voluntary Prekindergarten Education Program provider who is on the United States Department of Agriculture National Disqualified List. In addition, the coalition may not contract with any provider that shares an officer or director with a provider that is on the United States Department of Agriculture National Disqualified List.

(8) Each early learning coalition shall adopt an anti-fraud plan addressing the detection and prevention of overpayments, abuse, and fraud relating to the provision of and payment for school readiness program and Voluntary Prekindergarten Education Program services and submit the plan to the office for approval. The office shall adopt rules establishing criteria for the anti-fraud plan, including appropriate due process provisions. The anti-fraud plan must include, at a minimum:

(a) A written description or chart outlining the organizational structure of the plan's personnel who are responsible for the investigation and reporting of possible overpayment, abuse, or fraud.

(b) A description of the plan's procedures for detecting and investigating possible acts of fraud, abuse, or overpayment.

(c) A description of the plan's procedures for the

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mandatory reporting of possible overpayment, abuse, or fraud to the Office of Inspector General within the office.

(d) A description of the plan's program and procedures for educating and training personnel on how to detect and prevent fraud, abuse, and overpayment.

(e) A description of the plan's procedures, including the appropriate due process provisions adopted by the office for suspending or terminating from the school readiness program or the Voluntary Prekindergarten Education Program a recipient or provider who the early learning coalition believes has committed fraud.

(9) A person who commits an act of fraud as defined in this section is subject to the penalties provided in s. 414.39(5)(a) and (b).

1002.92 Child care and early childhood resource and referral.—

(1) As a part of the school readiness program, the office shall establish a statewide child care resource and referral network that is unbiased and provides referrals to families for child care and information on available community resources. Preference shall be given to using early learning coalitions as the child care resource and referral agencies. If an early learning coalition cannot comply with the requirements to offer the resource information component or does not want to offer that service, the early learning coalition shall select the resource and referral agency for its county or multicounty region based upon the procurement requirements of s. 1002.84(12).

(2) At least one child care resource and referral agency

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must be established in each early learning coalition's county or multicounty region. The office shall adopt rules regarding accessibility of child care resource and referral services offered through child care resource and referral agencies in each county or multicounty region which include, at a minimum, required hours of operation, methods by which parents may request services, and child care resource and referral staff training requirements.

(3) Child care resource and referral agencies shall provide the following services:

(a) Identification of existing public and private child care and early childhood education services, including child care services by public and private employers, and the development of a resource file of those services through the single statewide information system developed by the office under s. 1002.82(2)(n). These services may include family day care, public and private child care programs, the Voluntary Prekindergarten Education Program, Head Start, the school readiness program, special education programs for prekindergarten children with disabilities, services for children with developmental disabilities, full-time and part-time programs, before-school and after-school programs, vacation care programs, parent education, the temporary cash assistance program, and related family support services. The resource file shall include, but not be limited to:

1. Type of program.

2. Hours of service.

3. Ages of children served.

4. Number of children served.

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5. Program information.

6. Fees and eligibility for services.

7. Availability of transportation.

(b) Establishment of a referral process that responds to parental need for information and that is provided with full recognition of the confidentiality rights of parents. The resource and referral network shall make referrals to legally operating child care facilities. Referrals may not be made to a child care facility that is operating illegally.

(c) Maintenance of ongoing documentation of requests for service tabulated through the internal referral process through the single statewide information system. The following documentation of requests for service shall be maintained by the child care resource and referral network:

1. Number of calls and contacts to the child care resource information and referral network component by type of service requested.

2. Ages of children for whom service was requested.

3. Time category of child care requests for each child.

4. Special time category, such as nights, weekends, and swing shift.

5. Reason that the child care is needed.

6. Name of the employer and primary focus of the business for an employer based child care program.

(d) Provision of technical assistance to existing and potential providers of child care services. This assistance may include:

1. Information on initiating new child care services, zoning, and program and budget development and assistance in

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finding such information from other sources.

2. Information and resources which help existing child care services providers to maximize their ability to serve children and parents in their community.

3. Information and incentives that may help existing or planned child care services offered by public or private employers seeking to maximize their ability to serve the children of their working parent employees in their community, through contractual or other funding arrangements with businesses.

(e) Assistance to families and employers in applying for various sources of subsidy, including, but not limited to, the Voluntary Prekindergarten Education Program, the school readiness program, Head Start, Project Independence, private scholarships, and the federal child and dependent care tax credit.

(f) Assistance to families to negotiate discounts or other special arrangements with child care providers.

(g) Assistance to families in identifying summer recreation camp and summer day camp programs to help families make informed choice. Contingent upon specific appropriation, a checklist of important health and safety qualities that parents can use to choose their summer camp programs shall be developed and distributed in a manner that will reach parents interested in such programs for their children.

(h) Assistance to families for accessing local community resources.

(4) A child care facility licensed under s. 402.305 and licensed and registered family day care homes must provide the

statewide child care and resource and referral network with the following information annually:

(a) Type of program.

(b) Hours of service.

(c) Ages of children served.

(d) Fees and eligibility for services.

1002.93 School readiness program transportation services.—

(1) The office may authorize an early learning coalition to establish school readiness program transportation services for children at risk of abuse or neglect who are participating in the school readiness program, pursuant to chapter 427. The early learning coalitions may contract for the provision of transportation services as required by this section.

(2) The transportation servicers may only provide transportation to each child participating in the school readiness program to the extent that such transportation is necessary to provide child care opportunities that otherwise would not be available to a child whose home is more than a reasonable walking distance from the nearest child care facility or family day care home.

1002.94 Child Care Executive Partnership Program.—

(1) There is created a body politic and corporate known as the Child Care Executive Partnership which shall establish and govern the Child Care Executive Partnership Program. The purpose of the Child Care Executive Partnership Program is to use state and federal funds as incentives for matching local funds derived from local governments, employers, charitable foundations, and other sources so that Florida communities may create local flexible partnerships with employers. The Child Care Executive

Partnership Program funds shall be used at the discretion of local communities to meet the needs of working parents. A child care purchasing pool shall be developed with the state, federal, and local funds to provide subsidies to low-income working parents whose family income does not exceed the allowable income for any federally subsidized child care program with a dollar-for-dollar match from employers, local government, and other matching contributions. The funds used from the child care purchasing pool must be used to supplement or extend the use of existing public or private funds for direct services.

(2) The Child Care Executive Partnership, staffed by the office, shall consist of a representative of the Executive Office of the Governor and nine members of the corporate or child care community, appointed by the Governor.

(a) Members shall serve for a period of 4 years, except that the representative of the Executive Office of the Governor shall serve at the pleasure of the Governor.

(b) The Child Care Executive Partnership shall be chaired by a member chosen by a majority vote and shall meet at least quarterly and at other times upon the call of the chair. The Child Care Executive Partnership may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, only if the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate, participate.

(c) Members shall serve without compensation, but may be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(d) The Child Care Executive Partnership shall have all the

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powers and authority, not explicitly prohibited by law, necessary to carry out and effectuate the purposes of this section, as well as the functions, duties, and responsibilities of the partnership, including, but not limited to, the following:

1. Making recommendations concerning the implementation and coordination of the school readiness program.

2. Soliciting, accepting, receiving, investing, and expending funds from public or private sources.

3. Contracting with public or private entities as necessary.

4. Approving an annual budget.

5. Providing a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December 1 of each year.

Notwithstanding this subsection, the corporate body politic previously established by prior law is the corporate body politic for purposes of this section and shall continue in existence. All member terms of the existing corporate body politic expire as of June 30, 2013, and new members shall be appointed beginning July 1, 2013, in accordance with this subsection.

(3)(a) The Legislature shall annually determine the amount of state or federal low-income child care moneys which shall be used to create Child Care Executive Partnership Program child care purchasing pools in counties chosen by the Child Care Executive Partnership provided that at least two of the counties have populations of no more than 300,000. The Legislature shall

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annually review the effectiveness of the child care purchasing pool program and reevaluate the percentage of additional state or federal funds, if any, which can be used for the program's expansion.

(b) To ensure a seamless service delivery and ease of access for families, the office shall administer the child care purchasing pool funds.

(c) The office, in conjunction with the Child Care Executive Partnership, shall develop procedures for disbursement of funds through the child care purchasing pools. In order to be considered for funding, an early learning coalition or the office must commit to:

1. Matching the state purchasing pool funds on a dollar-for-dollar basis.

2. Expending only those public funds that are matched by employers, local government, and other matching contributors who contribute to the purchasing pool. Parents shall also pay a fee, which may not be less than the amount identified in the early learning coalition's school readiness program sliding fee scale.

(d) Each early learning coalition shall establish a community child care task force for each child care purchasing pool. The task force must be composed of employers, parents, private child care providers, and one representative from the local children's services council, if one exists in the area of the purchasing pool. The early learning coalition is expected to recruit the task force members from existing child care councils, commissions, or task forces already operating in the area of a purchasing pool. A majority of the task force shall consist of employers.

(e) Each participating early learning coalition shall develop a plan for the use of child care purchasing pool funds. The plan must show how many children will be served by the purchasing pool, how many will be new to receiving child care services, and how the early learning coalition intends to attract new employers and their employees to the program.

(4) The office may adopt any rules necessary for the implementation and administration of this section.

1002.95 Teacher Education and Compensation Helps (TEACH) scholarship program.—

(1) The office may contract for the administration of the Teacher Education and Compensation Helps (TEACH) scholarship program, which provides educational scholarships to caregivers and administrators of early childhood programs, family day care homes, and large family child care homes. The goal of the program is to increase the education and training for caregivers, increase the compensation for child caregivers who complete the program requirements, and reduce the rate of participant turnover in the field of early childhood education.

(2) The office shall adopt rules as necessary to administer this section.

1002.96 Early Head Start collaboration grants.—

(1) Contingent upon specific appropriation, the office shall establish a program to award collaboration grants to assist local agencies in securing Early Head Start programs through Early Head Start program federal grants. The collaboration grants shall provide the required matching funds for public and private nonprofit agencies that have been approved for Early Head Start program federal grants.

(2) Public and private nonprofit agencies providing Early Head Start programs applying for collaborative grants must:

(a) Meet the requirements in the Head Start program performance standards and other applicable rules and regulations.

(b) Collaborate with other service providers at the local level.

(c) Provide a comprehensive array of health, nutritional, and other services to the program's pregnant women and very young children, and their families.

(3) The office may adopt rules as necessary for the award of collaboration grants to competing agencies and the administration of the collaboration grants program under this section.

Section 18. Section 411.011, Florida Statutes, is transferred, renumbered as section 1002.97, Florida Statutes, and amended to read:

1002.97 ~~411.011~~ Records of children in the school readiness program ~~programs~~.—

(1) The individual records of children enrolled in the school readiness program ~~programs~~ provided under this part ~~s. 411.01~~, held by an early learning coalition or the office ~~of Early Learning~~, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this section, records include assessment data, health data, records of teacher observations, and personal identifying information.

(2) A parent~~, guardian, or individual acting as a parent in the absence of a parent or guardian~~ has the right to inspect and

review the individual school readiness program record of his or her child and to obtain a copy of the record.

(3) School readiness program records may be released to:

(a) The United States Secretary of Education, the United States Secretary of Health and Human Services, and the Comptroller General of the United States for the purpose of federal audits and investigations.

(b) Individuals or organizations conducting studies for institutions to develop, validate, or administer assessments or improve instruction.

(c) Accrediting organizations in order to carry out their accrediting functions.

(d) Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child enrollee or other individuals.

(e) The Office of Program Policy Analysis and Government Accountability and the Auditor General in connection with their ~~his or her~~ official functions.

(f) A court of competent jurisdiction in compliance with an order of that court in accordance with a lawfully issued subpoena.

(g) Parties to an interagency agreement among early learning coalitions, local governmental agencies, providers of the school readiness program ~~programs~~, state agencies, and the office ~~of Early Learning~~ for the purpose of implementing the school readiness program.

Agencies, organizations, or individuals that receive school readiness program records in order to carry out their official

functions must protect the data in a manner that does not permit the personal identification of a child enrolled in a school readiness program and his or her parent ~~parents~~ by persons other than those authorized to receive the records.

Section 19. Paragraph (p) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(p) The school readiness program ~~system~~, including the early learning coalitions~~, created~~ under part VI of chapter 1002 ~~s. 411.01~~.

Section 20. Paragraph (h) of subsection (3) of section 20.15, Florida Statutes, is amended to read:

20.15 Department of Education.—There is created a Department of Education.

(3) DIVISIONS.—The following divisions of the Department of Education are established:

~~(h) The Office of Early Learning, which shall administer the school readiness system in accordance with s. 411.01 and the operational requirements of the Voluntary Prekindergarten Education Program in accordance with part V of chapter 1002. The office is a separate budget entity and is not subject to control, supervision, or direction by the Department of Education or the State Board of Education in any manner including, but not limited to, personnel, purchasing,~~

~~transactions involving personal property, and budgetary matters. The office director shall be appointed by the Governor and confirmed by the Senate, shall serve at the pleasure of the Governor, and shall be the agency head of the office for all purposes. The office shall enter into a service agreement with the department for professional, technological, and administrative support services. The office shall be subject to review and oversight by the Chief Inspector General or his or her designee.~~

Section 21. Section 196.198, Florida Statutes, is amended to read:

196.198 Educational property exemption.—Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes shall be exempt from taxation. Sheltered workshops providing rehabilitation and retraining of disabled individuals and exempted by a certificate under s. (d) of the federal Fair Labor Standards Act of 1938, as amended, are declared wholly educational in purpose and shall be exempted from certification, accreditation, and membership requirements set forth in s. 196.012. Those portions of property of college fraternities and sororities certified by the president of the college or university to the appropriate property appraiser as being essential to the educational process shall be exempt from ad valorem taxation. The use of property by public fairs and expositions chartered by chapter 616 is presumed to be an educational use of such property and shall be exempt from ad valorem taxation to the extent of such use. Property used exclusively for educational purposes shall be

deemed owned by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property or if the entity owning 100 percent of the educational institution and the entity owning the property are owned by identical natural persons. Land, buildings, and other improvements to real property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the land is a nonprofit entity and the land is used, under a ground lease or other contractual arrangement, by an educational institution that owns the buildings and other improvements to the real property, is a nonprofit entity under s. 501(c)(3) of the Internal Revenue Code, and provides education limited to students in prekindergarten through grade 8. If legal title to property is held by a governmental agency that leases the property to a lessee, the property shall be deemed to be owned by the governmental agency and used exclusively for educational purposes if the governmental agency continues to use such property exclusively for educational purposes pursuant to a sublease or other contractual agreement with that lessee. If the title to land is held by the trustee of an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity that owns an educational institution that is using the land exclusively for educational purposes, the land is deemed to be property owned by the educational institution for purposes of this exemption. Property owned by an educational institution shall be deemed to be used for an educational purpose if the institution has taken affirmative steps to prepare the property for educational use. Affirmative steps means environmental or

land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use.

Section 22. Paragraph (a) of subsection (8) of section 216.136, Florida Statutes, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(8) EARLY LEARNING PROGRAMS ESTIMATING CONFERENCE.—

(a) The Early Learning Programs Estimating Conference shall develop estimates and forecasts of the unduplicated count of children eligible for the school readiness program ~~programs~~ in accordance with the standards of eligibility established in s. 1002.87 ~~411.01(6),~~ and of children eligible for the Voluntary Prekindergarten Education Program in accordance with s. 1002.53(2), as the conference determines are needed to support the state planning, budgeting, and appropriations processes.

Section 23. Paragraph (b) of subsection (1) and subsection (3) of section 402.281, Florida Statutes, are amended to read:

402.281 Gold Seal Quality Care program.—

(1)

(b) A child care facility, large family child care home, or family day care home that is accredited by an ~~a nationally recognized~~ accrediting association approved by the department under subsection (3) and meets all other requirements shall, upon application to the department, receive a separate "Gold Seal Quality Care" designation.

(3)(a) In order to be approved by the department for

participation in the Gold Seal Quality Care program, an accrediting association must apply to the department and demonstrate that it:

1. Is a ~~nationally~~ recognized accrediting association.

2. Has accrediting standards that substantially meet or exceed the Gold Seal Quality Care standards adopted by the department under subsection (2).

(b) In approving accrediting associations, the Department of Children and Families shall consult with the Department of Education, the Florida Head Start Directors Association, the Florida Association of Child Care Management, the Florida Family Child ~~Day~~ Care Home Association, the Florida Children's Forum, the Florida Association for the Education of the Young ~~Early Childhood Association of Florida~~, the Child Development Education Alliance, the Florida Association of Academic Nonpublic Schools, the Association of Early Learning Coalitions, providers receiving exemptions under s. 402.316, and parents.

Section 24. Subsection (9) of section 402.302, Florida Statutes, is amended to read:

402.302 Definitions.—As used in this chapter, the term:

(9) "Household children" means children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. Supervision of the operator's household children shall be left to the discretion of the operator unless those children receive subsidized child care through the school readiness program pursuant to s. 1002.92 ~~411.0101~~ to be in the home.

Section 25. Paragraph (c) of subsection (1) of section 402.305, Florida Statutes, is amended to read:

402.305 Licensing standards; child care facilities.—

(1) LICENSING STANDARDS.—The department shall establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.

(c) The minimum standards for child care facilities shall be adopted in the rules of the department and shall address the areas delineated in this section. The department, in adopting rules to establish minimum standards for child care facilities, shall recognize that different age groups of children may require different standards. The department may adopt different minimum standards for facilities that serve children in different age groups, including school-age children. The department shall also adopt by rule a definition for child care which distinguishes between child care programs that require child care licensure and after-school programs that do not require licensure. Notwithstanding any other provision of law to the contrary, minimum child care licensing standards shall be developed to provide for reasonable, affordable, and safe before-school and after-school care. After-school programs that otherwise meet the criteria for exclusion from licensure may provide snacks and meals through the federal Afterschool Meal Program (AMP) administered by the Department of Health in accordance with federal regulations and standards. The Department of Health shall consider meals to be provided through the AMP only if the program is actively participating in the

AMP, is in good standing with the department, and the meals meet AMP requirements. Standards, at a minimum, shall allow for a credentialed director to supervise multiple before-school and after-school sites.

Section 26. Paragraph (c) of subsection (1) and subsection (4) of section 445.023, Florida Statutes, are amended to read:

445.023 Program for dependent care for families with children with special needs.—

(1) There is created the program for dependent care for families with children with special needs. This program is intended to provide assistance to families with children who meet the following requirements:

(c) The family meets the income guidelines established under s. 1002.87 ~~411.01(6)~~, notwithstanding any financial eligibility criteria to the contrary in s. 414.075, s. 414.085, or s. 414.095.

(4) In addition to school readiness program services provided under part VI of chapter 1002 ~~s. 411.01~~, dependent care may be provided for children age 13 years and older who are in need of care due to disability and where such care is needed for the parent to accept or continue employment or otherwise participate in work activities. The amount of subsidy shall be consistent with the rates for special needs child care established by the department. Dependent care needed for employment may be provided as transitional services for up to 2 years after eligibility for temporary cash assistance ends.

Section 27. Paragraph (a) of subsection (2) of section 490.014, Florida Statutes, is amended to read:

490.014 Exemptions.—

(2) No person shall be required to be licensed or provisionally licensed under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 1002.92 ~~411.0101~~; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

Section 28. Paragraph (a) of subsection (4) of section 491.014, Florida Statutes, is amended to read:

491.014 Exemptions.—

(4) No person shall be required to be licensed, provisionally licensed, registered, or certified under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 1002.92 ~~411.0101~~; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research

institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

Section 29. Paragraph (b) of subsection (1) of section 1001.11, Florida Statutes, is amended to read:

1001.11 Commissioner of Education; other duties.—

(1) The Commissioner of Education must independently perform the following duties:

(b) Serve as the primary source of information to the Legislature, including the President of the Senate and the Speaker of the House of Representatives, concerning the State Board of Education, ~~and~~ the K-20 education system, and early learning programs.

Section 30. Sections 411.01, 411.0101, 411.01013, 411.01014, 411.01015, 411.0102, 411.0103, 411.0104, 411.0105, and 411.0106, Florida Statutes, are repealed.

Section 31. Within existing Senior Management Service and Selected Exempt Service positions authorized for the Office of Early Learning, a Senior Management Service position for a general counsel and a Selected Exempt Service position for an inspector general are authorized for the office.

Section 32. By October 1, 2013, the Office of Early Learning, in collaboration with the Commissioner of Education, shall develop a reorganization plan for the office. The plan shall include any changes made prior to July 1, 2013; personnel, purchasing, and budgetary matters and their alignment with the duties and responsibilities of the office; a report of all


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outstanding contractual obligations; and recommendations for statutory and budgetary changes. The plan shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 33. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/CS/SB 1722
INTRODUCER:	Appropriations Committee (Recommended by the Appropriations Subcommittee on Education); Education Committee; and Senator Legg
SUBJECT:	Early Learning
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Frye	Elwell	AED	**Fav/CS**
3.	Elwell	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 1722 changes the governance structure of the Office of Early Learning.

The bill has an insignificant fiscal impact on the Office of Early Learning. See Section V. The bill increases accountability and transparency in the administration of early learning programs:

- Moving the School Readiness program from Chapter 411 to the school code under Chapter 1002.
- Establishing the Office of Early Learning within the Department of Education's Office of Independent Education and Parental Choice; providing powers and duties.
- Providing that the Office of Early Learning must independently exercise all power, duties, and functions prescribed by law and must not be construed as part of the K-20 education system.
- Clarifying that participation in the School Readiness program does not expand the regulatory authority of the state, its officers, or an early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements outlined for this program.

- Requiring the Office of Early Learning to: adopt a list of approved curricula and a process for the review and approval of a provider's curriculum that meets the performance standards; identify a preassessment and postassessment for school readiness program participants; adopt a statewide, standardized contract to be used by coalitions with each school readiness program provider; coordinate with other agencies to perform data matches on individuals or families participating in the School Readiness program.
- Revising procurement and expenditure requirements for early learning coalitions.
- Revising the methodology for calculating the market rate schedule to require that the Office of Early Learning biennially calculate the market rate at the average of the market rate by program care level and provider type in a predetermined geographic market.
- Revising the eligibility criteria for the enrollment of children in the School Readiness program.
- Requiring the Office of Early Learning and each early learning coalition to limit expenditures to no more than 22 percent of funds for any combination of administrative costs, nondirect services, and quality activities in any fiscal year.
- Including provisions for fraud investigations and penalties for School Readiness program providers and parents who knowingly submit false information related to child eligibility and attendance in a school readiness program.
- Requiring private providers to maintain a minimum level of general liability insurance consistent with the requirements of private school readiness program providers, including any required workers' compensation and any required reemployment assistance or unemployment compensation.
- Requiring the Early Learning Advisory Council to periodically analyze and provide recommendations to the office on the effective and efficient use of local, state and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans.

The effective date of the bill is July 1, 2013.

The bill substantially amends sections 11.45, 20.15, 216.136, 402.281, 402.302, 402.305, 445.023, 490.014, 491.014, 1001.11, 1002.51, 1002.53, 1002.55, 1002.57, 1002.59, 1002.61, 1002.63, 1002.66, 1002.67, 1002.69, 1002.71, 1002.72, 1002.75, 1002.77, 1002.79, Florida Statutes.

The bill transfers, renumbers, and amends section 411.011 as 1002.97, Florida Statutes.

The bill creates section 1001.213 and part VI of chapter 1002, consisting of sections 1002.81-1002.96, F.S.

The bill repeals the following sections of the Florida Statutes: 411.01, 411.0101, 411.01013, 411.01014, 411.01015, 411.0102, 411.0103, 411.0104, 411.0105, and 411.0106.

II. Present Situation:

Early learning programs consist of the Voluntary Prekindergarten Education program and the School Readiness program.

Florida's Office of Early Learning

In 2011, the Legislature transferred the Office of Early Learning, currently called Florida's Office of Early Learning (Fl's OEL), from the Agency for Workforce Innovation to the Department of Education (DOE) as a separate budget entity, not subject to control, supervision, or direction by the DOE or the State Board of Education in any manner including, but not limited to, personnel, purchasing, transactions involving personal property, and budgetary matters. The office director is appointed by the Governor and confirmed by the Senate, serves at the pleasure of the Governor, and is the agency head of the office for all purposes. The office is subject to review and oversight by the Chief lnspector General or his or her designee.[1]

Florida's OEL is Florida's lead agency for administering the federal Child Care and Development Fund (CCDF) block grant from which funds are used to implement the school readiness program.[2]

Current law directs the Florida's OEL to establish a unified approach to the state's school readiness efforts by adopting specific system support services for the state's school readiness programs.[3] System support services include, but are not limited to:

- Child care resource and referral services.
- Warm-Line services.4
- Eligibility determinations.
- Child performance standards.
- Child screening and assessment.
- Developmentally appropriate curricula.
- Health and safety requirements.
- Statewide data system requirements.
- Rating and improvement systems.5

Additionally, Florida's OEL must develop and adopt performance standards and outcome measures for school readiness programs. Child performance standards must describe age-appropriate progress of children in the development of school readiness skills. The performance standards for children from birth to age five must be integrated with the performance standards adopted by the DOE for the VPK program.[6] Florida's OEL has developed and adopted a "robust set of child expectations for children, birth to five years of age."[7]

[1] Section 12, ch. 2011-142, codified at s. 20.15(3)(h), F.S. Florida's OEL is distinct from DOE's Office of Early Learning. Department of Education, Early Learning/Prekindergarten, http://www.fldoe.org/earlyLearning/ (last visited March 28, 2013).
[2] The law directs the Governor to designate Florida's OEL as the lead agency for administering the Child Care and Development Fund (CCDF). Section 411.01(4)(c), F.S.
[3] Section 411.01(4)(d)3., F.S.
[4] OEL is required to contract with the "statewide resource information and referral agency" to establish a statewide toll-free Warm-line for the purpose of assisting child care providers in serving children with disabilities and special needs. Section 402.3018, F.S.
[5] Section 411.01(4)(d)3.a.-i., F.S.
[6] Section 411.01(4)(d)8., F.S.; *see also* Florida's Office of Early Learning, *Early Learning Services – Birth to Five Standards*, http://flbt5.floridaearlylearning.com/Default.aspx (last visited April 16, 2013).The performance standards address the following school readiness skills: compliance with rules, limitations, and routines; ability to perform tasks; interactions with

Florida's OEL administers the School Readiness program at the state level and coordinates with the ELCs in providing school readiness services on a full-day, full-year, full-choice basis to enable parents to work and be financially self-sufficient.[8] The office must, every two years, review ELCs and school readiness plans and approve such plans.[9] Additionally, Florida's OEL must provide technical assistance and training to the Early Learning Coalitions (ELCs or coalitions) and monitor and evaluate the ELCs' administration of the School Readiness and VPK programs.[10] Florida's OEL must also work with the ELCs to provide training and support for parental involvement in children's early education and to provide family literacy activities and services.[11]

Voluntary Prekindergarten Education Program

In 2004, the Legislature established the Voluntary Prekindergarten Education program (VPK program), a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.[12] A child must be a Florida resident and attain four years of age on or before September 1 of the academic year to be eligible for the VPK program.[13] Parents may choose either a school year or summer program offered by either a public school or private prekindergarten provider.[14] The child remains eligible for the VPK program until he or she is eligible for kindergarten in a public school or is admitted to kindergarten, whichever

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adults; interactions with peers; ability to cope with challenges; self-help skills; ability to express the child's needs; verbal communication skills; problem-solving skills; following of verbal directions; demonstration of curiosity, persistence, and exploratory behavior; interest in books and other printed materials; paying attention to stories; participation in art and music activities; and ability to identify colors, geometric shapes, letters of the alphabet, numbers, and spatial and temporal relationships. Section 411.01(4)(j), F.S.

[7] Email, Florida's Office of Early Learning (April 5, 2013), on file with the Appropriations Subcommittee on Education staff; *see also* Florida's Office of Early Learning, *Early Learning Services – Birth to Five Standards*, http://flbt5.floridaearlylearning.com/Default.aspx (last visited April 16, 2013).

[8] Section 411.01(4)(a), F.S.

[9] Section 411.01(4)(d)2., F.S.

[10] Section 411.01(4)(d)6., (l) and (n), F.S.; *see also* ss. 1002.55(1) and 1002.61(1)(b), F.S. Florida's OEL and the ELCs must coordinate with the Department of Children and Family Services to minimize duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing. Section 411.01(4)(d)7., F.S.

[11] Section 411.01(4)(n), F.S.

[12] Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.; *see also* Art. IX, s. 1(b)-(c), Fla. Const. The VPK program originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. The amendment required the Legislature to establish a free prekindergarten education program for every four-year old child residing in Florida by the 2005 academic year. Voters approved the amendment by a total of 59 percent for to 41 percent against. Art. IX, s. 1(b)-(c), Fla. Const.; *see also* Florida Department of State, Division of Elections, *Voluntary Universal Prekindergarten Education,* http://election.dos.state.fl.us/reports/pdf/02annrpt.pdf (last visited March 28, 20 13).

[13] Section 1002.53(2), F.S.

[14] Section 1002.53(3), F.S. In 2010, the Legislature established a specialized instructional services program for children with disabilities as an option under the VPK program. Section 3, ch. 2010-227, *codified at* s. 1002.53(3)(d), F.S. Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK program and has a current Individual Education Plan (IEP) developed by the district school board. Specialized instructional services include applied behavior analysis, speech-language pathology, occupational therapy, and physical therapy. The Florida Department of Education is responsible for approving public and private program providers. Section 1002.66, F .S. Once this program is implemented, children who participate in the program will be eligible to receive a McKay Scholarship to enroll in and attend a private school. Section 1002.39(2)(a)l., F.S.

occurs first.[15] A child may not attend the summer VPK program earlier than the summer immediately before the academic year in which the child becomes eligible for kindergarten.[16]

Department of Education (DOE, through its Office of Early Learning, distinct from Florida's Office of Early Learning), Florida's OEL, and Department of Children and Families (DCF) each play a role in the state-level oversight of the VPK program. DOE is responsible for the programmatic requirements for the VPK program.[17] Florida's OEL governs the day-to-day operations of the VPK program.[18] DCF administers the state's child care provider licensing program and posts VPK program provider profiles on its Internet website.[19]

School Readiness Program

Established in 1999,[20] the School Readiness program provides subsidies for early childhood education and child care services to children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.[21]

The School Readiness program is a state-federal partnership between Florida's OEL and the Office of Child Care of the United States Department of Health and Human Services.[22]

Federal regulations governing the CCDF block grant,[23] the primary funding source for the School Readiness program, authorize states to use grant funds for child care services, if: [24]

- The child is under 13 years of age, or at the state's option, under age 19 if the child is physically or mentally incapable of caring for himself or herself or under court supervision;
- The child's family income does not exceed 85 percent of the state's median income for a family of the same size; and
- The child:
  - Resides with a parent or parents who work or attend job training or educational programs; or
  - Receives, or needs to receive, protective services.

[15] Section 1002.53(2), F.S. Children who attain five years of age on or before September 1 of the academic year are eligible for admission to public kindergartens. Section 1003.21(1)(a)2., F.S.
[16] Section 1002.61(2)(c), F.S.
[17] Sections 1002.57(1), 1002.59, 1002.67(1)-(2) and (4), 1002.69(1) and (5), 1002.73, and 1007.23(6), F.S.
[18] Section 1002.75(2), F.S.
[19] Sections 402.301-402.319, F.S.; *see also* Florida Department of Children and Family Services, *Provider Search*, http://dcfsanswrite.state.fl.us/Childcare/provider (last visited March 28, 2013).
[20] *Section* 1, ch. 99-357, L.O.F.
[21] Section 411.01(6), F.S.
[22] U.S. Department of Health and Human Services, *Office of Child Care: About*, http://www.acf.hhs.gov/programs/occ/about (last visited March 28, 2013).
[23] 45 C.F.R. parts 98 and 99.
[24] 45 C.F.R. s. 98.20(a). Florida's CCDF state plan for FY 2012-2013 defines physical or mental incapacity as "a developmental delay or established physical or mental condition. Mild or moderate emotional problems as certified by a licensed psychiatrist, psychologist, or licensed mental health professional." Florida's Office of Early Learning, Child Care and Development Fund State Plan, *CCDF Plan FFY 2012/13 Part 2-CCDF Subsidy Program Administration, available at* http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012_2013Part2-CCDFSubsidyProgramAdministration.pdf*; see also* rule 6M-4.200(1), F.A.C.

Within these broad federal eligibility categories, Florida law specifies that the School Readiness program is established for children from birth to school entry.[25]

Florida's OEL administers the program at the state level, including statewide coordination of the ELCs.

Funding

Funding for the School Readiness program is provided annually in the General Appropriations Act (GAA).[26] For the 2012-2013 fiscal year, a total of $581.5 million was appropriated for the School Readiness Program from state and federal funds, including $341.7 million from the CCDF block grant, $98 million from the TANF block grant, $141.3 million from the state's General Revenue Fund, and $500,000 from other federal fund sources. Florida law requires that the OEL establish a formula for the allocation of all state and federal school readiness program funds provided for children participating in the School Readiness program. The formula is required to be based on equity and must be submitted to the Governor and the Legislature by January 1 of each year.[27] Funding allocations for the 2012-2013 fiscal year were derived from the formula submitted to the Governor and Legislature as of January 1, 2012.

Market Rate

Florida's OEL is responsible for annually calculating a prevailing market rate schedule as a provision of the Child Care and Development Block Grant that must include county by county rates by provider type including licensed child care facilities; religious exempt facilities, public and non-public schools, large family day care homes, family day care homes and those who hold a Gold Seal quality Care Designation under section 402.281, Florida Statutes. The prevailing market rate must also differentiate rates by care level to include infants, toddlers, pre-school age, and school-age children. The prevailing market rate schedule is required to be set at the 75th percentile of a reasonable frequency distribution based exclusively on the prices charged for child care services. Each ELC must utilize the prevailing market rate schedule to set the coalition's School Readiness program provider payment rates.

Early Learning Coalitions

Each ELC administers the School Readiness program,[28] the VPK program,[29] and the state's child care resource and referral network in its county or multicounty region.[30] There are currently 31 ELCs.[31] Each ELC is governed by a board of directors comprised of various stakeholders and

[25] Section 411.01(6), F.S.
[26] Specific Appropriation 75, ch. 2012-118, Laws of Florida.
[27] Section 411.01(9), Florida Statutes.
[28] Section 411.01(5), F.S.
[29] Sections 1002.55(1) and 1002.61(1)(b), F.S.
[30] Section 411.0101, F.S.
[31] Florida's Office of Early Learning, *Early Learning Coalition Directory (Revised 4/3/2013)* , *http://www.floridaearlylearning.com/Documents/All-Contact/CoalitionDirectory.pdf* , (last visited April 9, 2013). Florida law permits the establishment of 31 or fewer ELCs. Section 411.01(5)(a)2.a., F.S.

community representatives. Three members of each board, including the chair, are appointed by the Governor.[32]

Each ELC must serve a minimum of 2,000 children based upon the average number of children served per month by the coalition's School Readiness program during the previous 12 months.[33] If an ELC serves fewer than 2,000 children, "the coalition must merge with another county to form a multicounty coalition."[34] Florida's OEL must waive the merger requirement if certain criteria are met.[35]

An ELC may participate in the School Readiness program if the coalition's School Readiness plan is approved by Florida's OEL.[36] The plan must, at a minimum, contain the following elements: alignment to the statutory requirements and system support services, performance standards, and outcome measures; instruction to enable children from birth through five years of age to meet the performance standards; and feedback regarding the plan from the local community.[37] Florida's OEL must adopt rules establishing school readiness program plan approval criteria[38] which must include the following minimum standards for the School Readiness program:[39]

- A community plan that addresses the needs of eligible children and providers within the coalition's county or multicounty region.
- A sliding fee scale establishing a copayment for parents based upon their ability to pay, which is the same for all program providers.[40]
- A choice of settings and locations in licensed, registered, religious-exempt, or school-based programs to be provided to parents.
- Specific eligibility priorities for children in accordance with the law.
- Performance standards and outcome measures adopted by Florida's OEL.
- Payment rates adopted by the ELCs and approved by Florida's OEL.
- Direct enhancement services for families and children.[41]

[32] Section 411.01(5)(a)4.-6., F.S.
[33] Section 411.01(5)(a)2.b., F.S.
[34] Section 411.01(5)(a)3., F.S. Florida's OEL must adopt procedures for merging ELCs.
[35] Section 411.01(5)(a)3.a.-c., F.S. Florida's OEL must waive the merger requirement if it determines that the ELC has substantially implemented its school readiness plan; the ELC demonstrates to Florida's OEL its ability to effectively and efficiently implement the VPK Program; and the ELC demonstrates to Florida's OEL its ability to perform its duties in accordance with the law.
[36] Section 411.01(5)(d)1., F.S.
[37] Section 411.01(5)(d)2.a.-c., F.S.
[38] Florida's OEL held rule workshops for the school readiness plan in February 2012 and received the transcript from the workshop on March 14, 2012. Florida's OEL staffs are in the process of analyzing comments and preparing rule. E-mail, Florida's Office of Early Learning (Aug. 21, 2012), on file with the Appropriations Subcommittee on Education staff.
[39] Section 411.01(5)(d)4., F.S.
[40] Each ELC is required to adopt, subject to approval by Florida's OEL, a copayment charged to the parent of a child enrolled in the School Readiness Program. Section 411.01(5)(d)4.b., F.S. The co-payment is based on the parent's income and family size. Rule 6M-4.400(1), F.A.C. A School Readiness Program provider receives payment for school readiness services from the ELC and is responsible for collecting the co-payment directly from the parent. Rule 6M-4.401, F.A.C. A School Readiness Program provider is not prohibited from charging parent fees in addition to the co-payment. Rule 6M-4.400(4), F.A.C.

- The business organization of the ELC.
- The implementation of locally developed quality programs in accordance with the requirements adopted by Florida's OEL regarding the expenditure of funds for improving the quality of child care within the state.

Each ELC must implement a comprehensive program of school readiness services to achieve the performance standards and outcome measures. At a minimum, the comprehensive program must contain the following system support service elements: use of a developmentally appropriate curriculum, character development education; age appropriate screening and assessment; appropriate staff to children ratio; a healthy and safe learning environment; and a resource and referral network[42] and a regional Warm-Line.[43,44]

Florida law requires each ELC to include a "choice of settings and locations in licensed, registered, religious-exempt, or school-based programs."[45] A wide range of public and private providers of early childhood education and child care services participate in the School Readiness program, including:

- Public and private schools;
- Licensed child care facilities and large family child care homes;
- Licensed and registered family day care homes;
- Faith-based child care facilities and after-school programs, which are both exempt from licensure; and
- Informal providers[46] (e.g., in-home and relative care).[47]

In FY 2011-2012, a total of 10,844 child care providers participated in the School Readiness program, including 1,013 public schools; 6,508 private providers; and 3,043 family day care homes. Of these providers, 836 were faith-based.[48]

Child care providers who provide school readiness services are regulated by the DCF.[49]

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[41] "Direct enhancement services for families may include parent training and involvement activities and strategies to meet the needs of unique populations and local eligibility priorities. Enhancement services for children may include provider supports and professional development approved in the plan by [Florida's] OEL." Section 411.01(5)(d)4.g., F.S.
[42] The statewide child resource and referral network is established to assist parents in making an informed choice regarding child care. Section 411.0101(1), F.S.
[43] The statewide toll-free Warm-Line is established to provide assistance to child care centers and family day care homes regarding health, developmental, disability, and special needs issues of children served by such providers. Section 411.01015(1), F.S.
[44] Section 411.01(5)(c)2., F.S.
[45] Section 411.01(5)(d)4.c., F.S.
[46] Florida's Office of Early Learning, Child Care and Development Fund State Plan, *CCDF Plan FFY 2012/13 Part 3-Health and Safety and Quality Improvement Activities*, *available at* http://www.floridaearlylearning.com/EarlyLearning/OEL_SysDev_CCDF.html.
[47] Section 411.01(5)(d)4.c., F.S. Federal regulations governing the CCDF block grant, in effect, require the School Readiness Program to serve children in center-based child care, group home child care, family child care, and in-home child care. 45 C.F.R. s. 98.30(e)(1).
[48] Email, Office of Early Learning (April 4, 2013), on file with the Appropriations Subcommittee on Education staff.
[49] Chapter 402, F.S.

Child Care Executive Partnership

The purpose of the Child Care Executive Partnership Program is to utilize state and federal funds as incentives for matching local funds derived from local governments, employers, charitable foundations, and other sources so that Florida communities may create local flexible partnerships with employers.[50] The Child Care Executive Partnership governs this program.[51] Current duties and responsibilities of the partnership include:[52]

- Assisting in the formulation and coordination of the Florida's child care policy.
- Adopting an official seal.
- Soliciting, accepting, receiving, investing, and expending funds from public or private sources.
- Contracting with public or private entities as necessary.
- Approving an annual budget.
- Carrying forward any unexpended state appropriations into succeeding fiscal years.
- Providing a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, on or before December 1 of each year.

Gold Seal Quality Care Designation

In order to be approved by the Department of Children and Families for participation in the Gold Seal Quality Care program, a child care facility, large family child care home, or family day care home must be accredited by a nationally recognized accrediting association approved by the Department of Children and Families.[53]

In approving accrediting associations, the Department of Children and Families must consult with the Department of Education, the Florida Head Start Directors Association, the Florida Association of Child Care Management, the Florida Family Day Care Association, the Florida Children's Forum, the Early Childhood Association of Florida, the Child Development Education Alliance, providers receiving exemptions under section 402.316, Florida Statutes, and parents.[54]

Afterschool Meals Program

The federally funded Afterschool Meal Program (AMP) was expanded to Florida and the rest of the nation by Congress in December 2010. Prior to that time, pilot programs existed in only 13 states and the District of Columbia. The federal regulations governing the program do not require child care licensure but do require AMP sites to meet state and local health and safety standards to participate.[55]

[50] Section 411.0102(2), F.S.
[51] Section 411.0102(3), F.S.
[52] Section 411.0102(4)(d), F.S.
[53] Section 402.281(1)(b), F.S.
[54] Section 402.281(3)(b), F.S.
[55] The Healthy, Hunger-Free Kids Act of 2010 (P.L. 111-296)

III. Effect of Proposed Changes:

CS/CS/SB 1722 changes the governance structure of the Office of Early Learning (OEL) and increases accountability and transparency in the administration of early learning programs: Voluntary Prekindergarten Education program (VPK program) and School Readiness program.

Governance

The bill creates the Office of Early Learning (OEL or office) within the DOE's Office of Independent Education and Parental Choice. The OEL will be administered by an Executive Director who is fully accountable to the Commissioner of Education. The office will be responsible for administering both the VPK and the school readiness programs at the state level and will independently exercise all powers, duties, and functions prescribed by law, but is not to be construed to be a part of the K-20 education system. Moreover, participation in the School Readiness program must not expand the regulatory authority of the state, its officers, or any ELC to impose any additional regulation on providers beyond those necessary to enforce the requirements of law.

The bill requires the OEL, in collaboration with the Commissioner of Education, to develop a reorganization plan for the office by October 1, 2013. The plan must include the following:

- Any changes made prior to July 1, 2013;
- Personnel, purchasing, and budgetary matters and their alignment with the duties and responsibilities of the office;
- A report of all outstanding contractual obligations; and
- Recommendations for statutory and budgetary changes.

The plan must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Accountability

The bill includes several accountability provisions for the OEL, ELCs, and VPK and School Readiness program providers.

Office of Early Learning

The bill requires the OEL to:

- Administer requirements of the VPK program.
- Adopt by rule a standard statewide provider contract for the VPK and School Readiness programs. The contract must include provisions for probation, termination for cause, and emergency termination of a provider's contract.
- Adopt a uniform chart of accounts for budgeting and financial reporting.
- Coordinate with other state and federal agencies to perform data matches to verify children's eligibility to participate in the School Readiness program.
- Establish procedures for the annual calculation of the average market rate.
- Adopt specific program support services.

- Provide technical assistance to coalitions on anti-fraud plans.
- Develop and adopt a health and safety checklist for license exempt providers that does not exceed current licensing standards for child care facilities.
- Select valid, reliable, and developmentally appropriate assessments for use as pre- and post-assessment for the age ranges specified in the coalition's plans.
- Adopt standardized monitoring procedures for coalitions to use to monitor providers.
- Collaborate with the Bureau of Federal Education Programs within the Department of Education to coordinate readiness and voluntary prekindergarten services to the populations served by the bureau, including students served through the homeless education program.
- Provide for the administration of the statewide toll-free Warm-Line.

The OEL must continue to establish a unified approach to coordinate a comprehensive early learning program and adopt specific program support services for the School Readiness program, including:

- A statewide data information program that includes:
  - Eligibility requirements.
  - Financial reports.
  - Program accountability measures.
  - Child progress reports.

- Child care resource and referral services
- A single point of entry and uniform waiting list.

In addition, the OEL may provide technical assistance and guidance on additional support services to complement the School Readiness program, including:

- Rating and improvement systems.
- Warm-Line services.
- Anti-fraud plans.
- School readiness program standards.
- Child screening and assessments.
- Training and support for parental involvement in children's early education.
- Family literacy activities and services.

Early Learning Coalitions

The bill revises the membership of the ELCs by updating terminology used to refer to Florida College System institution president, instead of a community college president. The bill also requires the ELCs to:

- Implement an age-appropriate pre- and post-assessment of children, if specified in the coalition's approved school readiness plan. ELCs cannot require providers to administer pre- and post-assessments.
- Require a parent to be in good standing on copayment obligations with a school readiness program provider prior to transferring to another school readiness program provider.

- Provide a timeframe within which attendance records may be altered or amended.
- Comply with federal and state procurement requirements.
- Provide proper information technology controls.
- Develop written policies, procedures, and standards for monitoring vendor contracts.
- Monitor providers in accordance with the applicable coalition's plan, or in response to complaints from parents, using the standard monitoring tool adopted by the office. Providers to be determined high-risk as demonstrated by substantial findings of violations of federal law or general or local laws of the state must be monitored more frequently. Providers with three consecutive years of compliance may be monitored biennially.
- Implement an anti-fraud plan addressing specific components.
- Specify components for the annual report that is submitted to the office by October 1.
- Requiring each ELC to use a coordinated, professional development system that supports the achievement and maintenance of core competencies by school readiness program teachers in helping children attain the performance standards adopted by the office.

ELCs must maintain direct enhancement services at the local level and provide access to such services in all 67 counties. The required annual report to the OEL must include an evaluation of the ELC's direct enhancement services.

School Readiness Program Plans

The OEL must adopt rules prescribing the standardized format and required content of school readiness program plans. The bill provides additional accountability by:

- Requiring ELCs to submit a school readiness program plans biennially before the expenditure of funds.
- Prohibiting an ELC from implementing the coalition's school readiness program until the plan is approved.
- Prohibiting an ELC from implementing any changes to its plan, until the changes are approved by the OEL. Each ELC plan must include:
  - The coalition's operations, including the coalition's membership and business organization.
  - The coalition's articles of incorporation and bylaws, as appropriate.
  - The minimum number of students to be served.
  - The coalition's procedures for implementing all requirements of administering the School Readiness program.
  - A detailed description of the coalition's quality activities and services.
  - A detailed budget outlining the estimated expenditures for state, federal, and local maintenance of effort and matching funds at a specific level of detail.
  - A detailed accounting of all revenues and expenditures during the previous state fiscal year, in a format described by the OEL.
  - Updated policies and procedures.
  - A description of the procedures for monitoring school readiness program providers or for responding to complaints from parents.
  - Documentation that the coalition has solicited and considered comments regarding the proposed school readiness program plan from the local community.

If the OEL determines during the review of school readiness program plans, or through monitoring and performance evaluations, that an ELC has not substantially implemented the coalition's plan, has not substantially met the performance standards and outcome measures, or has not effectively administered the School Readiness or VPK program, the office may temporarily contract with a qualified entity to continue providing services until the ELC is reestablished and a new school readiness program plan is approved.

Annual Report

The bill requires the OEL to collect and report data on coalition delivery of early learning programs to be implemented beginning July 1, 2014, and results included in the OEL's annual report. The OEL report must include, but not be limited to, the following elements:

- Progress toward reducing the number of children on the waiting list.
- The percentage of students served compared to the number of administrative staff and overhead.
- The percentage of students served compared to the total number of children under the age of five years below 150 percent of the federal poverty level.
- Provider payment process.
- Fraud intervention.
- Child attendance and stability.
- Use of child care resource and referral.
- Kindergarten readiness outcomes.

School Readiness Program Participation Eligibility

The bill establishes, effective August 1, 2013, or upon reevaluation of eligibility of children served, the following priorities for participation in the School Readiness Program:

- First priority must be a child under 13 from a family that includes a parent who is receiving Temporary Assistance for Needy Families (TANF) and is subject to the federal work requirements.
- Second priority must be an at-risk child under 9 years of age.
- Third priority must be a child from, birth to beginning of school year for which the child is eligible for kindergarten, from a working family that is economically disadvantaged and may include such children's eligible siblings who are eligible to enter kindergarten through the summer before sixth grade, provided that ELC use local revenues first. The child's eligibility ceases if the child's family income exceeds 200 percent of the federal poverty level.
- Fourth priority must be a child of a parent who transitions from the work program into employment, as described in s. 445.032, from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.
- Fifth priority must be a child aged 9 through 13, who is at risk. A child eligible under this priority whose sibling is enrolled in the School Readiness program within the first three eligibility priority categories specified above shall be given priority over other children.

- Sixth priority must be a child younger than 13 years of age from a working family that is economically disadvantaged. A child eligible under this priority whose sibling is enrolled in the School Readiness program under the third eligibility priority category specified above shall be given priority over other children. A child is no longer eligible if the family income exceeds 200 percent of the federal poverty level.
- Seventh priority must be a child of a parent who transitions from the work program into employment as described under s. 445.032 if the child is younger than 13 years of age.
- Eight priority must be a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. The child remains eligible until he or she is eligible for admission to kindergarten.
- Last priority must be for a child who is also concurrently enrolled in the federal Head Start program and the VPK program.

Additionally, the bill requires:

- Coalitions to enroll children in accordance with the specified eligibility priorities;
- Parents the opportunity to reestablish employment within 60 days (instead of the current 30 days for break in employment or 60 days for temporary break in employment due to medical reasons[56]);
- Disenrollment of children to occur in reverse order of the specified eligibility priorities, beginning with children from families with the highest family incomes;
- A notice of disenrollment be sent to the parent and school readiness program provider at least 2 weeks before disenrollment; and
- Providers to report to the coalition for determination of need for continued care if a child has been absent for five consecutive days without any parental notification.

Provider Standards and Eligibility

In addition to current standards and requirements for providers, the bill requires that providers:

- Maintain a minimum general liability insurance coverage of $100,000 and general aggregate coverage of $300,000 that includes coverage of transportation if students are transported by the provider. The OEL may authorize lower limits upon request, as appropriate.
- Must add the coalition as a named certificateholder and as an additional insured.
- Maintain any required worker's compensation insurance and any required unemployment compensation insurance.
- Maintain the coverage for the entire period of the provider contract with the coalition.
- Notify the coalition, with a minimum of ten calendar days' advance written notice, of cancellation or changes to coverage.
- Make provisions for coalitions to revoke provider's eligibility for five years if the provider fails of refuses to comply with the law or the statewide contract.

[56] Florida's Office of Early Learning, *Part 2: CCDF Subsidy Program Administration, available at* http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012_2013Part2-CCDFSubsidyProgramAdministration.pdf.

- Include school readiness program activities to foster brain development in infants and toddlers by providing an environment rich in language and music; stimulating visual, tactile, auditory, and linguistic senses; and include 30 minutes of reading to children each day.
- Administer preassessments and postassessments that are approved by the OEL, if such providers choose to administer such assessments.

School Readiness Program Funding

The bill provides that School Readiness program funding shall be allocated to the ELCs as provided in the General Appropriations Act (GAA). The bill also removes the requirement for the annual submission of a funding formula by the OEL.

The bill requires the OEL and each ELC to limit its expenditures to no more than 22 percent of funds for any combination of administrative costs, nondirect services, and quality activities for any fiscal year. No more than 5 percent may be used for administrative costs. Coalitions must place the highest priority for the expenditure of funds on providing direct services for eligible children in the School Readiness program.

The bill specifies that activities to improve the quality of child care must be limited to:

- Developing, operating, expanding, and coordinating resource and referral program.
- Awarding grants to School Readiness program providers to assist the providers in meeting the state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom supports, providing literacy supports, and providing professional development.
- Providing training and technical assistance for School Readiness program providers, staff, and parents on standards, child screenings, child assessments, curricula, charter development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, recognition of communicable diseases, and child abuse detection and prevention.
- Funding for quality activities for infants and toddler care, to meet applicable federal requirements.
- Improving the monitoring of compliance with state and local requirements.
- Responding to Warm Line requests by providers and parents regarding children in the School Readiness program.

The bill defines nondirect services to include, but not be limited to:

- Assisting families in completing the required application.
- Determining child and family eligibility.
- Recruiting eligible child care providers.
- Processing and tracking attendance records.
- Developing and maintaining a statewide information system.

The bill prohibits the use of state funds for the purchase or improvement of land or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading of child care facilities so that School Readiness program providers are able to meet the state and local child care standards including health and safety requirements.

School Readiness Program Prevailing Market Rate

The bill defines market rate as the price that a child care or early childhood education provider charges for full-time or part-time daily, weekly, or monthly child care or early childhood education services. Additionally, average market rate is defined in the bill as the biennially determined average of the market rate by program care level and provider type in a predetermined geographic market. The bill requires the funding for the School Readiness program to be allocated to the ELCs in accordance with the specified requirements and the GAA.

Investigations of Fraud

The bill requires the OEL to coordinate with federal and state agencies to perform data matches to verify the eligibility of individual and families regarding participation in the School Readiness program. Fraudulent information submitted by a school readiness program provider or parent must be considered a misdemeanor of the first degree, which may include a fine up to $1,000 and imprisonment not exceeding 1 year. Additionally, the bill:

- Defines "fraud" and the processes to investigate and refer fraud to Department of Financial Services for criminal investigation or to the applicable coalition.
- Applies the provisions and consequences regarding fraud to coalitions, recipients and providers.
- Provides that coalitions may suspend or terminate a provider from participation in School Readiness or the Voluntary Prekindergarten program if it has reasonable cause to believe that the provider has committed fraud.
- Removes a provider from eligibility to deliver program services or receive federal or state funds for a period of 5 years if the provider is convicted of fraud.
- Prohibits coalitions from contracting with a provider who is on the U.S. Department of Agriculture disqualified list.
- Requires coalitions to adopt an anti-fraud plan.
- Specifies that a person who commits an act of fraud is subject to the penalties provided in s. 414.39, F.S.[57]

The bill also requires the Early Learning Advisory Council (ELAC) to periodically analyze and provide recommendations to the OEL regarding the effective and efficient use of local, state and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans.

The bill requires that the chair of the ELAC appointed by the Governor and members appointed by the presiding officers of the Legislature be from the business community.

Transparency

The bill includes several provisions that increase transparency by:

[57] Fraud of less than $200 is a misdemeanor of the first degree and $200 or more is a felony of the third degree.

- Requiring the OEL to publish an annual report on the office's website by January 1. The report must include a summary of coalitions' annual report, a statewide summary, an analysis of early learning activities throughout the state with specified components, and a summary of activities and expenditures regarding the Child Care Executive Partnership Program.
- Requiring the OEL to review ELCs' delivery of the early learning programs.
- Requiring the OEL to review and adopt minimum performance standards for VPK.
- Requiring the OEL to include a summary of activities and expenditures related to the Child Care Executive Partnership Program in the annual report.
- Requiring ELCs to comply with specific requirements before contracting with a member of the coalition or a relative which includes approval of the contract by the office.
- Requiring the ELCs to comply with the tangible personal property requirements of chapter 274 and rules there under.
- Requiring VPK instructors to complete an online training course on the performance standards by July 1, 2014.
- Clarifying that participation in the School Readiness program does not expand the regulatory authority of the state, its officers, or any early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements set forth for administration of the School Readiness program.
- Revising provisions regarding the accrediting organizations recognized under the Gold Seal Quality Care program.

Child Care Executive Partnership

The bill removes from duties of the Child Care Executive Partnership, requirements regarding formulation and coordination of the state's child care policy and adopting an official seal, and instead, directs the partnership to make recommendations concerning the implementation and coordination of the School Readiness program.

Gold Seal Quality Care Designation

The bill removes the requirement for the accrediting association to be "nationally recognized," but it must still be approved by the Department of Children and Families. In approving accrediting associations, the Department of Children and Families must consult with the Florida Association of Academic Nonpublic Schools and the Association of Early Learning Coalitions in addition to the entities specified in Section 402.281(3)(b), Florida Statutes.

After School Meals Program

The bill authorizes after-school programs that are excluded from licensure to provide snacks and meals through the federally funded After School Meal Program (AMP) meals administered by the Department of Health if the programs are in good standing with the Department of Health and the meals meet the AMP requirements.

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 fiscal impact of this bill on the Department of Education and the Office of Early Learning is 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/CS by Appropriations on April 23, 2013:
The committee substitute differs from CS/SB 1722 in that the committee substitute:

- Clarifies the eligibility criteria for children to participate in the School Readiness program to ensure that families transitioning from the Temporary Assistance for Needy Families (TANF) to work to receive school readiness services.
- Removes from the bill the funding formula provision regarding the School Readiness program.
- Removes from the bill provision regarding educational property exemption.

- Changes the governance structure of the Office of Early Learning by establishing the office within the Department of Education's Office of Independent Education and Parental Choice.
- Includes several accountability and transparency provisions to promote effective and efficient administration of VPK program and School Readiness programs.
- Includes provisions regarding educational property and after-school meals program.

CS by Committee on Education on April 1, 2013:
The committee substitute differs from SB 1722 in that the committee substitute:

- Changes the governance structure of the Office of Early Learning by establishing the Office of Early Learning within the Office of the Commissioner of Education.
- Enhances the accountability of early learning programs by requiring the Office of Early Learning to administer the School Readiness and VPK programs and keeping the administrative staff for such programs to the minimum necessary to administer the duties of the office.
- Provides roles and responsibilities for the Office of Early Learning and early learning coalitions.

B. Amendments:

None.

By the Committee on Education; and Senator Legg

581-03367-13 20131722c1

A bill to be entitled

An act relating to early learning; establishing the Office of Early Learning within the Office of the Commissioner of Education; establishing responsibilities of the Office of Early Learning; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Office of Early Learning.—The Office of Early Learning is established within the Office of the Commissioner of Education.

(1) The Office of Early Learning shall administer the school readiness program and the Voluntary Prekindergarten Education Program. Administrative staff for the school readiness program and the Voluntary Prekindergarten Education Program shall be kept to the minimum necessary to administer the duties of the Office of Early Learning.

(2) The Office of Early Learning is responsible for the following:

(a) Prudent use of public and private funds, including, but not limited to, the adoption of a uniform chart of accounts for budgeting and financial reporting purposes.

(b) Monitoring and evaluating the performance of each early learning coalition with regard to its finances, management, and operations.

(c) Annually publishing a summary of the school readiness program and the Voluntary Prekindergarten Education Program, including, but not limited to, the number of children served and

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administrative costs of early learning coalitions relative to the coalitions' total expenditures. The summary must be based on reports that must be submitted annually by the early learning coalitions to the Office of Early Learning.

Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1844 (812796)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Health Policy Committee
SUBJECT:	Health Choice Plus Program
DATE:	April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall		**HP SPB 7144 as introduced**
2.	Brown	Pigott	AHS	**Fav/CS**
3.	Brown	Hansen	AP	**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:

PCS/SB 1844 expands the current Florida Health Choices Program (FHCP) eligibility guidelines by modifying the participation criteria for individuals and employers as long as other program criteria are met. The bill clarifies that products sold in the FHC marketplace are not limited to those specifically listed or to risk-bearing products. The bill gives the Florida Health Choices Corporation (FHCC) more flexibility in setting open enrollment periods and removes product pricing guidelines that are in conflict with the provisions of federal law.[1]

The bill includes an appropriation of $15,275,000 in general revenue (GR) for Fiscal Year 2013-2014.

The bill also creates a new health care services program, the Health Choice Plus (HCP) program within the FHCC. The FHCC will phase-in the HCP program and be responsible for its ongoing

[1] Currently, s. 408.910(4)(f)4., F.S. allows for the establishment of product prices based on age, gender and location. The Patient Protection and Affordable Care Act (PPACA) prohibits the pricing of health insurance products based on gender and only allows limited pricing differences based on age. *Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).*

oversight, including the delivery of services, management of contracts, and collection of enrollee or employer contributions.

The HCP is created as an alternative health benefits program for uninsured, low income Floridians with incomes at or below 100 percent of the federal poverty level (FPL) who meet other designated eligibility criteria. Enrollees and the state will jointly fund health benefits accounts, to be managed by the FHCC, to the extent funds are appropriated annually in the General Appropriations Act (GAA). Enrollees may utilize funds in those accounts to purchase a range of health care products from the FHCC's marketplace or to offset other out of pocket health care costs. Enrollees must contribute at least $20 per month and the state will contribute no more than $10 per month. These amounts may be adjusted annually in the GAA.

Continued enrollment in HCP is contingent upon several factors, including but not limited to, an enrollee health assessment within the first three months of enrollment, continued payment of the monthly contribution requirement, and the enrollee's employment or full-time school enrollment. Exceptions to full-time employment may be made for an enrollee's medical condition or where the enrollee is the primary caregiver for a relative with a chronic medical condition that requires at least 40 hours of care per week. Supplemental payments may also be deposited to an enrollee's health benefits account for successful achievement of optional healthy living goals, subject to a specific appropriation for this purpose. Total enrollment in the program is limited based on the availability of funds.

The HCP program is subject to automatic repeal on July 1, 2016, unless reenacted by the Legislature.

The bill has an effective date of July 1, 2013.

The bill substantially amends section 408.910 of the Florida Statutes.

The bill creates section 408.9105 of the Florida Statutes.

II. Present Situation:

Florida provides health insurance coverage options to low income Floridians through a variety of programs utilizing state and federal funds. As of February 28, 2013, more than 3.2 million individuals received coverage through the Medicaid program.[2] Enrollment in the Florida Kidcare program's non-Medicaid funded components for the same time period was an additional 256,721 children.[3]

Florida's Medicaid program is expected to spend $21 billion for Fiscal Year 2012-2013, making it fifth largest in the nation for expenditures.[4] The Medicaid program is jointly funded between

[2] Agency for Health Care Administration, *Report of Medicaid Eligibles*, http://ahca.myflorida.com/Medicaid/about/pdf/age_assistance_category_130228.pdf (last visited Mar. 17, 2013).
[3] Agency for Health Care Administration, *Florida KidCare Enrollment Report – February 2013*, (copy on file with the Senate Health Policy Committee).
[4] Agency for Health Care Administration, Presentation to House Health and Human Services Committee, *Florida Medicaid: An Overview - December 5, 2012*,

the state and federal governments; 52.73 percent of the costs for health care services are paid by federal funds and 42.27 percent is state share in the current fiscal year. Funding for the Florida Kidcare program's Title XXI components has an enhanced federal match of 70.66 percent for the 2012-2013 federal fiscal year.[5]

According to the most recent data from the American Community Survey (ACS) of the federal Census Bureau, an estimated four million Floridians are uninsured.[6] Of that number, according to the ACS data, 594,000 are children.[7] More than 1.9 million uninsured adults are under 139 percent of the FPL, according to statistics for 2010-2011.[8] Lower income adults – those below 100 percent of the FPL – number at 1.1 million for that same time period.[9]

Eligibility for the current Medicaid program is based on a number of factors, including age, household or individual income, and assets. The Department of Children and Families (DCF) determines eligibility for Medicaid but the Agency for Health Care Administration (AHCA) is the single state Medicaid agency under s. 409.963, F.S., and has the lead responsibility for the overall program.[10]

Recipients in the Medicaid program receive their benefits through several different delivery systems depending on their individual situation. Delivery systems currently include fee-for-service providers and various managed care organizations, including provider service networks (PSNs), health maintenance organizations (HMOs), and prepaid limited health service organizations. In July 2006, the AHCA implemented the Medicaid Managed Care Pilot Program as directed by the 2005 Legislature through s. 409.91211, F.S. The pilot program operates under an 1115 Research and Demonstration Waiver approved by the federal Centers for Medicare and Medicaid Services (CMS). The pilot program was initially authorized for Broward and Duval counties with expansion to Baker, Clay and Nassau the following year.

Under the current pilot program, most Medicaid recipients in the five pilot counties (Baker, Broward, Clay, Duval, and Nassau counties) are required to receive their benefits through either HMOs, PSNs, or a specialty plan. In addition to the minimum benefits package, plans may provide enhanced services such as over-the-counter benefits, preventive dental care for adults, and health and wellness benefits.

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http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2714&Session=2013&DocumentType=Meeting Packets&FileName=HHSC_Mtg_ 12-5-12_ONLINE.pdf (last visited Mar. 17, 2013).

[5] Florida KidCare Coordinating Council, *2013 Annual Report and Recommendations*, p. 5, (January 2013), http://www.floridakidcare.org/council/reports/2013_KCC_Report.pdf (last visited Mar. 17, 2013).

[6] Office of Economic and Demographic Research, Florida Legislature, *Economic Analysis of PPACA and Medicaid Expansion,* Presentation to Senate Select Committee on Patient Protection and Affordable Care Act (Mar. 4, 2013), http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf (last visited Mar. 17, 2013).

[7] Id.

[8] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011)*, http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).

[9] Id.

[10] Agency for Health Care Administration, *Welcome to Medicaid!*, http://ahca.myflorida.com/Medicaid/index.shtml (last visited Mar. 17, 2013).

Medicaid Statewide Managed Medical Care Program

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Care (SMMC) Program as ch. 409, part IV, F.S. SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care as well as long-term care services. SMMC has two components: the Long Term Care (LTC) Managed Care component and the Managed Medical Assistance (MMA) component.

To implement SMMC and receive federal Medicaid funding, the AHCA was required to seek federal authorization through two different Medicaid waivers from CMS. The first component authorized was the LTC Managed Care component's 1915(b) and (c) waiver. Approval was granted on February 1, 2013.

The LTC Managed Care component will serve Medicaid-eligible recipients who are also determined to require a nursing facility level of care. Medicaid recipients who qualify will receive all of their long-term care services from the long-term care managed care plan.

Implementation of the LTC Managed Care component started July 1, 2012, with completion expected by October 1, 2013. The AHCA released an Invitation to Negotiate (ITN) on June 29, 2012, and on January 15, 2013, notices of contract awards to managed care plans under that ITN were announced.

For the MMA component, the AHCA sought to modify the existing Medicaid Reform 1115 Demonstration waiver to expand the program statewide. The AHCA initiated the SMMC project in January 2012 and released a separate ITN to competitively procure managed care plans on a statewide basis on December 28, 2012. Bids were due to the AHCA on March 29, 2013, and awards are expected to be announced on September 16, 2013.

Plans can supplement the minimum benefits in their bids and offer enhanced options. The number of plans to be selected by region is prescribed under s. 409.974, F.S. Specialty plans that serve specific, targeted populations based on age, medical condition, and diagnosis are also included under SMMC. Under s. 409.967, F.S., accountability provisions for the managed care plans specify several conditions or requirements, including emergency care and physician reimbursement standards, access and credentialing requirements, encounter data submission guidelines, and grievance and resolutions.

Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however, on February 20, 2013, the AHCA and the CMS reached an "Agreement in Principle" on the proposed plan.

Under SMMC, all persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare, (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through DCF Substance Abuse and Mental Health Program; (c)

are eligible for refugee assistance; or (d) are residents of a developmental disability center, may voluntarily enroll in the SMMC program. If they elect not to enroll, they will be served through the Medicaid fee-for-service system.

Cover Florida and Florida Health Choices

In 2008, the Florida Legislature created two programs simultaneously to address the issue of Florida's uninsured: the Cover Florida Health Access Program and the Florida Health Choices Program.[11] The two programs offered two unique methods of addressing Florida's uninsured population.

Cover Florida Health Access Program
Cover Florida is designed to provide affordable health care options for uninsured residents between the ages of 19 and 64 and who met other criteria under s. 408.9091, F.S. The AHCA and the Office of Insurance Regulation (OIR) have joint responsibility for the program and were directed to issue an Invitation to Negotiate (ITN) to secure plans for the delivery of services by July 1 2008. An ITN was released July 2, 2008, and as a result of that ITN, two-year contracts were executed with two statewide plans and four regional plans.[12]

The Cover Florida plans are not subject to the Florida Insurance Code and ch. 641, F.S., relating to HMOs. Two plan options were required for development: plans with catastrophic coverage and plans without catastrophic coverage. Plans without catastrophic coverage are required to include other benefit options such as:[13]

- Incentives for routine preventive care;
- Office visits for diagnosis and treatment of illness or injury;
- Behavioral health services;
- Durable medical equipment and prosthetics; and,
- Diabetic supplies.

Plans that did include catastrophic coverage are required to include all of the benefits above, plus have options for these additional benefits:[14]

- Inpatient hospital stays;
- Hospital emergency care services;
- Urgent care services; and,
- Outpatient facility services, outpatient surgery, and outpatient diagnostic services.

All plans are guarantee-issue policies and are required to include prescription drug benefits. Plans can also place limits on services and cap benefits and copayments.

[11] *See* Chapter Law 2008-32.
[12] Agency for Health Care Administration, *Cover Florida Health Care Access Program Annual Report (March 2013), p. 1*, http://ahca.myflorida.com/MCHQ/Managed_Health_Care/CHMO/docs/CoverFLReport-Mar2013.pdf (last visited Mar. 22, 2013).
[13] *See* s. 409.9091(4)(6)(a).
[14] *See* s. 409.9091(4)(a)(7).

To be eligible, the enrollee must be:

- A resident of Florida;
- Between 19 and 64 years old;
- Not covered by private insurance or eligible for public insurance, unless eligibility for coverage lapses due to no longer meeting income or categorical requirements; and,
- Uninsured for at least the prior six months, with exceptions for persons who lose coverage within the past six months under certain conditions.

As of December 17, 2010, no insurers or HMOs offered any new policies under Cover Florida.[15] The six insurers selected by the state in 2009 to participate in Cover Florida ceased enrollment in 2011 due to lack of participation by both insurers and participants.[16] Currently, 1,997 enrollees participate in two plans and both plans will terminate those policies in 2014.[17]

Florida Health Choices Program (FHCP)
The FHCC is a private, non-profit, corporation under s. 408.910, F.S., and is led by a 15-member board of directors. The FHCP is designed as a single, centralized marketplace for the purchase of health products including, but not limited to, health insurance plans, HMO plans, prepaid services, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors:

- Insurers authorized under ch. 624, F.S.;
- HMOs authorized under ch. 641, F.S.;
- Prepaid health clinics licensed under ch. 641, part II, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and,
- Corporate entities providing specific health services.

The FHCP is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include:[18]

- Employers that meet criteria established by the FHCP and elect to make their employees eligible;
- Fiscally constrained counties described in s. 218.67, F.S.;

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[15] Department of Financial Services, *Cover Florida Health Care Access Program Defined*, http://www.myfloridacfo.com/consumers/insurancelibrary/insurance/l_and_h/cover_florida/cover_florida_-_defined.htm (last visited Mar. 22, 2013).
[16] South Florida Business Journal, Brian Bandell, http://www.bizjournals.com/southflorida/print-edition/2011/03/25/cover-florida-health-plan-program.html?s=print, Mar. 25, 2011, (last visited Mar. 22, 2013).
[17] *Supra* note 12, at 2.
[18] *See* s. 408.910(4)(a), F.S.

- Municipalities having populations of fewer than 50,000 residents;
- School districts in fiscally constrained counties; or,
- Statutory rural hospitals.

Individuals eligible to participate include:[19]

- Individual employees of enrolled employers;
- State employees not eligible for state employee health benefits;
- State retirees; or,
- Medicaid participants who opt-out.

For phase one of Florida Health Choices' launch in 2013, the Marketplace will serve small businesses with 2 to 50 employees.[20] The initial list of vendors will include plans from Florida Blue, Florida Health Care Plans, Argus Dental, and Liberty Dental.[21] The pilot will last six months and then the FHCP will evaluate adding other services.[22]

The Patient Protection and Affordable Care Act (PPACA)

In March 2010, the Congress passed the PPACA.[23] One of the PPACA's key components requires states to expand Medicaid to a minimum eligibility threshold of 133 percent of the FPL, or as it is sometimes expressed, 138 percent of the FPL when considering the automatic five-percent income disregard, effective January 1, 2014.[24] While the costs for the newly eligible under this expansion would be initially funded at 100 percent federal funds for the first three calendar years, states would gradually be required to pay a share of the costs, starting at five percent in calendar year 2017 before leveling off at 10 percent in 2020.[25] Under the PPACA as enacted, states refusing to expand to the new eligibility threshold faced the loss of *all* of their federal Medicaid funding.[26]

Florida, along with 25 other states challenged the constitutionality of the law. In *NFIB v. Sebelius*, the U.S. Supreme Court found the enforcement provisions of the Medicaid expansion unconstitutional.[27] As a result, states could voluntarily expand their Medicaid populations to 138 percent of the FPL and receive the enhanced federal match, but could not be required to do so for the population defined as newly eligible in the law, which was interpreted by the federal Department of Health and Human Services (HHS) to be only the adult population (childless

[19] *See* s. 408.910(4)(b), F.S.
[20] Florida Health Choices, *2012 Annual Report*, p. 4, http://myfloridachoices.org/wp-content/uploads/2011/03/FHC-AnnualReport-2012_v4a.pdf (last visited Mar. 22, 2013).
[21] Florida Health Choices, *Florida Health Choices Announces Initial Offerings*, (Feb. 22. 2013) http://myfloridachoices.org/florida-health-choices-announces-initial-offerings/ (last visited Mar. 25, 2013).
[22] *Supra* note 20, at 3.
[23] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[24] 42 U.S.C. s. 1396a(10).
[25] 42 U.S.C. s. 1396d(y)(1).
[26] 42 U.S.C. s. a1396c
[27] *National Federation of Independent Business v. Sebelius, 567 U.S.___(2012)*.

adults aged 19 - 64).[28] States are unable to receive the enhanced federal matching funds for partial Medicaid expansions.[29]

While finding the adult expansion of Medicaid optional, subsequent federal guidance has also emphasized state flexibility in how states expand coverage to those defined as newly eligible. In a letter to the National Governors Association January 14, 2013, HHS Secretary Kathleen Sebelius reminded states of their ability to design flexible benefit packages without the need for waivers.[30] This letter had been preceded by an HHS document entitled "Frequently Asked Questions on Exchange, Market Reforms and Medicaid" on December 10, 2012, that discussed promotion of personal responsibility, wellness benefits, and state flexibility to design benefits.[31]

A state Medicaid director letter on November 20, 2012 (ACA #21), further addressed state options for the adult Medicaid expansion group and the alternative benefit plans available under Section 1937 of the Social Security Act.[32] Under Section 1937, state Medicaid programs have the option of providing certain groups with benchmark or benchmark-equivalent coverage based on four products: (1) the standard Blue Cross/Blue Shield Preferred Provider option offered to federal employees; (2) state employee coverage that is generally offered to all state employees; (3) the commercial HMO with the largest insured, non-Medicaid enrollment in the state or (4) coverage approved by the HHS secretary.[33] For children under the age of 21, the coverage must include the Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT). Other aspects of the essential health benefit requirements of the PPACA, as discussed further below, may also be applicable, depending on the benefit package utilized.

In addition to the Medicaid expansion component, the PPACA imposes a mandate on individuals to buy insurance, or pay a penalty, which was interpreted by the U.S. Supreme Court as a tax. Currently, many uninsured individuals are eligible for Medicaid or Kidcare coverage but are not enrolled. The existence of the federal mandate to purchase insurance may result in some indeterminate number of current eligibles coming forward and enrolling in Medicaid who had previously not enrolled. Their participation will result in increased costs and would not likely have occurred without the catalyst of the federal legislation.

To obtain insurance coverage, the PPACA authorized the state-based American Health Benefit exchanges and Small Business Health Options Program (SHOP) exchanges. These exchanges are to be administered by governmental agencies or non-profit organizations and be ready to accept

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[28] Department of Health and Human Services, *Secretary Sebelius Letter to Governors, July 10, 2012*, http://capsules.kaiserhealthnews.org/wp-content/uploads/2012/07/Secretary-Sebelius-Letter-to-the-Governors-071012.pdf (last visited Mar. 16, 2013).

[29] Centers for Medicare and Medicaid Services, *Frequently Asked Questions on Exchanges, Market Reforms and Medicaid (December 10, 2012)*, p.12, http://medicaid.gov/State-Resource-Center/Frequently-Asked-Questions/Downloads/Governor-FAQs-12-10-12.pdf (last visited April 1, 2013).

[30] *Letter to National Governor's Association from Secretary Sebelius*, January 14, 2013 (copy on file with Senate Health Policy Committee).

[31] *See Supra* note 29, at 15-16.

[32] Centers for Medicare and Medicaid Services, *State Medicaid Director Letter: Essential Health Benefits in the Medicaid Program* (November 20, 2012), http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD-12-003.pdf (last visited Mar. 17, 2013).

[33] *See supra* note 32, at 2.

applications for coverage beginning October 1, 2013, for January 1, 2014, coverage dates. The exchanges, at a minimum, must:[34]

- Certify, re-certify and de-certify plans participating on the exchange;
- Operate a toll-free hotline;
- Maintain a website;
- Provide plan information and plan benefit options;
- Interact with the state's Medicaid and CHIP programs and provide information on eligibility and determination of eligibility for these programs;
- Certify individuals who gain exemptions from the individual responsibility requirement; and
- Establish a navigator program.

The initial guidance from the HHS in November 2010 set forward a number of principles and priorities for the exchanges. Further guidance was issued on May 16, 2012, detailing the proposed operations of federally facilitated exchanges for those states that elected not to implement a state-based exchange. On November 16, 2012, Florida Governor Rick Scott notified HHS that Florida had too many unanswered questions to commit to a state-based exchange under the PPACA for the first enrollment period on January 1, 2014.[35]

The PPACA also includes a tax penalty for those individuals that do not have qualifying health insurance coverage beginning January 1, 2014. The penalty is the greater of $695 per year, up to a maximum of three times that amount per family or 2.5% of household income. The penalty, however, is phased-in and exemptions apply.

The following persons are exempt from the PPACA's requirement to maintain coverage:[36]

- Individuals with a religious objection;
- Individuals not lawfully present; and
- Incarcerated individuals.

The following persons are exempt from the PPACA's penalty for failure to maintain coverage:[37]

- Individuals who cannot afford coverage, i.e. those whose required premium contributions exceed eight percent of household income;
- Individuals with income below the income tax filing threshold;
- American Indians;
- Individuals without coverage for less than three months; and

[34]Centers for Medicare and Medicaid Services, Initial Guidance to States on Exchanges, November 18, 2010, http://cciio.cms.gov/resources/files/guidance_to_states_on_exchanges.html (last visited Mar. 16, 2013).
[35] *Letter from Governor Rick Scott to Health and Human Services Secretary Kathleen Sebelius,* November 16, 2012 http://www.flgov.com/2012/11/16/letter-from-governor-rick-scott-to-u-s-secretary-of-health-and-human-services-kathleen-sebelius/ (last visited Mar. 16, 2013).
[36] *See* Sec. 5000A(d), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.
[37] *See* Sec. 5000A(e), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.

- Individuals determined by the HHS secretary to have suffered a hardship with respect to the capability to obtain coverage under a qualified plan.

Qualifying coverage may be obtained through an employer, the federal or state exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard.

Employers with more than 50 full time employees also share a financial responsibility under PPACA. Employers with more than 50 full-time employees that do not offer coverage meeting the essential benefits coverage standard and who have at least one employee receive a premium tax credit will be assessed a fee of $2,000 per full time employee, after the 30th employee.[38] If an employer does offer coverage and an employee receives a premium tax credit, the employer is assessed the lesser of $3,000 per employee receiving the credit or $2,000 per each employee after the 30th employee.[39]

Premium credits and other cost sharing subsidies are available to United States citizens and legal immigrants within certain income limits for coverage purchased through the exchanges. Legal immigrants with incomes at or below 100 percent of the FPL who are not eligible for Medicaid during their first five years are eligible for premium credits.[40] Premium credits are set on a sliding scale based on the percent of FPL for the household and reduce the out-of-pocket costs incurred by individuals and families.

The amount for premium tax credits, as a percentage of income, are set in section 36B of the Internal Revenue Code follows[41]:

Premium Tax Credits	
Income Range	**Premium Percentage Range** (% of income)
Up to 133% FPL	2%
133% to 150%	3% - 4%
150% to 200%	4% - 6.3%
200% to 250%	6.3% - 8.05%
250% to 300%	8.05% - 9.5%
300% to 400%	9.5%

Subsidies for cost sharing are also applicable for those between 100 percent of the FPL and 400 percent of the FPL.[42] For 2013, 100 percent of the FPL equates to the following by family size:[43]

[38] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[39] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[40] 26 U.S.C. s. 36B(c).
[41] 26 U.S.C. s. 36B(c).
[42] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).

2013 Federal Poverty Guidelines – 100% FPL	
Family Size	Maximum Annual Income
1	$11,490
2	$15,510
3	$19,530
4	$23,550

The cost sharing credits reduce the out-of-pocket amounts incurred by individuals on essential health benefits and will also impact the actuarial value of a health plan. Actuarial value reflects the average share of covered benefits paid by the insurer or health plan.[44] For example, if the actuarial value of a plan is 90 percent, the health plan is paying 90 percent of the costs and the enrollee 10 percent. Under the PPACA, the maximum amount of cost sharing under this component range from 94 percent for those between 100 percent to 150 percent of the FPL, to 70 percent for those between 250 percent and 400 percent of the FPL.[45]

Select Committee on Patient Protection and Affordable Care Act

In December 2012, Florida Senate President Don Gaetz formed the Select Committee on the PPACA to launch a comprehensive assessment on the impact of the law on Florida, evaluate the state's options under the law, and to make recommendations to the full Senate membership on any actions necessary to mitigate cost increases, preserve a competitive insurance market, and protect Florida's consumers.[46] The Select Committee received public testimony, expert presentations, and staff reports over nine meetings before it developed three specific recommendations relating to the development of a health care exchange, coverage for certain state employees, and the expansion of Medicaid. On Medicaid, the Select Committee voted 7-4 to recommend to the full Senate to not expand Medicaid under the current state plan or pending waivers.[47] Following that vote, two alternative proposals for coverage of the population under 138 percent of the FPL that utilize the private insurance market were put forward for further discussion and debate.[48]

[43] *See* Annual Update of the HHS Poverty Guidelines, 78 Fed. Reg. 5182, 5183 (January 24, 2013) https://www.federalregister.gov/articles/2013/01/24/2013-01422/annual-update-of-the-hhs-poverty-guidelines#t-1 (last visited Mar. 29, 2013).
[44] Lisa Bowen Garrett, et al., The Urban Institute, *Premium and Cost Sharing Subsidies under Health Reform: Implications for Coverage, Costs and Affordability* (December 2009), http://www.urban.org/UploadedPDF/411992_health_reform.pdf (last visited Mar. 16, 2013).
[45] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[46] *See* Florida Senate, *Patient Protection and Affordable Care Act*, http://www.flsenate.gov/topics/ppaca (last visited: April 1, 2013).
[47] Florida Senate Select Committee on Patient Protection and Affordable Care Act, *Letter to Senate President Don Gaetz on Medicaid Recommendation* http://www.flsenate.gov/usercontent/topics/ppaca/03-12-13MedicaidRecommendation.pdf (last visited: April 1, 2013).
[48] Id.

III. Effect of Proposed Changes:

Section 1 revises s. 409.910. F.S., and expands the eligibility and participation guidelines for the Florida Health Choices program to allow all individuals and employers that meet criteria established by the FHCC to participate in the program. The bill clarifies that products sold in the marketplace are not limited to those specifically listed or to risk-bearing products.

The bill removes a specific time standard for open enrollment periods to give the program and employers more flexibility. The bill deletes product pricing guidelines that were in conflict with federal law. The bill also provides that standard forms, website designs, or marketing communications developed by FHC or any vendor participating in the FHC marketplace are not subject to the Florida Insurance Code.

Section 2 creates s. 408.9105, F.S., and a new program called Health Choice Plus (HCP). The HCP program is managed by the FHCC under its existing infrastructure and governance and provides a benefit program to uninsured Floridians under 100 percent of the FPL. The bill establishes health benefit accounts for enrollees with financial contributions from the enrollee, the state (subject to funding in the GAA), and other sources such as the enrollee's employer; and provides a marketplace for enrollees to purchase health care goods and services utilizing funds from health benefits account. Examples of products that may be purchased include, but are not limited to, discount medical plans, limited benefit plans, health flex plans, individual health insurance plans, prepaid health clinic plans, bundled services, or other prepaid health care coverage.

The bill provides specific criteria for initial eligibility for HCP and conditions for continued enrollment. The bill requires that an enrolled individual meet the following conditions:

- Be a resident of Florida;
- Be between the ages of 19 and 64;
- Have a modified adjusted gross income of less than 100 percent of the FPL based on the individual's last tax return or other documentation;
- Be a United States citizen or a lawful permanent resident;
- Not be eligible for Medicaid;
- Not be eligible for employer sponsored coverage (with some exceptions); and,
- Meet criteria based on whether the enrollee meets the definition of a childless adult or parent/relative caretaker.

The bill requires HCP to establish guidelines for financial participation by enrollees. At a minimum, an enrollee is required to contribute $20 per month towards his or her health benefit account. The enrollee contribution amount may be adjusted annually through the GAA. The amount paid into the account by the state will be determined by the FHCC based on the availability of state, local, or federal funding. The bill provides that the state contribution may not exceed $10 per enrollee per month; however, this amount may be adjusted annually in the GAA. HCP is also directed to implement an employer based contribution option. An employer may contribute towards an employee's health benefits account, including making the entire payment amount, at any time.

The bill directs HCP to develop and maintain an education and public outreach campaign and to provide a secure website that provides information and facilitates the purchase of goods and services. Information must also be provided about other insurance affordability programs.

The bill requires that HCP must hold at least one open enrollment period per year, subject to available funding. Eligibility must be determined utilizing electronic means to the fullest extent possible. Once the program reaches its capacity, enrollment will cease. Enrollment may occur through the Florida Health Choices portal, a referral from the DCF, the Florida Healthy Kids Corporation, or an exchange as defined under the PPACA.

Once eligibility is confirmed, the bill directs the FHCC to determine the amount of funds that will be deposited into each enrollee's account based upon the availability of funds and other factors. Enrollees must make a financial contribution to their health benefits account in order to maintain enrollment and the FHCC is required to establish disenrollment criteria for non-payment of those minimum contributions. A maximum waiting period of one month prior to reinstatement to HCP for non-payment of any required payment may be imposed.

The bill requires the establishment of an optional incentives program for the achievement of healthy living goals. The program will establish annual healthy living goals and provide supplemental payments into an enrollee's health benefits account for meeting those goals, subject to the availability of funds.

The FHCC must establish the healthy living goals each fiscal year and publish the goals, procedures, and timeframes for the achievement of the goals by July 1 and distribute to new enrollees within 30 calendar days after enrollment. The bill directs HCP to publish goals for the 2014 calendar year by October 1, 2013. Bonus funds may accumulate in an enrollee's account until program termination.

The bill provides that continued enrollment in HCP and receipt of state contributions on the enrollee's behalf are contingent upon the enrollee obtaining a health assessment from a county health department, federally qualified health center, or other approved health care provider within the first three months of enrollment.

The following additional criteria apply based on the enrollee's category of eligibility:

Criteria	**Childless Adult**	**Parent\Relative Caretaker**
Any dependent child in the household must be enrolled in Medicaid or CHIP, if eligible		X
Proof of 20 hours of employment or effort to seek employment; or, in lieu of employment volunteer hours at school or non-profit or enrollment as full-time student	X Volunteer hours - 20	X Volunteer hours – 10
Health Assessment in first 3 months	X	X
One preventive visit in first 6 months, repeat every 18 months thereafter	X	X

Failure to meet the ongoing eligibility criteria will result in the enrollee's disenrollment. One 30-day extension may be granted by HCP to comply. If disenrolled, the enrollee may not re-apply for coverage until the next open enrollment period or 90 days, whichever occurs later.

Funds deposited into an enrollee's health benefits account may be used by the enrollee to offset health care costs or to purchase other health care services offered in the marketplace. Except for certain supplemental funds, funds deposited in an enrollee's account belong to the enrollee and are available for health care related expenditures. The bill provides that the optional bonus payments will be paid into the enrollee's account at the end of the quarter in which the goal was completed.

The bill requires the FHCC to establish a refund process for enrollees who request the closure of their health benefits accounts and the return of any unspent individual contributions. Enrollees may only be refunded funds that the enrollee or employer has contributed to their health benefits account. All other state funds revert to the FHCC.

HCP is authorized to accept funds from employers to deposit into their employees' health benefits accounts, when not in conflict with any other provisions of the bill. The FHCC is also permitted to accept state and federal funds or to seek other grants to help administer HCP. An assessment on vendors may be utilized to fund administration.

The bill designates the coverage as a non-entitlement and affirms that a cause of action does not arise against the state, a local governmental entity, any other political subdivision of the state, or the FHCC or its board of directors, for failure to make coverage available to eligible persons or for the discontinuation of any coverage under HCP.

The bill requires the FHCC to include information about the program into its regular annual report. A separate evaluation of HCP is also required and is due to the governor and Legislature by January 1, 2016.

A program sunset clause is provided to repeal the program effective July 1, 2016, unless saved from repeal through re-enactment by the Legislature.

Section 3 provides an appropriation of $15,275,000 from the General Revenue Fund to the Agency for Health Care Administration beginning in the 2013-2014 fiscal year to fund the Health Choice Plus program within Florida Health Choices, Inc. and to fund any necessary administrative costs for implementing and operating the program.

Section 4 provides an effective date of July 1, 2013.

Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill contemplates the FHCC contracting with private providers of health care services and products to deliver health care benefits to an additional population of currently uninsured individuals who may or may not be seeking health care services now. Physicians, hospitals, and other health care providers may be impacted by additional individuals seeking health care coverage and there may be a higher demand for such services once implemented.

Additionally, those safety net and other providers who serve this same population and are not receiving compensation or are receiving reduced compensation for those services may have an additional avenue for revenue.

C. Government Sector Impact:

The bill requires enrollees to receive certain health assessments from county health departments, federally qualified health centers, or other approved health care providers as a condition of continued enrollment. For those county health departments with primary care services, there could be an increased demand for services as individuals seek to comply with this requirement.

In addition to the increased demand for services, the program includes state contributions to the health benefit accounts on a monthly basis and incentives for achievement on optional healthy living performance goals based on an initial enrollment of 60,000 members for 12 months. No federal funds are expected for this program.

The following is the estimated state fiscal impact for 60,000 members over 12 months:

		PMPM Enrollee	PMPM State	Annual State PMPM	TOTAL
Health Benefits Account Funds		$20.00	$10.00	$120.00	$7,200,000
Incentives $25 Each Healthy Living Goal					
100% Achieve 2	$3,000,000				$3,000,000
25% Achieve 3	$1,125,000				$1,125,000
5% Achieve 4	$300,000				$300,000
2% Achieve 5	$150,000				$150,000
Administration (FHC)	$1,500,000				$1,500,000
Direct Services (Community and safety net provider supplement for HBAs)	$2,000,000				$2,000,000
Grand Total:					$15,275,000

V. Technical Deficiencies:

None.

VI. Related Issues:

The FHCC will be receiving and reviewing medical records and personal health information of enrollees in the HCP. The exemption from public records under s. 408.910(14) F.S., only applies to the FHCC and enrollees and participants of the Florida Health Choices program. An exemption for the HCP would be appropriate to ensure that medical records and personal information of enrollees and applicants to the program would remain confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. 1 of the State Constitution.

VII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on April 17, 2013:
The committee substitute represents the incorporation of one strike-all amendment and includes the following changes:

- Modifies s. 409.910, F.S., to expand eligibility criteria for individuals and employers who participate in the Florida Health Choices Program and meet other program criteria established by the Florida Health Choices Corporation;
- Revises product pricing criteria to remove elements in conflict with the federal Patient Protection and Affordable Care Act;
- Clarifies that products sold in the FHC marketplace are not limited to those specifically listed or to risk-bearing products;

- Provides the Florida Health Choices Corporation with flexibility in establishing the length of open enrollment periods;
- Transfers a provision that provides that standard forms, website designs, or marketing communications developed by FHC or any vendor participating in the FHC marketplace are not subject to the Florida Insurance Code from the Health Choice Plus section to the Florida Health Choice Program statute section;
- Deletes language that indicates goods and services purchased under the Health Choice Plus Program are not insurance as some enrollees may utilize their health benefits funds for the purchase of insurance coverage;
- Adds prepaid health clinic services to the list of possible goods and services that enrollees may purchase with funds from their health benefits accounts; and,
- Provides an appropriation of $15,275,000 from the General Revenue Fund for the 2013-2014 fiscal year.

B. Amendments:

None.

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the Health Choice Plus Program; amending s. 408.910, F.S.; conforming provisions to changes made by the act; providing that the Florida Insurance Code is not applicable in certain circumstances; creating s. 408.9105, F.S.; creating the Health Choice Plus Program; providing legislative intent; providing requirements of the program; providing definitions; providing eligibility requirements; providing for enrollment in the program; providing requirements and procedures for the deposit and use of funds in a health benefits account; providing that the marketplace is encouraged to use existing community programs and partnerships to deliver services and to include traditional safety net providers for the delivery of services to enrollees; requiring Florida Health Choices, Inc., to establish a refund process; authorizing the corporation to accept funds from various sources to deposit into health benefits accounts, subsidize the costs of coverage, and administer and support the program; requiring the corporation to manage the health benefits accounts and provide the marketplace of options which an enrollee in the program may use; providing for payment for achieving healthy living performance goals; requiring the program to post on its website a list of optional healthy living performance goals and to establish a

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procedure for documentation, achievement, and payment regarding the healthy living performance goals; providing that coverage under the program is not an entitlement; prohibiting a cause of action against certain entities under certain circumstances; requiring the corporation to submit to the Governor and the Legislature information about the program in its annual report and an evaluation of the effectiveness of the program; providing for a program review and repeal date; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (b), (e), and (f) of subsection (4) and paragraph (b) of subsection (7) of section 408.910, Florida Statutes, are amended, and paragraph (c) is added to subsection (10) of that section, to read

408.910 Florida Health Choices Program.—

(4) ELIGIBILITY AND PARTICIPATION.—Participation in the program is voluntary and shall be available to employers, individuals, vendors, and health insurance agents as specified in this subsection.

(a) Employers eligible to enroll in the program include those employers:

~~1. Employers~~ that meet criteria established by the corporation and elect to make their employees eligible through the program.

~~2. Fiscally constrained counties described in s. 218.67.~~

~~3. Municipalities having populations of fewer than 50,000 residents.~~

~~4. School districts in fiscally constrained counties.~~

~~5. Statutory rural hospitals.~~

(b) Individuals eligible to participate in the program include:

1. Individual employees of enrolled employers.

2. Other individuals that meet criteria established by the corporation ~~State employees not eligible for state employee health benefits~~.

~~3. State retirees.~~

~~4. Medicaid participants who opt out.~~

(e) Eligible individuals may participate in the program voluntarily ~~continue participation in the program regardless of subsequent changes in job status or Medicaid eligibility~~. Individuals who join the program may participate by complying with the procedures established by the corporation. These procedures must include, but are not limited to:

1. Submission of required information.

2. Authorization for payroll deduction.

3. Compliance with federal tax requirements.

4. Arrangements for payment ~~in the event of job changes~~.

5. Selection of products and services.

(f) Vendors who choose to participate in the program may enroll by complying with the procedures established by the corporation. These procedures may include, but are not limited to:

1. Submission of required information, including a complete description of the coverage, services, provider network, payment

restrictions, and other requirements of each product offered through the program.

2. Execution of an agreement to comply with requirements established by the corporation.

3. Execution of an agreement that prohibits refusal to sell any offered ~~non-risk-bearing~~ product or service to a participant who elects to buy it.

4. Establishment of product prices based on applicable criteria ~~age, gender, and location of the individual participant, which may include medical underwriting~~.

5. Arrangements for receiving payment for enrolled participants.

6. Participation in ongoing reporting processes established by the corporation.

7. Compliance with grievance procedures established by the corporation.

(7) THE MARKETPLACE PROCESS.—The program shall provide a single, centralized market for purchase of health insurance, health maintenance contracts, and other health products and services. Purchases may be made by participating individuals over the Internet or through the services of a participating health insurance agent. Information about each product and service available through the program shall be made available through printed material and an interactive Internet website. A participant needing personal assistance to select products and services shall be referred to a participating agent in his or her area.

(b) Initial selection of products and services must be made by an individual participant within the applicable open


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enrollment period ~~60 days after the date the individual's employer qualified for participation~~. ~~An individual who fails to enroll in products and services by the end of this period is limited to participation in flexible spending account services until the next annual enrollment period.~~

(10) EXEMPTIONS.—

(c) Any standard forms, website design, or marketing communication developed by the corporation and used by the corporation, or any vendor that meets the requirements of s. 408.910(4)(f) is not subject to the Florida Insurance Code, as established in s. 624.01.

Section 2. Section 408.9105, Florida Statutes, is created to read:

408.9105 Health Choice Plus Program.—

(1) LEGISLATIVE INTENT.—The Legislature recognizes that there are more than 600,000 uninsured residents in this state who have incomes at or below 100 percent of the federal poverty level. Many insurance options are not affordable, and the Legislature intends to provide a benefit program to those individuals who seek assistance with coverage and who assume individual responsibility for their own health care needs. It is therefore the intent of the Legislature to expand the services provided by the Florida Health Choices Program and begin the phase-in of the Health Choice Plus Program starting July 1, 2013. The Health Choice Plus Program shall:

(a) Use the existing infrastructure and governance of Florida Health Choices, Inc., to manage the program described in this section.

(b) Offer goods and services to individuals who are between


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19 to 64 years of age, inclusive.

(c) Establish guidelines for financial participation in the program which allow for enrollees and others to contribute toward a health benefits account.

1. An enrollee shall contribute at least $20 per month toward the health benefits account. This contribution amount may be adjusted annually in the General Appropriations Act.

2. The level of benefit paid into an enrollee's account using state funds is determined by the corporation based upon the availability of state, local, and federal funds. The amount may not exceed $10 per individual per month. This amount may be adjusted annually in the General Appropriations Act.

(d) Implement an employer-based contribution option.

(e) Develop and maintain an education and public outreach campaign for the Health Choice Plus Program.

(f) Provide a secure website to facilitate the purchase of goods and services and to provide public information about the program. The website must also provide information about the availability of insurance affordability programs targeted at this population.

(g) Establish an incentive program that rewards enrollees for achievements in reaching healthy living goals.

(2) DEFINITIONS.—As used in this section, the term:

(a) "CHIP" means Children's Health Insurance Program as authorized under Title XXI of the Social Security Act.

(b) "Corporation" means Florida Health Choices, Inc., as established under s. 408.910.

(c) "Corporation's marketplace" means the single, centralized market established by the corporation which

facilitates the purchase of products made available in the marketplace.

(d) "Enrollee" means an individual who participates in or receives benefits under the Health Choice Plus Program.

(e) "Goods and services" means the individual products offered for sale to an enrollee on the corporation's marketplace or other health care-related items that may be purchased by an enrollee in the private market. An enrollee may purchase these products using funds accumulated in his or her health benefits account.

(f) "Health benefits account" means the account established for an enrollee at the corporation into which funds may be deposited by the state, the enrollee, other individuals, or organizations for the purchase of health care goods and services on the enrollee's behalf.

(g) "Lawful permanent resident" means a non-United States citizen who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This individual may also be known as a permanent resident alien.

(h) "Parent" or "caretaker relative" means an individual who is a relative that has primary custody or legal guardianship of a dependent child and provides the primary care and supervision of that dependent child in the same household. A caretaker relative must be related to the dependent child by blood, marriage, or adoption within the fifth degree of kinship.

(i) "Patient Protection and Affordable Care Act" or "PPACA" means the federal law enacted as Pub. L. No. 111-148, as further amended by the federal Health Care and Education Reconciliation

Act of 2010, Pub. L. No. 111-152, and any amendments.

(j) "Program" means the Health Choice Plus Program established under this section.

(k) "Vendor" means an entity that meets the requirements under s. 408.910(4)(d) and is accepted by the corporation.

(3) ELIGIBILITY.—

(a) To be eligible for the Health Choice Plus Program, an individual must be a resident of this state and meet all of the following criteria:

1. Be between 19 and 64 years of age, inclusive.

2. Have a modified adjusted gross income that does not exceed 100 percent of the federal poverty level based on the individual's most recent federal tax return, or if the individual did not file a tax return, the individual's most recent monthly income.

3. Be a United States citizen or a lawful permanent resident.

4. Be ineligible for Medicaid.

5. Be ineligible for employer-sponsored insurance coverage. If the enrollee is eligible for employer-sponsored coverage but the cost of that coverage for the enrollee's share for individual coverage would exceed 5 percent of the enrollee's total modified adjusted gross household income or the enrollee's share of family coverage would exceed 5 percent of enrollee's total modified adjusted gross household income, the enrollee is not considered eligible for employer-sponsored coverage for purposes of this section.

6. Not be enrolled in other coverage that meets the definition of essential benefits coverage under PPACA.

(b) In addition to the requirements in paragraph (a), an enrollee must meet the following categorical requirements in order to maintain enrollment in the program:

1. For an enrollee who is also a parent or a caretaker relative, the enrollee must do all of the following:

a. Maintain enrollment in Medicaid or CHIP for any dependent child in the household who is eligible for Medicaid or CHIP and who must be enrolled in Medicaid or CHIP throughout the enrollee's participation in the Health Choice Plus Program.

b. Complete a health assessment within the first 3 months after enrollment at a county health department, federally qualified health center, or other approved health care provider.

c. Schedule and keep at least one preventive visit with a primary care provider within 6 months after enrollment and repeat the preventive visit at least once every 18 months thereafter.

d. Provide proof of employment for at least 20 hours a week or proof of efforts made to seek employment. In lieu of employment, the enrollee may provide proof of volunteering for at least 10 hours a month at a school or at a nonprofit organization or enrollment as a full-time student at an accredited educational institution. Exceptions to this requirement may be made on a case-by-case basis for medical conditions for an enrollee or if the enrollee is the primary caretaker for a family member who has a chronic and severe medical condition that requires a minimum of 40 hours a week of care.

2. For an enrollee who is also a childless adult, the enrollee must do all of the following:

a. Provide proof of employment for at least 20 hours a week or proof of efforts made to seek employment. In lieu of employment, the enrollee may provide proof of volunteering for at least 20 hours a month at a school or at a nonprofit organization or enrollment as a full-time student at an accredited educational institution. Exceptions to this requirement may be made on a case-by-case basis for medical conditions for the enrollee or if the enrollee is the primary caretaker for a family member who has a chronic and severe medical condition that requires a minimum of 40 hours a week of care.

b. Complete a health assessment within the first 3 months after enrollment at a county health department, federally qualified health center, or other approved health care provider.

c. Schedule and keep at least one preventive visit with a primary care provider within the first 6 months after enrollment and repeat the preventive visit at least once every 18 months thereafter.

If the enrollee fails to meet the requirements specified in this subsection, the enrollee is disenrolled from the program at the end of the month in which the enrollee fails to meet the requirements. The enrollee may receive one 30-day extension to comply before cancellation of coverage. If an enrollee's coverage is canceled, the enrollee may not reapply for coverage until the next open enrollment period or 90 days after cancellation of coverage occurs, whichever occurs later. The individual's reenrollment is subject to available funding.

(4) ENROLLMENT.—


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(a) Enrollment in the Health Choice Plus Program may occur through the portal of the Florida Health Choices Program, a referral process from the Department of Children and Families, the Florida Healthy Kids Corporation, or the exchange as defined by the federal Patient Protection and Affordable Care Act.

(b) Subject to available funding, the corporation shall establish at least one open enrollment period each year. When the program is full based on available funding, enrollment must cease.

(c) Eligibility is determined by using electronic means to the fullest extent practicable before requesting any written documentation from an applicant.

(5) HEALTH BENEFITS ACCOUNT.—

(a) A health benefits account is established for each enrollee upon confirmation of eligibility in the program. The corporation shall determine the deposit amount and frequency of deposits based on the availability of funds, the number of enrollees, and other factors.

(b) An enrollee shall make a financial contribution toward his or her own health benefits account in order to maintain enrollment in accordance with paragraph (1)(c).

1. The corporation shall establish disenrollment criteria for failure to pay the required minimum contribution.

2. The disenrollment criteria must include waiting periods of not more than 1 month before reinstatement to the program if the enrollee is still eligible and has paid all required financial obligations.

3. The enrollee's employer may contribute toward an employee's health benefits account under the program, including


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making the enrollee's required contribution, in whole or in part, to the enrollee's health benefits account at any time.

(c) Subject to appropriations available for this specific purpose, the corporation shall establish a procedure for the deposit of supplemental or bonus funds into an enrollee's health benefits account if certain healthy living performance goals are achieved. These goals must be established no later than July 1 in each fiscal year and distributed to all enrollees, published on the corporation's website, and distributed to new enrollees within 30 calendar days after enrollment. For the 2014 calendar year, the goals must be established no later than October 1, 2013.

1. An enrollee may use funds deposited in a health benefits account to offset other health care costs or to purchase other products and services offered by the marketplace, subject to guidelines established by the corporation and in accordance with federal law.

2. Bonus funds may accumulate in the enrollee's health benefits account for the duration of the program and must automatically expire and return to the corporation upon the termination of the program.

(d) The marketplace is encouraged to use existing community programs and partnerships to deliver services and to include traditional safety net providers for the delivery of services to enrollees, including, but not limited to, rural health clinics, federally qualified health centers, county health departments, emergency room diversion programs, and community mental health centers. A health care entity that receives state funding must participate in the Health Choice Plus Program and offer services


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or products through the marketplace or to enrollees, as appropriate. An enrollee may be required to make nominal copayments to providers for nonpreventive services. The corporation may establish the amount of the copayments when applicable.

(e) Except for supplemental funds described under paragraph (c), funds deposited in a health benefits account belong to the enrollee when deposited and are available for health-care-related expenditures, including, but not limited to, physician's fees, hospital costs, prescriptions, insurance premium payments, copayments, and coinsurance. The corporation shall establish a process or contract with another entity for the management of the funds. The process must ensure the timely distribution and the appropriate expenditure of the state's contributions.

(f) The corporation shall establish a refund process for an enrollee who requests the closure of a health benefits account and the return of any unspent individual contributions. The enrollee may be refunded only those funds that the enrollee or employer has contributed to his or her health benefits account. All other state funds in the enrollee's health benefits account revert to the corporation.

(6) FUNDING.—

(a) The corporation may accept funds from an employer to deposit into an enrollee's health benefits account to supplement funds if such a deposit is not in conflict with other provisions of this section.

(b) The corporation may accept state and federal funds to further subsidize the costs of coverage and to administer the program.


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(c) The corporation shall seek other grants and donations to support the program.

(d) An assessment on vendors that participate in the marketplace may be used to fund the administration of the program.

(7) SERVICES.—The corporation shall manage the health benefits accounts and provide a marketplace of options from which an enrollee may also use his or her health benefits account to purchase individual services and products, including, but not limited to, discount medical plans, limited benefit plans, health flex plans, individual health insurance plans, prepaid health clinic plans, bundled services, or other prepaid health care coverage.

(8) HEALTHY LIVING PERFORMANCE GOALS AND PAYMENT.—

(a) To the extent that funds are made available for this purpose, an enrollee is rewarded for achieving a healthy lifestyle and using preventive health care services appropriately.

(b) The program shall post on its website, by July 1 of each fiscal year, a list of optional healthy living performance goals and the proposed incentives for achievement of each goal. The corporation shall establish a procedure for the documentation of such goals, timeframes for achievement of the optional goals, and the payment of supplemental amounts into an enrollee's health benefits account, subject to available funding.

(c) Bonus payments for achieving a healthy living performance goal shall be paid into an enrollee's health benefits account at the end of the quarter in which the goal is

achieved. The amount of the payment is based upon the schedule posted by the program on July 1 of that fiscal year.

(9) LIABILITY.—Coverage under the Health Choice Plus Program is not an entitlement, and a cause of action does not arise against the state, a local governmental entity, any other political subdivision of the state, or the corporation or its board of directors for failure to make coverage under this section available to an eligible person or for discontinuation of any coverage.

(10) PROGRAM EVALUATION.—The corporation shall include information about the Health Choice Plus Program in its annual report under s. 408.910. The corporation shall complete and submit by January 1, 2016, a separate independent evaluation of the effectiveness of the Health Choice Plus Program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(11) PROGRAM REVIEW.—The Health Choice Plus Program is subject to repeal on July 1, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The sum of $15,275,000 from the General Revenue Fund is appropriated to the Agency for Health Care Administration beginning in the 2013-2014 fiscal year to provide funding for the Health Choice Plus Program within Florida Health Choices, Inc., and to fund the corporation's administrative costs necessary for implementing and operating the program.

Section 4. This act shall take effect July 1, 2013.

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 Committee on Appropriations

BILL:	CS/SB 1844
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Health Policy Committee
SUBJECT:	Health Choice Plus Program
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall		**HP SPB 7144 as introduced**
2.	Brown	Pigott	AHS	**Fav/CS**
3.	Brown	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1844 expands the current Florida Health Choices Program (FHCP) eligibility guidelines by modifying the participation criteria for individuals and employers as long as other program criteria are met. The bill clarifies that products sold in the FHC marketplace are not limited to those specifically listed or to risk-bearing products. The bill gives the Florida Health Choices Corporation (FHCC) more flexibility in setting open enrollment periods and removes product pricing guidelines that are in conflict with the provisions of federal law.[1]

The bill includes an appropriation of $15,275,000 in general revenue (GR) for Fiscal Year 2013-2014.

The bill also creates a new health care services program, the Health Choice Plus (HCP) program within the FHCC. The FHCC will phase-in the HCP program and be responsible for its ongoing

[1] Currently, s. 408.910(4)(f)4., F.S. allows for the establishment of product prices based on age, gender and location. The Patient Protection and Affordable Care Act (PPACA) prohibits the pricing of health insurance products based on gender and only allows limited pricing differences based on age. *Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).*

oversight, including the delivery of services, management of contracts, and collection of enrollee or employer contributions.

The HCP is created as an alternative health benefits program for uninsured, low income Floridians with incomes at or below 100 percent of the federal poverty level (FPL) who meet other designated eligibility criteria. Enrollees and the state will jointly fund health benefits accounts, to be managed by the FHCC, to the extent funds are appropriated annually in the General Appropriations Act (GAA). Enrollees may utilize funds in those accounts to purchase a range of health care products from the FHCC's marketplace or to offset other out of pocket health care costs. Enrollees must contribute at least $20 per month and the state will contribute no more than $10 per month. These amounts may be adjusted annually in the GAA.

Continued enrollment in HCP is contingent upon several factors, including but not limited to, an enrollee health assessment within the first three months of enrollment, continued payment of the monthly contribution requirement, and the enrollee's employment or full-time school enrollment. Exceptions to full-time employment may be made for an enrollee's medical condition or where the enrollee is the primary caregiver for a relative with a chronic medical condition that requires at least 40 hours of care per week. Supplemental payments may also be deposited to an enrollee's health benefits account for successful achievement of optional healthy living goals, subject to a specific appropriation for this purpose. Total enrollment in the program is limited based on the availability of funds.

The HCP program is subject to automatic repeal on July 1, 2016, unless reenacted by the Legislature.

The bill has an effective date of July 1, 2013.

The bill substantially amends section 408.910 of the Florida Statutes.

The bill creates section 408.9105 of the Florida Statutes.

II. Present Situation:

Florida provides health insurance coverage options to low income Floridians through a variety of programs utilizing state and federal funds. As of February 28, 2013, more than 3.2 million individuals received coverage through the Medicaid program.[2] Enrollment in the Florida Kidcare program's non-Medicaid funded components for the same time period was an additional 256,721 children.[3]

Florida's Medicaid program is expected to spend $21 billion for Fiscal Year 2012-2013, making it fifth largest in the nation for expenditures.[4] The Medicaid program is jointly funded between

[2] Agency for Health Care Administration, *Report of Medicaid Eligibles*, http://ahca.myflorida.com/Medicaid/about/pdf/age_assistance_category_130228.pdf (last visited Mar. 17, 2013).
[3] Agency for Health Care Administration, *Florida KidCare Enrollment Report – February 2013*, (copy on file with the Senate Health Policy Committee).
[4] Agency for Health Care Administration, Presentation to House Health and Human Services Committee, *Florida Medicaid: An Overview - December 5, 2012*,

the state and federal governments; 52.73 percent of the costs for health care services are paid by federal funds and 42.27 percent is state share in the current fiscal year. Funding for the Florida Kidcare program's Title XXI components has an enhanced federal match of 70.66 percent for the 2012-2013 federal fiscal year.[5]

According to the most recent data from the American Community Survey (ACS) of the federal Census Bureau, an estimated four million Floridians are uninsured.[6] Of that number, according to the ACS data, 594,000 are children.[7] More than 1.9 million uninsured adults are under 139 percent of the FPL, according to statistics for 2010-2011.[8] Lower income adults – those below 100 percent of the FPL – number at 1.1 million for that same time period.[9]

Eligibility for the current Medicaid program is based on a number of factors, including age, household or individual income, and assets. The Department of Children and Families (DCF) determines eligibility for Medicaid but the Agency for Health Care Administration (AHCA) is the single state Medicaid agency under s. 409.963, F.S., and has the lead responsibility for the overall program.[10]

Recipients in the Medicaid program receive their benefits through several different delivery systems depending on their individual situation. Delivery systems currently include fee-for-service providers and various managed care organizations, including provider service networks (PSNs), health maintenance organizations (HMOs), and prepaid limited health service organizations. In July 2006, the AHCA implemented the Medicaid Managed Care Pilot Program as directed by the 2005 Legislature through s. 409.91211, F.S. The pilot program operates under an 1115 Research and Demonstration Waiver approved by the federal Centers for Medicare and Medicaid Services (CMS). The pilot program was initially authorized for Broward and Duval counties with expansion to Baker, Clay and Nassau the following year.

Under the current pilot program, most Medicaid recipients in the five pilot counties (Baker, Broward, Clay, Duval, and Nassau counties) are required to receive their benefits through either HMOs, PSNs, or a specialty plan. In addition to the minimum benefits package, plans may provide enhanced services such as over-the-counter benefits, preventive dental care for adults, and health and wellness benefits.

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http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2714&Session=2013&DocumentType=Meeting Packets&FileName=HHSC_Mtg_ 12-5-12_ONLINE.pdf (last visited Mar. 17, 2013).

[5] Florida KidCare Coordinating Council, *2013 Annual Report and Recommendations*, p. 5, (January 2013), http://www.floridakidcare.org/council/reports/2013_KCC_Report.pdf (last visited Mar. 17, 2013).

[6] Office of Economic and Demographic Research, Florida Legislature, *Economic Analysis of PPACA and Medicaid Expansion,* Presentation to Senate Select Committee on Patient Protection and Affordable Care Act (Mar. 4, 2013), http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf (last visited Mar. 17, 2013).

[7] Id.

[8] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011)*, http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).

[9] Id.

[10] Agency for Health Care Administration, *Welcome to Medicaid!*, http://ahca.myflorida.com/Medicaid/index.shtml (last visited Mar. 17, 2013).

Medicaid Statewide Managed Medical Care Program

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Care (SMMC) Program as ch. 409, part IV, F.S. SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care as well as long-term care services. SMMC has two components: the Long Term Care (LTC) Managed Care component and the Managed Medical Assistance (MMA) component.

To implement SMMC and receive federal Medicaid funding, the AHCA was required to seek federal authorization through two different Medicaid waivers from CMS. The first component authorized was the LTC Managed Care component's 1915(b) and (c) waiver. Approval was granted on February 1, 2013.

The LTC Managed Care component will serve Medicaid-eligible recipients who are also determined to require a nursing facility level of care. Medicaid recipients who qualify will receive all of their long-term care services from the long-term care managed care plan.

Implementation of the LTC Managed Care component started July 1, 2012, with completion expected by October 1, 2013. The AHCA released an Invitation to Negotiate (ITN) on June 29, 2012, and on January 15, 2013, notices of contract awards to managed care plans under that ITN were announced.

For the MMA component, the AHCA sought to modify the existing Medicaid Reform 1115 Demonstration waiver to expand the program statewide. The AHCA initiated the SMMC project in January 2012 and released a separate ITN to competitively procure managed care plans on a statewide basis on December 28, 2012. Bids were due to the AHCA on March 29, 2013, and awards are expected to be announced on September 16, 2013.

Plans can supplement the minimum benefits in their bids and offer enhanced options. The number of plans to be selected by region is prescribed under s. 409.974, F.S. Specialty plans that serve specific, targeted populations based on age, medical condition, and diagnosis are also included under SMMC. Under s. 409.967, F.S., accountability provisions for the managed care plans specify several conditions or requirements, including emergency care and physician reimbursement standards, access and credentialing requirements, encounter data submission guidelines, and grievance and resolutions.

Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however, on February 20, 2013, the AHCA and the CMS reached an "Agreement in Principle" on the proposed plan.

Under SMMC, all persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare, (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through DCF Substance Abuse and Mental Health Program; (c)

are eligible for refugee assistance; or (d) are residents of a developmental disability center, may voluntarily enroll in the SMMC program. If they elect not to enroll, they will be served through the Medicaid fee-for-service system.

Cover Florida and Florida Health Choices

In 2008, the Florida Legislature created two programs simultaneously to address the issue of Florida's uninsured: the Cover Florida Health Access Program and the Florida Health Choices Program.[11] The two programs offered two unique methods of addressing Florida's uninsured population.

Cover Florida Health Access Program
Cover Florida is designed to provide affordable health care options for uninsured residents between the ages of 19 and 64 and who met other criteria under s. 408.9091, F.S. The AHCA and the Office of Insurance Regulation (OIR) have joint responsibility for the program and were directed to issue an Invitation to Negotiate (ITN) to secure plans for the delivery of services by July 1 2008. An ITN was released July 2, 2008, and as a result of that ITN, two-year contracts were executed with two statewide plans and four regional plans.[12]

The Cover Florida plans are not subject to the Florida Insurance Code and ch. 641, F.S., relating to HMOs. Two plan options were required for development: plans with catastrophic coverage and plans without catastrophic coverage. Plans without catastrophic coverage are required to include other benefit options such as:[13]

- Incentives for routine preventive care;
- Office visits for diagnosis and treatment of illness or injury;
- Behavioral health services;
- Durable medical equipment and prosthetics; and,
- Diabetic supplies.

Plans that did include catastrophic coverage are required to include all of the benefits above, plus have options for these additional benefits:[14]

- Inpatient hospital stays;
- Hospital emergency care services;
- Urgent care services; and,
- Outpatient facility services, outpatient surgery, and outpatient diagnostic services.

All plans are guarantee-issue policies and are required to include prescription drug benefits. Plans can also place limits on services and cap benefits and copayments.

[11] *See* Chapter Law 2008-32.
[12] Agency for Health Care Administration, *Cover Florida Health Care Access Program Annual Report (March 2013), p. 1,* http://ahca.myflorida.com/MCHQ/Managed_Health_Care/CHMO/docs/CoverFLReport-Mar2013.pdf (last visited Mar. 22, 2013).
[13] *See* s. 409.9091(4)(6)(a).
[14] *See* s. 409.9091(4)(a)(7).

To be eligible, the enrollee must be:

- A resident of Florida;
- Between 19 and 64 years old;
- Not covered by private insurance or eligible for public insurance, unless eligibility for coverage lapses due to no longer meeting income or categorical requirements; and,
- Uninsured for at least the prior six months, with exceptions for persons who lose coverage within the past six months under certain conditions.

As of December 17, 2010, no insurers or HMOs offered any new policies under Cover Florida.[15] The six insurers selected by the state in 2009 to participate in Cover Florida ceased enrollment in 2011 due to lack of participation by both insurers and participants.[16] Currently, 1,997 enrollees participate in two plans and both plans will terminate those policies in 2014.[17]

Florida Health Choices Program (FHCP)
The FHCC is a private, non-profit, corporation under s. 408.910, F.S., and is led by a 15-member board of directors. The FHCP is designed as a single, centralized marketplace for the purchase of health products including, but not limited to, health insurance plans, HMO plans, prepaid services, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors:

- Insurers authorized under ch. 624, F.S.;
- HMOs authorized under ch. 641, F.S.;
- Prepaid health clinics licensed under ch. 641, part II, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and,
- Corporate entities providing specific health services.

The FHCP is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include:[18]

- Employers that meet criteria established by the FHCP and elect to make their employees eligible;
- Fiscally constrained counties described in s. 218.67, F.S.;

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[15] Department of Financial Services, *Cover Florida Health Care Access Program Defined*, http://www.myfloridacfo.com/consumers/insurancelibrary/insurance/l_and_h/cover_florida/cover_florida_-_defined.htm (last visited Mar. 22, 2013).
[16] South Florida Business Journal, Brian Bandell, http://www.bizjournals.com/southflorida/print-edition/2011/03/25/cover-florida-health-plan-program.html?s=print, Mar. 25, 2011, (last visited Mar. 22, 2013).
[17] *Supra* note 12, at 2.
[18] *See* s. 408.910(4)(a), F.S.

- Municipalities having populations of fewer than 50,000 residents;
- School districts in fiscally constrained counties; or,
- Statutory rural hospitals.

Individuals eligible to participate include:[19]

- Individual employees of enrolled employers;
- State employees not eligible for state employee health benefits;
- State retirees; or,
- Medicaid participants who opt-out.

For phase one of Florida Health Choices' launch in 2013, the Marketplace will serve small businesses with 2 to 50 employees.[20] The initial list of vendors will include plans from Florida Blue, Florida Health Care Plans, Argus Dental, and Liberty Dental.[21] The pilot will last six months and then the FHCP will evaluate adding other services.[22]

The Patient Protection and Affordable Care Act (PPACA)

In March 2010, the Congress passed the PPACA.[23] One of the PPACA's key components requires states to expand Medicaid to a minimum eligibility threshold of 133 percent of the FPL, or as it is sometimes expressed, 138 percent of the FPL when considering the automatic five-percent income disregard, effective January 1, 2014.[24] While the costs for the newly eligible under this expansion would be initially funded at 100 percent federal funds for the first three calendar years, states would gradually be required to pay a share of the costs, starting at five percent in calendar year 2017 before leveling off at 10 percent in 2020.[25] Under the PPACA as enacted, states refusing to expand to the new eligibility threshold faced the loss of *all* of their federal Medicaid funding.[26]

Florida, along with 25 other states challenged the constitutionality of the law. In *NFIB v. Sebelius*, the U.S. Supreme Court found the enforcement provisions of the Medicaid expansion unconstitutional.[27] As a result, states could voluntarily expand their Medicaid populations to 138 percent of the FPL and receive the enhanced federal match, but could not be required to do so for the population defined as newly eligible in the law, which was interpreted by the federal Department of Health and Human Services (HHS) to be only the adult population (childless

[19] *See* s. 408.910(4)(b), F.S.
[20] Florida Health Choices, *2012 Annual Report*, p. 4, http://myfloridachoices.org/wp-content/uploads/2011/03/FHC-AnnualReport-2012_v4a.pdf (last visited Mar. 22, 2013).
[21] Florida Health Choices, *Florida Health Choices Announces Initial Offerings*, (Feb. 22. 2013) http://myfloridachoices.org/florida-health-choices-announces-initial-offerings/ (last visited Mar. 25, 2013).
[22] *Supra* note 20, at 3.
[23] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[24] 42 U.S.C. s. 1396a(10).
[25] 42 U.S.C. s. 1396d(y)(1).
[26] 42 U.S.C. s. a1396c
[27] *National Federation of Independent Business v. Sebelius, 567 U.S.___(2012)*.

adults aged 19 - 64).[28] States are unable to receive the enhanced federal matching funds for partial Medicaid expansions.[29]

While finding the adult expansion of Medicaid optional, subsequent federal guidance has also emphasized state flexibility in how states expand coverage to those defined as newly eligible. In a letter to the National Governors Association January 14, 2013, HHS Secretary Kathleen Sebelius reminded states of their ability to design flexible benefit packages without the need for waivers.[30] This letter had been preceded by an HHS document entitled "Frequently Asked Questions on Exchange, Market Reforms and Medicaid" on December 10, 2012, that discussed promotion of personal responsibility, wellness benefits, and state flexibility to design benefits.[31]

A state Medicaid director letter on November 20, 2012 (ACA #21), further addressed state options for the adult Medicaid expansion group and the alternative benefit plans available under Section 1937 of the Social Security Act.[32] Under Section 1937, state Medicaid programs have the option of providing certain groups with benchmark or benchmark-equivalent coverage based on four products: (1) the standard Blue Cross/Blue Shield Preferred Provider option offered to federal employees; (2) state employee coverage that is generally offered to all state employees; (3) the commercial HMO with the largest insured, non-Medicaid enrollment in the state or (4) coverage approved by the HHS secretary.[33] For children under the age of 21, the coverage must include the Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT). Other aspects of the essential health benefit requirements of the PPACA, as discussed further below, may also be applicable, depending on the benefit package utilized.

In addition to the Medicaid expansion component, the PPACA imposes a mandate on individuals to buy insurance, or pay a penalty, which was interpreted by the U.S. Supreme Court as a tax. Currently, many uninsured individuals are eligible for Medicaid or Kidcare coverage but are not enrolled. The existence of the federal mandate to purchase insurance may result in some indeterminate number of current eligibles coming forward and enrolling in Medicaid who had previously not enrolled. Their participation will result in increased costs and would not likely have occurred without the catalyst of the federal legislation.

To obtain insurance coverage, the PPACA authorized the state-based American Health Benefit exchanges and Small Business Health Options Program (SHOP) exchanges. These exchanges are to be administered by governmental agencies or non-profit organizations and be ready to accept

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[28] Department of Health and Human Services, *Secretary Sebelius Letter to Governors, July 10, 2012*, http://capsules.kaiserhealthnews.org/wp-content/uploads/2012/07/Secretary-Sebelius-Letter-to-the-Governors-071012.pdf (last visited Mar. 16, 2013).

[29] Centers for Medicare and Medicaid Services, *Frequently Asked Questions on Exchanges, Market Reforms and Medicaid (December 10, 2012)*, p.12, http://medicaid.gov/State-Resource-Center/Frequently-Asked-Questions/Downloads/Governor-FAQs-12-10-12.pdf (last visited April 1, 2013).

[30] *Letter to National Governor's Association from Secretary Sebelius*, January 14, 2013 (copy on file with Senate Health Policy Committee).

[31] *See Supra* note 29, at 15-16.

[32] Centers for Medicare and Medicaid Services, *State Medicaid Director Letter: Essential Health Benefits in the Medicaid Program* (November 20, 2012), http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD-12-003.pdf (last visited Mar. 17, 2013).

[33] *See supra* note 32, at 2.

applications for coverage beginning October 1, 2013, for January 1, 2014, coverage dates. The exchanges, at a minimum, must:[34]

- Certify, re-certify and de-certify plans participating on the exchange;
- Operate a toll-free hotline;
- Maintain a website;
- Provide plan information and plan benefit options;
- Interact with the state's Medicaid and CHIP programs and provide information on eligibility and determination of eligibility for these programs;
- Certify individuals who gain exemptions from the individual responsibility requirement; and
- Establish a navigator program.

The initial guidance from the HHS in November 2010 set forward a number of principles and priorities for the exchanges. Further guidance was issued on May 16, 2012, detailing the proposed operations of federally facilitated exchanges for those states that elected not to implement a state-based exchange. On November 16, 2012, Florida Governor Rick Scott notified HHS that Florida had too many unanswered questions to commit to a state-based exchange under the PPACA for the first enrollment period on January 1, 2014.[35]

The PPACA also includes a tax penalty for those individuals that do not have qualifying health insurance coverage beginning January 1, 2014. The penalty is the greater of $695 per year, up to a maximum of three times that amount per family or 2.5% of household income. The penalty, however, is phased-in and exemptions apply.

The following persons are exempt from the PPACA's requirement to maintain coverage:[36]

- Individuals with a religious objection;
- Individuals not lawfully present; and
- Incarcerated individuals.

The following persons are exempt from the PPACA's penalty for failure to maintain coverage:[37]

- Individuals who cannot afford coverage, i.e. those whose required premium contributions exceed eight percent of household income;
- Individuals with income below the income tax filing threshold;
- American Indians;
- Individuals without coverage for less than three months; and

[34]Centers for Medicare and Medicaid Services, Initial Guidance to States on Exchanges, November 18, 2010, http://cciio.cms.gov/resources/files/guidance_to_states_on_exchanges.html (last visited Mar. 16, 2013).
[35] *Letter from Governor Rick Scott to Health and Human Services Secretary Kathleen Sebelius,* November 16, 2012 http://www.flgov.com/2012/11/16/letter-from-governor-rick-scott-to-u-s-secretary-of-health-and-human-services-kathleen-sebelius/ (last visited Mar. 16, 2013).
[36] *See* Sec. 5000A(d), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.
[37] *See* Sec. 5000A(e), Internal Revenue Code of 1986, as created or amended by the Patient Protection and Affordable Care Act of 2010 and/or the Health Care and Education Reconciliation Act of 2010.

- Individuals determined by the HHS secretary to have suffered a hardship with respect to the capability to obtain coverage under a qualified plan.

Qualifying coverage may be obtained through an employer, the federal or state exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard.

Employers with more than 50 full time employees also share a financial responsibility under PPACA. Employers with more than 50 full-time employees that do not offer coverage meeting the essential benefits coverage standard and who have at least one employee receive a premium tax credit will be assessed a fee of $2,000 per full time employee, after the 30th employee.[38] If an employer does offer coverage and an employee receives a premium tax credit, the employer is assessed the lesser of $3,000 per employee receiving the credit or $2,000 per each employee after the 30th employee.[39]

Premium credits and other cost sharing subsidies are available to United States citizens and legal immigrants within certain income limits for coverage purchased through the exchanges. Legal immigrants with incomes at or below 100 percent of the FPL who are not eligible for Medicaid during their first five years are eligible for premium credits.[40] Premium credits are set on a sliding scale based on the percent of FPL for the household and reduce the out-of-pocket costs incurred by individuals and families.

The amount for premium tax credits, as a percentage of income, are set in section 36B of the Internal Revenue Code follows[41]:

Premium Tax Credits	
Income Range	**Premium Percentage Range** (% of income)
Up to 133% FPL	2%
133% to 150%	3% - 4%
150% to 200%	4% - 6.3%
200% to 250%	6.3% - 8.05%
250% to 300%	8.05% - 9.5%
300% to 400%	9.5%

Subsidies for cost sharing are also applicable for those between 100 percent of the FPL and 400 percent of the FPL.[42] For 2013, 100 percent of the FPL equates to the following by family size:[43]

[38] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[39] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[40] 26 U.S.C. s. 36B(c).
[41] 26 U.S.C. s. 36B(c).
[42] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).

2013 Federal Poverty Guidelines – 100% FPL	
Family Size	Maximum Annual Income
1	$11,490
2	$15,510
3	$19,530
4	$23,550

The cost sharing credits reduce the out-of-pocket amounts incurred by individuals on essential health benefits and will also impact the actuarial value of a health plan. Actuarial value reflects the average share of covered benefits paid by the insurer or health plan.[44] For example, if the actuarial value of a plan is 90 percent, the health plan is paying 90 percent of the costs and the enrollee 10 percent. Under the PPACA, the maximum amount of cost sharing under this component range from 94 percent for those between 100 percent to 150 percent of the FPL, to 70 percent for those between 250 percent and 400 percent of the FPL.[45]

Select Committee on Patient Protection and Affordable Care Act

In December 2012, Florida Senate President Don Gaetz formed the Select Committee on the PPACA to launch a comprehensive assessment on the impact of the law on Florida, evaluate the state's options under the law, and to make recommendations to the full Senate membership on any actions necessary to mitigate cost increases, preserve a competitive insurance market, and protect Florida's consumers.[46] The Select Committee received public testimony, expert presentations, and staff reports over nine meetings before it developed three specific recommendations relating to the development of a health care exchange, coverage for certain state employees, and the expansion of Medicaid. On Medicaid, the Select Committee voted 7-4 to recommend to the full Senate to not expand Medicaid under the current state plan or pending waivers.[47] Following that vote, two alternative proposals for coverage of the population under 138 percent of the FPL that utilize the private insurance market were put forward for further discussion and debate.[48]

[43] *See* Annual Update of the HHS Poverty Guidelines, 78 Fed. Reg. 5182, 5183 (January 24, 2013) https://www.federalregister.gov/articles/2013/01/24/2013-01422/annual-update-of-the-hhs-poverty-guidelines#t-1 (last visited Mar. 29, 2013).
[44] Lisa Bowen Garrett, et al., The Urban Institute, *Premium and Cost Sharing Subsidies under Health Reform: Implications for Coverage, Costs and Affordability* (December 2009), http://www.urban.org/UploadedPDF/411992_health_reform.pdf (last visited Mar. 16, 2013).
[45] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[46] *See* Florida Senate, *Patient Protection and Affordable Care Act*, http://www.flsenate.gov/topics/ppaca (last visited: April 1, 2013).
[47] Florida Senate Select Committee on Patient Protection and Affordable Care Act, *Letter to Senate President Don Gaetz on Medicaid Recommendation* http://www.flsenate.gov/usercontent/topics/ppaca/03-12-13MedicaidRecommendation.pdf (last visited: April 1, 2013).
[48] Id.

III. Effect of Proposed Changes:

Section 1 revises s. 409.910. F.S., and expands the eligibility and participation guidelines for the Florida Health Choices program to allow all individuals and employers that meet criteria established by the FHCC to participate in the program. The bill clarifies that products sold in the marketplace are not limited to those specifically listed or to risk-bearing products.

The bill removes a specific time standard for open enrollment periods to give the program and employers more flexibility. The bill deletes product pricing guidelines that were in conflict with federal law. The bill also provides that standard forms, website designs, or marketing communications developed by FHC or any vendor participating in the FHC marketplace are not subject to the Florida Insurance Code.

Section 2 creates s. 408.9105, F.S., and a new program called Health Choice Plus (HCP). The HCP program is managed by the FHCC under its existing infrastructure and governance and provides a benefit program to uninsured Floridians under 100 percent of the FPL. The bill establishes health benefit accounts for enrollees with financial contributions from the enrollee, the state (subject to funding in the GAA), and other sources such as the enrollee's employer; and provides a marketplace for enrollees to purchase health care goods and services utilizing funds from health benefits account. Examples of products that may be purchased include, but are not limited to, discount medical plans, limited benefit plans, health flex plans, individual health insurance plans, prepaid health clinic plans, bundled services, or other prepaid health care coverage.

The bill provides specific criteria for initial eligibility for HCP and conditions for continued enrollment. The bill requires that an enrolled individual meet the following conditions:

- Be a resident of Florida;
- Be between the ages of 19 and 64;
- Have a modified adjusted gross income of less than 100 percent of the FPL based on the individual's last tax return or other documentation;
- Be a United States citizen or a lawful permanent resident;
- Not be eligible for Medicaid;
- Not be eligible for employer sponsored coverage (with some exceptions); and,
- Meet criteria based on whether the enrollee meets the definition of a childless adult or parent/relative caretaker.

The bill requires HCP to establish guidelines for financial participation by enrollees. At a minimum, an enrollee is required to contribute $20 per month towards his or her health benefit account. The enrollee contribution amount may be adjusted annually through the GAA. The amount paid into the account by the state will be determined by the FHCC based on the availability of state, local, or federal funding. The bill provides that the state contribution may not exceed $10 per enrollee per month; however, this amount may be adjusted annually in the GAA. HCP is also directed to implement an employer based contribution option. An employer may contribute towards an employee's health benefits account, including making the entire payment amount, at any time.

The bill directs HCP to develop and maintain an education and public outreach campaign and to provide a secure website that provides information and facilitates the purchase of goods and services. Information must also be provided about other insurance affordability programs.

The bill requires that HCP must hold at least one open enrollment period per year, subject to available funding. Eligibility must be determined utilizing electronic means to the fullest extent possible. Once the program reaches its capacity, enrollment will cease. Enrollment may occur through the Florida Health Choices portal, a referral from the DCF, the Florida Healthy Kids Corporation, or an exchange as defined under the PPACA.

Once eligibility is confirmed, the bill directs the FHCC to determine the amount of funds that will be deposited into each enrollee's account based upon the availability of funds and other factors. Enrollees must make a financial contribution to their health benefits account in order to maintain enrollment and the FHCC is required to establish disenrollment criteria for non-payment of those minimum contributions. A maximum waiting period of one month prior to reinstatement to HCP for non-payment of any required payment may be imposed.

The bill requires the establishment of an optional incentives program for the achievement of healthy living goals. The program will establish annual healthy living goals and provide supplemental payments into an enrollee's health benefits account for meeting those goals, subject to the availability of funds.

The FHCC must establish the healthy living goals each fiscal year and publish the goals, procedures, and timeframes for the achievement of the goals by July 1 and distribute to new enrollees within 30 calendar days after enrollment. The bill directs HCP to publish goals for the 2014 calendar year by October 1, 2013. Bonus funds may accumulate in an enrollee's account until program termination.

The bill provides that continued enrollment in HCP and receipt of state contributions on the enrollee's behalf are contingent upon the enrollee obtaining a health assessment from a county health department, federally qualified health center, or other approved health care provider within the first three months of enrollment.

The following additional criteria apply based on the enrollee's category of eligibility:

Criteria	**Childless Adult**	**Parent\Relative Caretaker**
Any dependent child in the household must be enrolled in Medicaid or CHIP, if eligible		X
Proof of 20 hours of employment or effort to seek employment; or, in lieu of employment volunteer hours at school or non-profit or enrollment as full-time student	X Volunteer hours - 20	X Volunteer hours – 10
Health Assessment in first 3 months	X	X
One preventive visit in first 6 months, repeat every 18 months thereafter	X	X

Failure to meet the ongoing eligibility criteria will result in the enrollee's disenrollment. One 30-day extension may be granted by HCP to comply. If disenrolled, the enrollee may not re-apply for coverage until the next open enrollment period or 90 days, whichever occurs later.

Funds deposited into an enrollee's health benefits account may be used by the enrollee to offset health care costs or to purchase other health care services offered in the marketplace. Except for certain supplemental funds, funds deposited in an enrollee's account belong to the enrollee and are available for health care related expenditures. The bill provides that the optional bonus payments will be paid into the enrollee's account at the end of the quarter in which the goal was completed.

The bill requires the FHCC to establish a refund process for enrollees who request the closure of their health benefits accounts and the return of any unspent individual contributions. Enrollees may only be refunded funds that the enrollee or employer has contributed to their health benefits account. All other state funds revert to the FHCC.

HCP is authorized to accept funds from employers to deposit into their employees' health benefits accounts, when not in conflict with any other provisions of the bill. The FHCC is also permitted to accept state and federal funds or to seek other grants to help administer HCP. An assessment on vendors may be utilized to fund administration.

The bill designates the coverage as a non-entitlement and affirms that a cause of action does not arise against the state, a local governmental entity, any other political subdivision of the state, or the FHCC or its board of directors, for failure to make coverage available to eligible persons or for the discontinuation of any coverage under HCP.

The bill requires the FHCC to include information about the program into its regular annual report. A separate evaluation of HCP is also required and is due to the governor and Legislature by January 1, 2016.

A program sunset clause is provided to repeal the program effective July 1, 2016, unless saved from repeal through re-enactment by the Legislature.

Section 3 provides an appropriation of $15,275,000 from the General Revenue Fund to the Agency for Health Care Administration beginning in the 2013-2014 fiscal year to fund the Health Choice Plus program within Florida Health Choices, Inc. and to fund any necessary administrative costs for implementing and operating the program.

Section 4 provides an effective date of July 1, 2013.

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 contemplates the FHCC contracting with private providers of health care services and products to deliver health care benefits to an additional population of currently uninsured individuals who may or may not be seeking health care services now. Physicians, hospitals, and other health care providers may be impacted by additional individuals seeking health care coverage and there may be a higher demand for such services once implemented.

Additionally, those safety net and other providers who serve this same population and are not receiving compensation or are receiving reduced compensation for those services may have an additional avenue for revenue.

C. Government Sector Impact:

The bill requires enrollees to receive certain health assessments from county health departments, federally qualified health centers, or other approved health care providers as a condition of continued enrollment. For those county health departments with primary care services, there could be an increased demand for services as individuals seek to comply with this requirement.

In addition to the increased demand for services, the program includes state contributions to the health benefit accounts on a monthly basis and incentives for achievement on optional healthy living performance goals based on an initial enrollment of 60,000 members for 12 months. No federal funds are expected for this program.

The following is the estimated state fiscal impact for 60,000 members over 12 months:

		PMPM Enrollee	PMPM State	Annual State PMPM	TOTAL
Health Benefits Account Funds		$20.00	$10.00	$120.00	$7,200,000
Incentives $25 Each Healthy Living Goal					
100% Achieve 2	$3,000,000				$3,000,000
25% Achieve 3	$1,125,000				$1,125,000
5% Achieve 4	$300,000				$300,000
2% Achieve 5	$150,000				$150,000
Administration (FHC)	$1,500,000				$1,500,000
Direct Services (Community and safety net provider supplement for HBAs)	$2,000,000				$2,000,000
Grand Total:					$15,275,000

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FHCC will be receiving and reviewing medical records and personal health information of enrollees in the HCP. The exemption from public records under s. 408.910(14) F.S., only applies to the FHCC and enrollees and participants of the Florida Health Choices program. An exemption for the HCP would be appropriate to ensure that medical records and personal information of enrollees and applicants to the program would remain confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. 1 of the State Constitution.

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 Appropriations on April 23, 2013:
The committee substitute represents the incorporation of one strike-all amendment and includes the following changes:

- Modifies s. 409.910, F.S., to expand eligibility criteria for individuals and employers who participate in the Florida Health Choices Program and meet other program criteria established by the Florida Health Choices Corporation;
- Revises product pricing criteria to remove elements in conflict with the federal Patient Protection and Affordable Care Act;
- Clarifies that products sold in the FHC marketplace are not limited to those specifically listed or to risk-bearing products;

- Provides the Florida Health Choices Corporation with flexibility in establishing the length of open enrollment periods;
- Transfers a provision that provides that standard forms, website designs, or marketing communications developed by FHC or any vendor participating in the FHC marketplace are not subject to the Florida Insurance Code from the Health Choice Plus section to the Florida Health Choice Program statute section;
- Deletes language that indicates goods and services purchased under the Health Choice Plus Program are not insurance as some enrollees may utilize their health benefits funds for the purchase of insurance coverage;
- Adds prepaid health clinic services to the list of possible goods and services that enrollees may purchase with funds from their health benefits accounts; and,
- Provides an appropriation of $15,275,000 from the General Revenue Fund for the 2013-2014 fiscal year.

B. Amendments:

None.

By the Committee on Health Policy

588-03428-13 20131844__

A bill to be entitled

An act relating to the Health Choice Plus Program; amending s. 408.910, F.S.; conforming provisions to changes made by the act; creating s. 408.9105, F.S.; creating the Health Choice Plus Program; providing legislative intent; providing definitions; providing eligibility requirements; providing exceptions in specific situations; providing for enrollment in the program; providing for disenrollment in specific situations; providing for reenrollment in specific situations; providing requirements and procedures for use of funds in a health benefits account; authorizing the Florida Health Choices, Inc., to accept funds from various sources to deposit into health benefits accounts, subsidize the costs of coverage, and administer and support the program; requiring the corporation to manage the health benefits accounts and provide the marketplace of options that an enrollee in the program may use; providing for payment for achieving health living performance goals; providing that the Florida Insurance Code is not applicable to the program; providing that coverage under the program is not an entitlement; prohibiting a cause of action against certain entities under certain circumstances; requiring the corporation to submit to the Governor and the Legislature information about the program in its annual report and an evaluation of the effectiveness of the program; providing for a program review and repeal date; providing an effective date.

588-03428-13 20131844__

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 408.910, Florida Statutes, is amended to read:

408.910 Florida Health Choices Program.—

(1) LEGISLATIVE INTENT.—The Legislature finds that a significant number of the residents of this state do not have adequate access to affordable, quality health care. The Legislature further finds that increasing access to affordable, quality health care can be best accomplished by establishing ~~a~~ competitive markets ~~market~~ for purchasing health insurance and health services. It is therefore the intent of the Legislature to create the Florida Health Choices Program and the Health Choice Plus Program to:

(a) Expand opportunities for Floridians to purchase affordable health insurance and health services.

(b) Preserve the benefits of employment-sponsored insurance while easing the administrative burden for employers who offer these benefits.

(c) Enable individual choice in both the manner and amount of health care purchased.

(d) Provide for the purchase of individual, portable health care coverage.

(e) Disseminate information to consumers on the price and quality of health services.

(f) Sponsor ~~a~~ competitive markets ~~market~~ that stimulate ~~stimulates~~ product innovation, quality improvement, and efficiency in the production and delivery of health services.

Section 2. Section 408.9105, Florida Statutes, is created to read:

408.9105 Health Choice Plus Program.—

(1) LEGISLATIVE INTENT.—The Legislature recognizes that there are more than 600,000 uninsured residents in this state who have incomes at or below 100 percent of the federal poverty level. Many insurance options are not affordable, and the Legislature intends to provide a benefit program to those individuals who seek assistance with coverage and who assume individual responsibility for their own health care needs. It is therefore the intent of the Legislature to expand the services provided by the Florida Health Choices Program and begin the phase-in of the Health Choice Plus Program starting July 1, 2013. The Health Choice Plus Program must:

(a) Use the existing Florida Health Choices Corporation's infrastructure and governance to manage the program described in this section.

(b) Offer goods and services to individuals who are between 19 to 64 years of age, inclusive.

(c) Establish guidelines for financial participation in the program which allows for enrollees and others to contribute toward a health benefits account.

1. An enrollee shall contribute at least $20 per month toward the health benefits account. This amount may be adjusted annually in the General Appropriations Act.

2. The level of benefit paid into an enrollee's account using state funds is to be determined by the corporation based upon the availability of state, local, and federal funding. The amount may not exceed $10 per individual per month. This amount

may be adjusted annually in the General Appropriations Act.

(d) Implement an employer-based contribution option.

(e) Develop and maintain an education and public outreach campaign for the Health Choice Plus Program.

(f) Provide a secure website to facilitate the purchase of goods and services and to provide public information about the program. The website must also provide information about the availability of insurance affordability programs targeted at this population.

(g) Establish an incentive program that rewards enrollees for achievements in reaching healthy living goals.

(2) DEFINITIONS.—For the Health Choice Plus Program, the following terms are applicable:

(a) "CHIP" means Children's Health Insurance Program as authorized under Title XXI of the Social Security Act.

(b) "Corporation" means Florida Health Choices, Inc., as established under s. 408.910.

(c) "Corporation's marketplace" means the single, centralized market established by the corporation which facilitates the purchase of products made available in the marketplace.

(d) "Enrollee" means an individual who participates in or receives benefits under the Health Choice Plus Program.

(e) "Program" means the Health Choice Plus Program established under this section.

(f) "Vendor" means an entity that meets the requirements under s. 408.910(4)(d) and is accepted by the corporation.

(g) "Health benefits account" means the account established for an enrollee at the corporation into which funds may be

deposited by the state, the enrollee, other individuals, or organizations for the purchase of health care goods and services on the enrollee's behalf.

(h) "Parent" or "caretaker relative" means an individual who is a relative that has primary custody or legal guardianship of a dependent child and provides the primary care and supervision to that dependent child in the same household. A caretaker relative must be related to the dependent child by blood, marriage, or adoption within the fifth degree of kinship.

(i) "Goods and services" means the individual products offered for sale to an enrollee on the corporation's marketplace or other health care-related items that may be purchased by an enrollee in the private market. An enrollee may purchase these products using funds accumulated in his or her health benefits account.

(j) "Lawful permanent resident" means a non-United States citizen who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This individual may also be known as a permanent resident alien.

(k) "Patient Protection and Affordable Care Act" or "PPACA" means the federal law enacted as Pub. L. No. 111-148, as further amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments.

(3) ELIGIBILITY.—

(a) To be eligible for the Health Choice Plus Program, an individual must be a resident of this state and meet all of the following criteria:

1. Be between 19 and 64 years of age, inclusive.

2. Have a modified adjusted gross income that does not exceed 100 percent of the federal poverty level based on the individual's most recent federal tax return, or if the individual did not file a tax return, the individual's most recent monthly income.

3. Be a United States citizen or a lawful permanent resident.

4. Not be eligible for Medicaid.

5. Not be eligible for employer-sponsored insurance coverage. If the enrollee is eligible for employer-sponsored coverage but the cost of that coverage for the enrollee's share for individual coverage would exceed 5 percent of the enrollee's total modified adjusted gross household income or the enrollee's share of family coverage would exceed 5 percent of enrollee's total modified adjusted gross household income, the enrollee is not eligible for employer-sponsored coverage under this section.

6. Not be enrolled in other coverage that meets the definition of essential benefits coverage under PPACA.

(b) In addition to the requirements in paragraph (a), an enrollee must meet the following categorical requirements in order to maintain enrollment in the program:

1. For an enrollee who is also a parent or a caretaker relative, the enrollee must do all of the following:

a. Maintain enrollment in Medicaid or CHIP for any dependent child in the household who is eligible for Medicaid or CHIP and who must be enrolled in Medicaid or CHIP throughout the enrollee's participation in the Health Choice Plus program.

b. Complete a health assessment within the first 3 months after enrollment at a county health department, federally

qualified health center, or other approved health care provider.

c. Schedule and keep at least one preventive visit with a primary care provider within 6 months after enrollment and repeat the preventive visit at least once every 18 months thereafter.

d. Provide proof of employment for at least 20 hours a week or of efforts made to seek employment. In lieu of employment, the enrollee may provide proof of volunteering for at least 10 hours a month at a school or at a nonprofit organization or enrollment as a full-time student at an accredited educational institution. Exceptions to this requirement may be made on a case-by-case basis for medical conditions for the enrollee or if the enrollee is the primary caretaker for a family member who has a chronic and severe medical condition that requires a minimum of 40 hours a week of care.

2. For an enrollee who is also a childless adult, the enrollee must do all of the following:

a. Provide proof of employment for at least 20 hours a week or of efforts made to seek employment. In lieu of employment, the enrollee may provide proof of volunteering for at least 20 hours a month at a school or at a nonprofit organization or enrollment as a full-time student at an accredited educational institution. Exceptions to this requirement may be made on a case-by-case basis for medical conditions for the enrollee or if the enrollee is the primary caretaker for a family member who has a chronic and severe medical condition that requires a minimum of 40 hours a week of care.

b. Complete a health assessment within the first 3 months after enrollment at a county health department, federally

qualified health center, or other approved health care provider;

c. Schedule and keep at least one preventive visit with a primary care provider within the first 6 months after enrollment and repeat the preventive visit at least once every 18 months thereafter.

If the enrollee fails to meet the requirements specified in this subsection, the enrollee is disenrolled from the program at the end of the month in which the enrollee has not met the requirements. The enrollee may receive one 30-day extension to comply before cancellation of coverage. If an enrollee's coverage is canceled, the enrollee may not reapply for coverage until the next open enrollment period or 90 days after cancellation of coverage occurs, whichever occurs later. The individual's reenrollment is subject to available funding.

(4) ENROLLMENT.—

(a) Enrollment in the Health Choice Plus Program may occur through the portal of the Florida Health Choices Program, a referral process from the Department of Children and Families, the Florida Healthy Kids Corporation, or the exchange as defined by the federal Patient Protection and Affordable Care Act.

(b) Subject to available funding, the corporation shall establish at least one open enrollment period each year. When the program is full based on available funding, enrollment must cease.

(c) Eligibility is determined by using electronic means to the fullest extent practicable before requesting any written documentation from an applicant.

(5) HEALTH BENEFITS ACCOUNT.—

(a) A health benefits account is established for each enrollee upon confirmation of eligibility in the program. The corporation shall determine the deposit amount and frequency of deposits based on the availability of funds, the number of enrollees, and other factors.

(b) An enrollee shall make a financial contribution toward his or her own health benefits account in order to maintain enrollment in accordance with paragraph (1)(c).

1. The corporation shall establish disenrollment criteria for failure to pay the required minimum contribution.

2. The disenrollment criteria must include waiting periods of not more than 1 month before reinstatement to the program if the enrollee is still eligible and has paid all required financial obligations.

3. The enrollee's employer may contribute toward an employee's health benefits account under the program, including making the enrollee's required contribution, in whole or in part, to the enrollee's health benefits account at any time.

(c) Subject to appropriations available for this specific purpose, the corporation shall establish a procedure for the deposit of supplemental or bonus funds into an enrollee's health benefits account if certain healthy living performance goals are achieved. These goals must be established no later than July 1 in each fiscal year and distributed to all enrollees, published on the corporation's website, and distributed to new enrollees within 30 calendar days after enrollment. For calendar year 2014, the goals must be established no later than October 1, 2013.

1. An enrollee may use funds deposited in a health benefits

account to offset other health care costs or to purchase other products and services offered by the marketplace, subject to guidelines established by the corporation and in accordance with federal law.

2. Bonus funds may accumulate in the enrollee's health benefits account for the duration of the program and must automatically expire and return to the corporation upon the termination of the program.

(d) The marketplace is encouraged to use existing community programs and partnerships to deliver services and to include traditional safety net providers for the delivery of services to enrollees, including, but not limited to, rural health clinics, federally qualified health centers, county health departments, emergency room diversion programs, and community mental health centers. A health care entity that receives state funding must participate in the Health Choice Plus Program and offer services or products through the marketplace or to enrollees, as appropriate. An enrollee may be required to make nominal copayments to providers for any nonpreventive services. The corporation may establish the amount of the copayments when applicable.

(e) Except for supplemental funds described under paragraph (c), funds deposited in a health benefits account belong to the enrollee when deposited and are available for health-care-related expenditures, including, but not limited to, physician's fees, hospital costs, prescriptions, insurance premium payments, copayments, and coinsurance. The corporation shall establish a process or contract with another entity for the management of the funds. The process must ensure the timely distribution and

the appropriate expenditure of the state's contributions.

(f) The corporation shall establish a refund process for an enrollee who requests the closure of a health benefits account and the return of any unspent individual contributions. The enrollee may be refunded only those funds that the enrollee or employer has contributed to his or her health benefits account. All other state funds in the enrollee's health benefits account revert to the corporation.

(6) FUNDING.—

(a) The corporation may accept funds from an employer to deposit in an enrollee's health benefits account to supplement funds if such a deposit is not in conflict with other provisions of this section.

(b) The corporation may accept state and federal funds to further subsidize the costs of coverage and to administer the program.

(c) The corporation shall seek other grants and donations to support the program.

(d) An assessment on vendors that participate in the marketplace may be used to fund the administration of the program.

(7) SERVICES.—The corporation shall manage the health benefits accounts and provide a marketplace of options from which an enrollee may also use his or her health benefits account to purchase individual services and products, including, but not limited to, discount medical plans, limited benefit plans, health flex plans, individual health insurance plans, bundled services, or other prepaid health care coverage.

(8) HEALTHY LIVING PERFORMANCE GOALS AND PAYMENT.—

(a) To the extent that funds are made available for this purpose, an enrollee is rewarded for achieving a healthy lifestyle and using preventive health care services appropriately.

(b) The program shall post on its website, by July 1 of each fiscal year, a list of optional healthy living performance goals and the proposed incentives for achievement of each goal. The corporation shall establish a procedure for the documentation of such goals, timeframes for achievement of the optional goals, and the payment of supplemental amounts into an enrollee's health benefits account, subject to available funding.

(c) Bonus payments for achieving a healthy living performance goal shall be paid into an enrollee's health benefits account at the end of the quarter in which the goal is achieved. The amount of the payment is based upon the schedule posted by the program on July 1 of that fiscal year.

(9) APPLICABILITY OF INSURANCE CODE.—Coverage offered under this program is not insurance. Any standard forms, website design, or marketing communication developed by the corporation and used by the corporation or any vendor that meets the requirements of s. 408.910(4)(f) is not subject to the Florida Insurance Code.

(10) LIABILITY.—Coverage under the Health Choice Plus Program is not an entitlement, and a cause of action does not arise against the state, a local governmental entity, any other political subdivision of the state, or the corporation or its board of directors for failure to make coverage under this section available to an eligible person or for discontinuation

of any coverage.

(11) PROGRAM EVALUATION.—The corporation shall include information about the Health Choice Plus Program in its annual report under s. 408.910. The corporation shall complete and submit by January 1, 2016, a separate independent evaluation of the effectiveness of the Health Choice Plus Program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(12) PROGRAM REVIEW.—The Health Choice Plus Program is subject to repeal on July 1, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2013
Meeting Date

Topic Health care ~~Expansion~~ Bill Number SB-1844 *(if applicable)*

Name James A. Edwards Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1900 Valencia Ave Phone 772-480-3565
Street

Ft. Pierce FL 34946 E-mail JE101344@AOL.COM
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing PICO United of Fla.

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-13
Meeting Date

Topic Healthcare Expansion

Bill Number 1844 *(if applicable)*

Name Elbra Drain

Amendment Barcode *(if applicable)*

Job Title

Address 836 W Street Ovl, F *Street*

Phone 407-836-8884

Orlando *City* Fla *State* 32805 *Zip*

E-mail elbradrain1256@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing ~~Self~~ Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2013
Meeting Date

Topic Health Care

Bill Number SB 844 *(if applicable)*

Name MRS. Renee Walkes

Amendment Barcode *(if applicable)*

Job Title

Address 4815 Cherokee Rose Drive
Street

Phone (321)594-3411

Orlando Florida 32808
City *State* *Zip*

E-mail Tryphena529@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Pico United Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

_____
Meeting Date

Topic Health Care — Bill Number SB 1844 *(if applicable)*

Name Rev. John LEE SR. — Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2849 Harron Way *Street* — Phone 772-577-0805

Ft. Pierce Florida 34946 *City State Zip* — E-mail JohnLee5832@Aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Peco United Florida

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic Healthcare Expansion

Bill Number SB #1844 *(if applicable)*

Name Booker / Perry

Amendment Barcode *(if applicable)*

Job Title Volunteer Community Organizer

Address FL FF Exempted
Street

Phone 321 263-6984

E-mail bobkperry@gmail.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing PICO United FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic ~~Health~~ & HealthChoice Plan

Bill Number 1844 *(if applicable)*

Name Karen Woodall

Amendment Barcode _____ *(if applicable)*

Job Title _____

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Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 9, 2013

SENT TO CHAIR
STAFF DIR ____ STAFF ____
SENATE APPROPRIATIONS
RECEIVED
13 APR -9 AM 8:38

The Honorable Denise Grimsley
Chair, Appropriations Subcommittee on Health & Human Services
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Grimsley:

I am writing to respectfully request you consider placing SB 1844 relating to the Health Choice Plus Program on the next Appropriations Subcommittee on Health & Human Services agenda.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

Aaron Bean
Senator, 4th District

Cc: Scarlet Pigott, Staff Director
201 Knott

Thank you.

REPLY TO:
☐ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1884
INTRODUCER:	Appropriations Committee; and Health Policy Committee
SUBJECT:	County Medicaid Contributions
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd/Cote	Stovall/ Diez-Arguelles		**HP SPB 1756 as introduced**
2.	Cote	Hansen	AP	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1884 revises the current process for determining and collecting counties' contributions to the Medicaid program. For state Fiscal Year 2013-2014, the total amount of the counties' contribution is set at $269.6 million. For each year thereafter, the total annual amount of the counties' contribution is adjusted by the percentage change in state Medicaid expenditures.

Each county is responsible for paying a portion of the annual counties' contribution. For Fiscal Year 2013-2014, each county's share is based on actual payments made during Fiscal Year 2012-2013. The bill provides a seven-year period to transition from county shares based on past billing data to county shares based on the number of Medicaid enrollees. In Fiscal Year 2019-2020 and thereafter, each county's share will be based on the county's proportion of Medicaid enrollees as of March 1 of each year.

The Revenue Estimating Conference estimated the following annual changes to General Revenue Fund receipts: Fiscal Year 2013-2014: no change; Fiscal Year 2014-2015: $11.3 million reduction; Fiscal Year 2015-2016: $12.9 million reduction; Fiscal Year 2016-2017: $16.4 million reduction; Fiscal Year 2017-2018: $20.4 million reduction. See Section V.

This bill substantially amends section 409.915 of the Florida Statutes.

II. Present Situation:

County Contributions to Medicaid

Chapter 72-225, Laws of Florida, created s. 409.267, F.S., which required county participation in the cost of certain services provided to county residents through Florida's Medicaid program. In 1991, s. 409.267, F.S., was repealed and replaced with s. 409.915, F.S., which provides that the state shall charge counties for certain items of care and service. Counties are required to reimburse the state for:

- 35 percent of the cost of inpatient hospitalization in excess of 10 days, not to exceed 45 days, with the exception of pregnant women and children whose income is in excess of the federal poverty level and who do not participate in the Medicaid medically needy program, and for adult lung transplant services; and
- 35 percent of the cost of nursing home or intermediate facilities in excess of $170 per month, limited to $55 per resident per month, with the exception of skilled nursing care for children under age 21.

The Agency for Health Care Administration (AHCA) provides each county with a monthly bill based on payments made on behalf of the county's residents. The amount collected from the counties is deposited into the General Revenue Fund.

For the period from state Fiscal Year 1994-1995 through Fiscal Year 2006-2007, county contributions to Medicaid collections were approximately 93 percent of total billings in each fiscal year. For Fiscal Year 2007-2008 through Fiscal Year 2011-2012, county contributions to Medicaid collections dropped to less than 90 percent of total billings, with only 64.7 percent of billings billed in Fiscal Year 2010-2011 being paid in that year. The decline in collections was caused mainly by the inability of AHCA and individual counties to reach agreement on whether certain Medicaid recipients were residents of the county. The decline in the amount of billings collected resulted in a large backlog of past due billings.

In 2012, the Legislature reacted to this situation by enacting ch. 2012-33, L.O.F.

Backlog Payments

Chapter 2012-33, L.O.F., amended s. 409.915, F.S., requiring that the amount of each county's billings that remained unpaid as of April 30, 2012, be deducted from the county's monthly revenue sharing distribution over a 5-year period. The amounts by which the distributions are reduced are being transferred to the General Revenue Fund.

By August 2, 2012, AHCA certified to each county the amount of billings that remained unpaid from November 1, 2001 through April 30, 2012. A county could challenge the amount certified

by filing a petition with AHCA prior to September 1, 2012.[1] This procedure was the exclusive method to challenge the amount certified. AHCA permitted the counties to make a full or partial payment in the form of a check or wire transfer by September 13, 2012, instead of applying reductions to the revenue sharing distributions. On September 15, 2012, AHCA certified the amount of past billings for each county to the Department of Revenue (DOR). For counties that filed a petition, AHCA certified 100 percent of the past due billings. For counties that did not file a petition, AHCA certified 85 percent of the past due billings. Starting with the October 2012 distribution, DOR deducted the amount of past due billings certified by AHCA from each county's monthly revenue sharing distribution. The deductions will continue for 5 years or until each county has paid the total amount of past due billings.

Prospective Billings

Chapter 2012-33, L.O.F., also provided a new process for collecting counties' future contributions to Medicaid. Beginning May 1, 2012, and each month thereafter, AHCA had to certify to DOR the amount of monthly statements rendered to each county based on each county's Medicaid billings. The law provided for DOR to reduce each county's monthly distribution from the Local Half-Cent Sales Tax Trust Fund by the amount certified by AHCA. The amounts by which the distributions were reduced were to be transferred to the General Revenue Fund.

The law also directed AHCA to develop a process allowing counties to submit written requests for refunds. If approved, AHCA would certify to DOR the amount of the refund and DOR would issue the refund from the General Revenue Fund.

Administrative Billing and Refund Process

In order to address the counties' concerns regarding the new law, AHCA developed a process for monthly billings which allows counties to submit both advanced and back end refund requests.[2] Counties must include the reason and provide documentation for the request. Advanced refund requests must be received by AHCA by the end of each billing month. The agency withholds certifying the amount of the advanced refund request to DOR in order to provide time to research and resolve the requests. Advanced refund requests are researched within 60 days by AHCA. Denied refund requests are certified to DOR on a subsequent bill. If a refund request is granted and the bill should have been submitted to another county, the amount will be transferred and certified by AHCA to the appropriate county on a subsequent billing. The ability for a county to make an advanced refund request will expire on April 30, 2013.

In addition to an advanced refund request, a county may submit a back end refund request within 60 days from the date of certification. Counties requesting a back end request have already paid their billing and then subsequently filed their dispute after a monthly payment. AHCA notifies the counties whether the refund request is granted within 90 days after certification. If a back end refund request is granted, the refund will be a credit applied to a future bill and may be transferred to the appropriate county on a subsequent bill.

[1] A county could file a petition under the applicable provisions of Chapter 120, F.S.
[2] *See* Rule 59G-1.025, F.A.C., Medicaid County Billing.

AHCA also permits each county to submit payment in the form of a check or wire transfer to the agency. The payment must be received by the agency by the 5th day of the month. If the payment is not received by the agency by the 5th day of the month, the agency certifies the amount of the county billing to DOR for withholding from monthly Local Half-Cent Sales Tax distributions.

County Revenue Sharing Program[3]

The Florida Revenue Sharing Act of 1972 was a major attempt by the Legislature to ensure a minimum level of revenue parity across units of local government.[4] Provisions in the enacting legislation created the Revenue Sharing Trust Fund for Counties. Currently, the trust fund receives 2.9 percent of net cigarette tax collections and 2.044 percent of sales and use tax collections.[5] An allocation formula serves as the basis for the distribution of these revenues to each county that meets the strict eligibility requirements. The county revenue sharing program is administered by DOR and monthly distributions are made to the eligible counties.

Local Government Half-Cent Sales Tax Program[6]

Authorized in 1982, the local government half-cent sales tax program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature.[7] The program distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Additionally, the program distributes a portion of communications services tax revenue to eligible local governments. Allocation formulas serve as the basis for these separate distributions.

Changes to Medicaid Program

AHCA is in the process of implementing a new payment method for some Medicaid providers which utilizes diagnosis related groups (DRGs) instead of the current per diem reimbursement method. Also, the use of managed care organizations in the Medicaid program is expected to expand under the Statewide Medicaid Managed Care Program. Both of these changes will affect the current practices used to bill and collect counties' contributions to Medicaid.

[3] A full description including tables providing estimates of distributions to counties from the county revenue sharing program can be found in the 2012 Local Government Financial Handbook. See Florida Legislature, Office of Economic and Demographic Research, 2012 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, available online at <http://edr.state.fl.us/Content/local-government/reports/lgfih12.pdf>, (Last visited April 14, 2013).
[4] Chapter 72-360, L.O.F.
[5] Sections 212.20(6)(d)4. and 210.20(2)(a), F.S.
[6] A full description including tables providing estimates of distributions to local governments from the half-cent sales tax program can be found in the 2012 Local Government Financial Handbook. See Florida Legislature, Office of Economic and Demographic Research, 2012 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, available online at http://edr.state.fl.us/Content/local-government/reports/lgfih12.pdf. (last visited April 15, 2013).
[7] Chapter 82-154, L.O.F.

III. Effect of Proposed Changes:

The bill amends s. 409.915, F.S., to revise the current process for county Medicaid billings. Instead of the current practice based on expenditures incurred on behalf of a county's residents, the bill provides for an annual contribution for Medicaid. The bill establishes a total contribution of $269.6 million for state Fiscal Year 2013-2014. For each year thereafter, the total annual amount of the counties' contribution is adjusted by the percentage change in state Medicaid expenditures.

Each county is responsible for paying a portion of the annual counties' contribution. Each county's contribution is determined by weighing both the county's percentage share based on six months of billing data and the county's percentage share based on the proportion of Medicaid enrollees as of March 1 of each year. Over time, increasing weight will be given to shares based on Medicaid enrollees such that in Fiscal Year 2019-2020 and thereafter, the county's share will be based on the county's proportion of Medicaid enrollees. The Agency for Health Care Administration (AHCA) is responsible for calculating the proportion of Medicaid enrollees in each county and providing the information to DOR by May 15 of each year.

By February 1st of each year, AHCA must report to the President of the Senate and the Speaker of the House of Representatives the status of all county billings made from April 1, 2012 through March 31, 2013. Once a final accounting has been completed by AHCA and all county protest rights have expired, the county percentage shares based on six months of actual billing data will be replaced with the county percentage shares based on twelve months of actual billing data. If a court invalidates the replacement of each county's shares, the county shares based on six months of billing data will continue to apply.

By June 1 of each year, DOR must notify each county of its annual contribution. Counties must pay, via check or electronic transfer, by the 5th of each month. If a county fails to remit payment by the 5th of the month, DOR is directed to reduce the county's monthly distribution from the Local Government Half-Cent Sales Tax Trust Fund by the amount of the monthly installment. The payments and the amounts by which the distributions are reduced are transferred to the General Revenue Fund.

The amount of each county's contribution for Fiscal Year 2013-2014 must be determined and provided by AHCA to DOR by June 15, 2013. DOR will notify each county of its annual contribution by June 20, 2013.

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 estimated the following annual changes to General Revenue Fund receipts: Fiscal Year 2013-2014: no change; Fiscal Year 2014-2015: $11.3 million reduction; Fiscal Year 2015-2016: $12.9 million reduction; Fiscal Year 2016-2017: $16.4 million reduction; Fiscal Year 2017-2018: $20.4 million reduction.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Administrative costs incurred by AHCA and individual counties under the current law should be significantly lower under the provisions of SB 1884.

Each county will pay a portion of the total annual contribution for all counties. For Fiscal Year 2013-2014, the total annual contribution for all counties is $269.6 million. On the table in the following pages, the estimated contribution in Fiscal Year 2013-2014 for all counties is provided. However, over a seven-year period, each county's contribution will transition from percentage shares based on actual billing data to percentage shares based on Medicaid enrollees.

Fiscal Year 2013-2014 Estimated County Contributions

County	% share based on 6 months of actual AHCA billing data	FY 2013-14 Estimated Contribution
ALACHUA	1.278%	$3,445,488
BAKER	0.116%	$312,736
BAY	0.607%	$1,636,472
BRADFORD	0.179%	$482,584
BREVARD	2.471%	$6,661,816
BROWARD	9.226%	$24,873,296
CALHOUN	0.084%	$226,464
CHARLOTTE	0.578%	$1,558,288
CITRUS	0.663%	$1,787,448
CLAY	0.635%	$1,711,960
COLLIER	1.160%	$3,127,360
COLUMBIA	0.557%	$1,501,672
DADE	18.850%	$50,819,600
DESOTO	0.167%	$450,232
DIXIE	0.098%	$264,208
DUVAL	5.336%	$14,385,856
ESCAMBIA	1.614%	$4,351,344
FLAGLER	0.397%	$1,070,312
FRANKLIN	0.091%	$245,336
GADSDEN	0.239%	$644,344
GILCHRIST	0.078%	$210,288
GLADES	0.055%	$148,280
GULF	0.076%	$204,896
HAMILTON	0.075%	$202,200
HARDEE	0.110%	$296,560
HENDRY	0.163%	$439,448
HERNANDO	0.862%	$2,323,952
HIGHLANDS	0.468%	$1,261,728
HILLSBOROUGH	6.952%	$18,742,592
HOLMES	0.101%	$272,296
INDIAN RIVER	0.397%	$1,070,312
JACKSON	0.218%	$587,728
JEFFERSON	0.083%	$223,768
LAFAYETTE	0.014%	$37,744
LAKE	1.525%	$4,111,400
LEE	2.511%	$6,769,656
LEON	0.929%	$2,504,584
LEVY	0.256%	$690,176
LIBERTY	0.050%	$134,800
MADISON	0.086%	$231,856
MANATEE	1.622%	$4,372,912

County	% share based on 6 months of actual AHCA billing data	FY 2013-14 Estimated Contribution
MARION	1.629%	$4,391,784
MARTIN	0.352%	$948,992
MONROE	0.262%	$706,352
NASSAU	0.240%	$647,040
OKALOOSA	0.566%	$1,525,936
OKEECHOBEE	0.235%	$633,560
ORANGE	6.680%	$18,009,280
OSCEOLA	1.613%	$4,348,648
PALM BEACH	5.898%	$15,901,008
PASCO	2.391%	$6,446,136
PINELLAS	6.644%	$17,912,224
POLK	3.642%	$9,818,832
PUTNAM	0.417%	$1,124,232
SANTA ROSA	0.466%	$1,256,875
SARASOTA	1.230%	$3,316,080
SEMINOLE	1.739%	$4,688,344
ST. JOHNS	0.459%	$1,237,464
ST. LUCIE	1.154%	$3,111,184
SUMTER	0.218%	$587,728
SUWANNEE	0.252%	$679,392
TAYLOR	0.103%	$277,688
UNION	0.075%	$202,200
VOLUSIA	2.298%	$6,195,408
WAKULLA	0.103%	$277,688
WALTON	0.229%	$617,384
WASHINGTON	0.114%	$307,344
TOTAL	**99.98%**	**$269,562,795**

VI. Technical Deficiencies:

It is not clear which agency is responsible for calculating each county's annual contribution. The bill should clarify that the Agency for Healthcare Administration is responsible for calculating each county's shares and providing the information to the Department of Revenue.

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 Appropriations on April 23, 2013:
Compared to the bill, the committee substitute provides that, for Fiscal Year 2013-2014, each county's share is based on actual payments made during Fiscal Year 2012-2013. The CS also provides a seven-year period to transition from county shares based on past billing data to county shares based on the number of Medicaid enrollees in each county.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 409.915, Florida Statutes, is amended to read:

409.915 County contributions to Medicaid.—Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, ~~in order to acquire a certain portion of these funds,~~ the state shall charge the counties an annual contribution in order to acquire a certain portion of these funds ~~for certain items of care and~~


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~~service as provided in this section~~.

(1) As used in this section, the term "state Medicaid expenditures" means those expenditures used as matching funds for the federal Medicaid program.

(2)(a) For the 2013-2014 state fiscal year, the total amount of the counties' contribution is $269.6 million. For each fiscal year thereafter, the annual amount shall be adjusted by the percentage change in the state Medicaid expenditures as determined by the Social Services Estimating Conference.

(b) By March 15 of each year, the Social Services Estimating Conference shall determine the percentage change in state Medicaid expenditures by comparing expenditures for the 2 most recent completed state fiscal years.

(3)(a)1. The amount of each county's annual contribution is equal to the product of the amount determined under subsection (2) multiplied by the sum of the percentages calculated in sub-subparagraphs a. and b.:

a. The enrollment weight provided in subparagraph 2. is multiplied by a fraction, the numerator of which is the number of the county's Medicaid enrollees as of March 1 of each year, and the denominator of which is the number of all counties' Medicaid enrollees as of March 1 of each year. The agency shall calculate this amount for each county and provide the information to the Department of Revenue by May 15 of each year.

b. The payment weight provided in subparagraph 2. is multiplied by the percentage share of payments provided in subparagraph 3. for each county.

2. The weights for each fiscal year are equal to:


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	Weights	
Fiscal Year	Enrollment	Payment
2013-14	0%	100%
2014-15	16.67%	83.33%
2015-16	33.34%	66.66%
2016-17	50%	50%
2017-18	66.66%	33.34%
2018-19	83.33%	16.67%
2019-20+	100%	0%

3. The percentage share of payments for each county is:

County	Share of Payments
ALACHUA	1.278%
BAKER	0.116%


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BAY	0.607%
BRADFORD	0.179%
BREVARD	2.471%
BROWARD	9.226%
CALHOUN	0.084%
CHARLOTTE	0.578%
CITRUS	0.663%
CLAY	0.635%
COLLIER	1.160%
COLUMBIA	0.557%
DADE (MIAMI-DADE)	18.850%
DESOTO	0.167%
DIXIE	0.098%
DUVAL	5.336%


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ESCAMBIA	1.614%
FLAGLER	0.397%
FRANKLIN	0.091%
GADSDEN	0.239%
GILCHRIST	0.078%
GLADES	0.055%
GULF	0.076%
HAMILTON	0.075%
HARDEE	0.110%
HENDRY	0.163%
HERNANDO	0.862%
HIGHLANDS	0.468%
HILLSBOROUGH	6.952%
HOLMES	0.101%


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INDIAN RIVER	0.397%
JACKSON	0.218%
JEFFERSON	0.083%
LAFAYETTE	0.014%
LAKE	1.525%
LEE	2.511%
LEON	0.929%
LEVY	0.256%
LIBERTY	0.050%
MADISON	0.086%
MANATEE	1.622%
MARION	1.629%
MARTIN	0.352%
MONROE	0.262%

NASSAU	0.240%
OKALOOSA	0.566%
OKEECHOBEE	0.235%
ORANGE	6.680%
OSCEOLA	1.613%
PALM BEACH	5.898%
PASCO	2.391%
PINELLAS	6.644%
POLK	3.642%
PUTNAM	0.417%
SAINT JOHNS	0.459%
SAINT LUCIE	1.154%
SANTA ROSA	0.462%
SARASOTA	1.230%

SEMINOLE	1.739%
SUMTER	0.218%
SUWANNEE	0.252%
TAYLOR	0.103%
UNION	0.075%
VOLUSIA	2.298%
WAKULLA	0.103%
WALTON	0.229%
WASHINGTON	0.114%

(b)1. The Legislature intends to replace the county percentage share provided in subparagraph (a)3. with percentage shares based upon each county's proportion of the total statewide amount of county billings made under this section from April 1, 2012, through March 31, 2013, for which the state ultimately receives payment.

2. By February 1 of each year and continuing until a certification is made under sub-subparagraph b., the agency shall report to the President of the Senate and the Speaker of the House of Representatives the status of the county billings

made under this section from April 1, 2012, through March 31, 2013, by county, including:

a. The amounts billed to each county which remain unpaid, if any; and

b. A certification from the agency of a final accounting of the amount of funds received by the state from such billings, by county, upon the expiration of all appeal rights that counties may have to contest such billings.

3. By March 15 of the state fiscal year in which the state receives the certification provided for in sub-subparagraph (b)2.b., the Social Services Estimating Conference shall calculate each county's percentage share of the total statewide amount of county billings made under this section from April 1, 2012, through March 31, 2013, for which the state ultimately receives payment.

4. Beginning in the state fiscal year following the receipt by the state of the certification provided in sub-subparagraph (b)2.b., each county's percentage share under subparagraph (a)3. shall be replaced by the percentage calculated under subparagraph (b)3.

5. If the court invalidates the replacement of each county's share as provided in this paragraph, the county share set forth in subparagraph (a)3. shall continue to apply.

(4) By June 1 of each year, the Department of Revenue shall notify each county of its required annual contribution. Each county shall pay its contribution, by check or electronic transfer, in equal monthly installments to the department by the 5th day of each month. If a county fails to remit the payment by the 5th day of the month, the department shall reduce the

monthly distribution of that county pursuant to s. 218.61 and, if necessary, by the amount of the monthly installment pursuant to s. 218.26. The payments and the amounts by which the distributions are reduced shall be transferred to the General Revenue Fund.

~~(1) Each county shall participate in the following items of care and service:~~

~~(a) For both health maintenance members and fee-for-service beneficiaries, payments for inpatient hospitalization in excess of 10 days, but not in excess of 45 days, with the exception of pregnant women and children whose income is in excess of the federal poverty level and who do not participate in the Medicaid medically needy program, and for adult lung transplant services.~~

~~(b) For both health maintenance members and fee-for-service beneficiaries, payments for nursing home or intermediate facilities care in excess of $170 per month, with the exception of skilled nursing care for children under age 21.~~

~~(2) A county's participation must be 35 percent of the total cost, or the applicable discounted cost paid by the state for Medicaid recipients enrolled in health maintenance organizations or prepaid health plans, of providing the items listed in subsection (1), except that the payments for items listed in paragraph (1)(b) may not exceed $55 per month per person.~~

~~(3) Each county shall set aside sufficient funds to pay for items of care and service provided to the county's eligible recipients for which county contributions are required, regardless of where in the state the care or service is rendered.~~

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~~(4) Each county shall contribute its pro rata share of the total county participation based upon statements rendered by the agency. The agency shall render such statements monthly based on each county's eligible recipients. For purposes of this section, each county's eligible recipients shall be determined by the recipient's address information contained in the federally approved Medicaid eligibility system within the Department of Children and Family Services. A county may use the process developed under subsection (10) to request a refund if it determines that the statement rendered by the agency contains errors.~~

(5) In any county in which a special taxing district or authority is located which benefits ~~will benefit~~ from the Medicaid program ~~medical assistance programs covered by this section~~, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such district or authority must furnish its share to the board of county commissioners in time for the board to comply with subsection (4) ~~(3)~~. Any appeal of the proration made by the board of county commissioners must be made to the Department of Financial Services, which shall ~~then~~ set the proportionate share for ~~of~~ each party.

~~(6) Counties are exempt from contributing toward the cost of new exemptions on inpatient ceilings for statutory teaching hospitals, specialty hospitals, and community hospital education program hospitals that came into effect July 1, 2000, and for special Medicaid payments that came into effect on or after July 1, 2000.~~

(6)~~(7)~~(a) By August 1, 2012, the agency shall certify to

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each county the amount of such county's billings from November 1, 2001, through April 30, 2012, which remain unpaid. A county may contest the amount certified by filing a petition under the applicable provisions of chapter 120 on or before September 1, 2012. This procedure is the exclusive method to challenge the amount certified. In order to successfully challenge the amount certified, a county must show, by a preponderance of the evidence, that a recipient was not an eligible recipient of that county or that the amount certified was otherwise in error.

(b) By September 15, 2012, the agency shall certify to the Department of Revenue:

1. For each county that files a petition on or before September 1, 2012, the amount certified under paragraph (a); and

2. For each county that does not file a petition on or before September 1, 2012, an amount equal to 85 percent of the amount certified under paragraph (a).

(c) The filing of a petition under paragraph (a) does ~~shall~~ not stay or stop the Department of Revenue from reducing distributions in accordance with paragraph (b) and subsection (7) ~~(8)~~. If a county that files a petition under paragraph (a) is able to demonstrate that the amount certified should be reduced, the agency shall notify the Department of Revenue of the amount of the reduction. The Department of Revenue shall adjust all future monthly distribution reductions under subsection (7) ~~(8)~~ in a manner that results in the remaining total distribution reduction being applied in equal monthly amounts.

(7)~~(8)~~(a) Beginning with the October 2012 distribution, the Department of Revenue shall reduce each county's distributions

pursuant to s. 218.26 by one thirty-sixth of the amount certified by the agency under subsection (6) ~~(7)~~ for that county, minus any amount required under paragraph (b). Beginning with the October 2013 distribution, the Department of Revenue shall reduce each county's distributions pursuant to s. 218.26 by one forty-eighth of two-thirds of the amount certified by the agency under subsection (6) ~~(7)~~ for that county, minus any amount required under paragraph (b). However, the amount of the reduction may not exceed 50 percent of each county's distribution. If, after 60 months, the reductions for any county do not equal the total amount initially certified by the agency, the Department of Revenue shall continue to reduce such county's distribution by up to 50 percent until the total amount certified is reached. The amounts by which the distributions are reduced shall be transferred to the General Revenue Fund.

(b) As an assurance to holders of bonds issued before the effective date of this act to which distributions made pursuant to s. 218.26 are pledged, or bonds issued to refund such bonds which mature no later than the bonds they refunded and which result in a reduction of debt service payable in each fiscal year, the amount available for distribution to a county shall remain as provided by law and continue to be subject to any lien or claim on behalf of the bondholders. The Department of Revenue must ensure, based on information provided by an affected county, that any reduction in amounts distributed pursuant to paragraph (a) does not reduce the amount of distribution to a county below the amount necessary for the timely payment of principal and interest when due on the bonds and the amount necessary to comply with any covenant under the bond resolution


215006

or other documents relating to the issuance of the bonds. If a reduction to a county's monthly distribution must be decreased in order to comply with this paragraph, the Department of Revenue must notify the agency of the amount of the decrease and the agency must send a bill for payment of such amount to the affected county.

~~(9)(a) Beginning May 1, 2012, and each month thereafter, the agency shall certify to the Department of Revenue by the 7th day of each month the amount of the monthly statement rendered to each county pursuant to subsection (4). Beginning with the May 2012 distribution, the Department of Revenue shall reduce each county's monthly distribution pursuant to s. 218.61 by the amount certified by the agency minus any amount required under paragraph (b). The amounts by which the distributions are reduced shall be transferred to the General Revenue Fund.~~

~~(b) As an assurance to holders of bonds issued before the effective date of this act to which distributions made pursuant to s. 218.61 are pledged, or bonds issued to refund such bonds which mature no later than the bonds they refunded and which result in a reduction of debt service payable in each fiscal year, the amount available for distribution to a county shall remain as provided by law and continue to be subject to any lien or claim on behalf of the bondholders. The Department of Revenue must ensure, based on information provided by an affected county, that any reduction in amounts distributed pursuant to paragraph (a) does not reduce the amount of distribution to a county below the amount necessary for the timely payment of principal and interest when due on the bonds and the amount necessary to comply with any covenant under the bond resolution~~


215006

~~or other documents relating to the issuance of the bonds. If a reduction to a county's monthly distribution must be decreased in order to comply with this paragraph, the Department of Revenue must notify the agency of the amount of the decrease and the agency must send a bill for payment of such amount to the affected county.~~

~~(10) The agency, in consultation with the Department of Revenue and the Florida Association of Counties, shall develop a process for refund requests which:~~

~~(a) Allows counties to submit to the agency written requests for refunds of any amounts by which the distributions were reduced as provided in subsection (9) and which set forth the reasons for the refund requests.~~

~~(b) Requires the agency to make a determination as to whether a refund request is appropriate and should be approved, in which case the agency shall certify the amount of the refund to the department.~~

~~(c) Requires the department to issue the refund for the certified amount to the county from the General Revenue Fund. The Department of Revenue may issue the refund in the form of a credit against reductions to be applied to subsequent monthly distributions.~~

(8) ~~(11)~~ Beginning in the 2013-2014 fiscal year and each year thereafter through the 2020-2021 fiscal year, the Chief Financial Officer shall transfer from the General Revenue Fund to the Lawton Chiles Endowment Fund an amount equal to the amounts transferred to the General Revenue Fund in the previous fiscal year pursuant to subsections (4) and (7) ~~subsections (8) and (9), reduced by the amount of refunds paid pursuant to~~


215006

~~subsection (10),~~ which are in excess of the official estimate for medical hospital fees for such previous fiscal year adopted by the Revenue Estimating Conference on January 12, 2012, as reflected in the conference's workpapers. By July 20 of each year, the Office of Economic and Demographic Research shall certify the amount to be transferred to the Chief Financial Officer. Such transfers must be made before July 31 of each year until the total transfers for all years equal $350 million. If ~~In the event that~~ such transfers do not total $350 million by July 1, 2021, the Legislature shall provide for the transfer of amounts necessary to total $350 million. The Office of Economic and Demographic Research shall publish the official estimates reflected in the conference's workpapers on its website.

(9) ~~(12)~~ The agency may adopt rules to administer this section.

Section 2. Notwithstanding s. 409.915(3) and (4), Florida Statutes, as amended by this act, the amount of each county's contribution during the 2013-2014 state fiscal year shall be determined and provided to the Department of Revenue by the Agency for Health Care Administration by June 15, 2013. The Department of Revenue shall notify each county of its annual contribution by June 20, 2013.

Section 3. 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


215006

An act relating to county Medicaid contributions; amending s. 409.915, F.S.; specifying the total contribution for the year and specifying the method for determining the amount in the following years; revising the method for calculating each county's contribution; providing tables for calculating county contributions; requiring the Agency for Health Care Administration to annually report the status of county billings to the Legislature; authorizing the Department of Revenue to withhold county distributions for failure to remit Medicaid contributions; deleting provisions specifying the care and services that counties must participate in, obsolete bond provisions, and a process for refund requests; specifying the method for calculating each county's contribution for the 2013-2014 fiscal year; providing an effective date.

By the Committee on Health Policy

588-04482-13 20131884__

A bill to be entitled

An act relating to county Medicaid contributions; amending s. 409.915, F.S.; specifying the initial contribution and revising the method for calculating county contributions; providing timetables for calculating contributions and for payment of contributions; deleting provisions specifying the care and services that counties must participate in, obsolete bond provisions, and a process for refund requests; specifying the method for calculating each county's contribution for the 2013-2014 fiscal year; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.915, Florida Statutes, is amended to read:

409.915 County contributions to Medicaid.—Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, ~~in order to acquire a certain portion of these funds,~~ the state shall charge the counties an annual contribution in order to acquire a certain portion of these funds ~~for certain items of care and service as provided in this section~~.

(1) As used in this section, the term "state Medicaid expenditures," means those expenditures used as matching funds for the federal Medicaid program.

(2)(a) For the 2013-2014 state fiscal year, the total amount of the counties' contribution is $269.6 million. For each

588-04482-13 20131884__

fiscal year thereafter, the annual amount shall be adjusted by the percentage change in the state Medicaid expenditures as determined by the Social Services Estimating Conference.

(b) By March 15 of each year, the Social Services Estimating Conference shall determine the percentage change in state Medicaid expenditures by comparing expenditures for the 2 most recent completed state fiscal years.

(3) The amount of each county's annual contribution shall be equal to the product of the amount determined under subsection (2) multiplied by a fraction, the numerator of which is the number of the county's Medicaid enrollees as of March 1 of each year, and the denominator of which is the number of all counties' Medicaid enrollees as of March 1 of each year. The agency shall calculate this amount for each county and provide the information to the Department of Revenue by May 15 of each year.

(4) By June 1 of each year, the Department of Revenue shall notify each county of its annual contribution. Each county shall pay its contribution, by check or electronic transfer, in equal monthly installments to the Department of Revenue by the 5th day of each month. If a county fails to remit the payment by the 5th day of the month, the Department of Revenue shall reduce each county's monthly distribution pursuant to s. 218.61 by the amount of the monthly installment. The payments and the amounts by which the distributions are reduced shall be transferred to the General Revenue Fund.

~~(1) Each county shall participate in the following items of care and service:~~

~~(a) For both health maintenance members and fee-for-service~~

~~beneficiaries, payments for inpatient hospitalization in excess of 10 days, but not in excess of 45 days, with the exception of pregnant women and children whose income is in excess of the federal poverty level and who do not participate in the Medicaid medically needy program, and for adult lung transplant services.~~

~~(b) For both health maintenance members and fee for service beneficiaries, payments for nursing home or intermediate facilities care in excess of $170 per month, with the exception of skilled nursing care for children under age 21.~~

~~(2) A county's participation must be 35 percent of the total cost, or the applicable discounted cost paid by the state for Medicaid recipients enrolled in health maintenance organizations or prepaid health plans, of providing the items listed in subsection (1), except that the payments for items listed in paragraph (1)(b) may not exceed $55 per month per person.~~

~~(3) Each county shall set aside sufficient funds to pay for items of care and service provided to the county's eligible recipients for which county contributions are required, regardless of where in the state the care or service is rendered.~~

~~(4) Each county shall contribute its pro rata share of the total county participation based upon statements rendered by the agency. The agency shall render such statements monthly based on each county's eligible recipients. For purposes of this section, each county's eligible recipients shall be determined by the recipient's address information contained in the federally approved Medicaid eligibility system within the Department of Children and Family Services. A county may use the process~~

~~developed under subsection (10) to request a refund if it determines that the statement rendered by the agency contains errors.~~

(5) In any county in which a special taxing district or authority is located which benefits ~~will benefit~~ from the Medicaid program ~~medical assistance programs covered by this section~~, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such district or authority must furnish its share to the board of county commissioners in time for the board to comply with subsection (4) ~~(3)~~. Any appeal of the proration made by the board of county commissioners must be made to the Department of Financial Services, which shall ~~then~~ set the proportionate share for ~~of~~ each party.

~~(6) Counties are exempt from contributing toward the cost of new exemptions on inpatient ceilings for statutory teaching hospitals, specialty hospitals, and community hospital education program hospitals that came into effect July 1, 2000, and for special Medicaid payments that came into effect on or after July 1, 2000.~~

(6)~~(7)~~(a) By August 1, 2012, the agency shall certify to each county the amount of such county's billings from November 1, 2001, through April 30, 2012, which remain unpaid. A county may contest the amount certified by filing a petition under the applicable provisions of chapter 120 on or before September 1, 2012. This procedure is the exclusive method to challenge the amount certified. In order to successfully challenge the amount certified, a county must show, by a preponderance of the evidence, that a recipient was not an eligible recipient of that

county or that the amount certified was otherwise in error.

(b) By September 15, 2012, the agency shall certify to the Department of Revenue:

1. For each county that files a petition on or before September 1, 2012, the amount certified under paragraph (a); and

2. For each county that does not file a petition on or before September 1, 2012, an amount equal to 85 percent of the amount certified under paragraph (a).

(c) The filing of a petition under paragraph (a) does ~~shall~~ not stay or stop the Department of Revenue from reducing distributions in accordance with paragraph (b) and subsection (7) ~~(8)~~. If a county that files a petition under paragraph (a) is able to demonstrate that the amount certified should be reduced, the agency shall notify the Department of Revenue of the amount of the reduction. The Department of Revenue shall adjust all future monthly distribution reductions under subsection (7) ~~(8)~~ in a manner that results in the remaining total distribution reduction being applied in equal monthly amounts.

(7)~~(8)~~(a) Beginning with the October 2012 distribution, the Department of Revenue shall reduce each county's distributions pursuant to s. 218.26 by one thirty-sixth of the amount certified by the agency under subsection (6) ~~(7)~~ for that county, minus any amount required under paragraph (b). Beginning with the October 2013 distribution, the Department of Revenue shall reduce each county's distributions pursuant to s. 218.26 by one forty-eighth of two-thirds of the amount certified by the agency under subsection (6) ~~(7)~~ for that county, minus any amount required under paragraph (b). However, the amount of the

reduction may not exceed 50 percent of each county's distribution. If, after 60 months, the reductions for any county do not equal the total amount initially certified by the agency, the Department of Revenue shall continue to reduce such county's distribution by up to 50 percent until the total amount certified is reached. The amounts by which the distributions are reduced shall be transferred to the General Revenue Fund.

(b) As an assurance to holders of bonds issued before the effective date of this act to which distributions made pursuant to s. 218.26 are pledged, or bonds issued to refund such bonds which mature no later than the bonds they refunded and which result in a reduction of debt service payable in each fiscal year, the amount available for distribution to a county shall remain as provided by law and continue to be subject to any lien or claim on behalf of the bondholders. The Department of Revenue must ensure, based on information provided by an affected county, that any reduction in amounts distributed pursuant to paragraph (a) does not reduce the amount of distribution to a county below the amount necessary for the timely payment of principal and interest when due on the bonds and the amount necessary to comply with any covenant under the bond resolution or other documents relating to the issuance of the bonds. If a reduction to a county's monthly distribution must be decreased in order to comply with this paragraph, the Department of Revenue must notify the agency of the amount of the decrease and the agency must send a bill for payment of such amount to the affected county.

~~(9)(a) Beginning May 1, 2012, and each month thereafter, the agency shall certify to the Department of Revenue by the 7th~~

~~day of each month the amount of the monthly statement rendered to each county pursuant to subsection (4). Beginning with the May 2012 distribution, the Department of Revenue shall reduce each county's monthly distribution pursuant to s. 218.61 by the amount certified by the agency minus any amount required under paragraph (b). The amounts by which the distributions are reduced shall be transferred to the General Revenue Fund.~~

~~(b) As an assurance to holders of bonds issued before the effective date of this act to which distributions made pursuant to s. 218.61 are pledged, or bonds issued to refund such bonds which mature no later than the bonds they refunded and which result in a reduction of debt service payable in each fiscal year, the amount available for distribution to a county shall remain as provided by law and continue to be subject to any lien or claim on behalf of the bondholders. The Department of Revenue must ensure, based on information provided by an affected county, that any reduction in amounts distributed pursuant to paragraph (a) does not reduce the amount of distribution to a county below the amount necessary for the timely payment of principal and interest when due on the bonds and the amount necessary to comply with any covenant under the bond resolution or other documents relating to the issuance of the bonds. If a reduction to a county's monthly distribution must be decreased in order to comply with this paragraph, the Department of Revenue must notify the agency of the amount of the decrease and the agency must send a bill for payment of such amount to the affected county.~~

~~(10) The agency, in consultation with the Department of Revenue and the Florida Association of Counties, shall develop a~~

~~process for refund requests which:~~

~~(a) Allows counties to submit to the agency written requests for refunds of any amounts by which the distributions were reduced as provided in subsection (9) and which set forth the reasons for the refund requests.~~

~~(b) Requires the agency to make a determination as to whether a refund request is appropriate and should be approved, in which case the agency shall certify the amount of the refund to the department.~~

~~(c) Requires the department to issue the refund for the certified amount to the county from the General Revenue Fund. The Department of Revenue may issue the refund in the form of a credit against reductions to be applied to subsequent monthly distributions.~~

(8)~~(11)~~ Beginning in the 2013-2014 fiscal year and each year thereafter through the 2020-2021 fiscal year, the Chief Financial Officer shall transfer from the General Revenue Fund to the Lawton Chiles Endowment Fund an amount equal to the amounts transferred to the General Revenue Fund in the previous fiscal year pursuant to subsections (4) and (7) ~~subsections (8) and (9), reduced by the amount of refunds paid pursuant to subsection (10),~~ which are in excess of the official estimate for medical hospital fees for such previous fiscal year adopted by the Revenue Estimating Conference on January 12, 2012, as reflected in the conference's workpapers. By July 20 of each year, the Office of Economic and Demographic Research shall certify the amount to be transferred to the Chief Financial Officer. Such transfers must be made before July 31 of each year until the total transfers for all years equal $350 million. If

~~In the event that~~ such transfers do not total $350 million by July 1, 2021, the Legislature shall provide for the transfer of amounts necessary to total $350 million. The Office of Economic and Demographic Research shall publish the official estimates reflected in the conference's workpapers on its website.

(9)~~(12)~~ The agency may adopt rules to administer this section.

Section 2. Notwithstanding s. 409.915(3) and (4), Florida Statutes, as amended by this act, the amount of each county's contribution during the 2013-2014 state fiscal year shall be determined and provided to the Department of Revenue by the Agency for Health Care Administration by June 15, 2013. The Department of Revenue shall notify each county of its annual contribution by June 20, 2013.

Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic County Medicaid Contributions

Bill Number 1884 *(if applicable)*

Name Commissioner Fred Hawkins

Amendment Barcode 215006 *(if applicable)*

Job Title Osceola Co. Commissioner

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☑ Information

Representing Osceola Co / ~~FAA~~ FAC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

#2

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic County Medicaid Contributions

Bill Number 1884 *(if applicable)*

Name Kathy Bryant

Amendment Barcode 215006 *(if applicable)*

Job Title Marion County Commissioner

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☑ Information

Representing Marion County / FAC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

#3

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic County Medicaid Contributions

Bill Number 1884 *(if applicable)*

Name Peter O'Brien

Amendment Barcode 215006 *(if applicable)*

Job Title County Commissioner

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☑ Information

Representing Indian River County / FAC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

#4

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic County Medicaid Contributions

Bill Number 1884 *(if applicable)*

Name Sue Birge

Amendment Barcode 215006 *(if applicable)*

Job Title # County Commissioner

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☐ Information

Representing Hardee County / FAC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

#5

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic County Medicaid Contributions

Bill Number 1884 *(if applicable)*

Name Susan Harbin

Amendment Barcode 215006 *(if applicable)*

Job Title Legislative Advocate

Address 110 S Monroe
Street

Phone 850-922-4300

Tallahassee FL
City *State* *Zip*

E-mail

Speaking: ☐ For ☐ Against ☑ Information

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic Medicaid / Health Care

Bill Number SB 1884 *(if applicable)*

Name Grover Robinson

Amendment Barcode *(if applicable)*

Job Title Escambia County Commissioner

Address 221 Palafox Pl
Street
Pensacola, FL 32591
City *State* *Zip*

Phone (850) 554-2178

E-mail district4@co.escambia.fl.us.

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2013
Meeting Date

Topic County Medicaid Billing

Bill Number 1884 *(if applicable)*

Name Edward B. Labrador

Amendment Barcode 215006 *(if applicable)*

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Ave, Room 426
Street
Fort Lauderdale FL 33301
City *State* *Zip*

Phone (954) 357-7135

E-mail elabrador

Speaking: ☐ For ☑ Against ☐ Information

Representing Broward County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/13
Meeting Date

Topic County Medicaid billing

Bill Number 1684 *(if applicable)*

Name Cmsr. Fred Hawkins

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

_____
Meeting Date

Topic Medicaid

Bill Number SB1884 *(if applicable)*

Name Kathy Bryant

Amendment Barcode _____ *(if applicable)*

Job Title Chairman Marion County BCC

Address 601 SE 25th Ave *Street*

Phone _____

Ocala FL 34471 *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Medicaid Cost Share Bill Number 1884 *(if applicable)*

Name Chris Doolin Amendment Barcode *(if applicable)*

Job Title Small County Coalition

Address 3118 B Thomasville Rd Phone 508-5492
Street

Tallahassee Fl
City *State* *Zip*

E-mail

Speaking: ☐ For ☐ Against ☑ Information

Representing Small County Coalition

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/23/2013 9:04:18 AM
Ends: 4/23/2013 4:43:13 PM Length: 07:38:56

9:04:19 AM Sen. Negron (Chair)
9:05:51 AM S 916
9:05:53 AM Sen. Flores
9:06:18 AM PCS 116326
9:08:39 AM S 980
9:08:44 AM PCS 557432
9:09:26 AM Am. 687024
9:09:52 AM Sen. Joyner
9:10:05 AM Sen. Flores
9:10:21 AM Sen. Joyner
9:10:35 AM Sen. Flores
9:12:20 AM S 274
9:12:22 AM Sen. Dean
9:12:28 AM PCS 164746
9:14:07 AM S 1636
9:14:13 AM Sen. Flores
9:16:18 AM S 1644
9:16:45 AM Am. 872226
9:17:20 AM Am. 926568
9:19:05 AM S 742
9:19:20 AM Sen. Evers
9:20:20 AM Sen. Joyner
9:21:12 AM Sen. Evers
9:21:13 AM Sen. Joyner
9:21:49 AM Kevin Reilly, Legislative Director, Florida Parole Commission (in support)
9:23:01 AM S 154
9:23:08 AM Sen. Detert
9:24:03 AM Carole Green, Florida School Counselor Association
9:25:08 AM S 1024
9:25:25 AM Sen. Detert
9:25:26 AM PCS 389672
9:25:32 AM Am. 317422
9:30:30 AM Sen. Smith
9:30:44 AM Sen. Detert
9:32:59 AM Sen. Joyner
9:33:31 AM Sen. Detert
9:33:51 AM Sen. Joyner
9:34:10 AM Sen. Detert
9:34:30 AM Sen. Joyner
9:34:56 AM Sen. Detert
9:38:53 AM Sen. Montford
9:39:31 AM Sen. Detert
9:39:52 AM Sen. Montford
9:41:27 AM Sen. Detert
9:42:23 AM Sen. Latvala
9:43:18 AM Sen. Detert
9:43:41 AM Sen. Latvala
9:44:19 AM Sen. Detert
9:45:08 AM Sen. Latvala
9:45:48 AM Sen. Detert
9:47:01 AM Sen. Sobel
9:47:25 AM Sen. Detert

9:48:22 AM Sen. Sobel
9:48:38 AM Sen. Joyner
9:49:39 AM Sen. Detert
9:49:46 AM Sen. Joyner
9:50:28 AM Sen. Detert
9:54:14 AM Sen. Montford
9:55:09 AM Sen. Detert
9:55:14 AM Sen. Montford
9:56:02 AM Sen. Detert
9:57:05 AM Jay Liles, Policy Consultant, Florida Wildlife Federation
9:59:11 AM Dave Parisot, Vice Chairman, Okaloosa County Board of Commissioners
10:01:04 AM S 156
10:01:26 AM Sen. Detert
10:03:55 AM S 1024
10:04:18 AM Am. 699348
10:04:25 AM Sen. Latvala
10:06:07 AM Sen. Detert
10:06:50 AM Sen. Gardiner
10:07:25 AM Sen. Montford
10:07:52 AM Sen. Latvala
10:08:09 AM Sen. Montford
10:08:28 AM Sen. Detert
10:08:50 AM Sen. Latvala
10:09:44 AM Sen. Joyner
10:10:13 AM Sen. Latvala
10:10:57 AM Lynn Bannister, State Director of Outreach for Bill Nelson
10:11:42 AM Sen. Negron
10:11:49 AM L. Bannister
10:11:52 AM Sen. Montford
10:12:04 AM L. Bannister
10:12:08 AM Sen. Montford
10:12:33 AM L. Barrister
10:12:42 AM Sen. Latvala
10:13:06 AM L. Barrister
10:13:19 AM Lori Hutto, Deputy District Director for Congressman Southerland
10:14:11 AM Sen. Latvala
10:14:24 AM L. Hutto
10:14:39 AM Henry Kelly, citizen
10:15:28 AM Sen. Latvala
10:16:26 AM H. Kelly
10:17:34 AM Sen. Negron
10:19:22 AM D. Parisot
10:21:00 AM Grover Robinson, County Commissioner, Escambia County, Florida Consortium of Gulf Counties
10:22:47 AM Sen. Montford
10:22:54 AM G. Robinson
10:23:07 AM Sen. Montford
10:23:49 AM G. Robinson
10:23:50 AM Sen. Montford
10:24:08 AM G. Robinson
10:24:59 AM Pinki Jackel, County Commissioner, Franklin County
10:28:56 AM Kelly Windes, County Commissioner, Okaloosa County
10:29:59 AM Sen. Latvala
10:33:22 AM Ralph Thomas, County Commissioner, Wakulla County
10:36:32 AM G. Robinson
10:38:27 AM H. Kelly
10:38:35 AM Howard Kessler, County Commissioner, Wakulla County (information)
10:40:13 AM Jerry Moore, County Commissioner, Wakulla County
10:42:38 AM Ryan Matthews, Legislative Advocate, Florida League of Cities
10:43:56 AM Sen. Smith
10:45:20 AM Sen. Joyner
10:47:32 AM Sen. Montford
10:49:09 AM Sen. Sobel

10:50:38 AM Sen. Detert
10:53:20 AM S 156
10:53:34 AM Am. 269142
10:53:56 AM Am. 290726
10:54:41 AM Sen. Simpson
10:55:46 AM Cam Fentriss, Legislative Counsel, Florida Association of Plumbing, Heating, and Cooling Contractors (in support)
10:55:50 AM Kari Hebrank, Florida Homebuilders Association (in support)
10:55:54 AM Jennifer Hatfield, Florida Swimming Pool Association (in support)
10:55:56 AM Cindy Littlejohn, Consultant, Plum Creek Timber (in support)
10:56:30 AM Am. 741084
10:57:06 AM Am. 826452
10:57:11 AM Sen. Detert
10:57:28 AM Am. 899032
10:57:38 AM Sen. Galvano
10:58:34 AM Sen. Joyner
10:58:43 AM Sen. Detert
11:01:44 AM S 84
11:01:49 AM Sen. Diaz de la Portilla
11:02:38 AM Am. 456632
11:02:59 AM Marion Hoffmann, Associate Vice President of Government Relations, University of Florida (in support)
11:03:45 AM Am. 257648
11:04:08 AM Am. 273636
11:05:02 AM David Cruz, Legislative Advocate, Florida League of Cities
11:06:21 AM Sen. Joyner
11:07:38 AM D. Cruz
11:08:06 AM Sen. Latvala
11:08:12 AM Monica Rodriguez, Miami Museum of Science (in support)
11:08:15 AM Warren Husband, Florida Associated General Contractors Council (in support)
11:08:17 AM Mark Anderson, Nassau County (in support)
11:08:37 AM Leticia Adams, Director of Governance Policy, Florida Chamber of Commerce (in support)
11:08:39 AM Richard Watson, Legislative Counsel, Associated Builders and Contractors (in support)
11:08:42 AM Stephen Shiver, Associated Industries of Florida (in support)
11:09:05 AM Sen. Latvala
11:09:50 AM Sen. Joyner
11:09:59 AM Sen. Diaz de la Portilla
11:12:55 AM S 896
11:13:59 AM PCS 856836
11:14:09 AM Sen. Garcia
11:14:36 AM Casey Stoutamire, Lobbyist, Florida Dental Association (in support)
11:15:19 AM S 500
11:16:20 AM Sen. Clemens
11:16:43 AM Sen. Sobel
11:17:07 AM Lieutenant Morgan, Volusia County Sheriffs Office, Florida Sheriffs Association (in support)
11:17:30 AM S 1200
11:18:50 AM Sen. Simpson
11:19:14 AM PCS 971948
11:19:27 AM Am. 115124
11:19:50 AM C. Littlejohn, Florida Land Council (in support)
11:20:17 AM Doug Mann, Associated Industries of Florida (in support)
11:20:26 AM Martha Cleaver, Executive Director, Florida Association of Property Appraisers (in support)
11:20:35 AM Adam Basford, Director of Legislative Affairs, Florida Farm Bureau (in support)
11:20:51 AM Sen. Joyner
11:20:54 AM Sen. Simpson
11:22:56 AM Sen. Montford
11:23:01 AM Sen. Sobel
11:23:12 AM S 1190
11:23:30 AM Sen. Brandes
11:23:52 AM Am. 543664
11:24:51 AM Sen. Latvala
11:25:10 AM A. Basford (in support)
11:25:16 AM C. Littlejohn (in support)

11:26:12 AM S 1132
11:26:21 AM Sen. Brandes
11:27:52 AM PCS 730310
11:28:21 AM Am. 277322
11:28:28 AM Sen. Richter
11:29:05 AM Am. 396632
11:29:11 AM Sen. Gardiner
11:29:38 AM Am. 499346
11:29:43 AM Sen. Brandes
11:30:11 AM Sen. Smith
11:30:27 AM Sen. Brandes
11:30:56 AM Sen. Joyner
11:31:23 AM Eric Poole, Assistant Legislative Director, Florida Association of Counties (in support)
11:31:34 AM Mark Anderson, Nassau County (in support)
11:31:48 AM Am. 212468
11:31:58 AM Sen. Brandes
11:32:17 AM Am. 632806
11:32:52 AM Am. 753148
11:33:06 AM Am. 894362
11:33:38 AM Am. 593382
11:34:04 AM Am. 918984
11:34:13 AM Sen. Gardiner
11:34:32 AM Sen. Joyner
11:34:38 AM Sen. Gardiner
11:35:14 AM Am. 169590
11:35:21 AM Sen. Brandes
11:35:50 AM Sen. Joyner
11:36:02 AM Sen. Brandes
11:36:14 AM Am. 676670
11:36:24 AM Sen. Montford
11:37:08 AM Sen. Lee
11:38:04 AM Sen. Montford
11:38:24 AM Ray Colas, Government Affairs Representative, LKQ Corporation
11:40:35 AM Sen. Joyner
11:41:14 AM R. Colas
11:41:16 AM Sen. Montford
11:41:58 AM R. Colas
11:42:49 AM Sen. Lee
11:43:41 AM Sen. Brandes
11:44:39 AM Sen. Lee
11:44:56 AM Sen. Joyner
11:45:09 AM Sen. Brandes
11:45:39 AM Sen. Sobel
11:46:50 AM Sen. Brandes
11:46:52 AM Sen. Sobel
11:48:28 AM Am. 146010
11:48:50 AM Sen. Bean
11:48:51 AM Am. 127608
11:49:00 AM Sen. Margolis
11:49:56 AM Sen. Brandes
11:49:59 AM Am. 303472
11:50:10 AM Sen. Simmons
11:51:12 AM L. Adams (in support)
11:51:38 AM Richard Gentry, Rubber Manufacturers Association (in support)
11:51:59 AM Stan Forron, Space Florida (in support)
11:52:47 AM Sen. Galvano
11:53:03 AM Recording Paused
12:43:30 PM Recording Resumed
12:43:38 PM S 1630
12:44:08 PM Sen. Legg
12:44:10 PM Am. 640620
12:44:58 PM Am. 821630

12:45:17 PM Sen. Bean
12:45:47 PM Sen. Hays
12:46:07 PM Sen. Bean
12:46:10 PM Sen. Legg
12:46:39 PM David Shepp, Consultant, McKeel Academy of Technology (in support)
12:46:59 PM Sen. Joyner
12:47:04 PM Sen. Legg
12:47:45 PM Am. 941478
12:47:52 PM Sen. Bean
12:48:31 PM Sen. Joyner
12:48:51 PM Sen. Legg
12:50:24 PM Jim Horne, Associated Industries of Florida (in support)
12:50:33 PM Nikki Lowrey, State Director, Students First (in support)
12:51:40 PM S 1722
12:51:47 PM Sen. Legg
12:51:50 PM PCS 428226
12:52:06 PM Am. 959928
12:52:39 PM Am. 671062
12:53:04 PM Am. 416810
12:54:49 PM S 1884
12:55:41 PM Sen. Grimsley
12:55:51 PM Am. 215006
12:56:55 PM Sen. Margolis
12:57:05 PM Sen. Joyner
12:57:58 PM Sen. Grimsley
12:58:51 PM Sen. Joyner
12:59:23 PM Sen. Grimsley
1:00:43 PM Fred Hawkins, County Commissioner, Osceola County, Florida Association of Counties (information)
1:01:08 PM Kathy Bryant, County Commissioner, Marion County, Florida Association of Counties (information)
1:02:14 PM Peter O'Brien, County Commissioner, Indian River County, Florida Association of Counties
1:03:20 PM Sen. Lee
1:04:20 PM P. O'Brien
1:06:34 PM Sue Birge, County Commissioner, Hardee County, FAC
1:08:22 PM Sen. Galvano
1:08:36 PM Susan Harbin, Legislative Advocate, Florida Association of Counties
1:09:28 PM G. Robinson
1:11:36 PM Edward Labrador, Director of Intergovernmental Affairs, Broward County
1:13:23 PM F. Hawkins
1:15:25 PM K. Bryant
1:17:21 PM Chris Doolin, Small County Coalition
1:22:04 PM Sen. Margolis
1:23:21 PM Sen. Joyner
1:28:12 PM S 732
1:29:12 PM Sen. Grimsley
1:29:47 PM Sen. Joyner
1:29:53 PM Sen. Grimsley
1:29:59 PM Am 613416
1:30:21 PM Sen. Galvano
1:30:29 PM Sen. Sobel
1:30:37 PM Sen. Galvano
1:30:48 PM Sen. Joyner
1:31:06 PM Sen. Galvano
1:31:30 PM Melissa Joiner, Director of Government Affairs, Florida Retail Federation (in support)
1:31:31 PM Tommy Suter, Associate Director of State and Government Affairs, Novartis/Sandoz (in support)
1:31:36 PM Kelly Mallette, Teva Pharmaceuticals (in support)
1:31:48 PM Rebecca O'Hara, Vice President of Government Affairs, Florida Medical Association (against)
1:31:49 PM Sen. Hays
1:32:44 PM Sen. Sobel
1:33:19 PM Sen. Richter
1:34:19 PM Sen. Joyner
1:35:28 PM Sen. Montford
1:36:28 PM Sen. Grimsley

1:37:09 PM Sen. Galvano
1:38:47 PM Michael Garner, President and CEO, Florida Association of Health Plans (in support)
1:38:53 PM Chris Nuland, American College of Physicians, Florida Chapter (against)
1:39:16 PM Brian Pitts, Justice-2-Jesus
1:42:02 PM S 150
1:42:06 PM Sen. Altman
1:42:53 PM PCS 842716
1:43:17 PM Theresa Bulger, citizen (in support)
1:44:25 PM S 1684
1:45:08 PM PCS 721714
1:45:27 PM Sen. Altman
1:49:08 PM Sen. Joyner
1:49:14 PM Sen. Altman
1:49:23 PM Sen. Joyner
1:49:32 PM Sen. Bean
1:49:44 PM Sen. Altman
1:49:53 PM Sen. Bean
1:50:04 PM Sen. Altman
1:50:21 PM Sen. Smith
1:50:50 PM Sen. Altman
1:51:13 PM Sen. Smith
1:52:13 PM Sen. Altman
1:52:36 PM Am. 455738
1:54:40 PM Sen. Thrasher
1:55:11 PM Mary Jean Yon, Legislative Director, Audubon Florida (in support)
1:55:48 PM Am. 212288
1:55:50 PM Lisa Rinaman, St. John's Riverkeeper (against)
1:56:23 PM Sen. Latvala
1:57:03 PM L. Rinaman
1:58:15 PM Missy Timmins, Marine Industries Association of Florida (in support)
1:58:19 PM Charles Patterson, President, 1000 Friends of Florida (against)
1:58:20 PM Kenya Cory, National Solid Wastes Management Association, Florida Chapter (in support)
1:58:42 PM Jerry Sansom, Cities of Cocoa, Rockledge, and Melbourne
1:58:48 PM L. Adams (in support)
1:58:49 PM Chris Lyon, Attorney, Florida Association of Special Districts, Ranger Drainage District (in support)
1:58:50 PM David Cullen, Sierra Club Florida (against)
1:58:51 PM D. Mann (in support)
1:59:05 PM R. Matthews (in support)
1:59:07 PM Kurt Spitzer, Executive Director, Florida Stormwater Association (in support)
1:59:32 PM Sen. Bean
1:59:33 PM Sen. Latvala
2:01:54 PM Sen. Altman
2:04:10 PM S 862
2:05:14 PM Sen. Stargel
2:05:52 PM PCS 740566
2:06:05 PM Sen. Ring
2:06:20 PM Sen. Stargel
2:08:39 PM Sen. Sobel
2:10:18 PM Sen. Montford
2:10:44 PM Sen. Stargel
2:11:33 PM Sen. Montford
2:11:59 PM Sen. Stargel
2:12:01 PM Sen. Joyner
2:13:00 PM Sen. Stargel
2:13:42 PM Am. 437198
2:13:47 PM Sen. Joyner
2:14:31 PM Sen. Stargel
2:15:28 PM Sen. Joyner
2:16:28 PM Am. 499026
2:16:47 PM Am. 495786
2:17:18 PM Sen. Stargel
2:17:23 PM Sen. Joyner

2:19:00 PM Am. 805192
2:19:34 PM Sen. Sobel
2:19:37 PM Sen. Stargel
2:19:55 PM Sen. Sobel
2:20:34 PM Am. 447176
2:21:24 PM Sen. Stargel
2:21:58 PM Sen. Sobel
2:22:39 PM Am. 637634
2:23:26 PM Sen. Stargel
2:24:46 PM Sen. Sobel
2:25:23 PM Am. 193922
2:26:59 PM Sen. Stargel
2:29:24 PM Jean Hovey, Executive Director, Florida PTA
2:30:03 PM Jason Flom, Possibiities Architect, QED Foundation
2:32:10 PM Jeff Wright, Florida Education Association (against)
2:32:12 PM Justin Williams, student (in support)
2:32:28 PM Roger Williams, parent (in support)
2:32:34 PM N. Lowery (in support)
2:32:42 PM Wendy Howard, parent (in support)
2:32:49 PM Karen Francis Winston, parent (in support)
2:32:55 PM Amy Datz, parent (against)
2:33:16 PM Gail Marie Perry, Chair, CWA Council of Florida (against)
2:33:20 PM Glenda Abicht, citizen (against)
2:33:35 PM Wayne Blanton, Executive Director, Florida School Boards Association
2:34:37 PM Aurelio Hernandez Jr., citizen
2:34:38 PM Carl Tomestic, citizen (in support)
2:34:59 PM Ellena Little, citizen (against)
2:35:02 PM Rocky Little, citizen (against)
2:35:04 PM Carol Horton, educator and parent (against)
2:36:10 PM Brian Pitts, Trustee, Jesus-2-Justice
2:37:10 PM Jorge Lugo, educator (against)
2:37:15 PM Adam Giery, Director of Policy, Florida Chamber of Commerce (in support)
2:37:21 PM Fred Bevis, citizen (against)
2:37:29 PM Archibald Amory, citizen (against)
2:37:41 PM Evelyn Nazario, citizen (against)
2:37:48 PM Ismael Rivera, citizen (against)
2:37:52 PM Ismael Blanco, citizen (against)
2:38:08 PM Theo Parsons, citizen (against)
2:38:13 PM Norm Audet, citizen (against)
2:38:27 PM Guy Masters, citizen (against)
2:38:42 PM Sen. Joyner
2:41:39 PM Floyd Carroll, citizen (against)
2:42:18 PM Sen. Montford
2:43:10 PM Sen. Sobel
2:44:57 PM Sen. Latvala
2:45:25 PM Sen. Gardiner
2:46:08 PM Sen. Stargel
2:47:52 PM S 242
2:48:14 PM Sen. Hukill
2:48:59 PM Am. 703120
2:51:57 PM S 288
2:52:05 PM Sen. Bradley
2:53:07 PM Sen. Joyner
2:53:39 PM Sen. Bradley
2:54:04 PM Monica Hofheinz, Assistant State Attorney, Florida State Attorneys (in support)
2:54:07 PM Robert Trammell, General Counsel, Florida Public Defenders (in support)
2:55:05 PM S 370
2:55:40 PM Caitlin Lewis, Legislative Assistant to Senator Sachs
2:55:56 PM Ross McVoy, General Counsel and Lobbyist, Florida Cemetary Cremation and Funeral Association, Inc. (in support)
2:55:59 PM Jim Wylie, Government Affairs, Florida Funeral and Cemetary Consumer Advocacy Inc., (in support)
2:56:07 PM S. Harbin (in support)

2:56:11 PM Georgia McKeown, consultant, Florida Cemetary, Cremation, and Funeral Association (in support)
2:56:12 PM Elizabeth Boyd, Deputy Director of Legislative Affairs, Department of Financial Services (in support)
2:57:08 PM S 1280
2:57:29 PM PCS 458308
2:57:42 PM C. Lewis
2:58:56 PM Sen. Sobel
2:59:07 PM S 410
2:59:24 PM Sen. Bean
3:00:21 PM PCS 783148
3:00:51 PM Ashley Mayer, Director Legislative Cabinet and Policy, CFO, Department of Financial Services (in support)
3:01:38 PM S 582
3:01:42 PM Sen. Galvano
3:02:25 PM Am. 747758
3:03:01 PM L. Adams (in support)
3:03:05 PM Rheb Harbison, Senior Government Consultant, Associated Industries of Florida (in support)
3:03:14 PM Martha Chumbler, Attorney, Associated Industries of Florida (in support)
3:04:24 PM S 644
3:04:27 PM Sen. Richter
3:04:47 PM Warren Husband, Securities Industry and Financial Markets Association (in support)
3:04:55 PM French Brown, Legislative Affairs Director, OFR (in support)
3:05:08 PM Sen. Latvala
3:05:31 PM Sen. Richter
3:07:12 PM S 662
3:07:15 PM Sen. Hays
3:07:33 PM Am. 213550
3:07:35 PM R. O'Hara (in support)
3:09:05 PM C. Fentriss, Florida Roofing, Sheet Metal and Air Conditioning Contractors Association (in support)
3:09:17 PM Tom Panza, Automated Health Care Solutions (in support)
3:09:23 PM M. Joiner (in support)
3:09:38 PM David Hart, Executive Vice President, Florida Chamber of Commerce (in support)
3:09:52 PM Tammy Perdue, General Counsel, Associated Industries of Florida (in support)
3:10:18 PM Sen. Lee
3:10:53 PM Sen. Sobel
3:11:18 PM Sen. Hays
3:13:21 PM S 844
3:13:24 PM Sen. Grimsley
3:13:56 PM PCS 873636
3:14:15 PM Am. 931160
3:14:31 PM Am. 601082
3:14:42 PM Am. 105778
3:15:03 PM Am. 330380
3:15:27 PM Am. 717986
3:15:49 PM R. O'Hara (in support)
3:15:56 PM David Christian, Vice President of Government Affairs, Florida Chamber of Commerce (in support)
3:16:07 PM M. Garner (in support)
3:17:11 PM S 860
3:17:14 PM Sen. Galvano
3:18:06 PM Am. 974512
3:18:12 PM A. Mayer (in support)
3:18:20 PM Monte Stevens, Florida Medical Association (in support)
3:19:20 PM S 958
3:19:28 PM Sen. Richter
3:19:44 PM Am. 919526
3:21:18 PM S 960
3:21:23 PM PCS 243574
3:21:29 PM Sen. Bean
3:22:18 PM J. Sansom, Organized Fisherman of Florida (in support)
3:23:26 PM Sen. Hukill
3:23:47 PM Sen. Bradley
3:23:57 PM Sen. Hays
3:24:13 PM Sen. Latvala

3:24:43 PM S 1026
3:24:46 PM Sen. Thrasher
3:25:30 PM PCS 342350
3:27:00 PM S 1064
3:27:09 PM Sen. Latvala
3:27:43 PM PCS 725598
3:28:02 PM D. Cullen (in support)
3:29:18 PM S 1192
3:29:31 PM Sen. Grimsley
3:31:09 PM Am. 978416
3:31:26 PM Am. 426316
3:31:43 PM Am. 957718
3:31:55 PM Sen. Sobel
3:32:34 PM Nick Matthews, Legislative Coordinator, Broward County (in support)
3:32:39 PM Lisa Hurley, Florida Association of Counties (in support)
3:33:29 PM Ron Watson, Lobbyist, Florida Dental Association (in support)
3:33:30 PM R. O'Hara (in support)
3:33:39 PM M. Joiner (in support)
3:33:51 PM Paul Kammerek, Lieutenant, Volusia County Sheriffs Office, Florida Sheriffs Association (in support)
3:35:06 PM S 1246
3:35:09 PM Sen. Bean
3:35:18 PM PCS 877596
3:36:29 PM Paige Carter-Smith, Governmental Consultant, Jacksonville Police Force Pension (in support)
3:37:12 PM S 1350
3:37:20 PM Sen. Bradley
3:39:08 PM Am 176724
3:40:07 PM Sen. Joyner
3:40:17 PM Sen. Hays
3:41:17 PM Sen. Joyner
3:41:42 PM Sen. Hays
3:41:52 PM Sen. Joyner
3:42:01 PM Sen. Bradley
3:42:18 PM Sen. Joyner
3:42:47 PM Sen. Hays
3:43:13 PM Sen. Joyner
3:43:19 PM Carlos Martinez, Public Defender, Florida Public Defender Association
3:44:08 PM Sen. Bradley
3:45:10 PM C. Martinez
3:45:17 PM Sen. Bradley
3:45:27 PM Brad King, State Attorney, Florida Prosecuting Attorneys Association
3:49:43 PM Sen. Joyner
3:50:05 PM B. King
3:50:08 PM Sen. Joyner
3:50:10 PM B. King
3:50:39 PM Tim Nungesser, Lobbyist, Southern Poverty Law Center (in support)
3:50:45 PM Sheila Hopkins, Director of Social Concerns/Respect Life, Florida Conference of Catholic Bishops (in support)
3:51:21 PM Sen. Bradley
3:52:26 PM Sen. Joyner
3:55:12 PM Am. 813126
3:57:12 PM C. Martinez
3:58:56 PM B. King
4:01:45 PM T. Nungesser (in support)
4:02:33 PM Sen. Bradley
4:03:22 PM Sen. Joyner
4:04:03 PM Lt. Morgan
4:04:10 PM C. Martinez
4:04:56 PM T. Nungesser (against)
4:05:07 PM Rob Johnson, Legislative Director, Florida Attorney General Pam Bondi (in support)
4:06:24 PM Sen. Grimsley
4:06:35 PM Sen. Hays
4:06:49 PM S 1816

4:07:11 PM PCS 918752
4:07:21 PM Sen. Negron
4:08:03 PM Am. 803580
4:08:14 PM Sen. Hays
4:09:14 PM Joe Anne Hart, Director of Government Relations, Florida Dental Association (in support)
4:09:23 PM M. Garner (against)
4:09:52 PM David Francis, Government Relations Director, American Heart Association (in support)
4:10:20 PM Bailvia Devane, Florida NOW, Florida Alliance for Retired Americans (in support)
4:10:21 PM C. Nuland (in support)
4:10:22 PM Andy Bearman, CEO, Florida Association of Community Health Centers (in support)
4:10:33 PM Karen Woodall, Florida Center for Fiscal and Economic Policy (in support)
4:10:38 PM James Edwards, PICO United Florida (in support)
4:10:46 PM Elbra Drain, PICO United Florida (in support)
4:10:54 PM Renee Walker, PICO United Florida (in support)
4:10:59 PM John Lee Sr., PICO United Florida (in support)
4:11:05 PM Booker Perry, PICO United Florida (in support)
4:11:13 PM T. Perdue (in support)
4:11:18 PM Laura Cantwell, Associate State Director, AARP (in support)
4:11:23 PM Dorene Barker, Legislative Director, Florida Legal Services Inc. (in support)
4:11:30 PM M. Garner (in support)
4:11:35 PM Dawn Christie, 1199 SEIU (in support)
4:11:43 PM Debra Brown, 1199 SEIU (in support)
4:11:53 PM Anthena Haynes, 1199 SEIU (in support)
4:11:59 PM A. Datz (in support)
4:12:05 PM Paul Belcher, Senior Vice President, Florida Hospital Association (in support)
4:12:47 PM Sen. Bean
4:14:18 PM Sen. Galvano
4:14:34 PM S 1388
4:14:52 PM Sen. Montford
4:16:32 PM PCS 413204
4:16:46 PM Am. 426402
4:17:17 PM Am. 236298
4:17:42 PM Joy Frank, General Counsel, Florida Association of District School Superintendents (in support)
4:18:00 PM B. Pitts
4:23:35 PM S 1390
4:23:39 PM Sen. Montford
4:24:56 PM S 1408
4:25:06 PM Sen. Richter
4:25:38 PM Am. 683692
4:28:06 PM S 1352
4:28:08 PM Sen. Ring
4:28:43 PM PCS 508548
4:28:54 PM Am. 965980
4:29:10 PM Sen. Smith
4:29:21 PM Sen. Ring
4:30:52 PM S 1844
4:31:10 PM PCS 812796
4:31:21 PM Sen. Bean
4:32:52 PM J. Edwards (against)
4:33:42 PM E. Drain (against)
4:33:56 PM R. Walker (against)
4:34:49 PM J. Lee Sr. (against)
4:36:13 PM B. Perry (against)
4:36:20 PM K. Woodall (against)