

Tab 1	SB 86 by Negron (CO-INTRODUCERS) Gaetz ; (Identical to H 0199) State Contracts				
271786	PCS	S	RCS	GO	10/06 11:25 AM

Tab 2	SPB 7008 by GO ; Housing Discrimination				
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Tab 3	SPB 7010 by GO ; Individuals with Disabilities				
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Tab 4	SPB 7012 by GO ; Death Benefits under the Florida Retirement System				
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Tab 5	SPB 7014 by GO ; Florida Retirement System				
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Tuesday, October 6, 2015
TIME: 10:00 a.m.—12:00 noon
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<p>A proposed committee substitute for the following bill (SB 86) is expected to be considered:</p>			
1	SB 86 Negron (Identical H 199)	State Contracts; Prohibiting a public entity from entering into specified contracts; prohibiting a company from contracting with the state if the company appears on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; requiring a company that attempts to contract with the state to certify that the company or the assignee is not on the list; authorizing the state agency or entity to take appropriate actions as provided by law, etc.	Fav/CS Yeas 4 Nays 1
		GO 10/06/2015 Fav/CS AGG AP	
<p>Consideration of proposed bill:</p>			
2	SPB 7008	Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; authorizing, rather than requiring, a civil action to commence within 2 years after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of whether a specified complaint has been filed and regardless of the status of any such complaint, etc.	Submitted as Committee Bill Yeas 5 Nays 0
<p>Consideration of proposed bill:</p>			
3	SPB 7010	Individuals with Disabilities; Revising the state's equal employment opportunity policy to include individuals who have a disability; requiring the department to develop and implement certain programs geared toward individuals who have a disability; requiring the department to compile and post data regarding the hiring practices of executive agencies regarding the employment of individuals who have a disability; creating the "Employment First Act", etc.	Submitted as Committee Bill Yeas 5 Nays 0
<p>Consideration of proposed bill:</p>			

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, October 6, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7012	Death Benefits under the Florida Retirement System; Authorizing payment of death benefits to the surviving spouse or children of a Special Risk Class member killed in the line of duty under specified circumstances; authorizing payment of death benefits to the surviving spouse or surviving children of a Special Risk Class member in the investment plan; requiring the State Board of Administration to transfer moneys to fund survivor benefit payments under specified circumstances, etc.	Submitted as Committee Bill Yeas 5 Nays 0
Consideration of proposed bill:			
5	SPB 7014	Florida Retirement System; Expressing legislative intent to revise laws relating to service in the Florida Retirement System, etc.	Submitted as Committee Bill Yeas 4 Nays 1
(Preliminary Draft Available - final draft will be made available at least 48 hours prior to the meeting)			
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 Governmental Oversight and Accountability

BILL: PCS/SB 86 (271786)

INTRODUCER: Senator Negron

SUBJECT: Scrutinized Companies

DATE: October 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		Pre-meeting
2.				
3.				

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 86 requires the State Board of Administration (SBA) to identify and assemble a list of all companies that boycott Israel. The bill requires the SBA to update and make publicly available on a quarterly basis a Scrutinized Companies that Boycott Israel List (List). The list must be distributed to the trustees of the SBA, the President of the Florida Senate and the Speaker of the Florida House of Representatives.

The SBA must provide written notice to the companies that may be placed on the List and give those companies an opportunity to respond prior to the company becoming subject to investment prohibition and placement on the List.

In terms of its investment responsibilities relating to the Florida Retirement System (FRS) pension plan, the SBA is not permitted to acquire securities, as direct holdings, of companies that appear on the List. The bill provides an exception for securities that are not subject to this prohibition. The bill requires the investment policy statement for the FRS pension plan to be updated to include the limitations set forth in this bill.

PCS/SB 86 limits governmental entities from contracting with scrutinized companies on the List. Specifically, the bill prohibits a state agency or local governmental entity from contracting for goods and services of \$1 million or more with a company that has been placed on the List. In addition, the bill requires certain governmental contracts to contain provisions allowing the awarding body to terminate the contract if a company is placed on the List. Additionally, the bill

requires certification by a company that the company is not on the List upon submission of bid or renewal of existing contract. A case-by-case exception is provided to state agencies and local governmental entities for contracting with companies on the List under specified circumstances.

The fiscal impact on state and local governments is indeterminate.

II. Present Situation:

State Board of Administration Investing Duties

The State Board of Administration (SBA) was created by Article IV, section 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, section 9 of the Florida Constitution and ch. 215, F.S.

The SBA has oversight over the Florida Retirement System (FRS) pension plan and the FRS investment plan, which represent approximately \$157.14 billion, or 87.3 percent, of the \$180 billion in assets managed by the SBA, as of June 30, 2015.¹ The pension plan is a defined benefit plan, and the investment plan is a defined contribution plan that employees may choose in lieu of the pension plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22.86 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.²

State Sponsors of Terrorism

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.³ The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act⁴; the Arms Export Control Act⁵; and the Foreign Assistance Act⁶. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.⁷

Currently, the State Department designates three countries under these authorities: Iran, Sudan and Syria.⁸ The chart below shows the date each country was designated a terrorist nation.

¹ State Board of Administration "Performance Report to the Trustees" dated June 30, 2015, and issued on August 12, 2015.

² *Id.*

³ U.S. Department of State, Diplomacy in Action can be found online at <http://www.state.gov/j/ct/list/c14151.htm> (last visited Sept. 9, 2015).

⁴ 50 U.S.C. App 2405(j)

⁵ 22 U.S.C. s. 2780

⁶ 22 U.S.C. s. 2371

⁷ See <http://www.state.gov/s/ct/c14151.htm>.

⁸ *Id.*

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

Cuba had been designated as a State Sponsor of Terrorism on March 1, 1982. In December 2014, President Obama requested the Secretary of State to review Cuba's designation as a state sponsor of terrorism, and to provide him a report within six months in regards to Cuba's support for international terrorism.⁹ On April 8, 2015, the Secretary of State completed his review and recommended to the President that Cuba no longer be designated as a state sponsor of terrorism.¹⁰

On April 14, 2015, the President submitted this report to Congress indicating the administration's intent to rescind Cuba's state sponsor of terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the previous six months and that Cuba has provided assurances that it will not support acts of international terrorism in the future.¹¹

After the 45-day Congressional pre-notification period expired, Cuba was officially removed from the list on May 29, 2015.¹²

Protecting Florida Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).¹³ The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities¹⁴ and are required to divest those securities if the companies¹⁵ do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.

⁹ U.S. Department of State, Diplomacy in Action, Recession of Cuba as a State Sponsor of Terrorism, at <http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm> (last visited on Sept. 15, 2015).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Chapter 2007-88, Laws of Florida; *also, see* Senate Bill 2142 (reg. session 2007).

¹⁴ Section 215.473(3)(c), F.S.

¹⁵ Section 215.473(3)(b), F.S.

The term “public fund” is defined as “all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.”¹⁶ This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

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

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website¹⁷, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations.¹⁸ Such correspondence continues semiannually.¹⁹
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment.²⁰ The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.²¹
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.²²
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to

¹⁶ Section 215.473(1)(r), F.S.

¹⁷ The quarterly reports are available at

<http://www.sbafla.com/fsb/Portals/Internet/PFIA/CurrentProhibitedCompaniesList.pdf>

¹⁸ Section 215.473(3)(a)2., F.S.

¹⁹ *Id.*

²⁰ Section 215.473(3)(a)3., F.S.

²¹ *Id.*

²² Section 215.473(4)(a), F.S.

Sudan, and the United States Presidential Special Envoy to Iran.²³ The report must include the following:²⁴

- A summary of correspondence with engaged companies;
- A listing of all investments sold, redeemed, divested, or withdrawn;
- A listing of all prohibited investments;
- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
 - Darfur genocide has been halted for at least 12 months;²⁵
 - Sanctions imposed against the Government of Sudan are revoked;²⁶
 - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;²⁷
 - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;²⁸
 - Sanctions imposed against the government of Iran are revoked;²⁹ or
 - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.³⁰

Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.³¹ If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.³² Such condition is required to be updated semiannually.³³

²³ Section 215.473(4)(b), F.S.

²⁴ Section 215.473(4)(b)1.-5., F.S.

²⁵ Section 215.473(5)(a)1., F.S.

²⁶ Section 215.473(5)(a)2., F.S.

²⁷ Section 215.473(5)(a)3., F.S.

²⁸ Section 215.473(5)(b)1., F.S.

²⁹ Section 215.473(5)(b)2., F.S.

³⁰ Section 215.473(5)(b)3., F.S.

³¹ Section 215.473(7), F.S.

³² *Id.*

³³ *Id.*

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency³⁴ procurement of personal property and services.³⁵ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³⁶

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.³⁷ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.³⁸

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.³⁹

DMS is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;⁴⁰ creating uniform agency procurement rules;⁴¹ implementing the online procurement program;⁴² and establishing state term contracts.⁴³ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure

³⁴ 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.

³⁵ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

³⁶ See ss. 287.012(6) and 287.057, F.S.

³⁷ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. 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.

³⁸ See s. 287.057(3)(e), F.S.

³⁹ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁴⁰ Sections 287.032 and 287.042, F.S.

⁴¹ Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

⁴² Section 287.057(22), F.S.

⁴³ Sections 287.042(2) and 287.056, F.S.

goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Prohibition Against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency⁴⁴ or local governmental entity for goods or services of \$1 million or more. “Local governmental entity,” for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(b), F.S., provides that any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have been engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:

- The scrutinized business operations⁴⁵ were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

⁴⁴ Agency is defined in s. 287.012(1), F.S., as 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. Also, see s. 287.135(1), F.S. Definitions contained in ss. 287.012 and 215.473, F.S. are incorporated into s. 287.135, F.S.

⁴⁵ Section 215.473(1)(t), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.

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

Section 287.135(4)(a)2., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operation in Cuba or Syria.⁴⁶

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90 days to respond in writing to such determination.⁴⁷ If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body *must* bring a civil action against the company.⁴⁸ If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).⁴⁹ Also, a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.⁵⁰ The company is ineligible to bid on any

⁴⁶ Section 287.135(5), F.S.

⁴⁷ Section 287.135(5)(a), F.S.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Section 287.135(5)(a)1., F.S.

contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.⁵¹ A civil action to collect the penalties must commence within 3 years after the date the false certification is made.⁵²

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(7), F.S., specifies that this section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

Section 287.135 (8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

III. Effect of Proposed Changes:

Section 1 creates s. 215.4725, F.S., entitled “Investment Prohibition by the State Board of Administration; companies that boycott Israel,” and defines certain terms. This section is effective upon becoming a law.

The section defines “boycott Israel” or “boycott of Israel” as refusing to deal, terminating business activities, or taking other actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than a business, investment or commercial reason. This definition does not apply to:

1. Decisions made during course of a company’s ordinary business; or
2. For other business, investment or commercial reasons.

Also, a statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of calls for a boycott of Israel, may be considered by the SBA as evidence that a company is participating in a boycott of Israel.

The term “company” is defined as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, that exists for the purpose of making profit.

“Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

⁵¹ Section 287.135(5)(a)2., F.S.

⁵² Section 287.135(5)(b), F.S.

“Indirect holdings” in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the public fund owns shares or interests together with other investors not subject to this section or which are held in an index fund.

"Public fund" is defined as all funds, assets, trustee; and other designates under the State Board of Administration pursuant to Part I of Chapter 121. This means only those assets of the Florida Retirement System pension plan are impacted.

The term “scrutinized companies” is defined as companies that boycott Israel or engage in a boycott of Israel.

By August 1, 2016, SBA is required to use its best efforts to identify all scrutinized companies that boycott Israel in which the SBA has direct or indirect holdings or could possibly have such holdings in the future. The bill directs the SBA to use the following efforts to identify scrutinized companies:

1. Reviewing and relying, as appropriate in the SBA’s judgment, on publicly available information regarding companies that boycott Israel, such as nonprofit organizations, research firms, international organizations, and government entities;
2. Contacting asset managers contracted by the SBA for information regarding companies that boycott Israel; and
3. Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

By its first meeting following the identification of scrutinized companies, the SBA must compile and make available the Scrutinized Companies that Boycott Israel List. The SBA is required to update and make publicly available quarterly the Scrutinized Companies that Boycott Israel List based on unfolding information from other sources, including publicly available information, asset managers contracted by SBA and other institutional investors.

The SBA must immediately determine companies on the Scrutinized Companies that Boycott Israel List in which the SBA owns direct or indirect holdings.

This section requires the SBA to send written notice informing a company when it is identified as a scrutinized company and advising the company that it may become subject to investment prohibition by the SBA. Such notice must inform the company of the opportunity to clarify activities, evidence of boycott of Israel and encourage the company, within 90 days, to cease the boycott of Israel in order to avoid qualifying for investment prohibition by the SBA.

If, within 90 days after notification by the SBA, a company ceases a boycott of Israel, that company will be removed from the Scrutinized Companies that Boycott Israel List, and the provisions of this bill shall cease to apply to that company unless such company resumes a boycott of Israel.

Further, this section prohibits the SBA from acquiring securities of companies on the Scrutinized Companies that Boycott Israel List as direct holdings. Certain securities, however, are excluded

from the prohibition of acquiring securities of companies on the Scrutinized Companies that Boycott Israel List. These securities include the following:

1. Indirect holdings;
2. Securities that are not publicly traded. These are deemed to be indirect holdings;
3. Alternative investment as defined by s. 215.4401, F.S.⁵³ These are deemed to be indirect holdings; and
4. Exchange-traded funds.

For indirect holdings of the SBA, the SBA is required to submit letters to managers of investment funds which contain companies that boycott Israel requesting that such companies be removed from the fund or create a similar fund having indirect holdings devoid of companies that boycott Israel. If the investment manager creates a similar fund, the SBA is required to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

The SBA is required to file a report with each member of the SBA, the President of the Florida Senate, and the Speaker of the Florida House of Representatives within 30 days after the List is created. Such report shall be made available to the public.

At each quarterly meeting, the SBA must file a report, which shall be made available to the public and to each member of the SBA, the President of the Senate, and the Speaker of the House of Representatives. This report must include the following:

- A summary of correspondence with companies identified as scrutinized companies;
- All prohibited investments;
- A description of any progress related to external managers of investment funds offering holdings devoid of companies that boycott Israel; and
- A list of all publicly traded securities held directly by the SBA.

The SBA is required to adopt and incorporate the obligations of this act into the SBA's investment policy statement as set forth in s. 215.475, F.S.⁵⁴

Notwithstanding any other provisions of this act to the contrary, the SBA may cease the investment prohibitions contained in the bill in certain scrutinized companies if clear and convincing evidence shows the value of the assets under management of the SBA becomes equal

⁵³ Section 215.4401(3)(a)1., F.S., defines "alternative investment" as an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

⁵⁴ Section 215.475, F.S., entitled 'Investment policy statement' provides:

(1) In making investments for the System Trust Fund pursuant to ss. [215.44-215.53](#), the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

(2) Prior to any recommended changes in the IPS being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the IPS or changes in the IPS.

to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets under management of the SBA. For cessation of these investment prohibitions, the SBA must submit a written report to the Board of Trustees, the President of the Florida Senate and the Speaker of the Florida House of Representatives in advance of the new investment, setting forth its justification supported by clear and convincing evidence. Such condition is required to be updated semiannually.

Section 2 amends and reenacts s. 287.135, F.S., regarding prohibition against contracting with scrutinized companies. This section is effective October 1, 2016.

Each state agency or local governmental entity is prohibited from contracting for goods and services of \$1 million or more if the company has been placed on the Scrutinized Companies that Boycott Israel List.

Any contract with a state agency or local governmental entity for goods and services of \$1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that authorizes the termination of the contract by the awarding body if the company:

- Is found to have submitted a false certification regarding non-placement on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria;
- Has been placed on the Scrutinized Companies that Boycott Israel List;
- Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
- Has been engaged in business operations in Cuba or Syria.

A state agency or local governmental entity is permitted to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies that Boycott Israel List if all of the following occur:

- The business operations were made before October 1, 2016;
- The business operations have not been expanded or renewed after October 1, 2016;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the bill requires the company to certify that the company is not on the Scrutinized Companies that Boycott Israel List.

Section 3 provides that the bill takes effect upon becoming a law except as expressly provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Companies that choose to boycott Israel may not be eligible to contract with state and local governmental entities in Florida. In addition, any investment instruments of those companies may not be held by the SBA as an asset of the FRS pension plan.

C. Government Sector Impact:

Indeterminate. State agencies and local governments will not be permitted to contract with certain companies that boycott Israel in certain instances. This may eliminate companies that would otherwise have been the least expensive source for certain goods and services.

The State Board of Administration will not be permitted to hold certain investments relating to companies that boycott Israel. The financial impact of this limitation is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4725 of the Florida Statutes.

This bill amends section 287.135 of the Florida Statutes.

IX. Additional Information:

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

PCS (271786) by Governmental Oversight and Accountability

This PCS differs from SB 86 in the following ways:

- Limits the newly scrutinized companies to those that boycott Israel rather than companies that boycott any member of the World Trade Organization or other nation with a trade agreement with the United States.
- Limits the State Board of Administration's obligations to new acquisitions of securities related to the scrutinized companies rather than divesting in current holdings relating those companies.
- Limits the application of the investment limitations to the assets of the Florida Retirement System pension plan rather than the pension plan and the investment plan.
- Limits the contractual restrictions to contracts worth \$1 million or more rather than a total potential value of less than \$10,000 or to contracts in which a business agrees to provide the goods or services at a cost at least 20 percent less than the next lowest bidder.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to scrutinized companies; creating s. 215.4725, F.S.; providing definitions; requiring the State Board of Administration to identify all companies that are boycotting Israel or are engaged in a boycott of Israel in which the public fund owns direct or indirect holdings in; requiring the public fund to create and maintain a scrutinized companies list that names all such companies; requiring the public fund to provide written notice to a company that is identified as a scrutinized company; specifying contents of the notice; specifying circumstances under which a company may be removed from the list; prohibiting the acquisition of certain securities of scrutinized companies; prescribing reporting requirements; requiring certain information to be included in the investment policy statement; authorizing the public fund to invest in certain scrutinized companies if the value of all assets under management by the public fund becomes equal to or less than a specified amount; requiring the public fund to provide a written report to the Board of Trustees of the state board and the Legislature before such investment occurs; specifying required contents of the report; reenacting and amending s. 287.135, F.S., relating to the prohibition against contracting with scrutinized companies; prohibiting a state agency or



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local governmental entity from contracting for goods and services that exceed a specified amount if the company has been placed on the Scrutinized Companies that Boycott Israel List; requiring inclusion of a contract provision that authorizes termination of a contract if a company has been placed on the Scrutinized Companies that Boycott Israel List; providing exceptions; requiring certification upon submission of a bid or proposal for a contract, or before a company enters into or renews a contract, with an agency or governmental entity that the company; providing procedures upon determination that a company has submitted a false certification; providing for civil action; providing penalties; providing attorney fees and costs; providing a statute of repose; prohibiting a private right of action; providing for preemption of conflicting ordinances and rules; revising provisions relating to federal preemption; providing effective dates.

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

Section 1. Section 215.4725, Florida Statutes, is created to read:

215.4725 Prohibited investments by the State Board of Administration; companies that boycott Israel.-

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

(a) "Boycott Israel" or "boycott of Israel" means refusing to deal, terminating business activities, or taking other



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57 actions that are intended to penalize, inflict economic harm, or
58 otherwise limit commercial relations with Israel, or persons or
59 entities doing business in Israel or in Israeli-controlled
60 territories for reasons other than a business, investment, or
61 commercial reason. The term does not apply to decisions made
62 during the course of a company's ordinary business or for other
63 business, investment or commercial reasons. A statement by a
64 company that it is participating in a boycott of Israel, or that
65 it has initiated a boycott in response to a request for a
66 boycott of Israel or in compliance with, or in furtherance of,
67 calls for a boycott of Israel, may be considered by the State
68 Board of Administration to be evidence that a company is
69 participating in a boycott of Israel.

70 (b) "Company" means a sole proprietorship, organization,
71 association, corporation, partnership, joint venture, limited
72 partnership, limited liability partnership, limited liability
73 company, or other entity or business association, including all
74 wholly owned subsidiaries, majority-owned subsidiaries, and
75 parent companies, that exists for the purpose of making profit.

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

80 (d) "Indirect holdings" in a company means all securities
81 of that company that are held in a commingled fund or other
82 collective investment, such as a mutual fund, in which the
83 public fund owns shares or interests, together with other
84 investors not subject to this section or which are held in an
85 index fund.



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86 (e) "Public fund" means all funds, assets, trustee, and
87 other designates under the State Board of Administration
88 pursuant to part I of chapter 121.

89 (f) "Scrutinized companies" means companies that boycott
90 Israel or engage in a boycott of Israel.

91 (2) IDENTIFICATION OF COMPANIES.—

92 (a) By August 1, 2016, the public fund shall make its best
93 efforts to identify all scrutinized companies in which the
94 public fund has direct or indirect holdings or could possibly
95 have such holdings in the future. Such efforts include:

96 1. To the extent that the public fund finds it appropriate,
97 reviewing and relying on publicly available information
98 regarding companies that boycott Israel, including information
99 provided by nonprofit organizations, research firms,
100 international organizations, and government entities;

101 2. Contacting asset managers contracted by the public fund
102 for information regarding companies that boycott Israel; or

103 3. Contacting other institutional investors that prohibit
104 such investments or that have engaged with companies that
105 boycott Israel.

106 (b) By the first meeting of the public fund following the
107 identification of scrutinized companies in accordance with
108 paragraph (a), the public fund shall compile and make available
109 the "Scrutinized Companies that Boycott Israel List."

110 (c) The public fund shall update and make publicly
111 available quarterly the Scrutinized Companies that Boycott
112 Israel List based on evolving information from, among other
113 sources, those listed in paragraph (a).

114 (3) REQUIRED ACTIONS.—The public fund shall adhere to the



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115 following procedures for assembling companies on the Scrutinized
116 Companies that Boycott Israel List.

117 (a) Engagement.—

118 1. The public fund shall immediately determine the
119 companies on the Scrutinized Companies that Boycott Israel List
120 in which the public fund owns direct or indirect holdings.

121 2. For each company newly identified under this paragraph
122 after August 1, 2016, the public fund shall send a written
123 notice informing the company of its scrutinized company status
124 and that it may become subject to investment prohibition by the
125 public fund. The notice must inform the company of the
126 opportunity to clarify its activities regarding the boycott of
127 Israel and encourage the company to cease the boycott of Israel
128 within 90 days in order to avoid qualifying for investment
129 prohibition.

130 3. If, within 90 days after the public fund's first
131 engagement with a company pursuant to this paragraph, the
132 company ceases a boycott of Israel, the company shall be removed
133 from the Scrutinized Companies that Boycott Israel List, and the
134 provisions of this section shall cease to apply to that company
135 unless that company resumes a boycott of Israel.

136 (b) Prohibition.—The public fund may not acquire securities
137 of companies on the Scrutinized Companies that Boycott Israel
138 List, except as provided in paragraph (c) and subsection (6).

139 (c) Excluded securities.—Notwithstanding the provisions of
140 this section, paragraph (b) does not apply to:

141 1. Indirect holdings. However, the public fund shall submit
142 letters to the managers of such investment funds containing
143 companies that boycott Israel requesting that they consider



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144 removing such companies from the fund or create a similar fund
145 having indirect holdings devoid of such companies. If the
146 manager creates a similar fund, the public fund shall replace
147 all applicable investments with investments in the similar fund
148 in an expedited timeframe consistent with prudent investing
149 standards. For the purposes of this section, an alternative
150 investment, as the term is defined in s. 215.4401, and
151 securities that are not publicly traded are deemed to be
152 indirect holdings.

153 2. Exchange-traded funds.

154 (4) REPORTING.—

155 (a) The public fund shall file a report with each member of
156 the Board of Trustees of the State Board of Administration, the
157 President of the Senate, and the Speaker of the House of
158 Representatives which includes the Scrutinized Companies that
159 Boycott Israel List within 30 days after the list is created.
160 This report shall be made available to the public.

161 (b) At each quarterly meeting of the Board of Trustees
162 thereafter, the public fund shall file a report, which shall be
163 made available to the public and to each member of the Board of
164 Trustees of the State Board of Administration, the President of
165 the Senate, and the Speaker of the House of Representatives,
166 which includes:

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

169 2. All prohibited investments under paragraph (3)(b);

170 3. Any progress made under paragraph (3)(c); and

171 4. A list of all publicly traded securities held directly
172 by the public fund.



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173 (5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public
174 fund’s actions taken in compliance with this section, including
175 all good faith determinations regarding companies as required by
176 this act, shall be adopted and incorporated into the public
177 fund’s investment policy statement as provided in s. 215.475.

178 (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—
179 Notwithstanding any other provision of this section, the public
180 fund may invest in certain scrutinized companies if clear and
181 convincing evidence shows that the value of all assets under
182 management by the public fund becomes equal to or less than
183 99.50 percent, or 50 basis points, of the hypothetical value of
184 all assets under management by the public fund assuming no
185 investment prohibition for any company had occurred under
186 paragraph (3) (b). Cessation of the investment prohibition and
187 any new investment in a scrutinized company is limited to the
188 minimum steps necessary to avoid the contingency described in
189 this subsection. For any cessation of the investment prohibition
190 and new investment authorized by this subsection, the public
191 fund shall provide a written report to each member of the Board
192 of Trustees of the State Board of Administration, the President
193 of the Senate, and the Speaker of the House of Representatives
194 in advance of the new investment, updated semiannually
195 thereafter as applicable, setting forth the reasons and
196 justification, supported by clear and convincing evidence, for
197 its decisions to cease the investment prohibition in scrutinized
198 companies.

199 Section 2. Effective October 1, 2016, section 287.135,
200 Florida Statutes, is reenacted and amended to read:
201 287.135 Prohibition against contracting with scrutinized



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202 companies.—

203 (1) In addition to the terms defined in ss. 287.012 and
204 215.473, as used in this section, the term:

205 (a) “Awarding body” means, for purposes of state contracts,
206 an agency or the department, and for purposes of local
207 contracts, the governing body of the local governmental entity.

208 (b) “Business operations” means, for purposes specifically
209 related to Cuba or Syria, engaging in commerce in any form in
210 Cuba or Syria, including, but not limited to, acquiring,
211 developing, maintaining, owning, selling, possessing, leasing,
212 or operating equipment, facilities, personnel, products,
213 services, personal property, real property, military equipment,
214 or any other apparatus of business or commerce.

215 (c) “Local governmental entity” means a county,
216 municipality, special district, or other political subdivision
217 of the state.

218 (2) A company is ineligible to, and may not, bid on, submit
219 a proposal for, or enter into or renew a contract with an agency
220 or local governmental entity for goods or services of \$1 million
221 or more if ~~that~~, at the time of bidding or submitting a proposal
222 for a new contract or renewal of an existing contract, the
223 company:

224 (a) Is on the Scrutinized Companies that Boycott Israel
225 List, created pursuant to s. 215.4725;

226 (b) Is on the Scrutinized Companies with Activities in
227 Sudan List or the Scrutinized Companies with Activities in the
228 Iran Petroleum Energy Sector List, created pursuant to s.
229 215.473; ~~or~~

230 (c) Is engaged in business operations in Cuba or Syria, ~~is~~



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231 ~~ineligible for, and may not bid on, submit a proposal for, or~~
232 ~~enter into or renew a contract with an agency or local~~
233 ~~governmental entity for goods or services of \$1 million or more.~~

234 (3) ~~(a)~~ Any contract with an agency or local governmental
235 entity for goods or services of \$1 million or more entered into
236 or renewed on or after:

237 (a) July 1, 2011, through June 30, 2012, must contain a
238 provision that allows for the termination of such contract at
239 the option of the awarding body if the company is found to have
240 submitted a false certification as provided under subsection (5)
241 or been placed on the Scrutinized Companies with Activities in
242 Sudan List or the Scrutinized Companies with Activities in the
243 Iran Petroleum Energy Sector List.

244 (b) ~~Any contract with an agency or local governmental~~
245 ~~entity for goods or services of \$1 million or more entered into~~
246 ~~or renewed on or after July 1, 2012, through September 30, 2016,~~
247 must contain a provision that allows for the termination of such
248 contract at the option of the awarding body if the company is
249 found to have submitted a false certification as provided under
250 subsection (5), been placed on the Scrutinized Companies with
251 Activities in Sudan List or the Scrutinized Companies with
252 Activities in the Iran Petroleum Energy Sector List, or been
253 engaged in business operations in Cuba or Syria.

254 (c) October 1, 2016, must contain a provision that allows
255 for the termination of such contract at the option of the
256 awarding body if the company:

257 1. Is found to have submitted a false certification as
258 provided under subsection (5);

259 2. Has been placed on the Scrutinized Companies that



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260 Boycott Israel List;

261 3. Has been placed on the Scrutinized Companies with
262 Activities in Sudan List or the Scrutinized Companies with
263 Activities in the Iran Petroleum Energy Sector List; or

264 4. Has been engaged in business operations in Cuba or
265 Syria.

266 (4) Notwithstanding subsection (2) or subsection (3), an
267 agency or local governmental entity, on a case-by-case basis,
268 may permit a company on the Scrutinized Companies that Boycott
269 Israel List, the Scrutinized Companies with Activities in Sudan
270 List or the Scrutinized Companies with Activities in the Iran
271 Petroleum Energy Sector List, or a company with business
272 operations in Cuba or Syria, to be eligible for, bid on, submit
273 a proposal for, or enter into or renew a contract for goods or
274 services of \$1 million or more under the conditions set forth in
275 paragraph (a) or the conditions set forth in paragraph (b):

276 (a)1. With respect to a company on the Scrutinized
277 Companies with Activities in Sudan List or the Scrutinized
278 Companies with Activities in the Iran Petroleum Energy Sector
279 List, all of the following occur:

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

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

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

287 d. The company has adopted, has publicized, and is
288 implementing a formal plan to cease scrutinized business



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289 operations and to refrain from engaging in any new scrutinized
290 business operations.

291 2. With respect to a company engaged in business operations
292 in Cuba or Syria, all of the following occur:

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

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

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

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

302 3. With respect to a company on the Scrutinized Companies
303 that Boycott Israel List, all of the following occur:

304 a. The scrutinized business operations were made before
305 October 1, 2016.

306 b. The scrutinized business operations have not been
307 expanded or renewed after October 1, 2016.

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

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

315 (b) One of the following occurs:

316 1. The local governmental entity makes a public finding
317 that, absent such an exemption, the local governmental entity



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318 would be unable to obtain the goods or services for which the
319 contract is offered.

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

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

329 (5) At the time a company submits a bid or proposal for a
330 contract or before the company enters into or renews a contract
331 with an agency or governmental entity for goods or services of
332 \$1 million or more, the company must certify that the company is
333 not on the Scrutinized Companies that Boycott Israel List, the
334 Scrutinized Companies with Activities in Sudan List or the
335 Scrutinized Companies with Activities in the Iran Petroleum
336 Energy Sector List, or that it does not have business operations
337 in Cuba or Syria.

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



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347 local governmental entity shall bring a civil action against the
348 company. If a civil action is brought and the court determines
349 that the company submitted a false certification, the company
350 shall pay the penalty described in subparagraph 1. and all
351 reasonable attorney fees and costs, including any costs for
352 investigations that led to the finding of false certification.

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

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

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

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

371 (7) This section preempts any ordinance or rule of any
372 agency or local governmental entity involving public contracts
373 for goods or services of \$1 million or more with a company
374 engaged in scrutinized business operations.

375 (8) The contracting prohibitions in this section applicable



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376 to companies on the Scrutinized Companies with Activities in
377 Sudan List or the Scrutinized Companies with Activities in the
378 Iran Petroleum Energy Sector List or to companies engaged in
379 business operations in Cuba or Syria become ~~This section becomes~~
380 inoperative on the date that federal law ceases to authorize the
381 states to adopt and enforce such ~~the~~ contracting prohibitions ~~of~~
382 ~~the type provided for in this section.~~

383 Section 3. Except as otherwise expressly provided in this
384 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 Governmental Oversight and Accountability

BILL: CS/SB 86

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Negron

SUBJECT: Scrutinized Companies

DATE: October 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 86 requires the State Board of Administration (SBA) to identify and assemble a list of all companies that boycott Israel. The bill requires the SBA to update and make publicly available on a quarterly basis a Scrutinized Companies that Boycott Israel List (List). The list must be distributed to the trustees of the SBA, the President of the Florida Senate and the Speaker of the Florida House of Representatives.

The SBA must provide written notice to the companies that may be placed on the List and give those companies an opportunity to respond prior to the company becoming subject to investment prohibition and placement on the List.

In terms of its investment responsibilities relating to the Florida Retirement System (FRS) pension plan, the SBA is not permitted to acquire securities, as direct holdings, of companies that appear on the List. The bill provides an exception for securities that are not subject to this prohibition. The bill requires the investment policy statement for the FRS pension plan to be updated to include the limitations set forth in this bill.

CS/SB 86 limits governmental entities from contracting with scrutinized companies on the List. Specifically, the bill prohibits a state agency or local governmental entity from contracting for goods and services of \$1 million or more with a company that has been placed on the List. In addition, the bill requires certain governmental contracts to contain provisions allowing the awarding body to terminate the contract if a company is placed on the List. Additionally, the bill

requires certification by a company that the company is not on the List upon submission of bid or renewal of existing contract. A case-by-case exception is provided to state agencies and local governmental entities for contracting with companies on the List under specified circumstances.

The fiscal impact on state and local governments is indeterminate.

II. Present Situation:

State Board of Administration Investing Duties

The State Board of Administration (SBA) was created by Article IV, section 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, section 9 of the Florida Constitution and ch. 215, F.S.

The SBA has oversight over the Florida Retirement System (FRS) pension plan and the FRS investment plan, which represent approximately \$157.14 billion, or 87.3 percent, of the \$180 billion in assets managed by the SBA, as of June 30, 2015.¹ The pension plan is a defined benefit plan, and the investment plan is a defined contribution plan that employees may choose in lieu of the pension plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22.86 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.²

State Sponsors of Terrorism

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.³ The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act⁴; the Arms Export Control Act⁵; and the Foreign Assistance Act⁶. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.⁷

Currently, the State Department designates three countries under these authorities: Iran, Sudan and Syria.⁸ The chart below shows the date each country was designated a terrorist nation.

¹ State Board of Administration "Performance Report to the Trustees" dated June 30, 2015, and issued on August 12, 2015.

² *Id.*

³ U.S. Department of State, Diplomacy in Action can be found online at <http://www.state.gov/j/ct/list/c14151.htm> (last visited Sept. 9, 2015).

⁴ 50 U.S.C. App 2405(j)

⁵ 22 U.S.C. s. 2780

⁶ 22 U.S.C. s. 2371

⁷ See <http://www.state.gov/s/ct/c14151.htm>.

⁸ *Id.*

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

Cuba had been designated as a State Sponsor of Terrorism on March 1, 1982. In December 2014, President Obama requested the Secretary of State to review Cuba's designation as a state sponsor of terrorism, and to provide him a report within six months in regards to Cuba's support for international terrorism.⁹ On April 8, 2015, the Secretary of State completed his review and recommended to the President that Cuba no longer be designated as a state sponsor of terrorism.¹⁰

On April 14, 2015, the President submitted this report to Congress indicating the administration's intent to rescind Cuba's state sponsor of terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the previous six months and that Cuba has provided assurances that it will not support acts of international terrorism in the future.¹¹

After the 45-day Congressional pre-notification period expired, Cuba was officially removed from the list on May 29, 2015.¹²

Protecting Florida Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).¹³ The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities¹⁴ and are required to divest those securities if the companies¹⁵ do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.

⁹ U.S. Department of State, Diplomacy in Action, Recession of Cuba as a State Sponsor of Terrorism, at <http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm> (last visited on Sept. 15, 2015).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Chapter 2007-88, Laws of Florida; *also, see* Senate Bill 2142 (reg. session 2007).

¹⁴ Section 215.473(3)(c), F.S.

¹⁵ Section 215.473(3)(b), F.S.

The term “public fund” is defined as “all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.”¹⁶ This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

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

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website¹⁷, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations.¹⁸ Such correspondence continues semiannually.¹⁹
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment.²⁰ The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.²¹
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.²²
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to

¹⁶ Section 215.473(1)(r), F.S.

¹⁷ The quarterly reports are available at <http://www.sbafla.com/fsb/Portals/Internet/PFIA/CurrentProhibitedCompaniesList.pdf>

¹⁸ Section 215.473(3)(a)2., F.S.

¹⁹ *Id.*

²⁰ Section 215.473(3)(a)3., F.S.

²¹ *Id.*

²² Section 215.473(4)(a), F.S.

Sudan, and the United States Presidential Special Envoy to Iran.²³ The report must include the following:²⁴

- A summary of correspondence with engaged companies;
- A listing of all investments sold, redeemed, divested, or withdrawn;
- A listing of all prohibited investments;
- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
 - Darfur genocide has been halted for at least 12 months;²⁵
 - Sanctions imposed against the Government of Sudan are revoked;²⁶
 - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;²⁷
 - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;²⁸
 - Sanctions imposed against the government of Iran are revoked;²⁹ or
 - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.³⁰

Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.³¹ If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.³² Such condition is required to be updated semiannually.³³

²³ Section 215.473(4)(b), F.S.

²⁴ Section 215.473(4)(b)1.-5., F.S.

²⁵ Section 215.473(5)(a)1., F.S.

²⁶ Section 215.473(5)(a)2., F.S.

²⁷ Section 215.473(5)(a)3., F.S.

²⁸ Section 215.473(5)(b)1., F.S.

²⁹ Section 215.473(5)(b)2., F.S.

³⁰ Section 215.473(5)(b)3., F.S.

³¹ Section 215.473(7), F.S.

³² *Id.*

³³ *Id.*

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency³⁴ procurement of personal property and services.³⁵ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³⁶

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.³⁷ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.³⁸

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.³⁹

DMS is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;⁴⁰ creating uniform agency procurement rules;⁴¹ implementing the online procurement program;⁴² and establishing state term contracts.⁴³ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure

³⁴ 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.

³⁵ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

³⁶ See ss. 287.012(6) and 287.057, F.S.

³⁷ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. 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.

³⁸ See s. 287.057(3)(e), F.S.

³⁹ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁴⁰ Sections 287.032 and 287.042, F.S.

⁴¹ Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

⁴² Section 287.057(22), F.S.

⁴³ Sections 287.042(2) and 287.056, F.S.

goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Prohibition Against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency⁴⁴ or local governmental entity for goods or services of \$1 million or more. “Local governmental entity,” for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(b), F.S., provides that any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have been engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:

- The scrutinized business operations⁴⁵ were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

⁴⁴ Agency is defined in s. 287.012(1), F.S., as 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. Also, see s. 287.135(1), F.S. Definitions contained in ss. 287.012 and 215.473, F.S. are incorporated into s. 287.135, F.S.

⁴⁵ Section 215.473(1)(t), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.

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

Section 287.135(4)(a)2., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operation in Cuba or Syria.⁴⁶

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90 days to respond in writing to such determination.⁴⁷ If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body *must* bring a civil action against the company.⁴⁸ If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).⁴⁹ Also, a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.⁵⁰ The company is ineligible to bid on any

⁴⁶ Section 287.135(5), F.S.

⁴⁷ Section 287.135(5)(a), F.S.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Section 287.135(5)(a)1., F.S.

contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.⁵¹ A civil action to collect the penalties must commence within 3 years after the date the false certification is made.⁵²

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(7), F.S., specifies that this section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

Section 287.135 (8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

III. Effect of Proposed Changes:

Section 1 creates s. 215.4725, F.S., entitled “Investment Prohibition by the State Board of Administration; companies that boycott Israel,” and defines certain terms. This section is effective upon becoming a law.

The section defines “boycott Israel” or “boycott of Israel” as refusing to deal, terminating business activities, or taking other actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than a business, investment or commercial reason. This definition does not apply to:

1. Decisions made during course of a company’s ordinary business; or
2. For other business, investment or commercial reasons.

Also, a statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of calls for a boycott of Israel, may be considered by the SBA as evidence that a company is participating in a boycott of Israel.

The term “company” is defined as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, that exists for the purpose of making profit.

“Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

⁵¹ Section 287.135(5)(a)2., F.S.

⁵² Section 287.135(5)(b), F.S.

“Indirect holdings” in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the public fund owns shares or interests together with other investors not subject to this section or which are held in an index fund.

"Public fund" is defined as all funds, assets, trustee; and other designates under the State Board of Administration pursuant to Part I of Chapter 121. This means only those assets of the Florida Retirement System pension plan are impacted.

The term “scrutinized companies” is defined as companies that boycott Israel or engage in a boycott of Israel.

By August 1, 2016, SBA is required to use its best efforts to identify all scrutinized companies that boycott Israel in which the SBA has direct or indirect holdings or could possibly have such holdings in the future. The bill directs the SBA to use the following efforts to identify scrutinized companies:

1. Reviewing and relying, as appropriate in the SBA’s judgment, on publicly available information regarding companies that boycott Israel, such as nonprofit organizations, research firms, international organizations, and government entities;
2. Contacting asset managers contracted by the SBA for information regarding companies that boycott Israel; and
3. Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

By its first meeting following the identification of scrutinized companies, the SBA must compile and make available the Scrutinized Companies that Boycott Israel List. The SBA is required to update and make publicly available quarterly the Scrutinized Companies that Boycott Israel List based on unfolding information from other sources, including publicly available information, asset managers contracted by SBA and other institutional investors.

The SBA must immediately determine companies on the Scrutinized Companies that Boycott Israel List in which the SBA owns direct or indirect holdings.

This section requires the SBA to send written notice informing a company when it is identified as a scrutinized company and advising the company that it may become subject to investment prohibition by the SBA. Such notice must inform the company of the opportunity to clarify activities, evidence of boycott of Israel and encourage the company, within 90 days, to cease the boycott of Israel in order to avoid qualifying for investment prohibition by the SBA.

If, within 90 days after notification by the SBA, a company ceases a boycott of Israel, that company will be removed from the Scrutinized Companies that Boycott Israel List, and the provisions of this bill shall cease to apply to that company unless such company resumes a boycott of Israel.

Further, this section prohibits the SBA from acquiring securities of companies on the Scrutinized Companies that Boycott Israel List as direct holdings. Certain securities, however, are excluded

from the prohibition of acquiring securities of companies on the Scrutinized Companies that Boycott Israel List. These securities include the following:

1. Indirect holdings;
2. Securities that are not publicly traded. These are deemed to be indirect holdings;
3. Alternative investment as defined by s. 215.4401, F.S.⁵³ These are deemed to be indirect holdings; and
4. Exchange-traded funds.

For indirect holdings of the SBA, the SBA is required to submit letters to managers of investment funds which contain companies that boycott Israel requesting that such companies be removed from the fund or create a similar fund having indirect holdings devoid of companies that boycott Israel. If the investment manager creates a similar fund, the SBA is required to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

The SBA is required to file a report with each member of the SBA, the President of the Florida Senate, and the Speaker of the Florida House of Representatives within 30 days after the List is created. Such report shall be made available to the public.

At each quarterly meeting, the SBA must file a report, which shall be made available to the public and to each member of the SBA, the President of the Senate, and the Speaker of the House of Representatives. This report must include the following:

- A summary of correspondence with companies identified as scrutinized companies;
- All prohibited investments;
- A description of any progress related to external managers of investment funds offering holdings devoid of companies that boycott Israel; and
- A list of all publicly traded securities held directly by the SBA.

The SBA is required to adopt and incorporate the obligations of this act into the SBA's investment policy statement as set forth in s. 215.475, F.S.⁵⁴

Notwithstanding any other provisions of this act to the contrary, the SBA may cease the investment prohibitions contained in the bill in certain scrutinized companies if clear and convincing evidence shows the value of the assets under management of the SBA becomes equal

⁵³ Section 215.4401(3)(a)1., F.S., defines "alternative investment" as an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

⁵⁴ Section 215.475, F.S., entitled 'Investment policy statement' provides:

(1) In making investments for the System Trust Fund pursuant to ss. [215.44-215.53](#), the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

(2) Prior to any recommended changes in the IPS being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the IPS or changes in the IPS.

to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets under management of the SBA. For cessation of these investment prohibitions, the SBA must submit a written report to the Board of Trustees, the President of the Florida Senate and the Speaker of the Florida House of Representatives in advance of the new investment, setting forth its justification supported by clear and convincing evidence. Such condition is required to be updated semiannually.

Section 2 amends and reenacts s. 287.135, F.S., regarding prohibition against contracting with scrutinized companies. This section is effective October 1, 2016.

Each state agency or local governmental entity is prohibited from contracting for goods and services of \$1 million or more if the company has been placed on the Scrutinized Companies that Boycott Israel List.

Any contract with a state agency or local governmental entity for goods and services of \$1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that authorizes the termination of the contract by the awarding body if the company:

- Is found to have submitted a false certification regarding non-placement on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria;
- Has been placed on the Scrutinized Companies that Boycott Israel List;
- Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
- Has been engaged in business operations in Cuba or Syria.

A state agency or local governmental entity is permitted to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies that Boycott Israel List if all of the following occur:

- The business operations were made before October 1, 2016;
- The business operations have not been expanded or renewed after October 1, 2016;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the bill requires the company to certify that the company is not on the Scrutinized Companies that Boycott Israel List.

Section 3 provides that the bill takes effect upon becoming a law except as expressly provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Companies that choose to boycott Israel may not be eligible to contract with state and local governmental entities in Florida. In addition, any investment instruments of those companies may not be held by the SBA as an asset of the FRS pension plan.

C. Government Sector Impact:

Indeterminate. State agencies and local governments will not be permitted to contract with certain companies that boycott Israel in certain instances. This may eliminate companies that would otherwise have been the least expensive source for certain goods and services.

The State Board of Administration will not be permitted to hold certain investments relating to companies that boycott Israel. The financial impact of this limitation is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4725 of the Florida Statutes.

This bill amends section 287.135 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on October 6, 2015

CS/SB 86 differs from SB 86 in the following ways:

- Limits the newly scrutinized companies to those that boycott Israel rather than companies that boycott any member of the World Trade Organization or other nation with a trade agreement with the United States.
- Limits the State Board of Administration's obligations to new acquisitions of securities related to the scrutinized companies rather than divesting in current holdings relating those companies.
- Limits the application of the investment limitations to the assets of the Florida Retirement System pension plan rather than the pension plan and the investment plan.
- Limits the contractual restrictions to contracts worth \$1 million or more rather than a total potential value of less than \$10,000 or to contracts in which a business agrees to provide the goods or services at a cost at least 20 percent less than the next lowest bidder.

- B. **Amendments:**

None.

By Senator Negrón

32-00025-16

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1 A bill to be entitled
 2 An act relating to state contracts; creating s.
 3 215.4725, F.S.; prohibiting a public entity from
 4 entering into specified contracts; providing an
 5 exception; defining terms; providing applicability;
 6 amending s. 215.473, F.S.; prohibiting a company from
 7 contracting with the state if the company appears on
 8 the Scrutinized Companies with Activities in the Iran
 9 Petroleum Energy Sector List; requiring a public fund
 10 to send a written notice to a specified company in
 11 certain circumstances; granting the company an
 12 opportunity to comment in writing; providing for the
 13 removal of the company from the list in certain
 14 circumstances; providing an exception; requiring the
 15 determination to be entered into the procurement
 16 record; requiring a company that attempts to contract
 17 with the state to certify that the company or the
 18 assignee is not on the list; requiring the state
 19 agency to include certification information in the
 20 procurement record; providing an exception; defining
 21 terms; prohibiting a company that contracts with the
 22 state from entering into a subcontract with any
 23 company on the list; requiring the state agency or
 24 public entity to review specified information and
 25 offer the company an opportunity to respond;
 26 authorizing the state agency or entity to take
 27 appropriate actions as provided by law; requiring
 28 specified bid proposals to contain a specified
 29 statement signed under oath or affirmation by the

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

32-00025-16

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30 bidder under the penalty of perjury; providing
 31 applicability; authorizing the bidder to
 32 electronically submit the statement of noninvestment
 33 in the Iranian energy sector; requiring the bidder to
 34 provide a signed statement with specified information
 35 if the bidder cannot meet the certification
 36 requirements; authorizing a political subdivision to
 37 award a bid to a bidder who cannot meet the
 38 certification requirements in certain circumstances;
 39 providing an effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Section 215.4725, Florida Statutes, is created
 44 to read:

45 215.4725 Public entity contracts.—

46 (1) All contracts between a public entity and a business
 47 for supplies, services, information technology, or construction
 48 must include a representation by the business that it is not
 49 engaged in and will not engage in the boycott of any person or
 50 entity that is based in, or doing business with, a jurisdiction
 51 with which the state enjoys open trade. For purposes of this
 52 subsection, the term:

53 (a) "Boycott" means to blacklist, divest from, or otherwise
 54 refuse to engage with a person or entity on the basis of the
 55 race, color, religion, gender, or national origin of the person
 56 or entity. The term does not include:

57 1. A decision by a business that is based on economic
 58 reasons or the specific conduct of the person or entity;

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59 2. A boycott against a public entity of a foreign state if
60 the boycott is applied in a nondiscriminatory manner; and

61 3. Conduct required for compliance with applicable law in
62 the business's home jurisdiction.

63 (b) "Jurisdiction with which the state can enjoy open
64 trade" means members of the World Trade Organization and those
65 jurisdictions with whom the United States has free trade or
66 other agreements aimed at ensuring open and nondiscriminatory
67 trade relations.

68 (c) "Public entity" means the state, any of its departments
69 or agencies, or any political subdivision of the state.

70 (2) This section does not apply to contracts in which a
71 business agrees to provide the goods or services at a cost at
72 least 20 percent less than the next lowest bidder, or to
73 contracts with a total potential value of less than \$10,000.

74 Section 2. Present subsections (4) and (5) of section
75 215.473, Florida Statutes, are redesignated as subsections (5)
76 and (6), respectively, and a new subsection (4) is added to that
77 section, to read:

78 215.473 Divestiture by the State Board of Administration;
79 Sudan; Iran.—

80 (4) STATE CONTRACTS.—

81 (a) If a company appears on the Scrutinized Companies with
82 Activities in the Iran Petroleum Energy Sector List due to
83 engaging in investment activities in Iran as described in
84 subparagraph (1)(u)4., the company may not contract with the
85 state beginning 90 days after receiving notification of such
86 status unless the company meets an exception provided in
87 subparagraph 1. or subparagraph 2. A public fund shall send a

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88 written notice to the company specifying that it may be removed
89 from the list if it ceases its engagement in investment
90 activities in Iran. The company shall be granted an opportunity
91 to comment in writing that it is not engaged in such activities.
92 If the company demonstrates to the public fund that it is not
93 engaged in investment activities in Iran, the company shall be
94 removed from the list. A company engaged in investment
95 activities in Iran may contract with the state only if:

96 1. The investment activities in Iran were made before
97 January 1, 2016, the investment activities in Iran have not been
98 expanded or renewed after the effective date of this act, and
99 the company has adopted, publicized, and is implementing a
100 formal plan to cease the investment activities in Iran and to
101 refrain from engaging in any new investments in Iran; or

102 2. The state agency makes a determination that the
103 commodities or services are necessary to perform its functions
104 and that, absent such an exemption, the state agency would be
105 unable to obtain the commodities or services for which the
106 contract is offered. The determination shall be entered into the
107 procurement record.

108 (b) A company that seeks a contract with the state,
109 including a contract renewal or assumption, must certify, when
110 the bid is submitted or the contract is entered into, renewed,
111 or assigned, that the company or the assignee does not appear on
112 the Scrutinized Companies with Activities in the Iran Petroleum
113 Energy Sector List. The state agency shall include certification
114 information in the procurement record. Certification is not
115 required for contracts between public procurement units or
116 contracts between public procurement units and external

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117 procurement activities. For the purposes of this paragraph, the
 118 term:

119 1. "External procurement activity" means the procurement
 120 activity of a buying organization located outside this state
 121 which would qualify as a public procurement unit or the
 122 procurement activity of the United States Government.

123 2. "Local public procurement unit" means any political
 124 subdivision or unit that expends public funds for the
 125 procurement of supplies, services, or construction.

126 3. "Public procurement unit" means a local public
 127 procurement unit or a state public procurement unit.

128 4. "State public procurement unit" means the offices of the
 129 chief procurement officers and any other purchasing agency of
 130 the state.

131 (c) A company that contracts with the state may not enter
 132 into a subcontract under the contract with the state with any
 133 company on the Scrutinized Companies with Activities in the Iran
 134 Petroleum Energy Sector List.

135 (d) Upon receiving information that a company that made the
 136 certification required by paragraph (b) is engaged in activity
 137 contrary to the certification, the state agency or entity shall
 138 review such information and offer the company an opportunity to
 139 respond. If, within 90 days after it is determined that the
 140 company is engaged in such activity, the company fails to
 141 demonstrate that it has ceased the activity, the state agency or
 142 entity may take such action as appropriate and provided for by
 143 law, rule, or contract, including, but not limited to, imposing
 144 sanctions, seeking compliance, recovering damages, or declaring
 145 the contractor in default.

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146 (e) If competitive bidding is required by statute, rule,
 147 regulation, or local law for work or services performed or to be
 148 performed or goods sold or to be sold, any bid or proposal
 149 submitted to a political subdivision of the state or an official
 150 thereof shall contain the following statement signed under oath
 151 or affirmation by the bidder under penalty of perjury:

152
 153 By submission of this bid, each bidder and each person signing
 154 on behalf of such bidder and, in the case of a joint bid, each
 155 party thereto, certifies as to its own organization, under
 156 penalty of perjury, that to the best of its knowledge and belief
 157 such bidder does not appear on the Scrutinized Companies with
 158 Activities in the Iran Petroleum Energy Sector List.

159
 160 This paragraph does not apply to, and certification is not
 161 required for, contracts between public procurement units or
 162 contracts of public procurement units for external procurement
 163 activities, as those terms are defined in paragraph (b).

164 (f) A bidder may submit the statement of noninvestment in
 165 the Iranian energy sector electronically.

166 (g) If a bidder cannot make the certification required in
 167 paragraph (e), it shall provide with the bid a signed statement
 168 that cites the reasons for failing to do so. A political
 169 subdivision may award a bid to a bidder who cannot make the
 170 certification if:

171 1. The investment activities in Iran were made before
 172 January 1, 2016, the investment activities in Iran have not been
 173 expanded or renewed after the effective date of this act, and
 174 the company has adopted, publicized, and is implementing a

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175 formal plan to cease the investment activities in Iran and to
176 refrain from engaging in any new investments in Iran; or
177 2. The political subdivision makes a determination that the
178 goods or services that are the subject of the contract are
179 necessary for the political subdivision to perform its functions
180 and that, absent such an exception, the political subdivision
181 would be unable to obtain them. The determination shall be made
182 in writing and is a public document.

183 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

10-6-2015

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

SB 86

Bill Number (if applicable)

Meeting Date

Topic SB 86

Amendment Barcode (if applicable)

Name Derek

Job Title Student

Address 318 Park North Court

Phone 407-666-1627

Street Winter Park FL 32789

Email dgs12@my.fsu.edu

City State Zip

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

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/6/15
Meeting Date

S 86
Bill Number (if applicable)

Topic S 86 - ~~Israel~~ Israel Boycott

771786
Amendment Barcode (if applicable)

Name ASH WILLIAMS

Job Title Exec Dir & CIO FL SBA

Address 1801 Hermitage Blvd
Street

Phone 850 413 1250

Tallahassee FL 32308
City State Zip

Email ash

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL SBA

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.

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 Governmental Oversight and Accountability

BILL: SPB 7008

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Fair Housing Act

DATE: October 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		GO Submitted as Committee Bill
2.				
3.				

I. Summary:

SPB 7008 allows a person who alleges housing discrimination to file a civil action in a Florida court of law regardless of whether a complaint has been filed with the Florida Commission on Human Relations or a local housing discrimination agency, unless a conciliation agreement has been obtained.

The purpose of the legislation is to ensure that the Florida Commission on Human Relations continues to be eligible to contract with the U.S. Department of Housing and Urban Development (HUD) regarding housing discrimination cases. HUD has informed the Florida Commission on Human Relations that the Commission will no longer receive federal monies for investigations, administrative costs and training unless the Florida Fair Housing Act is amended to overcome the judicially-created requirement that a state court plaintiff exhaust his or her administrative remedies as a precondition to filing a housing discrimination claim in state court. The federal funds at risk are approximately \$600,000 annually (roughly 15.5 percent of the Commissions total budget).

II. Present Situation:

Florida Commission on Human Relations

Chapter 760, F.S., ensures that all individuals in Florida are protected against discrimination in areas of employment, housing and other opportunities based on race, color, religion, sex, pregnancy,¹ national origin, age, handicap, or marital or familial status. Section 760.03, F.S., creates the Florida Commission on Human Relations (Commission) and authorizes the Commission to carry out the purposes of ch. 760, F.S. Section 760.04, F.S., assigns the

¹ Chapter 2015-68, Laws of Florida; *see also* Senate Bill 982 (Reg. Session 2015).

Commission to the Department of Management Services (DMS); however, the Commission is not subject to any control, or supervision by, or direction from DMS.

The Commission is comprised of 12 individuals appointed by the Governor and confirmed by the Senate.² The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.³ At least one member of the Commission must be 60 years of age or older.⁴ The Commission is empowered to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging any discriminatory practice.⁵

Florida Fair Housing Act

Part II of Chapter 760, F.S., constitutes the Florida Fair Housing Act (FFHA). It is the state's policy, as provided in s. 760.21, F.S., to provide for fair housing throughout the state. Part II defines what constitutes unlawful housing discrimination. For example, it is unlawful to refuse to sell or rent, or otherwise make unavailable, or deny, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.⁶ In addition, protection is afforded to an individual who is pregnant or in the process of securing legal custody of a child 18 years of age or younger, or an individual who is handicapped or is associated with a handicapped person.⁷

Enforcement of the Florida Fair Housing Act

Section 760.34(1), F.S., provides that any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with the Commission. The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.⁸ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁹ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.¹⁰ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may commence a civil action or petition for an administrative determination.¹¹

² Section 760.03(1), F.S.

³ Section 760.03(2), F.S.

⁴ *Id.*

⁵ Section 760.06(5), F.S.

⁶ Section 760.23(1), F.S.

⁷ Sections 760.23(6)-(9), F.S.

⁸ Section 760.34(2), F.S.

⁹ Section 760.34(1), F.S.

¹⁰ *Id.*

¹¹ Section 760.34(4), F.S.

Section 760.34(8), F.S., provides that any local agency certified as substantially equivalent¹² may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with the local fair housing law. The local agency need not petition for an administrative hearing or exhaust its administrative remedies prior to bringing a civil action.¹³

Civil Actions and Relief

Section 760.35, F.S., provides for civil actions and administrative relief. A civil action must be commenced no later than two years after the alleged discriminatory act occurred.¹⁴ The court can continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.¹⁵ If the court finds that a discriminatory housing practice has occurred, it is to issue an order prohibiting the practice and providing affirmative relief.¹⁶ If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding or the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.¹⁷

Federal Discrimination Housing Law

In addition to adhering to the state discrimination laws, the Commission abides by federal discrimination laws. Through annual work-share agreements with HUD, the Commission, certified as a substantially equivalent agency,¹⁸ accepts and investigates housing discrimination cases from HUD. Federal housing discrimination laws are contained in Title VIII (Fair Housing Act) of the federal Civil Rights Act of 1968.¹⁹ The Commission is reimbursed by HUD for closing housing cases; such funds are deposited into the Commission's trust fund. Trust fund monies received from HUD in FY 2014-15 totaled \$604,978 which is up from the FY 2013-14 total of \$516,536.²⁰

¹² See Section 760.22(9), F.S. (For substantial equivalence certification, a state or local agency applies for certification and the U.S. Dep't of Housing and Urban Development determines if the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions substantially equivalent to the federal Fair Housing Act. See U.S. Department of Housing and Urban Development, Substantial Equivalence Certification, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/equivalency (last visited Aug. 3, 2015)).

¹³ Section 760.34(8), F.S.

¹⁴ Section 760.35(1), F.S.

¹⁵ *Id.*

¹⁶ Section 760.35(2), F.S.

¹⁷ Section 760.35(3), F.S.

¹⁸ See U.S. Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies (last visited Aug. 3, 2015). Providing a list of agencies participating in the FHAP with HUD.

¹⁹ 42 U.S.C. ch. 45. 3601-3619; See 42 U.S.C. 3631 for penalties for violations.

²⁰ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (on file with the Governmental Oversight and Accountability Committee).

FY 2010-2011 through FY 2014-2015 Housing Related Complaints

According to the Commission’s FY 2010-11 through FY 2014-15 Annual Reports, housing complaints represented on average 15 percent of all complaints received by the Commission. From FY 2010-11 through FY 2014-15, 1009 cases were closed, distributed as follows:

Closure Type	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
No Cause	171 (64%)	126 (69%)	92 (50%)	138 (73%)	123 (67%)
Administrative Closure	46 (17%)	15 (8%)	50 (27%)	29 (15%)	52 (28%)
Cause	20 (7%)	14 (8%)	4 (2%)	11 (6%)	0 (0%)
Settlement	16 (6%)	16 (9%)	18 (10%)	0 (0%)	0 (0%)
Withdrawal with Benefits	16 (6%)	11 (6%)	19 (11%)	12 (6%)	10 (5%)
Total Closures	269	182	183	190	185

State Law Regarding Avenues of Relief for Complaints Under the Florida Fair Housing Act

Florida’s Fourth District Court of Appeal held in the 2004 case, *Belletete v. Halford*, that individuals claiming discrimination under the FFHA must exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative remedies.²¹ In 2012, the Fourth DCA reiterated that the Florida Fair Housing Act, as interpreted by that court, requires exhaustion of administrative remedies as a condition precedent to a civil suit.²² The court did not rule on that particular issue because it was moot.²³ The Florida Supreme Court has not addressed this issue yet, leaving the 4th DCA decision the only one on point in the state court system.

However, in a case brought before the U.S. District Court for the Southern District of Florida and decided in 2010, the Florida Attorney General, in a motion to intervene, stated that “as co-enforcer with the Florida Commission on Human Relations of the FFHA, it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy.”²⁴ The U.S. District court agreed that the Fourth DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before filing a civil lawsuit in a cause of action grounded in the FFHA.²⁵

²¹ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); See also *Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The Doctrine of Exhaustion of Administrative Remedies stands generally for the proposition that judicial intervention in executive branch decision making is precluded where administrative procedures can afford the relief a litigant seeks.

²² *Sun Harbor Homeowners’ Ass’n, Inc. v. Bonura*, 95 So. 3d 262 (Fla. 4th DCA 2012).

²³ *Id.*

²⁴ *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436, at 1 (S.D. Fla. 2010).

²⁵ *Id.* at 2. The court held that the FFHA should be interpreted similarly to the federal Fair Housing Act, which has been interpreted by federal courts as allowing for actions in court whether or not all administrative remedies have been exhausted.

U.S. Housing and Urban Development Response

Based upon the Fourth DCA holdings in *Belletete v. Halford*, HUD notified the Commission that the agency will no longer receive federal monies for investigations, administrative costs and training if the FFHA is not amended to overcome the judicially-created requirement that a state court plaintiff must exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.²⁶ HUD has agreed to extend the deadline for the Commission to have the FFHA amended until March 12, 2016.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 760.07, F.S., by deleting the term “housing.” A plaintiff will no longer be required to exhaust his or her administrative remedies in an unlawful housing discrimination case. Such plaintiff will now be permitted to file a civil case in a Florida court of law without filing a complaint with the Commission or a local housing discrimination agency and waiting for final resolution.

Section 2 amends s. 760.34, F.S., to remove the requirement that a person must wait until the expiration of the 180 day time period after filing a complaint with the Commission or expiration of the 180 day time period after referral of the complaint to local fair housing agency before a person may commence a civil action.

This section is also amended to allow a person who was injured by a discriminatory housing practice to commence a civil action at any time and is not required to have petitioned for an administrative hearing or exhausted administrative remedies before initiating the civil action.

Section 3 amends s. 760.35, F.S., to provide that an aggrieved person may commence a civil action whether a complaint has been filed with the Commission pursuant to s. 760.34(1), F.S., and without regard to the status of such complaint.

If the Commission has obtained a conciliation agreement with consent of the aggrieved person, no civil action may be filed by the aggrieved person except to enforce the terms of such agreement. Also, an aggrieved person may not bring a civil action regarding a discriminatory housing practice if an administrative law judge has commenced a hearing on the record for such charge.

Section 4 provides an effective date of July 1, 2016.

²⁶ Letter from HUD to Michelle Wilson, Executive Director, Florida Commission on Human Relations, dated July 8, 2015 (copy on file with the Senate Governmental Oversight and Accountability Committee).

²⁷ *Id.*

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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 engaged in the housing industry may experience indeterminate effects as a result of the bill.

C. Government Sector Impact:

The Commission will incur no fiscal or workload impact related to the enactment of this bill.²⁸ While the Commission maintains that a Floridian aggrieved by a discriminatory housing practice already may commence a civil action without first filing a complaint for an administrative remedy, this bill confirms for individuals in the jurisdiction of the Fourth DCA that they can bypass the investigation and conciliation process in order to better access Florida's court system.

According to the Commission, if the proposed bill does not pass, this agency would continue to investigate any complaints of housing discrimination directly filed with the Commission; however, they would no longer receive or investigate cases for HUD.²⁹ Potentially, the Commission will no longer receive funding from HUD for investigations, administrative costs, or training.³⁰ The Commission received \$604,978 from HUD in FY

²⁸ E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 20, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

²⁹ E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 19, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

³⁰ See *supra* note 26.

2014-15.³¹ HUD has indicated to the Commission that cases previously referred to the Commission by HUD would have to be investigated by HUD.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 760.07, 760.34, and 760.35 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³¹ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

³² *Id.*

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00140B-16

20167008pb

A bill to be entitled

An act relating to housing discrimination; amending s. 760.07, F.S.; removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; amending s. 760.34, F.S.; making technical changes; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; providing that the aggrieved person does not need to take specified actions before bringing a civil action; amending s. 760.35, F.S.; authorizing, rather than requiring, a civil action to commence within 2 years after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of whether a specified complaint has been filed and regardless of the status of any such complaint; prohibiting an aggrieved person from filing a specified action in certain circumstances; providing an exception; prohibiting an aggrieved person from commencing a specified civil action if an administrative law judge has commenced a hearing on the record on the allegation; providing an effective date.

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

Section 1. Section 760.07, Florida Statutes, is amended to

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

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read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute that makes ~~making~~ unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, ~~housing,~~ or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 2. Subsections (2) and (4) of section 760.34, Florida Statutes, are amended to read:

760.34 Enforcement.—

(2) Any person who files a complaint under subsection (1) must ~~do so be filed~~ within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her

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59 answer at any time. Both the complaint and the answer shall be
60 verified.

61 ~~(4) If, within 180 days after a complaint is filed with the~~
62 ~~commission or within 180 days after expiration of any period of~~
63 ~~reference under subsection (3), the commission has been unable~~
64 ~~to obtain voluntary compliance with ss. 760.20-760.37, The~~
65 person aggrieved may commence a civil action in any appropriate
66 court against the respondent named in the complaint or petition
67 for an administrative determination pursuant to s. 760.35 to
68 enforce the rights granted or protected by ss. 760.20-760.37.
69 The person aggrieved is not required to petition for an
70 administrative hearing or exhaust administrative remedies before
71 bringing a civil action. If, as a result of its investigation
72 under subsection (1), the commission finds there is reasonable
73 cause to believe that a discriminatory housing practice has
74 occurred, at the request of the person aggrieved, the Attorney
75 General may bring an action in the name of the state on behalf
76 of the aggrieved person to enforce the provisions of ss. 760.20-
77 760.37.

78 Section 3. Section 760.35, Florida Statutes, is amended to
79 read:

80 760.35 Civil actions and relief; administrative
81 procedures.-

82 (1) An aggrieved person may commence a civil action ~~shall~~
83 ~~be commenced~~ no later than 2 years after an alleged
84 discriminatory housing practice has occurred. However, the court
85 shall continue a civil case brought pursuant to this section or
86 s. 760.34 from time to time before bringing it to trial if the
87 court believes that the conciliation efforts of the commission

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88 or local agency are likely to result in satisfactory settlement
89 of the discriminatory housing practice complained of in the
90 complaint made to the commission or to the local agency and
91 which practice forms the basis for the action in court. Any
92 sale, encumbrance, or rental consummated prior to the issuance
93 of any court order issued under the authority of ss. 760.20-
94 760.37 and involving a bona fide purchaser, encumbrancer, or
95 tenant without actual notice of the existence of the filing of a
96 complaint or civil action under the provisions of ss. 760.20-
97 760.37 shall not be affected.

98 (2) An aggrieved person may commence a civil action under
99 this section regardless of whether a complaint has been filed
100 under s. 760.34(1) and regardless of the status of any such
101 complaint. If the commission has obtained a conciliation
102 agreement with the consent of an aggrieved person under s.
103 760.36, the aggrieved person may not file any action under this
104 section regarding the alleged discriminatory housing practice
105 that forms the basis for the complaint except for the purpose of
106 enforcing the terms of such an agreement.

107 (3) An aggrieved person may not commence a civil action
108 under this section regarding an alleged discriminatory housing
109 practice if an administrative law judge has commenced a hearing
110 on the record on the allegation.

111 ~~(4)(2)~~ If the court finds that a discriminatory housing
112 practice has occurred, it shall issue an order prohibiting the
113 practice and providing affirmative relief from the effects of
114 the practice, including injunctive and other equitable relief,
115 actual and punitive damages, and reasonable attorney ~~attorney's~~
116 fees and costs.

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117 ~~(5)(3)~~(a) If the commission is unable to obtain voluntary
 118 compliance with ss. 760.20-760.37 or has reasonable cause to
 119 believe that a discriminatory practice has occurred:
 120 1. The commission may institute an administrative
 121 proceeding under chapter 120; or
 122 2. The person aggrieved may request administrative relief
 123 under chapter 120 within 30 days after receiving notice that the
 124 commission has concluded its investigation under s. 760.34.
 125 (b) Administrative hearings shall be conducted pursuant to
 126 ss. 120.569 and 120.57(1). The respondent must be served written
 127 notice by certified mail. If the administrative law judge finds
 128 that a discriminatory housing practice has occurred or is about
 129 to occur, he or she shall issue a recommended order to the
 130 commission prohibiting the practice and recommending affirmative
 131 relief from the effects of the practice, including quantifiable
 132 damages and reasonable attorney ~~attorney's~~ fees and costs. The
 133 commission may adopt, reject, or modify a recommended order only
 134 as provided under s. 120.57(1). Judgment for the amount of
 135 damages and costs assessed pursuant to a final order by the
 136 commission may be entered in any court having jurisdiction
 137 thereof and may be enforced as any other judgment.
 138 (c) The district courts of appeal may, upon the filing of
 139 appropriate notices of appeal, review final orders of the
 140 commission pursuant to s. 120.68. Costs or fees may not be
 141 assessed against the commission in any appeal from a final order
 142 issued by the commission under this subsection. Unless
 143 specifically ordered by the court, the commencement of an appeal
 144 does not suspend or stay an order of the commission.
 145 (d) This subsection does not prevent any other legal or

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146 administrative action provided by law.
 147 Section 4. This act shall take effect July 1, 2016.

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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 Governmental Oversight and Accountability

BILL: SPB 7010

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Individuals with Disabilities

DATE: October 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		Go Submitted as Committee Bill
2.				
3.				

I. Summary:

SPB 7010 modifies the State of Florida’s employment policy to provide enhanced opportunities for persons who have a disability to be employed by executive branch agencies. Specifically, the bill requires each executive agency to:

- Establish annual goals in its affirmative action plan that ensures full utilization of underrepresented groups in agency’s workforce, including individuals who have a disability;
- Report annually its progress toward increasing employment of individuals who have a disability; and
- Develop by January 1, 2017, an agency-specific plan on promoting employment opportunities for individuals who have a disability.

Additionally, the bill directs the Department of Management Services (DMS) to:

- Develop and implement programs geared toward individuals who have a disability in consultation with Agency for Persons with Disabilities, Division of Vocational Rehabilitation and Division of Blind Services of the Department of Education, Department of Economic Opportunity, and Executive Office of the Governor;
- Develop mandatory training programs for human resources personnel and hiring managers of executive agencies that support the employment of individuals who have a disability;
- Assist executive agencies with implementing the agency-specific plans and strategies for retaining employees who have a disability;
- Compile data on hiring practices of executive agencies regarding hiring of individuals who have a disability and post this information on the agency’s website; and
- Adopt rules relating to forms providing for voluntary self-identification of individuals who have a disability who are employed by executive agency.

The bill creates the Employment First Act requiring an interagency cooperative agreement among specified state agencies and organizations to ensure a long-term commitment to improve employment for individuals who have a disability.

The bill appropriates \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund and authorizes two full time equivalent (FTE) positions for DMS to implement this act. Also, the sum of \$88,285 from the General Revenue Fund and the sum of \$76,671 from trust funds within the Human Resource Services appropriation category are appropriated to Administered Funds.

The bill provides for an effective date of July 1, 2016.

II. Present Situation:

According to the United States Census Bureau, individuals who have a disability make up approximately 13.4 percent of the population of Florida, and 10.1 percent of individuals ages 18 to 64 (working age) have a disability.¹ In 2014, 20.6 percent of working aged individuals who have a disability lived below the federal poverty line in Florida, compared with 13.7 percent of individuals without a disability.²

Individuals who have a disability experience significant disparities in employment and participation in the workforce.³ For example, 17.9 percent of individuals who have a disability are employed in Florida, while over 61.3 percent of those who do not have a disability are employed.⁴ The trend is similar nationally with an 11.2 percent unemployment rate for individuals who have a disability and a 5 percent unemployment rate for individuals without a disability.⁵ According to the National Disability Institute (NDI), many of these individuals would like to find employment, but are concerned if they earn more money it will cause them to lose disability and health benefits.⁶

¹ U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Disability Characteristics for Civilian Noninstitutionalized Population, 2014 American Community Survey 1-year Estimates*, Report S1810, searchable database available at <http://factfinder.census.gov/> (last visited Sept. 29, 2015).

² U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2014, American Community Survey 1-year Estimates*, Report S1811, searchable database available at <http://factfinder.census.gov/> (last visited Sept. 29, 2015).

³ American Institutes for Research, *An Uneven Playing Field: The Lack of Equal Pay for People with Disabilities*, p. 2, December 2014, available at http://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities_Dec%2014.pdf (last visited Sept. 29, 2015).

⁴ Supra note 2.

⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Employment Status of the Civilian Population by Sex, Age, and Disability Status, not seasonally adjusted (Aug. 2015)*, available at <http://www.bls.gov/news.release/empstat06.htm> (last visited Sept. 29, 2015).

⁶ National Disability Institute with support from the Florida Development Disabilities Council, *The Changing Face of Benefits Knowledge for Successful Employment and Asset Development*, p. 1, March 2013, available at http://www.realeconomicimpact.org/data/files/other%20documents/changing_face_of_benefits_2013.pdf.pdf (last visited Sept. 29, 2015).

State Equal Employment Policy

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities.

Each executive agency is required to develop and implement an affirmative action plan;⁷ establish annual goals in its affirmative action plan for ensuring full utilization of groups underrepresented in the agency's workforce as compared to relevant labor market;⁸ and appoint an affirmative action-equal employment opportunity officer.⁹

DMS is required to issue an annual workforce report¹⁰ and provide training to all supervisory personnel of executive agencies.¹¹

Presently, s. 110.112, F.S., does not contain a definition of the term "individual who has a disability" and does not specifically address equal employment opportunity and affirmative action for this group.

State Disability Resources

Various state agencies provide services, benefits, and resources for individuals with disabilities. These agencies include the Agency for Health Care Administration (AHCA), the Agency for Persons with Disabilities (APD), the Department of Children and Families (DCF), the Department of Economic Opportunity (DEO), and the Department of Education (DOE). Many state and regional advocacy groups also provide resources and services.

Section 393.063(9), F.S., defines developmental disability to mean "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."

The APD currently serves approximately 55,000 clients with developmental disabilities.¹² The total population of individuals in Florida with developmental disabilities is indeterminate at this

⁷ Section 110.112(2)(a), F.S.

⁸ Section 110.112(2)(b), F.S.

⁹ Section 110.112(2)(c), F.S., provides that the duties of the affirmative action-equal employment opportunity officer include determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action.

¹⁰ Section 110.112(2)(d), F.S., provides that the DMS annual workforce report shall include information relating to implementation, continuance, and updating the results of each executive agency's affirmative action plan for the previous fiscal year.

¹¹ Section 110.112(2)(e), F.S., provides that the training will be in the principals of equal employment opportunity and affirmative action, the development and implementation of affirmative action plans, and establishment of annual affirmative action goals.

¹² E-mail from the Robert Brown, Agency for Persons with Disabilities (Sept. 30, 2015) (on file with the Senate Governmental Oversight and Accountability Committee).

time. However, the APD estimates the population of individuals with developmental disabilities in Florida could be between 300,000 to 600,000 people.¹³

Governor's Commission of Jobs for Floridians with Disabilities

On July 26, 2011, Governor Rick Scott created the Governor's Commission on Jobs for Floridians with Disabilities (Commission) to advance job and employment opportunities for persons with disabilities in order to help those individuals achieve greater independence.¹⁴ The Commission found that the state's disability system does not effectively connect employers to candidates with disabilities and inform them about the resources available to support these individuals in the workplace. The Commission recommended that the DEO serve as a single-point of contact to assist employers in finding these resources and services in order to help employers recruit, hire, and retain individuals with disabilities. The Commission further recommended the DEO provide information on available services and support that make it possible for persons with disabilities to succeed in the workforce. The "Abilities Work" web portal¹⁵ within the Employ Florida Marketplace¹⁶ website was developed to meet the needs of Florida employers looking to hire qualified job seekers with disabilities and of individuals with disabilities who are seeking to find employment.

Employment First Initiative

On October 8, 2013, Governor Scott issued Executive Order 13-284 requiring an interagency cooperative agreement between state agencies and other disability service organizations to ensure a long-term commitment to improving employment for individuals who have a disability.¹⁷ The Executive Order directed state agencies and organizations to develop methods to increase the number and percentage of growth in competitive employment for individuals who have a disability. In 2014, a five-year interagency cooperative agreement identified as the Employment First Initiative was executed by the following agencies and organizations:

- Agency for Persons with Disabilities;
- Department of Education, Bureau of Exceptional Education and Student Services;
- Department of Education, Division of Vocational Rehabilitation;
- Department of Education, Division of Blind Services;
- Department of Economic Opportunity;
- Workforce Florida, Inc.;¹⁸
- Department of Children and Families, Substance Abuse and Mental Health Office;
- Florida Developmental Disabilities Council, Inc.; and

¹³ *Id.*

¹⁴ Executive Order 11-161, available at <http://www.flgov.com/wp-content/uploads/2011/07/11-161-Commission-on-Jobs-for-Floridians-with-Disabilities.pdf> (last visited Sept. 29, 2015).

¹⁵ The Abilities Work website, available at <https://abilitieswork.employflorida.com/vosnet/Default.aspx#> (last visited Sept. 29, 2014).

¹⁶ Employ Florida Marketplace (EFM) is a partnership of CareerSource Florida, Inc., (formerly Workforce Florida, Inc.) and DEO.

¹⁷ See Executive Order 13-284 available at <http://www.flgov.com/wp-content/uploads/orders/2013/13-284-disabilities.pdf> (last visited Sept. 29, 2015).

¹⁸ Workforce Florida, Inc. was renamed as CareerSource Florida, Inc. See Chapter 2015-98, Laws of Florida; see also House Bill 7019 (reg. session 2015).

- Florida Association of Rehabilitation Facilities, Inc.¹⁹

Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.²⁰ Corporate social responsibility is defined as a company's sense of responsibility toward the community and the environment,²¹ which may be expressed through support of issues, such as ethical supply sourcing or a contribution to, or support for, social issues and programs. In 2013, corporations in the United States gave approximately \$18.7 billion, consisting of both cash and non-cash donations, such as product donations and employee volunteer hours.²² Corporate philanthropy is considered advantageous to a business because it provides the company with a bolstered public image, improved community relations, and increased employee morale.²³

Studies suggest that people value businesses that support causes that are important to them. A recent Nielsen survey found that 55 percent of global respondents indicated a willingness to pay extra for goods and services from businesses that are committed to making a positive social and environmental impact.²⁴ Consumers are becoming "more deliberate and purposeful" in their shopping decisions by patronizing businesses that have similar values to their own.²⁵ Consumers are also more likely to be loyal to those brands that share their values or are engaged in the support of those causes that are important to them.²⁶ People may even base their employment decisions on such values.

III. Effect of Proposed Changes:

Section 1 reorders, amends and revises definitions contained in s. 110.107, F.S., and defines the term "individual who has a disability".

The definition of "individual who has a disability" mirrors the federal definition of "disability" contained in the American with Disabilities Act (ADA),²⁷ with the exceptions of the following:

¹⁹ Interagency Cooperative Agreement, Employment First Initiative (2014), FLDOE Contract No.:IA-556, <http://www.fddc.org/sites/default/files/2.Employment%20First%20Interagency%20Cooperative%20Agreement.5.7.14.pdf> (last visited Sept. 29, 2015).

²⁰ Illia, Laura et al., *Communicating Corporate Social Responsibility to a Cynical Public*, MIT SLOAN MANAGEMENT REVIEW, Feb. 21, 2013, http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use_credit=db34fbf0a135038c9c9102e028c614be (last visited Sept. 29, 2015).

²¹ BusinessDictionary.com, <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Sept. 29, 2015).

²² Adams, Susan, *America's Most Generous Companies*, FORBES, July 15, 2014, <http://www.forbes.com/sites/susanadams/2014/07/15/americas-most-generous-companies/> (last visited Sept. 29, 2015).

²³ Montini, Laura, *Corporate Altruism Is on the Rise (Infographic)*, INC., Aug. 17, 2014, <http://www.inc.com/laura-montini/infographic/the-benefits-of-community-service.html> (last visited Sept. 29, 2015).

²⁴ The Nielsen Company, *Doing Well by Doing Good* (June 2014), <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/global-corporate-social-responsibility-report-june-2014.pdf> (last visited Sept. 29, 2015).

²⁵ Solomon, Micah, *Six Customer Trends That Will Build or Break Your Business As We Enter 2015*, FORBES, Dec. 25, 2014, <http://www.forbes.com/sites/micahsolomon/2014/12/25/six-deep-customer-trends-that-will-build-or-break-your-business-as-we-enter-2015/> (last visited Sept. 29, 2015).

²⁶ Irwin, Julie, *Ethical Consumerism Isn't Dead, It Just Needs Better Marketing*, HARVARD BUSINESS REVIEW, Jan. 12, 2015, <https://hbr.org/2015/01/ethical-consumerism-isnt-dead-it-just-needs-better-marketing> (last visited Sept. 29, 2015).

²⁷ 42 U.S.C. s. 12102(2).

- The federal term “mental impairment”²⁸ is replaced with “intellectual impairment”; and
- The federal phrase “being regarded”²⁹ is replaced with “who is perceived by others”.

Section 2 amends s. 110.112, F.S., and revises and broadens the state’s equal employment opportunity policy to include individuals who have a disability.

Executive agencies are required to:

- Set annual goals in its affirmative action plan to ensure the full utilization of underrepresented groups, to specifically include individuals who have a disability as compared to the relevant labor market;
- Report annually to DMS on the agency’s progress toward increasing employment of individuals who have a disability; and
- Develop an agency-specific plan by January 1, 2017, addressing how to promote employment opportunities for individuals who have a disability.

DMS is required to:

- Include data for each executive agency related to employment levels among women, minorities, and individuals who have a disability in its annual workforce report;
- Develop and implement programs specifically geared toward individuals who have a disability in consultation with Agency for Persons with Disabilities, Division of Vocational Rehabilitation and Division of Blind Services of the Department of Education, Department of Economic Opportunity, and Executive Office of the Governor;³⁰
- Develop mandatory training programs by January 1, 2017, for human resources personnel and hiring managers of executive agencies that support the employment of individuals who have a disability;
- Assist executive agencies in implementing agency-specific plans; and identifying and implementing strategies for retaining employees who have a disability.³¹
- Biannually report on the progress of executive agencies in implementing their plans to the Governor, the President of the Senate, and the Speaker of the House of Representatives;
- Compile data regarding the hiring practices of executive agencies in regards to individuals who have a disability and make this data available on its website; and
- Adopt rules regarding forms that provide for voluntary self-identification of individuals who have a disability who are employed by an executive agency.

SPB 7010 also contains a provision that specifically states that no substantive or procedural right or benefit enforceable at law or in equity against the state, state agency, officer, employee, or agent thereof is created by this legislation.

The bill applies to the State Personnel System comprised of positions in the Career Service, Selected Exempt Service, or Senior Management Service within all executive branch agencies.

²⁸ *Id.*

²⁹ *Id.*

³⁰ These programs may incorporate internships, mentoring, on-the-job training, unpaid work experience, situational assessments, and other innovative strategies.

³¹ Some of these strategies include training programs, funding reasonable accommodations, increasing access to technologies, and ensuring accessibility of physical and virtual workplaces.

This bill is not applicable to the personnel systems of the State University System, the Florida Lottery, the Legislature, the Justice Administration System, or the State Courts System.

Section 3 creates legislation to be known as the “Employment First Act.” This section provides a short title, legislative intent and purpose which is to improve the employment outcomes for individuals with disabilities, to prioritize employment of individuals with disabilities, and to change the employment system to integrate individuals with disabilities into the workforce.

This section also requires an interagency cooperative agreement be developed among the following:

- Division of Vocational Rehabilitation of the Department of Education;
- Division of Blind Service of the Department of Education;
- Bureau of Exceptional Education and Student Services of the Department of Education;
- Agency for Person with Disabilities;
- Substance Abuse and Mental Health Program of the Department of Children and Families;
- Department of Economic Opportunity;
- CareerSource Florida, Inc.;
- Florida Developmental Disabilities Council;
- Florida Association of Rehabilitation Facilities; and
- Other appropriate organizations.

Additionally, this interagency cooperative agreement shall outline the roles and responsibilities of the parties to the agreement.

The bill outlines the objectives of the interagency agreement that must include the following:

- Establishing commitment by state leadership to maximizing resources and coordination to improve employment outcomes for individuals with disabilities;
- Developing strategic goals and benchmarks to assist state agencies and organizations in the implementation of agreement;
- Identifying financing and contracting methods to help prioritize employment for individuals with disabilities by state agencies and organizations;
- Establish training methods to better integrate persons with disabilities into the workforce;
- Ensuring collaborative efforts between agencies;
- Promoting service innovations to better assist individuals with disabilities in the workplace; and
- Identifying accountability measures to ensure sustainability of agreement.

Section 4 appropriates for FY 2016-2017, the sums of \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to DMS, and authorizes two FTE positions for the purpose of implementing the new responsibilities of DMS, relating to employment of individuals who have a disability.

In addition, \$88,285 from the General Revenue Fund and \$76,671 from trust funds are appropriated to Administered Funds in the “Special Categories – Transfer to DMS – Human Services Purchased per Statewide Contract” appropriations category for distribution among agencies.

Section 5 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill appropriates \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to DMS, and authorizes two positions. The bill also appropriates \$88,285 from the General Revenue Fund and \$76,671 from trust funds to Administered Funds for distribution among the agencies.

DMS has also suggested the People First system, the state's human resource information system, may need to be enhanced to add an "individual who has a disability" indicator to fully implement the reporting requirements of this legislation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill directs the DMS to adopt rules relating to forms that provide for the voluntary self-identification of individuals who have a disability.

Under the Americans with Disabilities Act (ADA), employers are prohibited from inquiring about whether a person has a disability or the nature of a disability prior to employment.³² However, an employer may inquire about the applicant's ability to perform job-related functions. Upon employment, an employer may require a medical examination if it is required of all employees, is job-related, and consistent with business necessity. Any medical information obtained from the medical examination must be maintained in a separate file. If an employee requests a reasonable accommodation, an employer is permitted to request documentation sufficient to substantiate the need for the reasonable accommodation.³³

DMS uses data from the Equal Employment Opportunity (EEO) Tabulation that is published by the U.S. Census Bureau for information on women and minorities. The EEO Tabulation provides detailed occupational statistics by race, ethnicity and sex in the labor market by location-based geography. The state's data center, DEO, has informed DMS that data for individuals who have a disability is not available at the occupational level. Data is only available in broad categories (employed/unemployed, full-time/less than full-time). Accordingly, it might be difficult for agencies to establish numerical goals on such limited data.

VIII. Statutes Affected:

This bill substantially amends the sections 110.107 and 110.112 of the Florida Statutes.

This bill creates the Employment First Act.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³² See 42 U.S.C. s. 12112.

³³ EEOC, No. 915.002, *EEOC Enforcement Guidance of Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, July 27, 2000, <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (last visited Sept. 29, 2015).

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00571A-16

20167010pb

1 A bill to be entitled
 2 An act relating to individuals with disabilities;
 3 reordering and amending s. 110.107, F.S.; revising
 4 definitions and defining the term "individual who has
 5 a disability"; amending s. 110.112, F.S.; revising the
 6 state's equal employment opportunity policy to include
 7 individuals who have a disability; requiring each
 8 executive agency to annually report to the Department
 9 of Management Services regarding the agency's progress
 10 in increasing employment among certain
 11 underrepresented groups; revising the required content
 12 of the department's annual workforce report; requiring
 13 the department to develop and implement certain
 14 programs geared toward individuals who have a
 15 disability; requiring the department to develop
 16 training programs by a specified date; requiring each
 17 executive agency to develop a plan regarding the
 18 employment of individuals who have a disability by a
 19 specified date; requiring the department to report to
 20 the Governor and the Legislature regarding
 21 implementation; requiring the department to compile
 22 and post data regarding the hiring practices of
 23 executive agencies regarding the employment of
 24 individuals who have a disability; requiring the
 25 department to assist executive agencies in identifying
 26 strategies to retain employees who have a disability;
 27 requiring the department to adopt certain rules;
 28 specifying that the act does not create any
 29 enforceable right or benefit; creating the "Employment

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30 First Act"; providing legislative findings and intent;
 31 providing a purpose; requiring specified state
 32 agencies and organizations to develop and implement an
 33 interagency cooperative agreement; requiring the
 34 interagency cooperative agreement to provide the
 35 roles, responsibilities, and objectives of state
 36 agencies and organizations; providing appropriations;
 37 providing an effective date.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 110.107, Florida Statutes, is reordered
 42 and amended to read:
 43 110.107 Definitions.—As used in this chapter, the term:
 44 (5)(1) "Department" means the Department of Management
 45 Services.
 46 (28)(2) "Secretary" means the Secretary of Management
 47 Services.
 48 (11)(3) "Furlough" means a temporary reduction in the
 49 regular hours of employment in a pay period, or temporary leave
 50 without pay for one or more pay periods, with a commensurate
 51 reduction in pay, which is necessitated by a projected deficit
 52 in any fund that supports salary and benefit appropriations. The
 53 deficit must be projected by the Revenue Estimating Conference
 54 pursuant to s. 216.136(3).
 55 (30)(4) "State agency" or "agency" means any official,
 56 officer, commission, board, authority, council, committee, or
 57 department of the executive branch or the judicial branch of
 58 state government as defined in chapter 216.

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59 ~~(21)(5)~~ "Position" means the work, consisting of duties and
60 responsibilities, assigned to be performed by an officer or
61 employee.

62 ~~(10)(6)~~ "Full-time position" means a position authorized
63 for the entire normally established work period, whether daily,
64 weekly, monthly, or annually.

65 ~~(18)(7)~~ "Part-time position" means a position authorized
66 for less than the entire normally established work period,
67 whether daily, weekly, monthly, or annually.

68 ~~(16)(8)~~ "Occupation" means all positions that ~~which~~ are
69 sufficiently similar in knowledge, skills, ~~and~~ abilities, and
70 the sufficiently similar as to kind or subject matter of work.

71 ~~(17)(9)~~ "Occupational group" means a group of occupations
72 that ~~which~~ are sufficiently similar in the kind of work
73 performed to warrant the use of the same performance factors in
74 determining the level of complexity for all occupations in that
75 occupational group.

76 ~~(3)(10)~~ "Classification plan" means a formal description of
77 the concepts, rules, job family definitions, occupational group
78 characteristics, and occupational profiles used in the
79 classification of positions.

80 ~~(20)(11)~~ "Pay plan" means a formal description of the
81 philosophy, methods, procedures, and salary schedules for
82 competitively compensating employees at market-based rates for
83 work performed.

84 ~~(27)(12)~~ "Salary schedule" means an official document that
85 ~~which~~ contains a complete list of occupation titles, broadband
86 level codes, and pay bands.

87 ~~(1)(13)~~ "Authorized position" means a position included in

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88 an approved budget. In counting the number of authorized
89 positions, part-time positions may be converted to full-time
90 equivalents.

91 ~~(8)(14)~~ "Established position" means an authorized position
92 ~~that~~ ~~which~~ has been classified in accordance with a
93 classification and pay plan as provided by law.

94 ~~(22)(15)~~ "Position number" means the identification number
95 assigned to an established position.

96 ~~(26)(16)~~ "Reclassification" means the changing of an
97 established position in one broadband level in an occupational
98 group to a higher or lower broadband level in the same
99 occupational group or to a broadband level in a different
100 occupational group.

101 ~~(24)(17)~~ "Promotion" means the changing of the
102 classification of an employee to a broadband level having a
103 higher maximum salary; or the changing of the classification of
104 an employee to a broadband level having the same or a lower
105 maximum salary but a higher level of responsibility.

106 ~~(4)(18)~~ "Demotion" means the changing of the classification
107 of an employee to a broadband level having a lower maximum
108 salary; or the changing of the classification of an employee to
109 a broadband level having the same or a higher maximum salary but
110 a lower level of responsibility.

111 ~~(32)(19)~~ "Transfer" means moving an employee from one
112 geographic location of the state to a different geographic
113 location more than in excess of 50 miles from the employee's
114 current work location.

115 ~~(25)(20)~~ "Reassignment" means moving an employee from a
116 position in one broadband level to a different position in the

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117 same broadband level or to a different broadband level having
118 the same maximum salary.

119 ~~(6)(21)~~ "Dismissal" means a disciplinary action taken by an
120 agency pursuant to s. 110.227 against an employee which results
121 ~~resulting~~ in the termination of his or her employment.

122 ~~(31)(22)~~ "Suspension" means a disciplinary action taken by
123 an agency pursuant to s. 110.227 against an employee which ~~to~~
124 temporarily relieves ~~relieve~~ the employee of his or her duties
125 and places ~~place~~ him or her on leave without pay.

126 ~~(15)(23)~~ "Layoff" means termination of employment due to a
127 shortage of funds or work, or a material change in the duties or
128 organization of an agency, including the outsourcing or
129 privatization of an activity or function previously performed by
130 career service employees.

131 ~~(7)(24)~~ "Employing agency" means any agency authorized to
132 employ personnel to carry out the responsibilities of the agency
133 under the provisions of chapter 20 or other law ~~statutory~~
134 ~~authority~~.

135 ~~(29)(25)~~ "Shared employment" means part-time career
136 employment in which ~~whereby~~ the duties and responsibilities of a
137 full-time position in the career service are divided among part-
138 time employees who are eligible for the position and who receive
139 career service benefits and wages pro rata. The term ~~In no case~~
140 ~~shall "shared employment" does not~~ include the employment of
141 persons paid from other-personal-services funds.

142 ~~(9)(26)~~ "Firefighter" means a firefighter certified under
143 chapter 633.

144 ~~(14)(27)~~ "Law enforcement or correctional officer" means a
145 law enforcement officer, special agent, correctional officer,

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146 correctional probation officer, or institutional security
147 specialist ~~required to be~~ certified under chapter 943.

148 ~~(23)(28)~~ "Professional health care provider" means
149 registered nurses, physician's assistants, dentists,
150 psychologists, nutritionists or dietitians, pharmacists,
151 psychological specialists, physical therapists, and speech and
152 hearing therapists.

153 ~~(13)(29)~~ "Job family" means a defined grouping of one or
154 more occupational groups.

155 ~~(19)(30)~~ "Pay band" means the minimum salary, the maximum
156 salary, and intermediate rates that ~~which~~ are payable for work
157 in a specific broadband level.

158 ~~(2)(31)~~ "Broadband level" means all positions that ~~which~~
159 are sufficiently similar in knowledge, skills, and abilities;
160 ~~the, and sufficiently similar as to~~ kind or subject matter of
161 work; ~~the,~~ level of difficulty or the level of
162 responsibilities; ~~and the~~ qualification requirements of the
163 work so as to warrant the same treatment with respect ~~as~~ to
164 title, pay band, and other personnel transactions.

165 ~~(12)~~ "Individual who has a disability" means a person who
166 has a physical or intellectual impairment that substantially
167 limits one or more major life activities; a person who has a
168 history or record of such an impairment; or a person who is
169 perceived by others as having such an impairment.

170 Section 2. Subsections (1) and (2) of section 110.112,
171 Florida Statutes, are amended, present subsections (3) through
172 (6) of that section are redesignated as subsections (4) through
173 (7), respectively, and a new subsection (3) is added to that
174 section, to read:

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175 110.112 Affirmative action; equal employment opportunity.-

176 (1) It ~~is shall be~~ the policy of ~~this the~~ state to assist
177 in providing the assurance of equal employment opportunity
178 through programs of affirmative and positive action that will
179 allow full utilization of women, ~~and~~ minorities, and individuals
180 who have a disability.

181 (2) (a) The head of each executive agency shall develop and
182 implement an affirmative action plan in accordance with rules
183 adopted by the department and approved by a majority vote of the
184 Administration Commission before their adoption.

185 (b) Each executive agency shall establish annual goals for
186 ensuring full utilization of groups underrepresented in the
187 agency's its workforce, including women, minorities, and
188 individuals who have a disability, as compared to the relevant
189 labor market, as defined by the agency. Each executive agency
190 shall design its affirmative action plan to meet its established
191 goals.

192 (c) Each executive agency shall annually report to the
193 department regarding the agency's progress toward increasing
194 employment among women, minorities, and individuals who have a
195 disability.

196 ~~(d)(e)~~ An affirmative action-equal employment opportunity
197 officer shall be appointed by the head of each executive agency.
198 The affirmative action-equal employment opportunity officer's
199 responsibilities must include determining annual goals,
200 monitoring agency compliance, and providing consultation to
201 managers regarding progress, deficiencies, and appropriate
202 corrective action.

203 ~~(e)(d)~~ The department shall report information in its

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204 annual workforce report relating to the implementation,
205 continuance, updating, and results of each executive agency's
206 affirmative action plan for the previous fiscal year. The annual
207 workforce report must also include data for each executive
208 agency relating to employment levels among women, minorities,
209 and individuals who have a disability.

210 ~~(f)(e)~~ The department shall provide to all supervisory
211 personnel of the executive agencies training in the principles
212 of equal employment opportunity and affirmative action, the
213 development and implementation of affirmative action plans, and
214 the establishment of annual affirmative action goals. The
215 department may contract for training services, and each
216 participating agency shall reimburse the department for costs
217 incurred through such contract. After the department approves
218 the contents of the training program for the agencies, the
219 department may delegate this training to the executive agencies.

220 (3) (a) The department, in consultation with the Agency for
221 Persons with Disabilities, the Division of Vocational
222 Rehabilitation and the Division of Blind Services of the
223 Department of Education, the Department of Economic Opportunity,
224 and the Executive Office of the Governor, shall develop and
225 implement programs that incorporate internships, mentoring, on-
226 the-job training, unpaid work experience, situational
227 assessments, and other innovative strategies that are
228 specifically geared toward individuals who have a disability.

229 (b) By January 1, 2017, the department shall develop
230 mandatory training programs for human resources personnel and
231 hiring managers of executive agencies which support the
232 employment of individuals who have a disability.

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233 (c)1. By January 1, 2017, each executive agency shall
 234 develop an agency-specific plan that addresses how to promote
 235 employment opportunities for individuals who have a disability.
 236 2. The department shall assist executive agencies in the
 237 implementation of agency-specific plans. The department shall
 238 regularly report to the Governor, the President of the Senate,
 239 and the Speaker of the House of Representatives the progress of
 240 executive agencies in implementing these plans. Such reports
 241 shall be made at least biannually.
 242 (d) The department shall compile data regarding the hiring
 243 practices of executive agencies with regard to individuals who
 244 have a disability and make such data available on its website.
 245 (e) The department shall assist executive agencies in
 246 identifying and implementing strategies for retaining employees
 247 who have a disability which include, but are not limited to,
 248 training programs, funding reasonable accommodations, increasing
 249 access to appropriate technologies, and ensuring accessibility
 250 of physical and virtual workplaces.
 251 (f) The department shall adopt rules relating to forms that
 252 provide for the voluntary self-identification of individuals who
 253 have a disability who are employed by an executive agency.
 254 (g) This subsection does not create any substantive or
 255 procedural right or benefit enforceable at law or in equity
 256 against the state or a state agency, or an officer, employee, or
 257 agent thereof.
 258 Section 3. Employment First Act.-
 259 (1) SHORT TITLE.-This section may be cited as the
 260 "Employment First Act."
 261 (2) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds

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262 that employment is the most direct and cost-effective means to
 263 assist an individual in achieving independence and fulfillment;
 264 however, individuals with disabilities are confronted by unique
 265 barriers to employment which inhibit their opportunities to
 266 compete fairly in the labor force. It is the intent of the
 267 Legislature to provide a framework for a long-term commitment to
 268 improving employment outcomes for individuals with disabilities
 269 in this state through the implementation of this act.
 270 (3) PURPOSE.-The purpose of this act is to prioritize
 271 employment of individuals with disabilities and to change the
 272 employment system to better integrate individuals with
 273 disabilities into the workforce. This act encourages a
 274 collaborative effort between state agencies and organizations to
 275 achieve better employment outcomes for individuals with
 276 disabilities.
 277 (4) INTERAGENCY COOPERATIVE AGREEMENT.-The following state
 278 agencies and organizations, and others, as appropriate, shall
 279 develop an interagency cooperative agreement to implement this
 280 act:
 281 (a) The Division of Vocational Rehabilitation of the
 282 Department of Education.
 283 (b) The Division of Blind Services of the Department of
 284 Education.
 285 (c) The Bureau of Exceptional Education and Student
 286 Services of the Department of Education.
 287 (d) The Agency for Persons with Disabilities.
 288 (e) The Substance Abuse and Mental Health Program of the
 289 Department of Children and Families.
 290 (f) The Department of Economic Opportunity.

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291 (g) CareerSource Florida, Inc.
 292 (h) The Florida Developmental Disabilities Council.
 293 (i) The Florida Association of Rehabilitation Facilities.
 294 (j) Other appropriate organizations.
 295 (5) ROLES, RESPONSIBILITIES, AND OBJECTIVES.—The
 296 interagency cooperative agreement must identify the roles and
 297 responsibilities of the state agencies and organizations
 298 identified in subsection (4) and the objectives of the
 299 interagency cooperative agreement, which must include all of the
 300 following:
 301 (a) Establishing a commitment by leadership of the state
 302 agencies and organizations to maximize resources and
 303 coordination to improve employment outcomes for individuals with
 304 disabilities who seek publicly funded services.
 305 (b) Developing strategic goals and benchmarks to assist the
 306 state agencies and organizations in the implementation of this
 307 agreement.
 308 (c) Identifying financing and contracting methods that will
 309 help to prioritize employment for individuals with disabilities
 310 by state agencies and organizations.
 311 (d) Establishing training methods to better integrate
 312 individuals with disabilities into the workforce.
 313 (e) Ensuring collaborative efforts between multiple
 314 agencies to achieve the purposes of this act.
 315 (f) Promoting service innovations to better assist
 316 individuals with disabilities in the workplace.
 317 (g) Identifying accountability measures to ensure the
 318 sustainability of this agreement.
 319 Section 4. For the 2016-2017 fiscal year, the following

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320 sums are appropriated for the purpose of implementing the
 321 amendments made by this act to s. 110.112, Florida Statutes,
 322 relating to the employment of individuals who have a disability:
 323 (1) The sums of \$138,692 in recurring funds and \$26,264 in
 324 nonrecurring funds are appropriated from the State Personnel
 325 System Trust Fund to the Department of Management Services, and
 326 two full-time equivalent positions with associated salary rate
 327 of 92,762 are authorized.
 328 (2) The sum of \$88,285 from the General Revenue Fund and
 329 the sum of \$76,671 from trust funds are appropriated to
 330 Administered Funds in the "Special Categories - Transfer to
 331 Department of Management Services - Human Resources Services
 332 Purchased per Statewide Contract" appropriations category for
 333 distribution among agencies.
 334 Section 5. This act shall take effect July 1, 2016.

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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)

10/6/15
Meeting Date

SPB7010
Bill Number (if applicable)

Topic Employment First Act

Amendment Barcode (if applicable)

Name Sheila Gritz - Swift

Job Title Deputy Director of Programs

Address 124 Marriott Drive, Suite 203 Phone 850-922-6707
Street

Tallahassee, FL 32301 Email Sheilag@fdde.org
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Developmental Disabilities 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.

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

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

10-6-15
Meeting Date

SPB 7010
Bill Number (if applicable)

Topic Employment First Act

Amendment Barcode (if applicable)

Name Margaret S. Hooper

Job Title Public Policy Coordinator

Address 124 Marriott Drive #203

Phone 850-921-7260

Tallahassee, FL 32311
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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 Governmental Oversight and Accountability

BILL: SPB 7012

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Death Benefits Under the Florida Retirement System

DATE: October 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		GO submitted as Committee Bill
2.				
3.				

I. Summary:

SPB 7012 primarily makes two changes to the Florida Retirement System (FRS). First, the bill increases the monthly survivor benefits available to the spouses and children of FRS pension plan members in the Special Risk Class when killed in the line of duty from 50 percent of the member's monthly salary at the time of death to 100 percent of the member's monthly salary at the time of death. These new benefits are funded through additional employer-paid contributions relating to the FRS pension plan.

Second, the bill permits the surviving spouse or children of an investment plan member in the Special Risk Class when killed in the line of duty to opt into the FRS investment plan survivor benefits program in lieu of receiving normal retirement benefits under the FRS investment plan. By participating in the survivor benefits program, the surviving spouse and children are eligible to receive annuitized benefits much like the survivor benefits (described above) afforded to Special Risk Class members of the FRS pension plan. The investment plan survivor benefits program is funded by additional employer-paid contributions to the survivor benefits account of the FRS Trust Fund.

The new survivor benefits established by this bill are available to members in the Special Risk Class when killed in the line of duty on or after July 1, 2013.

The contributions paid into the FRS by employers participating in the FRS are increased by \$25 million annually. The bill appropriates the recurring amounts of \$5,445,337 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was added to the FRS, and in 2007, the membership of the Institute of Food and Agricultural Sciences Supplemental Retirement Program was included in the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Ch. 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

⁵ The Regular Class is for all members who are not assigned to another class. (Section 121.021(12), F.S.)

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. (Section 121.0515, F.S.)

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. (Section 121.055, F.S.)

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management of the pension plan assets is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. (Section 121.4501(6)(b) – (d), F.S.)

¹³ Section 121.591, F.S.

¹⁴ Section 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the line of duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA.CONST. art. IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.²² For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement occurs at 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

In the Line of Duty Death Benefits Available under Chapter 121, F.S.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan.²⁵ Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.²⁶ Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.²⁷ If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in the line of duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for her lifetime equal to one-half the member's monthly salary at death.²⁸ If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.²⁹ If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.³⁰

For in the line of duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of member's death.³¹ If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or purchasable service, to purchase enough service credit to vest the member posthumously.³²

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ Under the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary. Section 121.591, F.S.

²⁶ Section 121.091(7), F.S.

²⁷ Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

²⁸ Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

²⁹ *Id.*

³⁰ Section 121.091(7)(b) and (d), F.S.

³¹ Section 121.091(7)(e), F.S.

³² Section 121.091(7)(f), F.S.

The following chart notes the Special Risk Class in the line of duty death benefits for the last five years for the State of Florida and the local governmental entities participating in the FRS:³³

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Total
State Count	0	2	2	1	0	1	6
State Benefits	0	\$49,928	\$37,424	\$25,862	0	\$20,386	\$133,600
Local Count	5	5	4	2	1	2	19
Local Benefits	\$146,836	\$129,389	\$97,061	\$56,932	\$30,052	\$58,917	\$519,187

Death Benefits Available under Chapter 112, F.S.

Chapter 112, F.S., provides death benefits that are supplemental to the benefits afforded under ch. 121, F.S., for law enforcement officers, correctional officers, correctional probation officers, firefighters, instructional staff and school administrators under specified circumstances.³⁴ The Bureau of Crime Prevention and Training within the Department of Legal Affairs annually adjusts the statutory amounts³⁵ for price level changes in the Consumer Price Index since 2002.³⁶ The table below shows the benefit amounts currently provided.³⁷

	Law Enforcement	Firefighters	Instructional Personnel
Accidental Death in performance of duties	\$65,773	\$65,773	None
Accidental Death in response to emergency	Additional \$65,773	Additional \$65,773	None
Death by intentional act of another	\$198,272	\$198,272	\$198,272

The payments outlined above for accidental death in performance of duties, accidental death in response to emergency and death by intentional act of another, for firefighters, law enforcement, correctional, and correctional probation officers, are made to the beneficiary designated by the firefighter or officer in writing.³⁸ If no designation is made, payments are made to the firefighter

³³ E-mail from Department of Management Services dated September 30, 2015.

³⁴ For definitions of these terms, see ss. 112.19(1) and 112.1915(1)(b), F.S.

³⁵ Sections 112.19(2)(a), 112.19(2)(b), 112.19(2)(c), and 112.1915(3)(a), F.S.

³⁶ Sections 112.19(2)(j) and 112.191(2)(i), F.S.

³⁷ Conversation with Rick Nuss, Office of the Attorney General, Bureau of Criminal Justice Programs (Feb. 13, 2015).

³⁸ Sections 112.191(2)(d) and 112.19(2)(d), F.S.

or officer's surviving spouse and children in equal amounts.³⁹ If there is no surviving spouse or children, payment is made to the firefighter's or officer's parents.⁴⁰ If there is no surviving spouse, child or parent, payment will be made to the firefighter's or officer's estate.⁴¹

If instructional personnel dies as a result of an intentional act of another and a beneficiary is not designated, the instructional staff's or school administrator's estate receives the money.⁴²

Other death benefits under ch. 112, F.S., which are available to law enforcement, correctional officers, correctional probation officers, firefighters and instructional staff and school administrators who are killed in the line of duty include the following:

- Funeral and burial expenses (full-time law enforcement, correctional, or correctional probation officer employed by a state agency under specified circumstances;⁴³ and instructional staff and school administrator employed by school district);⁴⁴
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (full-time law enforcement officer or correctional officer);⁴⁵ full-time firefighter;⁴⁶ and instructional staff and school administrator);⁴⁷
- Family health insurance premium payments for catastrophic injury (full-time law enforcement, correctional, correctional probation officer,⁴⁸ or firefighter⁴⁹ employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;⁵⁰ firefighter;⁵¹ and instructional staff or school administrator).⁵²

Death benefits available under Chapter 185, F.S.

Chapter 185, F.S., governs municipal police pensions. If a municipal police officer dies before being eligible to retire, the officer's beneficiaries will receive:

- A refund of all contributions made by the officer to the retirement trust fund;⁵³
- Death benefits from life insurance or annuity contract if purchased for officer, subject to limitations;⁵⁴ and

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Section 112.1915(1)(f), F.S.

⁴³ Section 112.19(2)(f), F.S.

⁴⁴ Section 112.1915(3)(b), F.S.

⁴⁵ Section 112.19(2)(g), F.S.

⁴⁶ Section 112.191(2)(f), F.S.

⁴⁷ Section 112.1915(3)(c), F.S.

⁴⁸ Section 112.19(2)(h), F.S.

⁴⁹ Section 112.191(2)(g), F.S.

⁵⁰ Section 112.19(3), F.S.

⁵¹ Section 112.191(3), F.S.

⁵² Section 112.1915(3)(d), F.S. (surviving children only, not spouse).

⁵³ Section 185.21(1), F.S.

⁵⁴ *Id.*

- Benefits payable to officer at early or normal retirement age (if officer had at least 10 years of service).⁵⁵

Death benefits provided in accordance with s. 112.19, F.S., are not included in the calculation of death or retirement benefits under this chapter.⁵⁶

Death benefits available under Chapter 175, F.S.

Chapter 175, F.S., governs firefighter pensions. If a firefighter dies before being eligible to retire, the officer's beneficiaries will receive:⁵⁷

- A refund of all contributions made by the firefighter to the pension trust fund;⁵⁸
- Death benefits from life insurance or annuity contract if purchased for firefighter, subject to limitations;⁵⁹ and
- Benefits payable to firefighter at early or normal retirement age (if officer had at least 10 years of service).⁶⁰

Death benefits provided in accordance with s. 112.191, F.S., are not included in the calculation of death or retirement benefits under this chapter.

Compensation for death under Chapter 440, F.S.

The Workers' Compensation Law provides that the death of an employee of the state or one of its subdivisions, which results from an injury arising out of and in the course of employment, is a basis for a right to compensation.⁶¹ When a death results within one year of an accident, or within five years following continuous disability, the employer pays:⁶²

- Actual funeral expenses up to \$7,500;
- Compensation to enumerated dependents in the form of a percentage of the deceased employee's weekly wages, not to exceed \$150,000; and
- Payment of postsecondary student fees for the surviving spouse.

Survivor Death Benefits from the Public Safety Officers' Benefits Program

The Public Safety Officers' Benefits Program (PSOB), administered by the U.S. Department of Justice, provides education benefits and a one-time death benefit to eligible survivors of federal, state or local public safety officers who die in the line of duty. The amount of the PSOB benefit is \$339,310 for eligible deaths occurring on or after October 1, 2014.⁶³

⁵⁵ Section 185.21(2), F.S.

⁵⁶ *Id.*

⁵⁷ Section 175.201, F.S., for firefighters employed by any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan.

⁵⁸ Section 175.201(1), F.S.

⁵⁹ *Id.*

⁶⁰ Section 175.201(2), F.S.

⁶¹ Section 440.02, F.S.

⁶² Section 440.16(1), F.S.

⁶³ U.S. Dep't of Justice Office of Justice Programs, *Public Safety Officers' Benefits Programs*, available at <https://www.psob.gov/index.html> (last visited Feb. 13, 2015).

III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to increase the Florida Retirement System (FRS) pension plan's survivor benefits available to the spouse and children of members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. Rather than receiving 50 percent of the member's salary at the time of death, the new survivor benefit is increased to 100 percent of the member's salary at the time of death. This survivor benefit is payable in lieu of the member's normal retirement benefits based on service credits and average final compensation.

The survivor benefits are payable for the life of the surviving spouse. If there is no surviving spouse or the spouse dies, the member's children will receive the benefits until the youngest child's eighteen birthday. The benefits may be extended to the 25th birthday of an unmarried child enrolled as a full time student.

These survivor benefits are payable to the surviving spouse and children and supersede any beneficiary designation made by the member.

Section 2 amends s. 121.571, F.S., to specify that the new employer-paid contribution rates must be embedded in the system-wide blended rates assessed pursuant to s. 121.71, F.S.

Section 3 amends s. 121.591, F.S., to provide survivor benefits to the spouse and children of investment plan members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. The spouse and children may elect to transfer the balance of the member's investment plan account to the survivor benefits program and receive the survivor benefits described in section 1 above (100 percent of the member's salary at the time of death). In addition to the transfer of moneys from the deceased member's investment account, additional employer-paid contributions into the survivor benefit account of the FRS Trust Fund are used to pay the survivor benefits.

Section 4 creates s. 121.5912, F.S., to establish legislative intent regarding the implementation of a survivor benefit program for the spouses and children of investment plan members in the Special Risk Class when killed in the line of duty. The program is intended to meet all applicable requirements of a qualified plan under the Internal Revenue Code. If the SBA or Department of Management Services (DMS) receives notification that a portion of this program will cause the FRS to be disqualified for tax purposes, that portion of the program ceases to be applicable.

Section 5 creates s. 121.735, F.S., to allocate 0.82 percentage points of the employer-paid contribution rate for investment plan members of the Special Risk Class to the survivor benefit program of the FRS investment plan. These contribution rates are applied as a percentage of the investment plan members' gross compensation for the calendar month.

Section 6 amends s. 121.71, F.S., to make a conforming change relating to the calculation by the system actuary of the contributions required for the FRS.

Section 7 amends s. 121.74, F.S., to make a technical correction relating to the contributions required by FRS employers to the FRS Trust Fund.

Section 8 amends s. 121.75, F.S., to make a conforming change relating to the distribution of contributions paid into the FRS Trust Fund.

Section 9 provides that, for the 2016-2017 fiscal year only, upon notification by the DMS that sufficient funds are not available to make the survivor benefit payments authorized by the bill, the State Board of Administration shall transfer sufficient funds from the Administrative Trust Fund to the survivor benefits account in the FRS Trust Fund in order to ensure timely payment of survivor benefits.

Section 10 increases the employer-paid contributions into the Florida Retirement System by 0.58 percentage points for the Special Risk Class and 0.06 percentage points for the Deferred Retirement Option Program.

Section 11 provides that the Legislature finds that this act fulfills an important state interest.

Section 12 appropriates the recurring amounts of \$5,445,537 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

Section 13 provides that this bill will take effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated.”

This bill includes legislative findings that the bill fulfills an important state interest (see section 11), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System with employees in the Special Risk Class and DROP), including state agencies, school boards, community colleges, counties, and municipalities. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities participating in the FRS.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study has been completed to comply with Article X, section 14 of the Florida Constitution. The bill provides adjustments to contribution rates consistent with that actuarial study and concurrent with the adjustments in retirement benefits.⁶⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SPB 7012, spouses and children of members in the Special Risk Class when killed in the line of duty may receive higher benefits than available under current law.

C. Government Sector Impact:

Employers participating the FRS whose employees are members of the Special Risk Class or DROP will incur higher retirement contributions to fund these new benefits. The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2015-2016 will increase by approximately \$25 million when compared to the employer contributions paid in Fiscal Year 2014-2015. However, the impacts on particular employers vary significantly based on whether the employers have members in the Special Risk Class or DROP. The impacts by employer group for Fiscal Year 2015-2016 are noted below.

⁶⁴ *Re: Actuarial Study – Special Risk Class In Line of Duty (ILOD) Death Benefits*, from Milliman, Inc., to Dan Drake, State Retirement Director, dated April 1, 2015. (on file with the Senate Committee on Governmental Oversight and Accountability)

Employer Group	Impact on Contributions
State Agencies	\$5.4 m
Universities	\$0.2 m
Colleges	\$0.1 m
School Boards	\$0.8 m
Counties	\$17.2 m
Other	\$1.3 m
Total	\$25.1 m

The bill appropriates the recurring amounts of \$5,445,537 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.091, 121.571, 121.591, and 121.75.

The bill creates the following sections of the Florida Statutes: 121.5912 and 121.735.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to death benefits under the Florida
 3 Retirement System; amending s. 121.091, F.S.;
 4 authorizing payment of death benefits to the surviving
 5 spouse or children of a Special Risk Class member
 6 killed in the line of duty under specified
 7 circumstances; specifying eligibility; amending s.
 8 121.571, F.S.; conforming provisions to changes made
 9 by the act; amending s. 121.591, F.S.; authorizing
 10 payment of death benefits to the surviving spouse or
 11 surviving children of a Special Risk Class member in
 12 the investment plan; establishing qualifications and
 13 eligibility requirements in order to receive such
 14 benefits; prescribing the method of calculating the
 15 benefit; specifying circumstances under which benefit
 16 payments are terminated; creating s. 121.5912, F.S.;
 17 providing legislative intent; requiring the State
 18 Board of Administration or the Division of Retirement
 19 to take certain action upon receipt of notification of
 20 disqualification from the Internal Revenue Service;
 21 authorizing the state board and the Department of
 22 Management Services to adopt rules; creating s.
 23 121.735, F.S.; providing for allocations for death
 24 benefits authorized by the act; amending ss. 121.71,
 25 121.74, and 121.75, F.S.; conforming cross-references
 26 to changes made by the act; requiring the State Board
 27 of Administration to transfer moneys to fund survivor
 28 benefit payments under specified circumstances;
 29 adjusting employer contribution rates in order to fund

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30 changes made by the act; providing a directive to the
 31 Division of Law Revision and Information; declaring
 32 that the act fulfills an important state interest;
 33 providing an appropriation; providing an effective
 34 date.
 35
 36 Be It Enacted by the Legislature of the State of Florida:
 37
 38 Section 1. Paragraph (d) of subsection (7) of section
 39 121.091, Florida Statutes, is amended, and paragraph (i) is
 40 added to that subsection, to read:
 41 121.091 Benefits payable under the system.—Benefits may not
 42 be paid under this section unless the member has terminated
 43 employment as provided in s. 121.021(39)(a) or begun
 44 participation in the Deferred Retirement Option Program as
 45 provided in subsection (13), and a proper application has been
 46 filed in the manner prescribed by the department. The department
 47 may cancel an application for retirement benefits when the
 48 member or beneficiary fails to timely provide the information
 49 and documents required by this chapter and the department's
 50 rules. The department shall adopt rules establishing procedures
 51 for application for retirement benefits and for the cancellation
 52 of such application when the required information or documents
 53 are not received.
 54 (7) DEATH BENEFITS.—
 55 (d) Notwithstanding any other provision in this chapter to
 56 the contrary, with the exception of the Deferred Retirement
 57 Option Program, as provided in subsection (13):
 58 1. The surviving spouse of any member killed in the line of

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59 duty may receive a monthly pension equal to one-half of the
60 monthly salary being received by the member at the time of death
61 for the rest of the surviving spouse's lifetime or, if the
62 member was vested, such surviving spouse may elect to receive a
63 benefit as provided in paragraph (b). Benefits provided by this
64 paragraph shall supersede any other distribution that may have
65 been provided by the member's designation of beneficiary.

66 2. If the surviving spouse of a member killed in the line
67 of duty dies, the monthly payments ~~that which~~ would have been
68 payable to such surviving spouse had such surviving spouse lived
69 shall be paid for the use and benefit of such member's child or
70 children under 18 years of age and unmarried until the 18th
71 birthday of the member's youngest child. Beginning July 1, 2016,
72 such payments may be extended, for the surviving child of a
73 member in the Special Risk Class at the time he or she was
74 killed in the line of duty on or after July 1, 2013, until the
75 25th birthday of any child of the member if the child is
76 unmarried and enrolled as a full-time student.

77 3. If a member killed in the line of duty leaves no
78 surviving spouse but is survived by a child or children under 18
79 years of age, the benefits provided by subparagraph 1., normally
80 payable to a surviving spouse, shall be paid for the use and
81 benefit of such member's child or children under 18 years of age
82 and unmarried until the 18th birthday of the member's youngest
83 child. Beginning July 1, 2016, such monthly payments may be
84 extended, for the surviving child of a member in the Special
85 Risk Class at the time he or she was killed in the line of duty
86 on or after July 1, 2013, until the 25th birthday of any child
87 of the member if the child is unmarried and enrolled as a full-

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88 time student.

89 4. The surviving spouse of a member whose benefit
90 terminated because of remarriage shall have the benefit
91 reinstated beginning July 1, 1993, at an amount that would have
92 been payable had the benefit not been terminated.

93 (i) Effective July 1, 2016, and notwithstanding any
94 provision in this chapter to the contrary, if a member in the
95 Special Risk Class, other than a participant in the Deferred
96 Retirement Option Program under subsection (13), is killed in
97 the line of duty on or after July 1, 2013, the following
98 benefits are payable in addition to the benefits provided in
99 paragraph (d):

100 1. The surviving spouse may receive a monthly pension equal
101 to one-half of the monthly salary being received by the member
102 at the time of the member's death for the rest of the surviving
103 spouse's lifetime or, if the member was vested, such surviving
104 spouse may elect to receive a benefit as provided in paragraph
105 (b). Benefits provided by this paragraph supersede any other
106 distribution that may have been provided by the member's
107 designation of beneficiary.

108 2. If the surviving spouse dies, the monthly payments that
109 otherwise would have been payable to such surviving spouse shall
110 be paid for the use and benefit of the member's child or
111 children under 18 years of age and unmarried until the 18th
112 birthday of the member's youngest child. Such monthly payments
113 may be extended until the 25th birthday of the member's child if
114 the child is unmarried and enrolled as a full-time student.

115 3. If the member leaves no surviving spouse but is survived
116 by a child or children under 18 years of age, the benefits

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117 provided by subparagraph 1., normally payable to a surviving
 118 spouse, shall be paid for the use and benefit of such member's
 119 child or children under 18 years of age and unmarried until the
 120 18th birthday of the member's youngest child. Such monthly
 121 payments may be extended until the 25th birthday of any of the
 122 member's children if the child is unmarried and enrolled as a
 123 full-time student.

124 Section 2. Subsection (2) of section 121.571, Florida
 125 Statutes, is amended to read:

126 121.571 Contributions to the Florida
 127 Retirement System Investment Plan shall be made as follows:

128 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund the
 129 retirement, and disability, and line-of-duty death benefits
 130 provided under this part must be based on the uniform
 131 contribution rates established by s. 121.71 and on the
 132 membership class or subclass of the member. Such contributions
 133 must be allocated as provided in ss. 121.72, and 121.73, and
 134 121.735.

135 Section 3. Subsection (3) of section 121.591, Florida
 136 Statutes, is amended, present subsection (4) of that section is
 137 redesignated as subsection (5), and a new subsection (4) is
 138 added to that section, to read:

139 121.591 Payment of benefits.—Benefits may not be paid under
 140 the Florida Retirement System Investment Plan unless the member
 141 has terminated employment as provided in s. 121.021(39) (a) or is
 142 deceased and a proper application has been filed as prescribed
 143 by the state board or the department. Benefits, including
 144 employee contributions, are not payable under the investment
 145 plan for employee hardships, unforeseeable emergencies, loans,

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146 medical expenses, educational expenses, purchase of a principal
 147 residence, payments necessary to prevent eviction or foreclosure
 148 on an employee's principal residence, or any other reason except
 149 a requested distribution for retirement, a mandatory de minimis
 150 distribution authorized by the administrator, or a required
 151 minimum distribution provided pursuant to the Internal Revenue
 152 Code. The state board or department, as appropriate, may cancel
 153 an application for retirement benefits if the member or
 154 beneficiary fails to timely provide the information and
 155 documents required by this chapter and the rules of the state
 156 board and department. In accordance with their respective
 157 responsibilities, the state board and the department shall adopt
 158 rules establishing procedures for application for retirement
 159 benefits and for the cancellation of such application if the
 160 required information or documents are not received. The state
 161 board and the department, as appropriate, are authorized to cash
 162 out a de minimis account of a member who has been terminated
 163 from Florida Retirement System covered employment for a minimum
 164 of 6 calendar months. A de minimis account is an account
 165 containing employer and employee contributions and accumulated
 166 earnings of not more than \$5,000 made under the provisions of
 167 this chapter. Such cash-out must be a complete lump-sum
 168 liquidation of the account balance, subject to the provisions of
 169 the Internal Revenue Code, or a lump-sum direct rollover
 170 distribution paid directly to the custodian of an eligible
 171 retirement plan, as defined by the Internal Revenue Code, on
 172 behalf of the member. Any nonvested accumulations and associated
 173 service credit, including amounts transferred to the suspense
 174 account of the Florida Retirement System Investment Plan Trust

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175 Fund authorized under s. 121.4501(6), shall be forfeited upon
 176 payment of any vested benefit to a member or beneficiary, except
 177 for de minimis distributions or minimum required distributions
 178 as provided under this section. If any financial instrument
 179 issued for the payment of retirement benefits under this section
 180 is not presented for payment within 180 days after the last day
 181 of the month in which it was originally issued, the third-party
 182 administrator or other duly authorized agent of the state board
 183 shall cancel the instrument and credit the amount of the
 184 instrument to the suspense account of the Florida Retirement
 185 System Investment Plan Trust Fund authorized under s.
 186 121.4501(6). Any amounts transferred to the suspense account are
 187 payable upon a proper application, not to include earnings
 188 thereon, as provided in this section, within 10 years after the
 189 last day of the month in which the instrument was originally
 190 issued, after which time such amounts and any earnings
 191 attributable to employer contributions shall be forfeited. Any
 192 forfeited amounts are assets of the trust fund and are not
 193 subject to chapter 717.

194 (3) DEATH BENEFITS.—Under the Florida Retirement System
 195 Investment Plan:

196 (a) Survivor benefits are payable in accordance with the
 197 following terms and conditions, except as provided in subsection
 198 (4):

199 1. To the extent vested, benefits are payable only to a
 200 member's beneficiary or beneficiaries as designated by the
 201 member as provided in s. 121.4501(20).

202 2. Benefits shall be paid by the third-party administrator
 203 or designated approved providers in accordance with the law, the

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204 contracts, and any applicable state board rule or policy.

205 3. To receive benefits, the member must be deceased.

206 (b) Except as provided in subsection (4), in the event of a
 207 member's death, all vested accumulations as described in s.
 208 121.4501(6), less withholding taxes remitted to the Internal
 209 Revenue Service, shall be distributed, as provided in paragraph
 210 (c) or as described in s. 121.4501(20), as if the member retired
 211 on the date of death. No other death benefits are available for
 212 survivors of members, except for benefits, or coverage for
 213 benefits, as are otherwise provided by law or separately
 214 provided by the employer, at the employer's discretion.

215 (c) Except as provided in subsection (4), upon receipt by
 216 the third-party administrator of a properly executed application
 217 for distribution of benefits, the total accumulated benefit is
 218 payable by the third-party administrator to the member's
 219 surviving beneficiary or beneficiaries, as:

220 1. A lump-sum distribution payable to the beneficiary or
 221 beneficiaries, or to the deceased member's estate;

222 2. An eligible rollover distribution, if permitted, on
 223 behalf of the surviving spouse of a deceased member, whereby all
 224 accrued benefits, plus interest and investment earnings, are
 225 paid from the deceased member's account directly to the
 226 custodian of an eligible retirement plan, as described in s.
 227 402(c)(8)(B) of the Internal Revenue Code, on behalf of the
 228 surviving spouse; or

229 3. A partial lump-sum payment whereby a portion of the
 230 accrued benefit is paid to the deceased member's surviving
 231 spouse or other designated beneficiaries, less withholding taxes
 232 remitted to the Internal Revenue Service, and the remaining

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233 amount is transferred directly to the custodian of an eligible
 234 retirement plan, if permitted, as described in s. 402(c)(8)(B)
 235 of the Internal Revenue Code, on behalf of the surviving spouse.
 236 The proportions must be specified by the member or the surviving
 237 beneficiary.

238
 239 This paragraph does not abrogate other applicable provisions of
 240 state or federal law providing for payment of death benefits.

241 (4) DEATH BENEFITS FOR SPECIAL RISK CLASS MEMBERS.—Benefits
 242 are provided under this subsection to the spouse and child or
 243 children of members in the Special Risk Class when such members
 244 are killed in the line of duty and are payable in lieu of the
 245 benefits that would otherwise be payable under subsection (1) or
 246 subsection (3). Benefits provided by this subsection supersede
 247 any other distribution that may have been provided by the
 248 member's designation of beneficiary. Such benefits must be
 249 funded from employer contributions made under s. 121.571,
 250 transferred employee contributions and funds accumulated
 251 pursuant to paragraph (a), and interest and earnings thereon.

252 (a) Transfer of funds.—To qualify to receive monthly
 253 benefits under this subsection:

254 1. All moneys accumulated in the member's account,
 255 including vested and nonvested accumulations as described in s.
 256 121.4501(6), must be transferred from such individual accounts
 257 to the division for deposit in the survivor benefit account of
 258 the Florida Retirement System Trust Fund. Moneys in the survivor
 259 benefit account must be accounted for separately. Earnings must
 260 be credited on an annual basis for amounts held in the survivor
 261 benefit account of the Florida Retirement System Trust Fund

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262 based on actual earnings of the trust fund.

263 2. If the member has retained retirement credit earned
 264 under the pension plan as provided in s. 121.4501(3), a sum
 265 representing the actuarial present value of such credit within
 266 the Florida Retirement System Trust Fund shall be transferred by
 267 the division from the pension plan to the survivor benefit
 268 retirement program as implemented under this subsection and
 269 shall be deposited in the survivor benefit account of the trust
 270 fund.

271 (b) Survivor retirement; entitlement.—An investment plan
 272 member who is in the Special Risk Class at the time the member
 273 is killed in the line of duty on or after July 1, 2013,
 274 regardless of length of creditable service, may have survivor
 275 benefits paid as provided in s. 121.091(7)(d) and (i) to:

276 1. The surviving spouse for the spouse's lifetime; or
 277 2. If there is no surviving spouse or the surviving spouse
 278 dies, the member's child or children under 18 years of age and
 279 unmarried until the 18th birthday of the member's youngest
 280 child. Such payments may be extended until the 25th birthday of
 281 any child of the member if the child is unmarried and enrolled
 282 as a full-time student as provided in s. 121.091(7)(d) and (i).

283 (c) Survivor benefit retirement effective date.—The
 284 effective retirement date for the surviving spouse or eligible
 285 child of a Special Risk Class member who is killed in the line
 286 of duty is:

287 1. The first day of the month following the member's death
 288 if the member dies on or after July 1, 2016.

289 2. July 1, 2016, for a member of the Special Risk Class
 290 when killed in the line of duty on or after July 1, 2013, but

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291 before July 1, 2016, if the application is received before July
 292 1, 2016; or the first day of the month following the receipt of
 293 such application.

294
 295 If the investment plan account balance has already been paid out
 296 to the surviving spouse or the eligible unmarried dependent
 297 child or children, the benefit payable shall be actuarially
 298 reduced by the amount of the payout.

299 (d) Line-of-duty death benefit.-

300 1. The following individuals are eligible to receive a
 301 retirement benefit under s. 121.091(7) (d) and (i) if the
 302 member's account balance is surrendered and an application is
 303 received and approved:

304 a. The surviving spouse.

305 b. If there is no surviving spouse or the surviving spouse
 306 dies, the member's child or children under 18 years of age and
 307 unmarried until the 18th birthday of the member's youngest
 308 child, or until the 25th birthday of the member's child if the
 309 child is unmarried and enrolled as a full-time student.

310 2. Such surviving spouse or such child or children shall
 311 receive a monthly survivor benefit that begins accruing on the
 312 first day of the month of survivor benefit retirement, as
 313 approved by the division, and is payable on the last day of that
 314 month and each month thereafter during the surviving spouse's
 315 lifetime or on behalf of the unmarried children of the member
 316 until the 18th birthday of the youngest child, or until the 25th
 317 birthday of any of the member's unmarried children who are
 318 enrolled as full-time students. Survivor benefits must be paid
 319 out of the survivor benefit account of the Florida Retirement

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320 System Trust Fund established under this subsection.

321
 322 If the investment plan account balance has already been paid out
 323 to the surviving spouse or the eligible unmarried dependent
 324 child or children, the benefit payable shall be actuarially
 325 reduced by the amount of the payout.

326 (e) Computation of survivor benefit retirement benefit.-The
 327 amount of each monthly payment must be calculated as provided
 328 under s. 121.091(7) (d) and (i).

329 (f) Death of the surviving spouse or children.-

330 1. Upon the death of a surviving spouse, the monthly
 331 benefits shall be paid through the last day of the month of
 332 death and shall terminate or be paid on behalf of the unmarried
 333 child or children until the 18th birthday of the youngest child,
 334 or the 25th birthday of any of the member's unmarried children
 335 who are enrolled as full-time students.

336 2. If the surviving spouse dies and the benefits are being
 337 paid on behalf of the member's unmarried children as provided in
 338 subparagraph 1., benefits shall be paid through the last day of
 339 the month until the later of the month the youngest child
 340 reaches his or her 18th birthday, the month of the 25th birthday
 341 of any of the member's unmarried children enrolled as full-time
 342 students, or the month of the death of the youngest child.

343 Section 4. Section 121.5912, Florida Statutes, is created
 344 to read:

345 121.5912 Survivor benefit retirement program; qualified
 346 status; rulemaking authority.-It is the intent of the
 347 Legislature that the survivor benefit retirement program for
 348 Special Risk Class members of the Florida Retirement System

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349 investment plan meet all applicable requirements for a qualified
 350 plan. If the state board or the division receives notification
 351 from the Internal Revenue Service that this program or any
 352 portion of this program will cause the retirement system, or any
 353 portion thereof, to be disqualified for tax purposes under the
 354 Internal Revenue Code, the portion that will cause the
 355 disqualification does not apply. Upon such notice, the state
 356 board or the division shall notify the presiding officers of the
 357 Legislature. The state board and the department may adopt any
 358 rules necessary to maintain the qualified status of the survivor
 359 benefit retirement program.

360 Section 5. Section 121.735, Florida Statutes, is created to
 361 read:

362 121.735 Allocations for member line-of-duty death benefits;
 363 percentage amounts.—

364 (1) The allocations established in subsection (3) shall be
 365 used to provide line-of-duty death benefit coverage for Special
 366 Risk Class members in the investment plan and shall be
 367 transferred monthly by the division from the Florida Retirement
 368 System Contributions Clearing Trust Fund to the survivor benefit
 369 account of the Florida Retirement System Trust Fund.

370 (2) Such allocations are stated as a percentage of each
 371 investment plan member's gross compensation for the calendar
 372 month. Any change in a contribution percentage is effective the
 373 first day of the month for which retirement contributions may be
 374 made on or after the beginning date of the change. Contribution
 375 percentages may be modified by general law.

376 (3) Effective July 1, 2016, allocations from the Florida
 377 Retirement System Contributions Clearing Trust Fund to provide

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378 line-of-duty death benefits for Special Risk Class members in
 379 the investment plan and to offset the costs of administering
 380 said coverage, are as follows:
 381
 382

<u>Membership Class</u>	<u>Percentage of Gross</u> <u>Compensation</u>
-------------------------	---

<u>Special Risk Class</u>	<u>0.82%</u>
---------------------------	--------------

383
 384
 385 Section 6. Subsection (1) of section 121.71, Florida
 386 Statutes, is amended to read:

387 121.71 Uniform rates; process; calculations; levy.—

388 (1) In conducting the system actuarial study required under
 389 s. 121.031, the actuary shall follow all requirements specified
 390 to determine, by Florida Retirement System employee membership
 391 class, the dollar contribution amounts necessary for the next
 392 fiscal year for the pension plan. In addition, the actuary shall
 393 determine, by Florida Retirement System membership class, based
 394 on an estimate for the next fiscal year of the gross
 395 compensation of employees participating in the investment plan,
 396 the dollar contribution amounts necessary to make the
 397 allocations required under ss. 121.72, ~~and~~ 121.73, and 121.735.
 398 For each employee membership class and subclass, the actuarial
 399 study must establish a uniform rate necessary to fund the
 400 benefit obligations under both Florida Retirement System
 401
 402

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403 retirement plans by dividing the sum of total dollars required
404 by the estimated gross compensation of members in both plans.

405 Section 7. Section 121.74, Florida Statutes, is amended to
406 read:

407 121.74 Administrative and educational expenses.—In addition
408 to contributions required to fund member accounts under s.
409 121.71 ~~ss. 121.71 and 121.73~~, effective July 1, 2010, through
410 June 30, 2014, employers participating in the Florida Retirement
411 System shall contribute an employer assessment amount equal to
412 0.03 percent of the payroll reported for each class or subclass
413 of Florida Retirement System membership. Effective July 1, 2014,
414 the employer assessment is 0.04 percent of the payroll reported
415 for each class or subclass of membership. The amount assessed
416 shall be transferred by the division ~~of Retirement~~ from the
417 Florida Retirement System Contributions Clearing Trust Fund to
418 the State Board of Administration's Administrative Trust Fund to
419 offset the costs of administering the investment plan and the
420 costs of providing educational services to members of the
421 Florida Retirement System. Approval of the trustees is required
422 before the expenditure of these funds. Payments for third-party
423 administrative or educational expenses shall be made only
424 pursuant to the terms of the approved contracts for such
425 services.

426 Section 8. Section 121.75, Florida Statutes, is amended to
427 read:

428 121.75 Allocation for pension plan.—After making the
429 transfers required pursuant to ss. 121.71, 121.72, 121.73,
430 121.735, and 121.74, the monthly balance of funds in the Florida
431 Retirement System Contributions Clearing Trust Fund shall be

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

585-00361-16 20167012pb

432 transferred to the Florida Retirement System Trust Fund to pay
433 the costs of providing pension plan benefits and plan
434 administrative costs under the pension plan.

435 Section 9. For the 2016-2017 fiscal year only, upon
436 notification by the Department of Management Services that
437 sufficient funds are not available to make survivor benefit
438 payments authorized by this act, the State Board of
439 Administration shall transfer, to the extent necessary, moneys
440 in the Administrative Trust Fund to the survivor benefits
441 account in the Florida Retirement System Trust Fund to ensure
442 the timely payment of survivor benefits.

443 Section 10. (1) In order to fund the benefit changes
444 provided in this act, the required employer contribution rates
445 for members of the Florida Retirement System established in s.
446 121.71(4), Florida Statutes, are adjusted as follows:

447 (a) The Special Risk Class is increased by 0.45 percentage
448 point; and

449 (b) The Deferred Retirement Option Program is increased by
450 0.06 percentage point.

451 (2) In order to fund the benefit changes provided in this
452 act, the required employer contribution rate for the unfunded
453 actuarial liability of the Florida Retirement System established
454 in s. 121.71(5), Florida Statutes, for the Special Risk Class is
455 increased by 0.13 percentage point.

456 (3) The adjustments provided in subsections (1) and (2) are
457 in addition to any other changes to such contribution rates
458 which may be enacted into law to take effect on July 1, 2016.
459 The Division of Law Revision and Information is directed to
460 adjust accordingly the contribution rates provided in s. 121.71,

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461 Florida Statutes.

462 Section 11. The Legislature finds that a proper and
463 legitimate state purpose is served when employees and retirees
464 of the state and of its political subdivisions, and the
465 dependents, survivors, and beneficiaries of such employees and
466 retirees, are extended the basic protections afforded by
467 governmental retirement systems that provide fair and adequate
468 benefits that are managed, administered, and funded in an
469 actuarially sound manner, as required by s. 14, Article X of the
470 State Constitution and part VII of chapter 112, Florida
471 Statutes. Therefore, the Legislature determines and declares
472 that this act fulfills an important state interest.

473 Section 12. For the 2016-2017 fiscal year, the recurring
474 sums of \$5,445,537 from the General Revenue Fund and \$1,062,991
475 from trust funds are appropriated to Administered Funds in order
476 to fund the increased employer contribution rates to be paid
477 under this act by state agencies, state universities, state
478 colleges, and school districts.

479 Section 13. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-6-15

Meeting Date

7012

Bill Number (if applicable)

Topic DEATH BENEFITS

Amendment Barcode (if applicable)

Name LES CANTRELL

Job Title STATEWIDE COORDINATOR

Address 5818 E. MLK BLVD

Phone 386-679-9272

TAMPA FL 33619

Email LCANTRELL2011@AOL

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing TEAMSTERS LOCAL 2011

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/6/2015
Meeting Date

7012
Bill Number (if applicable)

Topic FRS Death Benefits

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

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Phone 850-222-3329

Tallahassee FL 32301
City State Zip

Email N/A

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

706

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

Topic Death Benefits

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Tallahassee, FL 32305

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City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10/6/15
Meeting Date

7012
Bill Number (if applicable)

Topic Death benefit

Amendment Barcode (if applicable)

Name Jim Tolley

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Tallahassee FL 32301
City State Zip

Email tolley@mindspring.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Professional Firefighters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10/6/2015

Meeting Date

7012

Bill Number (if applicable)

Topic Death Benefits for Law Enforcement

Amendment Barcode (if applicable)

Name Sarrah Carroll

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32301

Email carroll@sostrategy.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing 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 (10/14/14)

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 Governmental Oversight and Accountability

BILL: SPB 7014
INTRODUCER: Governmental Oversight and Accountability Committee
SUBJECT: Florida Retirement System
DATE: October 7, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		Go Submitted as Committee Bill
2.				
3.				

I. Summary:

SPB 7014 reestablishes renewed membership in the Florida Retirement System (FRS). A retiree of the FRS pension plan, the FRS investment plan, the Senior Management Service Optional Annuity Program (SMSOAP), the State University System Optional Retirement Program (SUSORP) or the State Community College System Optional Retirement Program (SCCSOAP) who is employed in a regularly established position with a covered employer on or after July 1, 2016, will be a renewed member in the FRS as follows:

- FRS (all retirees) → Investment Plan (any eligible class)
- SMSOAP → Investment Plan (any eligible class)
- SUSORP → SUSORP
- SCCSORP → SCCSORP

A renewed member must meet the vesting requirements of the applicable plan in which he becomes a renewed member. Except for renewed members reemployed prior to June 30, 2010, creditable service does not accrue for a retiree’s employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2016, and no employer or employee contributions may be paid into a renewed member’s investment plan account for employment with a covered employer during this time period.

System-wide, the contributions paid into the FRS Trust Fund by employers participating in the FRS will be increased by \$75.8 million annually.

The bill also requires employers to pay the full contribution related to the purchase of general military service under s. 121.111, F.S., in those instances in which the FRS member leaves the employment of a FRS-participating employer to report for active duty in the Armed Forces. This modification does not impact the FRS Trust Fund but does shift the costs of the service from the member to the employer.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was added to the FRS, and in 2007, the membership of the Institute of Food and Agricultural Sciences Supplemental Retirement Program was included in the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Ch. 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 115.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management of the pension plan assets is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. (Section 121.4501(6)(b) – (d), F.S.)

¹³ Section 121.591, F.S.

¹⁴ Section 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the line of duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA.CONST. art. IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.²² For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement occurs at 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.²⁷

Reemployment Restrictions

For the purposes of the pension plan, a "retiree" means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.²⁸ For the purposes of the investment plan, a "retiree" means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions. This does not include a member who has received a mandatory distribution of a de minimis account authorized by the SBA or a minimum required distribution provided for by the Internal Revenue Code.²⁹

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.021(60), F.S.

²⁹ Section 121.4501(2)(k), F.S.

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his FRS benefits.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the **first six calendar months** of retirement or after his DROP termination date, then his retirement application is voided and all retirement benefits, including any funds accumulated during DROP participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. A retiree cannot become a newly hired employee until after meeting the definition of termination by remaining unemployed for six calendar months.

A retiree may not receive both wages paid by an FRS-participating employer and an FRS retirement benefit in the same month during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. There are no exceptions to this reemployment limitation during this period. This restriction applies even if the particular position held is not covered by the FRS. A retiree must inform the Division of Retirement if he works for an FRS-participating employer during the reemployment limitation period.

Suspended retirement benefits for the months a reemployed retiree is employed by an FRS-participating employer during the reemployment limitation period will never be paid to the retiree. The reemployed retiree and his employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS-participating employer after a retiree has been retired for 12 calendar months.

If a retiree is re-employed with an FRS participating employer, he will be required to sign a statement that his reemployment does not violate these provisions.³⁰

Before July 1, 2010, there were various exceptions to employment with FRS-participating employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of chapter 2009-209, Laws of Florida, which also extended from one month to 12 months the exclusionary period immediately after retirement in which a retiree may not be reemployed with any FRS-participating employer.

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment prior to July 1, 2010, can have renewed membership in either the FRS pension plan or FRS investment plan or other state-administered retirement system and earn

³⁰ The information in this section of the bill analysis comes from the FRS Pension Plan Member Handbook, 2013 edition, p. 56, located at: https://www.rol.frs.state.fl.us/forms/member_handbook.pdf. See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.

service credit toward a second retirement benefit. Renewed members who retire again, including former DROP participants, are once more subject to reemployment limitations.

Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent children of a renewed member may qualify for survivor benefits.

Prior to July 1, 2010, when ch. 2009-209, Laws of Florida, took effect, retirees of a state-administered retirement system reemployed by an FRS-participating employer were eligible for renewed membership in the FRS. Currently, retirees initially re-employed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and will not earn creditable service toward a subsequent retirement benefit. This restriction from renewed membership includes retirees of the FRS pension plan, the FRS investment plan, the SUSORP, the SMSOAP, and the SCCSORP.³¹

Reemployed Retirees without Renewed Membership

Information provided by the DMS indicates that as of December of 2013, there were 5,703 employees who retired by June 30, 2010, and subsequently returned to FRS-covered employment, but are not permitted to be renewed members of the FRS. Of that number, 2,918 were retirees of the pension plan, and 2,616 were retirees of the investment plan. Anecdotal evidence suggests that some of these “retirees” were employees who took distributions from investment plan accounts prior to July 1, 2010, and rolled them into IRAs upon their termination from FRS-covered employment. The enactment on the bar to renewed membership means that anyone who took such a distribution is deemed retired, and cannot become a renewed member of the FRS.

Purchase of Military Service

Section 121.111, F.S., allows a member of the Florida Retirement System to purchase credit for military service. For the purchase of general military service, the member must have been employed by an FRS-participating employer in a regularly established position within 60 days prior to reporting for active duty. Upon return from active duty the member must be reemployed by the employer. The cost to purchase the service credit is equal to the employee and employer contributions required for the employee’s membership class for each month of service credit during the period of military service based on the member’s rate of monthly compensation as of the date that the employee left his position. Annual interest of 6 percent is added to such contributions from the due date of the contribution until final payment is made.

III. Effect of Proposed Changes:

The bill allows renewed membership in the FRS investment plan, beginning July 1, 2016, for all retirees of the FRS, the SUSORP, the CCORP, and the SMSOAP.

Section 6 amends s. 121.122, F.S., to provide that a retiree of:

- Either the pension plan or the investment plan of the FRS,

³¹ *Id.*, at 57. See also ss. 121.053, 121.091(9), 121.122, and 238.181, F.S.

- The State University System Optional Retirement Program,
- The Senior Management Service Optional Annuity Program, or
- The State Community College System Optional Retirement Program,

who is employed in a regularly established position with a covered employer on or after July 1, 2016, will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSOPRP or SCCSORP. The renewed member must satisfy the vesting requirements of the plan (one year for the investment plan). Members who retired and returned to renewed membership before July 1, 2010, may continue membership in the plan they choose.

A renewed member who had returned to covered employment prior to July 1, 2010, may retain membership in either the pension plan or the investment plan. A renewed member may be moved to Special Risk Class membership after July 1, 2016, if the position and member are eligible for Special Risk Class membership.

Creditable service (including credit toward the retiree health insurance subsidy) does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2016. Nor may employer or employee contributions be paid into a renewed member's investment plan account for employment with a covered employer during this time period.

Section 1 amends s. 121.0515, F.S., to make conforming changes consistent with section 6 and to allow a renewed member who returned to cover service prior to July 1, 2010, to shift to the Special Risk Class for service on or after July 1, 2016, if the member's position is eligible for the Special Risk Class.

Sections 2, 3, 4, and 7 amends ss. 121.053, 121.055, 121.091, and 121.4501, F.S., respectively to make conforming changes consistent with section 6 of the bill.

Section 5 amends s. 121.111, F.S., to require the employer to pay both the employer and employee contributions for the purchase of military service credit earned on or after July 1, 2015.

Section 8 provides a mechanism to adjust employer contribution rates to be paid into the FRS Trust Fund.

Section 9 makes the finding that the changes made by the bill fulfill an important state interest.

Section 10 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides in pertinent part that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law

fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated.”

This bill includes legislative findings that the bill fulfills important state interests (see section 9), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, universities, community colleges, counties, and municipalities.

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:

Members of the FRS who purchase military service earned on or after July 1, 2015, will save roughly 3 percent of the salary used to calculate the cost of the purchase of the credits.

C. Government Sector Impact:

Employers participating in the FRS that hire employees eligible for renewed membership will incur greater personnel costs associated with contributing to the FRS. Likewise, the public sector employees will also contribute 3 percent of their salaries to the FRS.

The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2016-2017 will increase by approximately \$75.8 million when compared to the employer contributions paid in Fiscal Year 2015-2016. The impacts by employer group for Fiscal Year 2016-2017 are noted below.

Employer Group	Impact on Contributions
State Agencies	\$12.7 m
Universities	\$7.3 m
Colleges	\$2.6 m
School Boards	\$29.9 m
Counties	\$19.4 m
Other	\$3.9 m
Total	\$75.8 m

Employers participating in the FRS that have employees purchase military service earned on or after July 1, 2016, will incur greater costs associated with the purchase of the service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.0515, 121.053, 121.055, 121.091, 121.111, 121.122, and 121.4501.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00609-16

20167014pb

1 A bill to be entitled
 2 An act relating to the Florida Retirement System;
 3 amending s. 121.0515, F.S.; authorizing renewed
 4 membership in the retirement system for retirees who
 5 are reemployed in a position eligible for the Special
 6 Risk Class under certain circumstances; amending s.
 7 121.053, F.S.; authorizing renewed membership in the
 8 retirement system for retirees who are reemployed in a
 9 position eligible for the Elected Officers' Class
 10 under certain circumstances; amending s. 121.055,
 11 F.S.; providing for renewed membership in the
 12 retirement system for retirees of the Senior
 13 Management Service Optional Annuity Program who are
 14 employed on or after a specified date; amending s.
 15 121.091, F.S.; conforming a provision to changes made
 16 by the act; amending s. 121.111, F.S.; requiring an
 17 employer to make employer and employee contributions
 18 toward credit for military service for service credit
 19 earned on or after a specified date; amending s.
 20 121.122, F.S.; requiring that certain retirees who are
 21 employed on or after a specified date be renewed
 22 members in the investment plan; providing exceptions;
 23 specifying that creditable service does not accrue for
 24 employment during a specified period; prohibiting
 25 certain funds from being paid into a renewed member's
 26 investment plan account for a specified period of
 27 employment; requiring the renewed member to satisfy
 28 vesting requirements; prohibiting a renewed member
 29 from receiving specified disability benefits;

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30 specifying limitations and requirements; requiring the
 31 employer and the retiree to make applicable
 32 contributions to the renewed member's investment plan
 33 account; providing for the transfer of contributions;
 34 prohibiting the purchase of past service in the
 35 investment plan; authorizing a renewed member to
 36 receive additional credit towards the health insurance
 37 subsidy under certain circumstances; prohibiting
 38 transfers to the pension plan; providing that a
 39 retiree employed on or after a specified date in a
 40 regularly established position eligible for the State
 41 University System Optional Retirement Program or State
 42 Community College System Optional Retirement Program
 43 is a renewed member of that program; specifying
 44 limitations and requirements; requiring the employer
 45 and the retiree to make applicable contributions;
 46 prohibiting the purchase of past service in the
 47 program; providing for renewed membership in the
 48 optional retirement program for certain retirees
 49 initially reemployed on or after a specified date;
 50 prohibiting a renewed member from receiving specified
 51 disability benefits; specifying limitations and
 52 requirements; requiring the employer and the retiree
 53 to make applicable contributions; providing for the
 54 transfer of contributions; prohibiting the purchase of
 55 past service in the optional retirement program;
 56 authorizing a renewed member to receive additional
 57 credit towards the health insurance subsidy under
 58 certain circumstances; providing for enrollment in the

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59 investment plan for retirees initially reemployed on
 60 or after a specified date; prohibiting such retirees
 61 from receiving specified disability benefits;
 62 specifying limitations and requirements; providing for
 63 contributions, and the transfer thereof, to the
 64 reemployed retiree's investment plan account;
 65 prohibiting the purchase of past service; authorizing
 66 a renewed member to receive additional credit towards
 67 the health insurance subsidy under certain
 68 circumstances; prohibiting transfers to the pension
 69 plan; amending s. 121.4501, F.S.; revising the
 70 definition of the term "eligible employee"; conforming
 71 a provision to changes made by the act; providing for
 72 employer contribution rate increases to fund changes
 73 made by the act; providing a directive to the Division
 74 of Law Revision and Information; declaring that the
 75 act fulfills an important state interest; providing an
 76 effective date.

77
 78 Be It Enacted by the Legislature of the State of Florida:

79
 80 Section 1. Paragraphs (i) and (j) are added to subsection
 81 (2) of section 121.0515, Florida Statutes, to read:

82 121.0515 Special Risk Class.—

83 (2) MEMBERSHIP.—

84 (i) A retiree of a state-administered retirement system who
 85 is employed in a regularly established position eligible for the
 86 Special Risk Class with a covered employer and initially
 87 enrolled in the Special Risk Class as a renewed member as

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88 provided in s. 121.122 on or after July 1, 2016, is subject to
 89 the following conditions:

90 1. If initially reemployed at any time from July 1, 2010,
 91 through June 30, 2016, and employed in a regularly established
 92 position eligible for the Special Risk Class as provided in this
 93 subsection and subsection (3), the retiree shall be enrolled in
 94 the Special Risk Class as a renewed member of the investment
 95 plan for creditable service earned on or after July 1, 2016.

96 2. If initially reemployed on or after July 1, 2016 in a
 97 regularly established position eligible for the Special Risk
 98 Class as provided in this subsection and subsection (3), the
 99 retiree shall be enrolled as a renewed member of the investment
 100 plan.

101 3. A reemployed retiree, or the employer on behalf of the
 102 retiree, may not purchase any past service for employment from
 103 July 1, 2010, to June 30, 2016, when renewed membership was not
 104 available.

105 (j) Effective July 1, 2016, a renewed member initially
 106 enrolled before July 1, 2010, who is employed in a regularly
 107 established position eligible for the Special Risk Class as
 108 provided in this subsection and subsection (3) may be enrolled
 109 in the Special Risk Class as a renewed member of the Florida
 110 Retirement System for creditable service earned on or after July
 111 1, 2016. Service as a renewed member in a regularly established
 112 position otherwise covered by the Special Risk Class as required
 113 by this subsection and subsection (3), before July 1, 2016,
 114 cannot be upgraded from the Regular Class accrual value.

115 Section 2. Paragraph (a) of subsection (3) and subsection
 116 (5) of section 121.053, Florida Statutes, are amended to read:

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117 121.053 Participation in the Elected Officers' Class for
118 retired members.—

119 (3) On or after July 1, 2010:

120 (a) A retiree of a state-administered retirement system who
121 is initially reemployed in ~~elected or appointed for the first~~
122 ~~time to~~ an elective office in a regularly established position
123 with a covered employer may not reenroll in the Florida
124 Retirement System, except as provided in s. 121.122.

125 (5) Any renewed member, as described in s. 121.122(1), (3),
126 or (6) subsection (1) or subsection (2), who is not receiving
127 the maximum health insurance subsidy provided in s. 112.363 is
128 entitled to earn additional credit toward the maximum health
129 insurance subsidy. Any additional subsidy due because of such
130 additional credit may be received only at the time of payment of
131 the second career retirement benefit. The total health insurance
132 subsidy received from initial and renewed membership may not
133 exceed the maximum allowed in s. 112.363.

134 Section 3. Paragraph (f) of subsection (1) and paragraph
135 (c) of subsection (6) of section 121.055, Florida Statutes, are
136 amended to read:

137 121.055 Senior Management Service Class.—There is hereby
138 established a separate class of membership within the Florida
139 Retirement System to be known as the "Senior Management Service
140 Class," which shall become effective February 1, 1987.

141 (1)

142 (f) Effective July 1, 1997:

143 1. Except as provided in subparagraph 3., an elected state
144 officer eligible for membership in the Elected Officers' Class
145 under s. 121.052(2)(a), (b), or (c) who elects membership in the

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146 Senior Management Service Class under s. 121.052(3)(c) may,
147 within 6 months after assuming office or within 6 months after
148 this act becomes a law for serving elected state officers, elect
149 to participate in the Senior Management Service Optional Annuity
150 Program, as provided in subsection (6), in lieu of membership in
151 the Senior Management Service Class.

152 2. Except as provided in subparagraph 3., an elected
153 officer of a local agency employer eligible for membership in
154 the Elected Officers' Class under s. 121.052(2)(d) who elects
155 membership in the Senior Management Service Class under s.
156 121.052(3)(c) may, within 6 months after assuming office, or
157 within 6 months after this act becomes a law for serving elected
158 officers of a local agency employer, elect to withdraw from the
159 Florida Retirement System, as provided in subparagraph (b)2., in
160 lieu of membership in the Senior Management Service Class.

161 3. A retiree of a state-administered retirement system who
162 is initially reemployed in a regularly established position on
163 ~~or after~~ July 1, 2010, through June 30, 2016, as an elected
164 official eligible for the Elected Officers' Class may not be
165 enrolled in renewed membership in the Senior Management Service
166 Class or in the Senior Management Service Optional Annuity
167 Program as provided in subsection (6), and may not withdraw from
168 the Florida Retirement System as a renewed member as provided in
169 subparagraph (b)2., as applicable, in lieu of membership in the
170 Senior Management Service Class. Effective July 1, 2016, a
171 retiree of the Senior Management Service Optional Annuity
172 Program who reenters covered employment shall be enrolled as a
173 renewed member as provided in s. 121.122.

174 (6)

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175 (c) *Participation.*—

176 1. An eligible employee who is employed on or before
 177 February 1, 1987, may elect to participate in the optional
 178 annuity program in lieu of participating in the Senior
 179 Management Service Class. Such election shall ~~must~~ be made in
 180 writing and filed with the department and the personnel officer
 181 of the employer on or before May 1, 1987. An eligible employee
 182 who is employed on or before February 1, 1987, and who fails to
 183 make an election to participate in the optional annuity program
 184 by May 1, 1987, is ~~shall be~~ deemed to have elected membership in
 185 the Senior Management Service Class.

186 2. Except as provided in subparagraph 6., an employee who
 187 becomes eligible to participate in the optional annuity program
 188 by reason of initial employment commencing after February 1,
 189 1987, may, within 90 days after the date of commencing
 190 employment, elect to participate in the optional annuity
 191 program. Such election shall ~~must~~ be made in writing and filed
 192 with the personnel officer of the employer. An eligible employee
 193 who does not within 90 days after commencing employment elect to
 194 participate in the optional annuity program is ~~shall be~~ deemed
 195 to have elected membership in the Senior Management Service
 196 Class.

197 3. A person who is appointed to a position in the Senior
 198 Management Service Class and who is a member of an existing
 199 retirement system or the Special Risk or Special Risk
 200 Administrative Support Classes of the Florida Retirement System
 201 may elect to remain in such system or class in lieu of
 202 participating in the Senior Management Service Class or optional
 203 annuity program. Such election shall ~~must~~ be made in writing and

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204 filed with the department and the personnel officer of the
 205 employer within 90 days after such appointment. An eligible
 206 employee who fails to make an election to participate in the
 207 existing system, the Special Risk Class of the Florida
 208 Retirement System, the Special Risk Administrative Support Class
 209 of the Florida Retirement System, or the optional annuity
 210 program is ~~shall be~~ deemed to have elected membership in the
 211 Senior Management Service Class.

212 4. Except as provided in subparagraph 5., an employee's
 213 election to participate in the optional annuity program is
 214 irrevocable if the employee continues to be employed in an
 215 eligible position and continues to meet the eligibility
 216 requirements set forth in this paragraph.

217 5. Effective from July 1, 2002, through September 30, 2002,
 218 an active employee in a regularly established position who has
 219 elected to participate in the Senior Management Service Optional
 220 Annuity Program has one opportunity to choose to move from the
 221 Senior Management Service Optional Annuity Program to the
 222 Florida Retirement System Pension Plan.

223 a. The election shall ~~must~~ be made in writing and ~~must be~~
 224 filed with the department and the personnel officer of the
 225 employer before October 1, 2002, or, in the case of an active
 226 employee who is on a leave of absence on July 1, 2002, within 90
 227 days after the conclusion of the leave of absence. This election
 228 is irrevocable.

229 b. The employee shall receive service credit under the
 230 pension plan equal to his or her years of service under the
 231 Senior Management Service Optional Annuity Program. The cost for
 232 such credit is the amount representing the present value of that

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233 employee's accumulated benefit obligation for the affected
234 period of service.

235 c. The employee ~~shall must~~ transfer the total accumulated
236 employer contributions and earnings on deposit in his or her
237 Senior Management Service Optional Annuity Program account. If
238 the transferred amount is not sufficient to pay the amount due,
239 the employee ~~shall must~~ pay a sum representing the remainder of
240 the amount due. The employee may not retain any employer
241 contributions or earnings from the Senior Management Service
242 Optional Annuity Program account.

243 6. A retiree of a state-administered retirement system who
244 is initially reemployed on or after July 1, 2010, through June
245 30, 2016, may not renew membership in the Senior Management
246 Service Optional Annuity Program. Effective July 1, 2016, a
247 retiree of the Senior Management Service Optional Annuity
248 Program who reenters covered employment shall be enrolled as a
249 renewed member as provided in s. 121.122.

250 Section 4. Paragraph (c) of subsection (9) of section
251 121.091, Florida Statutes, is amended to read:

252 121.091 Benefits payable under the system.—Benefits may not
253 be paid under this section unless the member has terminated
254 employment as provided in s. 121.021(39) (a) or begun
255 participation in the Deferred Retirement Option Program as
256 provided in subsection (13), and a proper application has been
257 filed in the manner prescribed by the department. The department
258 may cancel an application for retirement benefits when the
259 member or beneficiary fails to timely provide the information
260 and documents required by this chapter and the department's
261 rules. The department shall adopt rules establishing procedures

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262 for application for retirement benefits and for the cancellation
263 of such application when the required information or documents
264 are not received.

265 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

266 (c) Any person whose retirement is effective on or after
267 July 1, 2010, or whose participation in the Deferred Retirement
268 Option Program terminates on or after July 1, 2010, who is
269 retired under this chapter, except under the disability
270 retirement provisions of subsection (4) or as provided in s.
271 121.053, may be reemployed by an employer that participates in a
272 state-administered retirement system and receive retirement
273 benefits and compensation from that employer. However, a person
274 may not be reemployed by an employer participating in the
275 Florida Retirement System before meeting the definition of
276 termination in s. 121.021 and may not receive both a salary from
277 the employer and retirement benefits for 6 calendar months after
278 meeting the definition of termination. However, a DROP
279 participant shall continue employment and receive a salary
280 during the period of participation in the Deferred Retirement
281 Option Program, as provided in subsection (13).

282 1. The reemployed retiree may not renew membership in the
283 Florida Retirement System, except as provided in s. 121.122.

284 2. The employer shall pay retirement contributions in an
285 amount equal to the unfunded actuarial liability portion of the
286 employer contribution that would be required for active members
287 of the Florida Retirement System in addition to the
288 contributions required by s. 121.76.

289 3. A retiree initially reemployed in violation of this
290 paragraph and an employer that employs or appoints such person

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291 are jointly and severally liable for reimbursement of any
 292 retirement benefits paid to the retirement trust fund from which
 293 the benefits were paid, including the Florida Retirement System
 294 Trust Fund and the Public Employee Optional Retirement Program
 295 Trust Fund, as appropriate. The employer must have a written
 296 statement from the employee that he or she is not retired from a
 297 state-administered retirement system. Retirement benefits shall
 298 remain suspended until repayment is made. Benefits suspended
 299 beyond the end of the retiree's 6-month reemployment limitation
 300 period shall apply toward the repayment of benefits received in
 301 violation of this paragraph.

302 Section 5. Subsection (1) of section 121.111, Florida
 303 Statutes, is amended to read:

304 121.111 Credit for military service.—

305 (1) Creditable service of any member shall also include
 306 military service as defined in s. 121.021(20)(a) if:

307 (a) The member is in the active employ of an employer
 308 immediately prior to such service and leaves a position, other
 309 than a temporary position, for the purpose of induction into the
 310 Armed Forces of the United States or entry upon duty in the
 311 Armed Forces of the United States. When applied to the Florida
 312 Retirement System:

313 1. The term "position other than a temporary position"
 314 means a regularly established position with a Florida Retirement
 315 System employer; and

316 2. A member shall be construed to have left his or her
 317 employment for military purposes if he or she reported for
 318 active duty within 60 days after leaving such employment;

319 (b) The member is entitled to reemployment under the

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320 provisions of the Veterans' Reemployment Rights Act (38 U.S.C.
 321 ss. 2021 et seq.);

322 (c) The member applies for reemployment with the same
 323 employer within the time set forth in s. 2021 or s. 2024 of the
 324 Veterans' Reemployment Rights Act, whichever is applicable, and
 325 is reemployed by such employer;

326 (d) 1. For service credit before July 1, 2016, the member
 327 makes the required employee contributions, if any, and the
 328 employer makes the required employer contributions for the
 329 employee's membership class for each month of service credit
 330 during such period of military service, based upon the
 331 employee's rate of monthly compensation as of the date that the
 332 employee left his or her position, plus 4 percent interest on
 333 such contributions compounded annually from the due date of the
 334 contribution until July 1, 1975, and 6.5 percent interest
 335 compounded annually thereafter, until the payment is made to the
 336 proper retirement trust fund; and

337 2. For service credit on or after July 1, 2016, the
 338 employer makes the required employer and employee contributions
 339 for the employee's membership class for each month of service
 340 credit during such period of military service, based upon the
 341 employee's rate of monthly compensation as of the date that the
 342 employee left his or her position, plus 6.5 percent interest on
 343 such contributions compounded annually from the due date of the
 344 contribution until the payment is made to the Florida Retirement
 345 System Trust Fund; and

346 (e) The period of service claimed pursuant to this
 347 subsection does not exceed the periods specified by the
 348 provisions of ss. 2021 and 2024 of the Veterans' Reemployment

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349 Rights Act which are applicable in the member's case.

350 Section 6. Subsection (2) of section 121.122, Florida
351 Statutes, is amended, and subsections (3) through (6) are added
352 to that section, to read:

353 121.122 Renewed membership in system.—

354 (2) A retiree of a state-administered retirement system who
355 is initially reemployed in a regularly established position on
356 or after July 1, 2010, through June 30, 2016, may not be
357 enrolled as a renewed member.

358 (3) A retiree of a state-administered retirement system
359 specified in subsection (2) who is employed on or after July 1,
360 2016, in a regularly established position shall be a renewed
361 member of the investment plan, regardless of the position held,
362 unless employed in a position eligible for participation in the
363 State University System Optional Retirement Program or the State
364 Community College System Optional Retirement Program as provided
365 in subsections (4) and (5), respectively. A renewed member must
366 satisfy the vesting requirements and other provisions of this
367 chapter.

368 (a) Creditable service, including credit toward the retiree
369 health insurance subsidy provided in s. 112.363, does not accrue
370 for a retiree's employment in a regularly established position
371 with a covered employer during the period from July 1, 2010,
372 through June 30, 2016.

373 (b) Employer and employee contributions, interest,
374 earnings, or any other funds may not be paid into a renewed
375 member's investment plan account for any employment in a
376 regularly established position with a covered employer from July
377 1, 2010, through June 30, 2016, by the renewed member or the

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378 employer on behalf of the member.

379 (c) To be eligible to receive a retirement benefit, the
380 renewed member must satisfy the vesting requirements in s.
381 121.4501(6).

382 (d) The member is ineligible to receive disability benefits
383 as provided in s. 121.091(4) or s. 121.591(2).

384 (e) The member is subject to the reemployment after
385 retirement limitations provided in s. 121.091(9), as applicable.

386 (f) The member must satisfy the requirements for
387 termination from employment provided in s. 121.021(39).

388 (g) Upon the renewed membership or reemployment of a
389 retiree, the employer and the retiree shall pay the applicable
390 employer and employee contributions required under ss. 112.363,
391 121.71, 121.74, and 121.76. The contributions are payable only
392 for employment and salary earned in a regularly established
393 position with a covered employer on or after July 1, 2016. The
394 employer and employee contributions shall be transferred to the
395 investment plan and placed in a default fund as designated by
396 the state board. The retiree may move the contributions once an
397 account is activated in the investment plan.

398 (h) The member may not purchase any past service in the
399 investment plan, including employment in a regularly established
400 position with a covered employer from July 1, 2010, through June
401 30, 2016.

402 (i) A renewed member who earns creditable service under the
403 investment plan and who is not receiving the maximum health
404 insurance subsidy provided in s. 112.363 is entitled to earn
405 additional credit toward the subsidy. Such credit may be earned
406 only for employment in a regularly established position with a

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407 covered employer on or after July 1, 2016. Any additional
 408 subsidy due because of additional credit may be received only at
 409 the time of paying the second career retirement benefit. The
 410 total health insurance subsidy received by a retiree receiving
 411 benefits from initial and renewed membership may not exceed the
 412 maximum allowed under s. 112.363.

413 (j) Notwithstanding s. 121.4501(4)(g), the renewed member
 414 is not eligible to move to the pension plan.

415 (4) A retiree of a state-administered retirement system
 416 specified in subsection (2) who is employed on or after July 1,
 417 2016, in a regularly established position eligible for
 418 participation in the State University System Optional Retirement
 419 Program shall become a renewed member of the optional retirement
 420 program. The renewed member must satisfy the vesting
 421 requirements and other provisions of this chapter. Once
 422 enrolled, a renewed member remains enrolled in the optional
 423 retirement program while employed in an eligible position for
 424 the optional retirement program. If employment in a different
 425 covered position results in the retiree's enrollment in the
 426 investment plan, the retiree is no longer eligible to
 427 participate in the optional retirement program unless employed
 428 in a mandatory position under s. 121.35.

429 (a) The member is subject to the reemployment after
 430 retirement limitations provided in s. 121.091(9), as applicable.

431 (b) The member must satisfy the requirements for
 432 termination of employment provided in s. 121.021(39).

433 (c) Upon renewed membership or reemployment of a retiree,
 434 the employer and the retiree shall pay the applicable employer
 435 and employee contributions required under s. 121.35.

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436 (d) The member, or the employer on behalf of the member,
 437 may not purchase any past service in the optional retirement
 438 program or employment from July 1, 2010, to June 30, 2016, when
 439 renewed membership is not available.

440 (5) A retiree of a state-administered retirement system
 441 specified in subsection (2) who is employed on or after July 1,
 442 2016, in a regularly established position eligible for
 443 participation in the State Community College System Optional
 444 Retirement Program as provided in s. 121.051(2)(c)4. shall
 445 become a renewed member of the optional retirement program. The
 446 renewed member must satisfy the eligibility requirements of this
 447 chapter and s. 1012.875 for the optional retirement program.
 448 Once enrolled, a renewed member remains enrolled in the optional
 449 retirement program while employed in an eligible position for
 450 the optional retirement program. If employment in a different
 451 covered position results in the retiree's enrollment in the
 452 investment plan, the retiree is no longer eligible to
 453 participate in the optional retirement program.

454 (a) The member is subject to the reemployment after
 455 retirement limitations provided in s. 121.091(9), as applicable.

456 (b) The member must satisfy the requirements for
 457 termination of employment provided in s. 121.021(39).

458 (c) Upon renewed membership or reemployment of a retiree,
 459 the employer and the retiree shall pay the applicable employer
 460 and employee contributions required under ss. 121.051(2)(c) and
 461 1012.875.

462 (d) The member, or the employer on behalf of the member,
 463 may not purchase any past service in the optional retirement
 464 program or employment accrued from July 1, 2010, to June 30,

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2016.

(6) A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2016, shall be enrolled in the investment plan unless eligible for participation in the State University System Optional Retirement Program as provided in s. 121.35 or in the State Community College System Optional Retirement Program as provided in ss. 121.051(2)(c) and 1012.875. A renewed member must satisfy the vesting requirements and other provisions provided in this chapter.

(a) The member is not entitled to disability benefits as provided in s. 121.091(4) or s. 121.591(2).

(b) The member is subject to the reemployment after retirement limitations as provided in s. 121.091(9), as applicable.

(c) The member must meet the termination from employment provisions as provided in s. 121.021(39).

(d) Upon the renewed membership of a reemployed retiree, the employer and the retiree shall pay the applicable employer and employee contributions as required by ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only for employment and compensation earned in a regularly established position with a covered employer on or after July 1, 2016. The employer and employee contributions shall be transferred to the investment plan and placed in a default fund as designated by the state board. The retiree may move the contributions once an account is activated in the investment plan.

(e) The member or the employer on behalf of the member may not purchase any past service in the optional retirement program

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or employment accrued from July 1, 2010 to June 30, 2016.

(f) A renewed member who earns creditable service in the investment plan and is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. Such credit may be earned only for employment in a regularly established position with a covered employer on or after July 1, 2016. Any additional subsidy due because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowable under s. 112.363.

(g) Notwithstanding s. 121.4501(4)(g), the renewed member is not eligible to move to the pension plan.

Section 7. Paragraph (e) of subsection (2) and paragraph (f) of subsection (4) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

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

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; ~~or~~

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s.

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523 121.051(2)(c), or the State University System Optional
 524 Retirement Program established under s. 121.35; or
 525 3. Is a retiree of a state-administered retirement system
 526 employed in a regularly established position on or after July 1,
 527 2016, enrolled as a renewed member as provided under s. 121.122.

528
 529 The term does not include any member participating in the
 530 Deferred Retirement Option Program established under s.
 531 121.091(13), a retiree of a state-administered retirement system
 532 initially reemployed in a regularly established position on or
 533 after July 1, 2010, through June 30, 2016, or a mandatory
 534 participant of the State University System Optional Retirement
 535 Program established under s. 121.35.

536 (4) PARTICIPATION; ENROLLMENT.—

537 (f) 1. A member of the investment plan who takes a
 538 distribution of any contributions from his or her investment
 539 plan account is considered a retiree. A retiree who is initially
 540 reemployed in a regularly established position on or after July
 541 1, 2010, and before June 30, 2016, is not eligible for ~~to be~~
 542 ~~enrolled in~~ renewed membership, except as provided in s.
 543 121.122.

544 2. A retiree who is initially reemployed on or after July
 545 1, 2016, shall be a renewed member as provided in s. 121.122.

546 Section 8. (1) In order to fund the benefit changes
 547 provided for in this act, the required employer contribution
 548 rates of the Florida Retirement System established in s.
 549 121.71(4), Florida Statutes, shall be adjusted effective July 1,
 550 2016, as follows:

551 (a) The Regular Class is increased by 0.05 percentage

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552 points.
 553 (b) The Special Risk Class is increased by 0.09 percentage
 554 points.
 555 (c) The Special Risk Administrative Support Class is
 556 increased by 0.00 percentage points.
 557 (d) The Elected Officers' Class—Legislators, Governor, Lt.
 558 Governor, Cabinet Officers, State Attorneys, Public Defenders is
 559 increased by 0.14 percentage points.
 560 (e) The Elected Officers' Class—Justices, Judges is
 561 increased by 0.56 percentage points.
 562 (f) The Elected Officers' Class—County Elected Officers is
 563 increased by 0.22 percentage points.
 564 (g) The Senior Management Service Class is increased by
 565 0.10 percentage points.
 566 (h) The DROP is increased by 0.07 percentage points.
 567 (2) In order to fund the benefit changes provided for in
 568 this act, the required employer contribution rates of the
 569 Florida Retirement System established in s. 121.71(5), Florida
 570 Statutes, shall be adjusted effective July 1, 2016, as follows:
 571 (a) The Regular Class is increased by 0.18 percentage
 572 points.
 573 (b) The Special Risk Class is increased by 0.18 percentage
 574 points.
 575 (c) The Special Risk Administrative Support Class is
 576 increased by 0.00 percentage points.
 577 (d) The Elected Officers' Class—Legislators, Governor, Lt.
 578 Governor, Cabinet Officers, State Attorneys, Public Defenders is
 579 increased by 0.44 percentage points.
 580 (e) The Elected Officers' Class—Justices, Judges is

585-00609-16

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581 increased by 1.01 percentage points.

582 (f) The Elected Officers' Class-County Elected Officers is
583 increased by 0.54 percentage points.

584 (g) The Senior Management Service Class is increased by
585 0.38 percentage points.

586 (h) The DROP is increased by 0.00 percentage points.

587 (3) The adjustments provided in subsections (1) and (2)
588 shall be made in addition to other changes to such contribution
589 rates which may be enacted into law to take effect on July 1,
590 2016. The Division of Law Revision and Information is requested
591 to adjust accordingly the contribution rates provided in s.
592 121.71, Florida Statutes.

593 Section 9. The Legislature finds that a proper and
594 legitimate state purpose is served when employees and retirees
595 of the state and its political subdivisions, and the dependents,
596 survivors, and beneficiaries of such employees and retirees, are
597 extended the basic protections afforded by governmental
598 retirement systems. These persons must be provided benefits that
599 are fair and adequate and that are managed, administered, and
600 funded in an actuarially sound manner, as required by s. 14,
601 Article X of the State Constitution and part VII of chapter 112,
602 Florida Statutes. Therefore, the Legislature determines and
603 declares that this act fulfills an important state interest.

604 Section 10. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/6/2015
Meeting Date

7014
Bill Number (if applicable)

Topic FRS Reemployment

Amendment Barcode (if applicable)

Name Matt Rickett

Job Title Lobbyist

Address 300 East Brevard St.
Street

Phone 850-222-3329

Tallahassee FL 32301
City State Zip

Email N/A

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/6/15
Meeting Date

7014
Bill Number (if applicable)

Topic Re-employment

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President FPF

Address 345 West Madison St.
Street

Phone 850 224 7333

Tallahassee FL 32301
City State Zip

Email tolley@rainspring.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Professional Firefighters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Oct 6

Meeting Date

SB 7014

Bill Number (if applicable)

Topic Reemployment after distribution

Amendment Barcode (if applicable)

Name Kevin Watson

Job Title Lobbyist

Address 213 S. Adams Street

Phone 450.224.2074

City

State

3201

Zip

Email

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

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Education 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.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Governmental Oversight and Accountability

Judge:

Started: 10/6/2015 10:01:17 AM

Ends: 10/6/2015 10:37:39 AM

Length: 00:36:23

10:01:17 AM Meeting called to order
10:01:25 AM Roll call
10:02:02 AM Tab 1, SB 86 by Senator Negron (State Contracts)
10:02:06 AM Take up PCS barcode 271786
10:05:09 AM Senator Latvala for questions to Sen. Negron
10:08:55 AM Senator Bullard for questions to Sen. Negron
10:12:51 AM Senator Hays for questions to Sen. Negron
10:14:47 AM Senator Ring comments
10:16:07 AM Ash Williams, Executive Director FL SBA
10:19:01 AM Derek Silver (Student at FSU)
10:19:58 AM Debate
10:20:47 AM Waive close
10:20:51 AM Roll Call on CS/SB 86
10:21:03 AM CS/SB 86 Favorable
10:21:14 AM Chair over to Senator Hays
10:21:19 AM Tab 2, SPB 7008 by GO (Housing Discrimination)
10:21:43 AM Senator Ring to present SPB 7008
10:23:03 AM Waive Close
10:23:10 AM Move to Submit as committee bill, Sen. Ring
10:23:19 AM Roll Call on SPB 7008
10:23:23 AM Tab 3, SPB 7010 by GO (Individuals with Disabilities)
10:23:57 AM Senator Ring to present SPB 7010
10:24:51 AM Margaret Hooper, Florida Dev. Disabilities Council, Public Policy Coordinator
10:25:53 AM Sheila Gritz-Swift, Florida Dev. Disabilities Council, Deputy Director of Programs
10:27:52 AM Waive Close
10:27:59 AM Motion to submit as committee bill and roll Call on SPB 7010
10:28:25 AM Tab 4, SPB 7012 by GO (Death Benefits under the Florida Retirement System)
10:29:13 AM Senator Ring presenting SPB 7012
10:30:13 AM Senator Hays comments to staff
10:30:54 AM Lisa Henning, Fraternal Order of Police
10:32:45 AM Senator Hays in Debate
10:33:16 AM Senator Ring in Debate
10:34:15 AM Motion to submit as committee bill and roll call on SPB 7012
10:34:41 AM Tab 5, SPB 7014 by GO (Florida Retirement System)
10:35:10 AM Senator Ring to present SPB 7012
10:37:05 AM Motion to submit as committee bill and roll call on SPB 7014
10:37:27 AM Move to rise