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 Banking and Insurance Committee

BILL: SM 1822

INTRODUCER: Senator Hays

SUBJECT: Sarbanes Oxley Act

DATE: January 23, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Senate Memorial 1822 urges the United States Congress to repeal the Sarbanes-Oxley Act of 2002, and replace it with “reasonable non-intrusive measures to protect investors.”

II. Present Situation:

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act is designed to prevent accounting scandals such as those that accompanied the failures of Enron and WorldCom. The act applies to companies required to file reports with the Securities and Exchange Committee. The act amended Federal securities laws, primarily increasing requirements related to corporate governance, auditing, and financial reporting of public companies. The major provisions of the Act include:

- Section 101: Creates the Public Company Accounting Oversight Board, which regulates independent auditors.
- Section 201: Prohibits registered accounting firms from providing certain non-audit services[1] to a public company if the same firm audits the company’s financial statements.
- Section 301: Requires company audit committees to perform the appointment, compensation, and oversight of the company’s registered accounting firm and are also responsible for resolving disagreements between the registered accounting firm and company management regarding financial reporting. Audit committee members must be independent.

[1] Examples include bookkeeping, appraisal or valuation services, internal audit outsourcing services, and management functions. *Sarbanes-Oxley Act – Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*, (GAO-06-361) United States Government Accountability Office, Page 11.

- Section 302: Requires the Chief Executive Officer and Chief Financial Officer to certify they have reviewed annual and quarterly reports, that such reports do not contain untrue statements or omissions of material facts, and that the financial information is fairly presented.
- Section 404: Requires company management, in each annual report filed with the SEC, to state management's responsibility for maintaining adequate internal control structure and procedures for financial reporting. Management must also assess the effectiveness of such measures. The registered accounting firm must attest to and report on management's assessment of its internal control structure for financial reporting.
- Section 407: Requires public companies to disclose in periodic reports to the SEC whether the audit committee includes a financial expert.

The positive and negative effects of Sarbanes-Oxley have been widely debated. For example, a 2006 Government Accounting Office report[2] found that smaller public companies[3] incur higher compliance costs as a percentage of revenues than large public companies, particularly with respect to internal control reporting provisions and related audit fees.

III. Effect of Proposed Changes:

Resolution - Senate Memorial 1822 urges the United States Congress to repeal the Sarbanes-Oxley Act of 2002, and replace it with "reasonable non-intrusive measures to protect investors."

Rationales for Resolution – The memorial states that although Sarbanes-Oxley act was passed with "good intentions" to protect investors after the discovery of corporate accounting scandals, the act has damaged public companies and their ability to compete with foreign corporations because of its complex, costly, and damaging regulations. The costs of compliance with the act are unnecessary and crippling and disproportionally negatively affect smaller businesses. Financial market scholars also state that the act discourages American businesses from listing on the New York Stock Exchange and instead leads them to list on the London Stock Exchange because the latter is less heavily regulated. The act amounts to a "very costly intrusion" of the Federal government that imposes unnecessary regulatory costs on business and disrupts the free market. The Sarbanes-Oxley Act fails to achieve its purposes of reducing fraud and increasing transparency. Instead, it has "thwarted the creation of new public companies, driven business away from domestic stock markets, and cost the industrial sector billions of dollars."

Circulation – Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each legislature of the United States, and each member of the Florida delegation to the United States Congress.

The memorial is not subject to approval or veto by the Governor. The presiding officers of each house sign the memorial.

[2] *Sarbanes-Oxley Act – Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*, United States Government Accountability Office, (GAO-06-361).
[3] Defined as those with $700 million or less in market capitalization.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The positive and negative effects of Sarbanes-Oxley have been widely debated. Proponents of the Sarbanes-Oxley Act argue that it has had a positive impact on investor protection and confidence and improved the accuracy and transparency of financial statements and reports issued by publicly traded corporations. However, opponents of the legislation argue that the burdens and costs it places on businesses, including small businesses, outweigh any asserted benefits.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.