

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Ring, Chair
Senator Siplin, Vice Chair

MEETING DATE: Wednesday, March 30, 2011

TIME: 3:45 —5:45 p.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Fasano, Flores, Garcia, Latvala, Margolis, Montford, Norman, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 882 Detert (Similar CS/H 649)	Water Management Districts; Revises provisions relating to the membership of basin boards. Specifies the terms of service for basin board members designated by district governing board chairs. Provides that basin board members designated by district governing board chairs are voting members and counted for quorum purposes. Provides for designated district governing board members to serve as basin board chairs and co-chairs. Provides that a quorum of remaining members may conduct business if there is a vacancy on the board, etc.	EP 03/10/2011 Favorable GO 03/30/2011 BC
2	CS/SB 594 Judiciary / Hays (Identical CS/CS/H 277)	Sovereign Immunity; Requires that a claim in a wrongful death case be presented to the Department of Financial Services (DFS) within 2 years after the claim accrues. Provides that failure of the DFS or the appropriate agency to make final disposition of a claim for wrongful death within 90 days after it is filed is deemed to be a final denial of the claim. Tolls the statute of limitations for the period of time taken by the DFS or other agency to deny a medical malpractice or wrongful death claim, etc.	JU 03/09/2011 Fav/CS GO 03/30/2011 CA
3	SB 726 Bullard (Identical H 681)	State Symbols/Official State Flagship; Designates the schooner Western Union as the official state flagship.	GO 03/30/2011 EP RC

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Governmental Oversight and Accountability

Wednesday, March 30, 2011, 3:45 —5:45 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 86 Dockery (Identical H 1071)	Voting Conflicts; Provides an exception to provisions relating to voting conflicts, to conform to changes made by the act. Prohibits a member of the Legislature from voting upon or participating in any legislation inuring to the personal gain or loss of the member or his or her relative. Prohibits a member of the Legislature from participating in any legislation inuring to the personal gain or loss of a business associate, employer, board on which the member sits, principal by whom the member is retained, or parent corporation or subsidiary of such principal, etc. GO 03/30/2011 JU EE RC	
5	CS/SB 516 Children, Families, and Elder Affairs / Garcia (Similar H 83)	Autism; Creates the Autism Spectrum Disorder Study Committee to study autism spectrum disorder in families in which English is the second language. Provides for membership, meetings, and duties. Prohibits committee members from receiving compensation for their services. Authorizes certain funding for publications, subject to approval of the State Surgeon General. Requires a report to the Governor and Legislature. Provides for expiration of the committee. CF 03/14/2011 Fav/CS GO 03/30/2011 BC	
6	CS/SB 866 Judiciary / Bogdanoff (Similar H 567)	Judgment Interest; Requires quarterly adjustments to the rate of interest payable on judgments. Revises the calculation of the interest rate. Removes provisions relating to the date the interest rate established by the Chief Financial Officer is to take effect. Conforms provisions to changes made by the act, etc. JU 03/14/2011 Fav/CS GO 03/30/2011 BC	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1150 Transportation / Latvala (Similar H 1353, Compare H 4007, H 5501, S 1004, S 1644, S 1684)	Department of Highway Safety and Motor Vehicles; Specifies that the executive director of the department serves at the pleasure of the Governor and Cabinet. Authorizes a health care provider to notify a law enforcement agency after detecting the presence of a controlled substance in the blood of a person injured in a motor vehicle crash. Amends provisions relating to the operation of low-speed vehicles, motorized disability access vehicles, and all-terrain or utility vehicles, the unlawful operation of motor carriers, and special permits, respectively, etc. TR 03/09/2011 Fav/CS GO 03/30/2011 BC	
8	SM 954 Flores (Identical HM 557)	Parental Rights Amendment; Urges the Congress of the United States to propose to the states for ratification an amendment to the United States Constitution relating to parental rights. JU 03/09/2011 Not Considered JU 03/14/2011 Favorable CF 03/14/2011 Not Received CF 03/22/2011 Favorable GO 03/30/2011	
9	CS/SB 666 Regulated Industries / Ring (Link S 668)	Governmental Reorganization; Transfers and reassigns certain functions and responsibilities, including records, personnel, property, and unexpended balances of appropriations and other resources, from the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to the Department of Gaming Control. Requires the department to issue advisory opinions under certain circumstances. Provides for the Department of Gaming Control or the Department of Legal Affairs, to prosecute a fair association for illegal gambling activities, etc. RI 03/09/2011 Fav/CS GO 03/30/2011 BC	
10	SB 668 Ring (Link CS/S 666)	Florida Gaming Trust Fund/Dept. of Gaming Control; Creates the Florida Gaming Trust Fund within the Department of Gaming Control. Provides the funding sources and purpose of the trust fund. Requires funds to remain in the trust fund at the end of each fiscal year. Provides for future review and termination or re- creation of the trust fund. RI 03/09/2011 Temporarily Postponed RI 03/22/2011 Fav/1 Amendment GO 03/30/2011 BC	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 30, 2011, 3:45 —5:45 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1182 Ring (Similar H 7155)	State Board of Administration; Authorizes the board to invest the assets of a governmental entity in the Local Government Surplus Funds Trust Fund without a trust agreement with that governmental entity. Provides that certain investments made by the board under a trust agreement are subject only to the restrictions and limitations contained in the trust agreement. Corrects cross-references. Clarifies provisions prohibiting certain conflicts of interest by investment advisers and managers retained by the board. GO 03/23/2011 Temporarily Postponed GO 03/30/2011 BC	

12	SB 102 Ring (Identical H 31)	Office of the Chief Technology Officer; Creates the Office of the Chief Technology Officer within the Department of Financial Services. Requires that said officer be appointed by the Governor and Cabinet. Requires that the office be composed of three divisions. Requires that the Chief Technology Officer develop a multiyear plan of action for the purpose of meeting specified objectives, etc. GO 03/30/2011 BC	
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Consideration of proposed committee bill:

13	SPB 7228	Open Government Sunset Review Act; Expresses the legislative intent to review an exemption pertaining to competitive procurement solicitations.	
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Secretary of State			
14	Browning, Kurt S. (Dade City)	Pleasure of Governor	
Secretary of Management Services			
15	Miles, John P. (Winter Park)	Pleasure of Governor	



911140

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Wise) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 192
and insert:

Section 3. Section 373.609, Florida Statutes, is amended to
read:

373.609 Enforcement; city and county officers to assist.—It
is shall be the duty of every state and county attorney,
sheriff, police officer, and other appropriate city and county
official, upon request, to assist the department, the governing
board of any water management district, or any local board, or
any of their agents in the enforcement of the provisions of this



911140

law and the rules and regulations adopted thereunder.
Notwithstanding s. 373.217, local governments may adopt
ordinances that implement restrictions on landscape irrigation
as set forth in water management district rules or orders.

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

And the title is amended as follows:

Delete lines 19 - 22

and insert:

amending s. 373.609, F.S.; providing that local
governments may adopt restrictions on landscape
irrigation as set forth in district rules or orders;

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 Governmental Oversight and Accountability Committee

BILL: SB 882

INTRODUCER: Senator Detert

SUBJECT: Water Management Districts

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Favorable
2.	Naf	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill makes technical revisions and clarifications to basin boards related to board constitution and voting conditions for basin board chairs. The bill exempts water management district cooperative funding programs from chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party.

Additionally, the bill clarifies that local governments can continue to implement water management district (WMD) landscape irrigation restrictions by adopting ordinances that implement restrictions. It also allows local governments to adopt ordinances for landscape irrigation restrictions that are set forth in WMD rules or orders.

Lastly, the bill allows the Suwannee River Water Management District (SRWMD) to use funds from the Water Protection and Sustainability Program Trust Fund for regional water supply planning and other water resource projects.

This bill substantially amends ss. 373.0693, 373.171, 373.228 and 373.707, Florida Statutes.

II. Present Situation:

Water Management Districts

WMD basin boards ensure that local concerns within the districts are addressed effectively. Each board has half of the districts' millage capacity to fund projects that address water supply, flood protection, water quality and natural systems issues in its watershed. Basin board members are appointed by the Governor and must be confirmed by the Senate.

Only two WMDs have basin boards in addition to their regular governing boards – the Southwest Florida Water Management District (SWFWMD) and the South Florida Water Management District (SFWMD). The SWFWMD maintains seven basin boards, the SFWMD, one. These boards provide guidance for local programs and projects that are specific to their watershed basins. Each basin is guided by a basin board, which is composed of not less than three members and must include one member from each of the basin's counties.¹ The WMDs interpret this to mean that, in the absence of at least one member from each county, the basin board is not properly constituted. When this occurs, a basin board is unable to transact official business until the Governor appoints an individual to fill the vacancy. While vacancies of this kind occur from time to time, if one were to coincide with the budget and tax levy processes, it is possible that a basin board would not be able to establish its annual budget or request its annual tax levy.

SWFWMD Governing Board Policy 110-8 provides that the Governing Board Chair may appoint more than one governing board member to serve as chair of a basin board on a rotating basis. This is inconsistent with subsection 373.0693(6), F.S. Further, nothing in s. 373.0693, F.S., indicates the actual status of the basin chairs with respect to voting or the establishment of a quorum.

Cooperative Funding

SB 2080, signed into law by then Governor Crist in 2009, addressed cooperative funding programs. However, its statutory placement limits its application instead of applying generally to all cooperative funding programs, as was intended. Cooperative funding is not considered a regulatory program. It is a cost-share program for local governments for projects that develop sustainable water resources, provide flood protection and enhance conservation efforts. Therefore, if a district needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary.

Landscape Irrigation

Section 373.609, F.S., requires state, city, and county officials, upon request, to assist the governing board of any WMD in enforcing chapter 373, F.S., and the rules and regulations adopted to implement the provisions of the chapter. It is unclear whether the provisions allow local government adoption of ordinances to enforce WMD rules or if no such authority exists.

With limited exceptions, s. 373.217, F.S., states that Part II of chapter 373, F.S., preempts the regulation of consumptive use of water. Water use for landscape irrigation is a consumptive use of water. This provision may be construed to prohibit other government entities from adopting rules or ordinances to regulate consumptive uses of water, such as for landscape irrigation.

Alternative Water Supply Development

Section 373.707, F.S., allocates revenues deposited into the Water Protection and Sustainability Trust Fund Program to each WMD for assisting in the development of alternative water supply

¹ Section 373.0693(2), F.S. (2010)

and conservation projects. However, if a district does not have a regional water supply plan, or the plan does not identify the need for any alternative water supply projects, funds deposited in the district's trust fund may be used for water resource development projects. Four of the WMDs have one or more regional water supply plans, and most are assisting with the development of alternative supplies. The SRWMD recently completed its Water Supply Assessment Report and is in the process of developing regional water supply plans.

III. Effect of Proposed Changes:

Section 1 amends s. 373.0693, F.S., to provide that a member of the governing board serving as chair of a basin board be a regular, voting member of the basin board and be counted for purposes of establishing a quorum. In the event a vacancy occurs and a successor is not appointed within 180 days, the remaining members of the basin board will be able to continue to transact official business provided a quorum of the whole authorized number of members of the board is present. This will provide continuity in basin board operations, particularly during budget and tax levy times. The bill also provides for the appointment of more than one basin board chair from among the members of the governing board, to be consistent with governing board practice and policy. This section also contains technical and conforming changes.

Section 2 amends s. 373.171, F.S., to exempt cooperative funding programs from rulemaking requirements of chapter 120, F.S. Parties whose substantial interests are affected may still challenge these programs under s. 120.569, F.S.

Section 3 amends s. 373.228, F.S., to clarify that local governments can continue to implement WMD landscape irrigation restrictions for conservation purposes. Additionally, it authorizes local governments to adopt ordinances that implement landscape irrigation restrictions set forth in WMD rules or orders. This section also contains technical changes.

Section 4 amends s. 373.707, F.S., to allow the SRWMD to use funds deposited in the Water Protection and Sustainability Program Trust Fund to its credit for regional water supply planning and water resource projects. This section also contains technical changes.

Section 5 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

There may be some costs associated with complying with ordinances that enact WMD landscape irrigation restrictions. However, those costs are unknown. Private landscaping businesses and service providers may have reduced sales during watering restrictions. However, these businesses may also see an increase in sales of Florida-Friendly plants to offset any negative impacts. Landscape irrigation restrictions should lead to reduced water bills for the public during those times the restrictions are being enforced.

C. Government Sector Impact:

WMDs that establish cooperative funding programs may save time and money associated with the rulemaking process outside of chapter 120, F.S., review.

Additional efficiencies and continuity in the operation of the basin boards will be realized; however, the fiscal impact is indeterminate.

There may be some costs associated with ordinance development and adoption by local governments for landscape irrigation restrictions. However, local governments are not required to exercise the authority granted in this bill to implement such restrictions.

The SRWMD may access funds in the Water Protection and Sustainability Program Trust Fund dedicated for alternative water supply projects for other programs. This will maintain the SRWMD's flexibility to use these funds even though its need for alternative water supply projects may be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

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

The Florida Senate
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 Governmental Oversight and Accountability Committee

BILL: CS/SB 594

INTRODUCER: Judiciary Committee and Senator Hays

SUBJECT: Statutes of Limitations

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland	Maclure	JU	FAV/CS
2.	McKay	Roberts	GO	Pre-meeting
3.			CA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

A statute of limitations is a law that bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered. Currently, claims against the state or its subdivisions for a negligent or wrongful act are subject to a 4-year statute of limitations. However, there is an exception for medical malpractice claims against the state or its subdivisions, which are subject to a 2-year limitations period. The bill adds “wrongful death” to the list of exceptions governed by the 2-year statute of limitations. Thus, the bill reduces the statute of limitations for wrongful death actions against the state from 4 years to 2 years.

The bill brings other portions of the statute in conformity with the new statute of limitations. Currently, claimants have 3 years to give notice of their claim to an agency. The agency then has 6 months, or 90 days for medical malpractice claims, to dispose of the claim. Suit cannot be brought before notice has been given and a final disposition of the claim rendered; except that, if no agency action occurs for 6 months, or 90 days for medical malpractice claims, it is considered an automatic denial of the claim. Currently, the statute of limitations still runs during the period that the agency has to dispose of the claim. The bill reduces the period that a claimant has to give notice to an agency of its wrongful death claim, mandating that a claimant give notice to the agency within 2 years of the claim accruing. Additionally, the bill adds wrongful death claims to

the 90-day period for agency action already in place for medical malpractice claims. Thus, if no agency action occurred on a wrongful death claim for 90 days, such inaction would result in an automatic final denial of the claim. Finally, the bill tolls the statute of limitations for wrongful death and medical malpractice claims during the time period provided for agency action.

This bill substantially amends section 768.28, Florida Statutes.

Wrongful Death Actions

A wrongful death action is a lawsuit brought on behalf of a decedent's survivors for damages resulting from a tortious injury that caused the decedent's death.¹ The "Florida Wrongful Death Act" is codified in ss. 768.16-768.26, F.S. The Florida Wrongful Death Act provides that when the death of a person is caused by the wrongful act, negligence, default, or breach of contract of any person, the person who would have been liable for injury, if death had not ensued, is still liable for the damages resulting from the tortious conduct.² Furthermore, s. 768.20, F.S., provides that the personal representative of the decedent shall bring the wrongful death action and seek recovery on behalf of the survivors and the decedent's estate. The following damages are recoverable under the Florida Wrongful Death Act:

- Payer of medical and funeral expenses may recover those expenses;
- Surviving spouse, minor children (defined as under 25 years of age³), and all children if there is no surviving spouse, hereafter "survivors", may recover lost value of support and services from date of injury until resulting death;
- Survivors may recover lost value of future support and services;
- Survivors may recover for loss of companionship and mental pain and suffering;
- Parents of deceased minors may recover for mental pain and suffering from the date of injury; and,
- Decedent's estate may recover lost earnings from date of injury to the date of death.⁴

Statutes of Limitations

A statute of limitations is a law that bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered.⁵ These laws are designed to create equity and have a conclusive effect by preventing surprises and disallowing claims that have been allowed to slumber until evidence, memories, and availability of witnesses have eroded.⁶ The theory behind a statute of limitations is that, even if one has a just claim, it is unjust not to put the adversary on notice that he/she must defend that claim within the period of limitation.⁷

¹ Black's Law Dictionary (9th ed. 2009).

² Section 768.19, F.S.

³ Section 768.18, F.S.

⁴ Section 768.21, F.S.

⁵ Black's Law Dictionary (9th ed. 2009).

⁶ *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944).

⁷ *Id.* at 349.

Section 768.28, F.S., provides for tort actions against the state and its subdivisions. Section 768.28(14), F.S., creates special limitation periods when the state or one of its subdivisions is the defendant, notably:

Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4),⁸ and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

Section 95.11, F.S., sets forth the time limitations for commencing civil actions in Florida. Specifically, s. 95.11(4)(d), F.S., provides that an action for wrongful death must be commenced within 2 years of the death from which the cause of action accrues.

In *Beard v. Hambrick*, 396 So. 2d 708 (Fla. 1981), the Florida Supreme Court held that the 4-year statute of limitations provided in s. 768.28, F.S., is applicable to political subdivisions of the state rather than the 2-year statute of limitations for wrongful death actions provided in s. 95.11(4), F.S. The Court based its holding on a determination that a sheriff's office was an integral part of a "county" as defined in the Florida Constitution and therefore fell within the definition of a "political subdivision" of the state.⁹ The Court found that the Legislature intended there to be one limitations period for all actions brought under s. 768.28, F.S.¹⁰ Therefore, there is currently a 4-year statute of limitations for filing a wrongful death action against the state and its political subdivisions, and there is a 2-year statute of limitations for filing a wrongful death action against anyone other than the state and its political subdivisions.

Notice Requirements for Claims Against the State

Currently, if a claimant wishes to bring an action against the state or one of its subdivisions, then the claimant must give notice to the appropriate agency within 3 years of the claim accruing. Once notice has been given, the agency then has 90 days in the case of medical malpractice claims, and 6 months in all other cases, to take action on the claim. If no agency action occurs during the 6-month or 90-day period, then such inaction constitutes a denial of the claim. Additionally, the statute of limitations continues to run on claims after notice is given and while they are awaiting agency action. No action may be taken against the state or one of its subdivisions prior to the satisfaction of these notice requirements.¹¹

⁸ Section 768.31 (4), F.S., provides that where there is a judgment for wrongful death against a tortfeasor seeking contribution, any separate action by her or him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

⁹ *Hambrick*, 396 So. 2d at 711-12.

¹⁰ *Id.* at 712.

¹¹ Section 768.28 (6), F.S.

II. Effect of Proposed Changes:

This bill shortens the statute of limitations for wrongful death actions against the state from 4 years to 2 years. Whereas the Court in *Beard v. Hambrick* held that the 4-year statute of limitations was applicable to wrongful death actions against the state and its subdivisions, this bill would legislatively override that decision and offer only the 2-year statute of limitations, provided for in s. 95.11(4), F.S., in which to file a wrongful death action against the state and its subdivisions.¹² Potentially, shortening the statute of limitations will bar some claims against the state based on the fact that claims filed after the 2-year limitation period will be untimely and dismissed on those grounds.

The bill changes the time that a claimant has to give notice to the appropriate agency of its wrongful death claim to 2 years. The bill also provides that the agency has 90 days from the time that notice is given to take action on the wrongful death claim. If the agency takes no action during that 90-day period, then the agency's inaction constitutes a final denial of the claim. Additionally, the bill provides that the statute of limitations for wrongful death and medical malpractice claims are tolled during the time that the agency has to take action after the claimant gives the agency notice of its claim. This period for agency action could toll the statute of limitations for up to 90 days in wrongful death actions.

The bill provides an effective date of July 1, 2011, and applies to causes of action accruing on or after that date.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² *Hambrick*, at 712.

B. Private Sector Impact:

An estate will have a shorter period of time in which to commence a lawsuit on behalf of the survivors of a person whose death is caused by the wrongful act of the state or one of its subdivisions.

C. Government Sector Impact:

To the extent that a shorter period of time in which to institute litigation against the state or its subdivisions results in fewer wrongful death lawsuits being filed, the state and its subdivisions may potentially benefit fiscally from having fewer judgments entered against them.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 9, 2011:**

The committee substitute amends the original bill in the following ways:

- Changes the statutory period in which a claimant is required to give notice to the appropriate agency of its claim to 2 years;
- Adds wrongful death actions to the 90-day period for agency action that is already in place for medical malpractice actions;
- Adds a provision to the end of s. 768.28(6)(d), F.S., that tolls the statute of limitations during the 90 days that an agency has to take action once notice is given, and applies this provision to wrongful death and medical malpractice claims; and
- Changes the effective date to provide that this bill only applies to causes of action accruing on or after the effective date.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 726

INTRODUCER: Senator Bullard

SUBJECT: State Symbols/Official State Flagship

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mason	Roberts	GO	Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill designates the Schooner Western Union the official state flagship.

This bill creates section 15.0465 of the Florida Statutes.

II. Present Situation:

Currently, no ship is designated as the official state flagship.

Chapter 15, F.S. designates official state emblems. To date there are designations for a state tree, fruit, beverage, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera, renaissance festival, railroad museums, transportation museum, soil, fiddle contest, band, sports hall of fame, pie, maritime museum, and horse.

The Schooner Western Union is a 130-foot historic sailing vessel of the tall ship class. Construction of the ship began in Grand Cayman, but it was completed in Key West and first launched on April 7, 1939.¹ The Schooner is made of yellow pine and mahogany. For thirty-five years the Schooner served as a cable vessel for the Western Union Telegraph Company, repairing underwater cables throughout the Keys, Cuba, and the Carribean. Since retiring, the Schooner was used as a charter boat, in various events, and is now an open maritime museum.

¹ Schooner Western Union Maritime Museum—Boat History, <http://www.schoonerwesternunion.org/key-west/boat-history.htm> (last visited March 25, 2011).

III. Effect of Proposed Changes:

Section 1. Creates section 15.0465, F.S., to designate the Schooner Western Union as the official state flagship.

Section 2. Provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



784618

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 31 and 32
insert:

Section 2. Section 112.3142, Florida Statutes, is created
to read:

112.3142 Qualified blind trusts.-

(1) The Legislature finds that if a public official creates
a trust, and if the public official does not know the identity
of the financial interests held by the trust and does not
control the interests held by the trust, his or her official
actions would not be influenced or appear to be influenced by



784618

private considerations. Thus, it is the intent of the
Legislature that the public policy goal of the state, which is
to be achieved through reliance on a blind trust, be an actual
"blindness" or lack of knowledge or control by the official with
respect to the interests held in trust.

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

(a) "Cabinet" has the same meaning as in s. 20.03.

(b) "Commission" means the Commission on Ethics.

(c) "Covered public official" means the Governor, the
Lieutenant Governor, or a member of the Cabinet.

(3) If a covered public official holds an economic interest
in a qualified blind trust as defined in this section, he or she
does not have a conflict of interest prohibited under s.
112.313(3) or (7) or a voting conflict of interest under s.
112.3143 with regard to matters pertaining to that economic
interest.

(4) Except as otherwise provided in this section, the
covered public official may not attempt to influence or exercise
any control over decisions regarding the management of assets in
a qualified blind trust. The covered public official and each
person having a beneficial interest in the qualified blind trust
may not make any effort to obtain information with respect to
the holdings of the trust, including obtaining a copy of any
trust tax return filed or any information relating thereto,
except as otherwise provided in this section.

(5) Except for communications that consist solely of
requests for distributions of cash or other unspecified assets
of the trust, there shall be no direct or indirect communication
with respect to the trust between the covered public official or



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any person having a beneficial interest in the qualified blind trust and the trustee, unless such communication is in writing and unless it relates only to:

(a) A request for a distribution from the trust which does not specify whether the distribution is to be made in cash or in kind;

(b) The general financial interests and needs of the covered public official or interested person, including, but not limited to, an interest in maximizing income or long-term capital gain;

(c) The notification of the trustee of a law or regulation subsequently applicable to the covered public official which prohibits the covered official from holding an asset and which notification directs that the asset not be held by the trust; or

(d) Directions to the trustee to sell all of an asset initially placed in the trust by the covered public official which, in the determination of the covered public official, creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the public official.

(6) The covered public official shall report as an asset on his or her financial disclosure forms the beneficial interest in the qualified blind trust and its value, if the value is required to be disclosed. The covered public official shall report the blind trust as a primary source of income on his or her financial disclosure forms and its amount, if the amount of income is required to be disclosed. The covered public official is not required to report as a secondary source of income any source of income to the blind trust.

(7) In order to constitute a qualified blind trust, the



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71 trust must be established by the covered public official and
72 meet the following requirements:

73 (a) The person or entity appointed as a trustee must not
74 be:

75 1. The covered public official's spouse, child, parent,
76 grandparent, grandchild, brother, sister, parent-in-law,
77 brother-in-law, sister-in-law, aunt, uncle, or first cousin, or
78 the spouse of any such person;

79 2. A person who is an elected or appointed public officer
80 or a public employee; or

81 3. A person who has been appointed to serve in an agency by
82 the covered public official or by a public officer or public
83 employee supervised by the covered public official.

84 (b) The trust agreement that establishes the trust must:

85 1. Contain a clear statement of its purpose, namely, to
86 remove from the grantor control and knowledge of investment of
87 trust assets so that conflicts between the grantor's
88 responsibilities as a public official and his or her private
89 interests will be eliminated;

90 2. Give the trustee complete discretion to manage the
91 trust, including, but not limited to, the power to dispose of
92 and acquire trust assets without consulting or notifying the
93 covered public official or any person having a beneficial
94 interest in the trust;

95 3. Prohibit communication between the trustee and the
96 covered public official and any person having a beneficial
97 interest in the trust concerning the holdings or sources of
98 income of the trust, except amounts of cash value or net income
99 or loss, provided that such report may not identify any asset or



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holding, and except as provided in this section;

4. Provide that the trust tax return is prepared by the trustee or his or her designee and that any information relating thereto is not disclosed to the covered public official or to any other beneficiary, except as provided in this section;

5. Permit the trustee to notify the covered public official of the date of disposition and value at disposition of any original investment or interests in real property to the extent required by federal tax law, so that the information can be reported on the covered public official's applicable tax returns;

6. Prohibit the trustee from disclosing to the covered public official and any person having a beneficial interest in the trust any information concerning replacement assets to the trust, except for the minimum tax information that lists only the totals of taxable items from the trust and does not describe the source of individual items of income;

7. Prohibit the trustee from investing trust assets in business entities that he or she knows are regulated by or do a significant amount of business with the covered public official's public agency; and

8. Provide that the trust is not effective until it is approved by the commission.

(c) The obligations of the trustee and the official under the trust agreement must be observed by them.

(d) The trust shall contain only readily marketable assets.

(e) The trust must be approved by the commission as meeting the requirements of this section.

(8) A copy of the trust agreement must be filed with the



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commission within 5 business days after the agreement is
executed and must include:

(a) A listing of the assets placed in the trust;

(b) A statement detailing the date the agreement was
executed;

(c) The name and address of the trustee; and

(d) A separate statement signed by the trustee, under
penalty of perjury, certifying that he or she will not reveal
any information to the covered public official or any person
having a beneficial interest in the qualified blind trust,
except for information that is authorized under this section,
and that, to the best of the trustee's knowledge, the submitted
blind trust agreement complies with this section.

(9) If the trust is revoked while the covered public
official is a public officer, or if the covered public official
learns of any replacement assets that have been added to the
trust, the covered public official must file an amendment to his
or her most recent financial disclosure statement. The amendment
must be filed no later than 60 days after the date of revocation
or the addition of the replacement assets. The covered public
official must disclose the previously unreported pro rata share
of the trust's interests in investments or income deriving from
any such investments. For purposes of this section, any replaced
asset of which the covered public official learns shall
thereafter be treated as though the asset were an original asset
of the trust.

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

And the title is amended as follows:



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158 Delete line 3
159 and insert:
160 title; creating s. 112.3142, F.S., pertaining to
161 qualified blind trusts; providing legislative findings
162 and intent relating to qualified blind trusts;
163 defining terms; providing that if a covered public
164 official holds an economic interest in a qualified
165 blind trust, he or she does not have a conflict of
166 interest that would otherwise be prohibited by law;
167 prohibiting a covered public official from attempting
168 to influence or exercise any control over decisions
169 regarding the management of assets in a qualified
170 blind trust; prohibiting direct or indirect
171 communication between the covered public official or
172 any person having a beneficial interest in the
173 qualified blind trust and the trustee; providing
174 exemptions; requiring a covered public official to
175 report as an asset on his or her financial disclosure
176 forms the beneficial interest, and its value if
177 required, which he or she has in a qualified blind
178 trust; specifying the required elements necessary to
179 establish a qualified blind trust; specifying the
180 required elements necessary to be a trustee;
181 specifying the required elements in the trust
182 agreement; providing that the trust is not effective
183 unless it is approved by the Commission on Ethics;
184 requiring that the trustee and the official observe
185 the obligations of the trust agreement; providing that
186 the trust contains only readily marketable assets;



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187 requiring that the trust agreement be filed with the
188 commission within a specified time; providing for the
189 filing of an amendment to a financial disclosure
190 statement of a covered public official in specified
191 circumstances; amending s. 112.3143, F.S.; providing
192 an



637562

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

Senate Amendment (with title amendment)

After line 96
insert:

(4) A member of the Legislature shall vote on the annual
General Appropriations Act and disclose any conflict that he or
she may have with a line-item appropriation contained in that
act.

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

And the title is amended as follows:

Delete line 26



637562

and insert:

legislator is a member; requiring that a member of the
Legislature vote on the annual General Appropriations
Act and disclose any conflict that he or she may have
with a line-item appropriation contained in that act;
providing an effective date.



565230

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 96 and 97
insert:

Section 4. Paragraphs (a) and (c) of subsection (8) of
section 112.3215, Florida Statutes, are amended, present
subsection (14) of that section is redesignated as subsection
(15), and a new subsection (14) is added to that section, to
read:

112.3215 Lobbying before the executive branch or the
Constitution Revision Commission; registration and reporting;
investigation by commission.—



565230

(8)(a) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation report, has made a prohibited expenditure, or has knowingly submitted false information in any report or registration required in this section.

(c) The commission shall investigate any lobbying firm, lobbyist, principal, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(14) Any person who is required to be registered or to provide information under this section or under rules adopted pursuant to this section and who knowingly fails to disclose any material fact that is required by this section or by rules adopted pursuant to this section, or who knowingly provides false information on any report required by this section or by rules adopted pursuant to this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. This fine is in addition to any other penalty assessed by the Governor and Cabinet pursuant to subsection (10).

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

And the title is amended as follows:

Delete line 26

and insert:

legislator is a member; amending s. 112.3215, F.S.;

revising the requirements that the commission

investigate certain complaints to include complaints



565230

42 **against a certain act or certain entities;** providing
43 that a person who is required to register with the
44 Constitution Revision Commission or to provide
45 information on a report required by the commission but
46 who fails to disclose material fact or provides false
47 information commits a noncriminal infraction;
48 providing a fine for such infraction; providing an
49 effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 86

INTRODUCER: Senator Dockery

SUBJECT: Voting Conflicts

DATE: March 26, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			JU	
3.			EE	
4.			RC	
5.				
6.				

I. Summary:

This bill prohibits a member of the Legislature from participating in, and/or voting upon, certain legislation. The new provision would also require the member to publicly state to the body or the committee to which the member belongs, prior to consideration of the legislation, the interests which give rise to the voting conflict. The bill would also require disclosure of the specific nature of those interests in a memorandum filed with either the Secretary of the Senate or Clerk of the House of Representatives and placed in the journal of the house of which the legislator is a member.

This bill substantially amends Section 112.3143, Florida Statutes, and creates Section 112.31435, Florida Statutes.

II. Present Situation:

Under Section 112.3143(2), Florida Statutes, no state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting. The law does not prohibit a state public officer from participating in any matter.

Conversely, county, municipal, and other local officers are prohibited from voting on any measure which would inure to his/her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained, other than an agency; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. In the event of a conflict, the county, municipal, and other local officers are required to publicly state to the assembly the nature of the officer's interests in the matter from which he or she is abstaining prior to the vote being taken.

Additionally, county, municipal, and other local officers are required to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting. Appointed public officers are also prohibited from participating in a matter when the matter would inure to the special private gain or loss of one of the enumerated people unless the appointed public officer first discloses his or her interest in the matter.¹

III. Effect of Proposed Changes:

Senate Bill 86 creates an exception to the general rule in s. 112.3143(2), F.S., that state public officers may vote in an official capacity on any matter. The bill prohibits a member of the Legislature from voting upon or participating² in any legislation that would inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of his or her relative. The bill would also require the member to publicly state to the body or committee to which the member belongs, before any consideration of the legislation, all of his or her interests in the legislation or all of the relative's interests in the legislation which are known to the member. The member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

Senate Bill 86 also prohibits a member of the Legislature from participating in any legislation that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, the parent organization or subsidiary of a corporate principal by which he or she is retained, a business associate, an employer, or a board upon which the member sits. The member is required to publicly state to the body or committee all of the interests of such principals, parent organizations or subsidiaries of a corporate principal, business associates, employers, or board which are known to the member prior to any consideration of the legislation. The member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The bill requires that the memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

¹ Section 112.3143(4), F.S.

² Under the bill, the term "participate" means any attempt, other than casting a vote, to influence the passage, defeat, or amendment of legislation by oral or written communication made by a legislator or at such legislator's request.

As drafted, the bill could prohibit a member from voting on measures such as the General Appropriations Act if something therein inured to his/her special private gain or loss or if the member knows that it would inure to the special private gain or loss of a relative, a principal by whom the member is retained, the corporate parent organizations or subsidiaries of a corporate principal, business associates, employers, or boards upon which the member sits. The measure could also prohibit a member from voting on matters affecting his or her compensation as a member of the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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



828422

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Garcia) recommended the following:

Senate Amendment

Delete lines 24 - 45
and insert:

(3) The committee shall be composed of 10 members, of whom
four shall be appointed by the Governor, three shall be
appointed by the President of the Senate, and three shall be
appointed by the Speaker of the House of Representatives. Of the
members appointed to the committee:



828422

11 (a) At least one member must be a physician licensed under
12 chapter 458 or chapter 459, Florida Statutes.

13 (b) At least one member must be a psychiatrist licensed
14 under chapter 458 or chapter 459, Florida Statutes.

15 (c) At least one member must be a psychologist licensed
16 under chapter 490, Florida Statutes.

17 (d) At least one member must be a behavior analyst
18 certified under s. 393.17, Florida Statutes, who specializes in
19 the treatment of autism spectrum disorder through speech
20 therapy, occupational therapy, physical therapy, or applied
21 behavior analysis, or a provider licensed under chapter 491,
22 Florida Statutes.

23 (e) At least one member must be the State Surgeon General
24 or an employee of the Department of Health appointed by the
25 State Surgeon General.

26 (f) At least one member must be the parent of a child with
27 autism spectrum disorder.

28 (g) At least one member must be an educator certified in
29 special education.

30 (h) At least one member must be a medical doctor from UM-
31 NSU CARD, Center for Autism & Related Disabilities.

32 (j) At least one member must have autism spectrum disorder.

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 Governmental Oversight and Accountability Committee

BILL: CS/CB 516

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Autism

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Fav/CS
2.	Mason	Roberts	GO	Pre-meeting
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 516 creates the Autism Spectrum Disorder Study Committee (committee) to examine the effects of autism spectrum disorder (ASD) on families in which English is the second language. The committee, composed of nine members, is to advise the Agency for Persons with Disabilities (APD) on matters relating to the occurrence of ASD in those families. The committee must prepare and present its report by September 1, 2012, when the committee expires.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

What is Autism?

Autism is a term used to describe a group of complex developmental disabilities that many researchers believe are the result of a neurological disorder that affects the functioning of the

brain. More people are being diagnosed with ASD than ever before, and the Centers for Disease Control and Prevention (CDC) considers it an urgent public health concern.¹

Individuals with autism often have problems communicating with others through spoken language and nonverbal communication. The early signs of autism usually appear in the form of developmental delays before a child turns 3 years old.²

Section 393.063(3), F.S., defines autism to mean: “. . . a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.”

The various forms of autism are referred to as the autism spectrum disorders (ASD), meaning that autism can be manifested in a wide variety of combinations, from mild to severe. Thus, many different behaviors can indicate that a person should be diagnosed as autistic. According to the National Institute of Mental Health (NIMH),³ the pervasive developmental disorders, or ASDs, range from a severe form, called autistic disorder, to a milder form, Asperger’s syndrome.⁴ If a child has symptoms of either of these disorders, but does not meet the specific criteria for either, the diagnosis is called pervasive developmental disorder not otherwise specified (PDD NOS). Other rare, severe disorders that are included in the autism spectrum are Rett syndrome⁵ and childhood disintegrative disorder.⁶ The NIMH states that all children with an ASD demonstrate deficits in:

¹ See, e.g., Prevalence of Autism Spectrum Disorders --- Autism and Developmental Disabilities Monitoring Network, United States, 2006. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5810a1.htm> (last visited on March 24, 2011).

² Centers for Disease Control and Prevention website, available at <http://www.cdc.gov/ncbddd/autism/signs.html> (last visited on March 24, 2011).

³ Department of Health and Human Services, National Institute of Mental Health. Autism Spectrum Disorders: Pervasive Developmental Disorders. Printed 2004 Reprinted 2008. Available at: <http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf> (last visited on March 24, 2011).

⁴ The NIMH states that children with Asperger’s syndrome are similar to high-functioning children with autism in that their language and intelligence remain intact. Like autistic children, persons with Asperger’s syndrome have repetitive behaviors, severe social problems, and clumsy movements. The symptoms of Asperger’s syndrome usually appear later in childhood than those of autism. *Id.*

⁵ The NIMH provides the following explanation of Rett syndrome: Rett syndrome is relatively rare, affecting almost exclusively females, one out of 10,000 to 15,000. After a period of normal development, sometime between 6 and 18 months, autism-like symptoms begin to appear. The little girl’s mental and social development regresses—she no longer responds to her parents and pulls away from any social contact. If she has been talking, she stops; she cannot control her feet; she wrings her hands. Some of the problems associated with Rett syndrome can be treated. Physical, occupational, and speech therapy can help with problems of coordination, movement, and speech. *Id.*

⁶ The NIMH provides the following explanation of childhood disintegrative disorder: Very few children who have an ASD diagnosis meet the criteria for childhood disintegrative disorder (CDD). An estimate based on four surveys of ASD found fewer than two children per 100,000 with an ASD could be classified as having CDD. This suggests that CDD is a very rare form of ASD. It has a strong male preponderance. Symptoms may appear by age 2, but the average age of onset is between 3 and 4 years. Until this time, the child has age-appropriate skills in communication and social relationships. The long period of normal development before regression helps differentiate CDD from Rett syndrome. The loss of such skills as vocabulary is more dramatic in CDD than they are in classical autism. The diagnosis requires extensive and pronounced losses involving motor, language, and social skills. CDD is also accompanied by loss of bowel and bladder control and oftentimes seizures and a very low IQ. *Id.*

- *Social Interaction* – Most children with an ASD have difficulty learning to engage in everyday human interaction. Children with an ASD are also slower in understanding subtle social cues (nonverbal communication) and thus struggle to interpret what others are thinking and feeling. This causes them to often find social interaction confusing and frustrating. It is also common for people with an ASD to have difficulty controlling their emotions. Examples include episodes of disruptive behavior such as crying or verbal outbursts at inappropriate times or physical aggression. Autistics often can lose self control when exposed to a strange or overwhelming environment or when angry or frustrated.
- *Verbal and nonverbal communication* – Autistics have difficulty developing standard communication skills. Some children with an ASD remain mute, while others do not develop language until ages 5 to 9. Others use language in unusual ways or utilize sign language or pictures to communicate. The body language of autistics can be difficult to understand because it is not always consistent with the words they are saying. As they grow older, persons with an ASD often become more aware of their difficulties in communication, which can lead to anxiety or depression.
- *Repetitive behaviors or interests* – Children with an ASD often perform odd repetitive motions that set them apart from their peers. For example, some children and adults repeatedly flap their arms or walk on their toes while others freeze in position. Children with an ASD exhibit the need for consistency in their environment. Changes in daily routines—such as mealtimes, dressing, bathing, going to school at a certain time and by the same route—can cause autistics to become extremely disturbed. As children, they might spend hours lining up their toys in a certain way and if the toys are moved become upset. Additionally, autistics often form intense, obsessive preoccupations with certain objects or topics on which they focus much of their energy.

Another common difficulty is that children with an ASD often have unusual responses to sensory experiences, such as certain sounds or the way objects look.

Sections 627.6686(2)(b) and 641.31098(2)(b), F.S., define the term “autism spectrum disorder” as any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM):⁷

- Autistic disorder;
- Asperger’s syndrome; or
- Pervasive developmental disorder not otherwise specified.

Diagnosis of Autism Spectrum Disorders

There is no medical test for ASDs. Instead, doctors look at behavioral symptoms to make a diagnosis. These symptoms may show up within the first few months of life or may appear at any time before the age of 3.⁸

⁷ The DSM, published by the American Psychiatric Association, is the primary system used to classify and diagnose mental disorders. The 4th edition of the DSM was released in 1994. On February 10, 2010, the American Psychiatric Association released its draft criteria for the fifth edition of the DSM on its website. The draft DSM-5 includes collapsing all autism related diagnoses into one single category, “autism spectrum disorder,” that would incorporate autistic disorder, Asperger’s syndrome, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified. The final DSM-5 is scheduled for release in May 2013. <http://www.dsm5.org/ProposedRevisions/Pages/InfancyChildhoodAdolescence.aspx> (last visited March 24, 2011).

According to the Centers for Disease Control and Prevention (CDC), research shows that the diagnosis of autism at age 2 can be reliable, valid, and stable. However, many children do not receive final diagnosis until they are much older.⁹ This delay in diagnosis may result in lost opportunities for specialized early intervention.

The diagnosis of an ASD is a two-stage process. The first stage involves developmental screening during “well child” check-ups. These screening tests are used solely for identifying children with developmental disabilities. Additional screening may be needed if a child’s symptoms warrant it,¹⁰ or if he or she is at high risk for an ASD.¹¹

The second stage of diagnosis is a comprehensive evaluation. If the initial screening tests indicate the possibility of an ASD, then further comprehensive testing is performed. Comprehensive testing is done by health care practitioners from multiple disciplines (psychologists, psychiatrists, neurologists, speech therapists, and other professions with experience in diagnosing children with an ASD) who evaluate the child in depth and determine if there is a developmental disorder, and if so, render a diagnosis. This may include:¹²

- Clinical observations;
- Parent interviews;
- Developmental histories;
- Psychological testing;
- Speech and language assessments;
- The possibility of the use of one or more autism diagnostic scales; and
- The possibility of physical, neurological, and genetic testing.

Treatment Approaches

Much of the scientific and clinical evidence indicates that early treatment of autism during preschool years (ages 3 to 5) often yields very positive results in mitigating the effects of ASDs. According to the National Institute of Neurological Disorders and Stroke (NINDS), therapies for autism are designed to remedy specific symptoms.¹³ Educational and behavioral interventions are highly structured and usually aimed at the development of skills such as language and social skills. Medication may be prescribed to reduce self-injurious behavior or other behavioral symptoms of autism. Early intervention is important for children because children learn most rapidly when they are very young. If begun early enough, such intervention has a chance of favorably influencing brain development.

In a 2001 report, the Commission on Behavioral and Social Sciences and Education recommended that treatment “services begin as soon as a child is suspected of having an autistic

⁸ Centers for Disease Control and Prevention website. Available at: <http://www.cdc.gov/ncbddd/autism/screening.html> (last visited on March 24, 2011).

⁹ *Id.*

¹⁰ *Id.*

¹¹ The CDC considers a child with a sibling or parent with an ASD to be at high risk. *Id.*

¹² *Id.*

¹³ National Institutes of Health, National Institute of Neurological Disorders and Stroke, Autism Information Page. Available at: http://www.ninds.nih.gov/disorders/autism/autism.htm#Is_there_any_treatment (last visited on March 24, 2011).

spectrum disorder. Those services should include a minimum of 25 hours a week, 12 months a year, in which the child is engaged in systematically planned, and developmentally appropriate educational activity toward identified objectives.”¹⁴

Florida’s Centers for Autism and Related Disabilities (CARD) are established in s. 1004.55, F.S., to provide nonresidential resource and training services for persons of all ages who have autism; a pervasive developmental disorder that is not otherwise specified; who have an autistic-like disability; who have a dual sensory impairment; or who have a sensory impairment with other handicapping conditions. There are seven CARD centers throughout the state,¹⁵ serving clients in their geographic areas.

Each of the centers is involved in academic research, and each provides information and resources to families in order to enable them to assist their loved ones dealing with ASD. In particular, early application of speech-language therapy, occupational therapy, and physical therapy are encouraged for individuals with autism:

- **Speech-Language Therapy:** People with autism usually have delays in communication. Speech therapists look for a system of communication that will work for an individual with autism and may consider alternatives to the spoken word such as signing, typing, or a picture board with words.
- **Occupational Therapy:** Commonly, this therapy focuses on improving fine motor skills, such as brushing teeth, feeding, and writing, or sensory motor skills that include balance, awareness of body position, and touch.
- **Physical Therapy:** This therapy specializes in developing strength, coordination, and movement.

ASD in the Hispanic Community

In 2008, the Hispanic population in Florida exceeded 3.8 million, and 86 percent of Hispanics lived in a household where a language other than English was spoken.¹⁶ The incidence of ASD does not differ across racial or ethnic groups.¹⁷ Dr. Bobbie Vaughn with USF’s CARD Center notes:¹⁸

¹⁴ Commission on Behavioral and Social Sciences and Education, *Educating Children with Autism* (2001). Available at: http://www.nap.edu/openbook.php?record_id=10017&page=6 (last visited on March 24, 2011).

¹⁵ Pursuant to s. 1004.55(1), F.S., the following centers are established: The College of Medicine at Florida State University; the College of Medicine at the University of Florida; the University of Florida Health Science Center at Jacksonville; the Louis de la Parte Florida Mental Health Institute at the University of South Florida; the Mailman Center for Child Development and the Department of Psychology at the University of Miami; the College of Health and Public Affairs at the University of Central Florida; and the Department of Exceptional Student Education at Florida Atlantic University.

¹⁶ *Demographic Profile of Hispanics in Florida, 2008*. Pew Hispanic Center. Available at: <http://pewhispanic.org/states/?stateid=FL> (last visited on March 24, 2011)

¹⁷ See fn. 1.

¹⁸ Project Conectar: Building Capacity in a Community Learn the Signs Act Early. Bobbie J. Vaughn, Ph.D., Associate Professor, University of South Florida, Principal Investigator. (On file with the Children, Families, and Elder Affairs Committee.) This ongoing research project is investigating the use of natural helpers, or promotoras, in Little Havana, Miami, to overcome the cultural and linguistic disparities that prevent families from seeking early help for their children and preventing early and accurate diagnosis of ASD and other developmental disabilities.

The rise in autism spectrum disorders and concomitant rise in the Latino population as the fastest growing minority along with linguistic differences potentially creates the widening of an already established disparity. ... The parents of many of these children also have limited English proficiency. ... This presents another challenge for children who might also have communication and social problems related to ASD.

These adult language barriers alone might prevent an immigrant Latino parent from taking their child to a clinic. In addition to language, is documented that racial bias, patient preferences, and poor communication (i.e., relaying of information) present health care access barriers for Latino and other minority families.

These cultural and linguistic issues can lead to late or inaccurate diagnoses, which can be devastating in a disorder like ASD, where early intervention is critical. Further, there exists a general lack of Spanish-speaking health care professionals trained to diagnose individuals with ASD,¹⁹ exacerbating the problems faced by these families.

III. Effect of Proposed Changes:

CS/SB 516 creates the Autism Spectrum Disorder Study Committee to examine the effects of autism spectrum disorder on families in which English is the second language.

The committee is to advise the Agency for Persons with Disabilities (APD) on legislative, programmatic and administrative matters relating to the occurrence of ASD in those families.

Nine members will be appointed to the committee: three by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. The membership must include:

- At least one licensed physician;
- At least one certified behavior analyst specializing in treatment of ASD through speech, occupational or physical therapy or through applied behavior analysis, or a provider licensed under Chapter 491, F.S., *i.e.*, a clinical social worker, marriage and family therapist, or mental health counselor;²⁰
- At least one licensed psychologist;
- The State Surgeon General or an employee of the Department of Health whom he or she designates;
- At least one parent of a child with ASD; and,
- At least one educator certified in special education.

Initial appointments must be made by July 1, 2011, and subsequent vacancies are to be filled by the original appointing authority for the duration of the term.

¹⁹ Conversation with Mary Kay Bunton-Pierce, USF CARD Center, March 10, 2011.

²⁰ Pursuant to s. 491.003(13), F.S., a licensed clinical social worker, marriage and family therapist, or mental health counselor may also be referred to as a “psychotherapist”.

The committee must appoint a chair and must meet at least six times, bimonthly, beginning in August 2011. The last meeting may be no later than August 30, 2012.

The members will receive no compensation for their service, and no state funds may be expended in support of the committee, except that the Surgeon General may publish the recommendations and public announcements.

The final report must be completed by September 1, 2012, and presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The committee expires on September 1, 2012.

The Act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State Surgeon General or an employee of the Department of Health may be required to attend committee meetings, and the Surgeon General has the discretion to spend department funds on the publication of committee recommendations and public meetings. These activities may create a minimal fiscal impact on the agency.

VI. Technical Deficiencies:

The bill does not specify administrative support for the committee, other than publication of its recommendations and public meetings at the discretion of the state Surgeon General. The bill also does not address issues such as transportation to the bimonthly meetings (per diem travel costs); how the members will fund any research, studies, surveys, etc.; or if any of the members will be people who interact with ASD children with English as their second language.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 14, 2011:

The Committee adopted an amendment relating to the composition of the committee, which:

- adds that a physician may also be licensed under Chapter 459;
- includes at least one licensed psychologist among the required membership; and,
- replaces “psychotherapist” with the more-specific “provider licensed under Chapter 491” among the optional membership.

- B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 38
and insert:

Section 1. Section 55.03, Florida Statutes, is amended to
read:

55.03 Judgments; rate of interest, generally.—

(1) On December 1, March 1, June 1, and September 1 of each
year, the Chief Financial Officer shall set the rate of interest
that shall be payable on judgments or decrees for the calendar
quarter ~~year~~ beginning January 1, April 1, July 1, and October 1
by averaging the discount rate of the Federal Reserve Bank of



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New York for the preceding 12 months ~~year~~, then adding 400 ~~500~~ basis points to the averaged federal discount rate. The Chief Financial Officer shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming year. The interest rate established by the Chief Financial Officer shall take effect on the first day ~~January 1~~ of each following calendar quarter ~~year~~. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer for time periods after January 1, 1995, for which interest is due. This section does not ~~Nothing contained herein shall~~ affect a rate of interest established by written contract or obligation.

(2) Any judgment for money damages or order for a judicial sale and any process or writ directed to a sheriff for execution shall bear, on its face, the rate of interest that is payable on the judgment. The rate of interest stated in the judgment, as adjusted in subsection (3), accrues on the judgment until it is paid.

(3) The interest rate is established at the time a judgment is obtained, and such interest rate shall be adjusted quarterly in accordance with the interest rate set each quarter by the Chief Financial Officer ~~remain the same~~ until the judgment is paid.

(4) A sheriff is ~~shall~~ not be required to docket and index or collect on any process, writ, judgment, or decree, described in subsection (2), and entered after the effective date of this act, unless such process, writ, judgment, or decree indicates



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the rate of interest. For purposes of this subsection, if the process, writ, judgment, or decree refers to the statutory rate of interest described in subsection (1), such reference shall be deemed to indicate the rate of interest.

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

And the title is amended as follows:

Delete lines 3 - 9
and insert:

55.03, F.S.; requiring the Chief Financial Officer to set the rate of interest payable on judgments or decrees for the calendar quarter on certain specified dates; revising the calculation of the interest rate; specifying the dates the rate of interest established by the Chief Financial Officer is to take effect; providing that the rate of interest is established at the time a judgment is obtained; requiring that such interest rate be adjusted quarterly in accordance with a certain interest rate;

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 866

INTRODUCER: Judiciary Committee and Senator Bogdanoff

SUBJECT: Judgment Interest

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	Fav/CS
2.	Roberts	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill requires the Chief Financial Officer to adjust the statutory rate of interest payable on judgments or decrees on a quarterly basis by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 450 basis points to the averaged federal discount rate. The bill also provides that the interest rate at the time the judgment is obtained will be adjusted annually until the judgment is paid. Currently, the rate is calculated annually, without quarterly adjustment, and includes an addition of 500 basis points to the averaged federal discount rate. Additionally, under current law, the interest rate established at the time of the judgment remains the same until it is paid, without annual adjustment.

This bill substantially amends sections 55.03 and 717.1341, Florida Statutes.

Prejudgment and Post-judgment Interest

Interest can accrue on both prejudgment and post-judgment awards. Prejudgment interest is awarded for the time between the loss of a vested property right and the time that judgment is entered. The purpose is to compensate the prevailing party for loss of use of his or her money from the date that it is determined he or she is entitled to a sum of money to the time when final

judgment is entered.¹ Post-judgment interest, on the other hand, is awarded for the period between the final judgment and the time when the entire sum of the money is collected.² The purpose of post-judgment interest is two-fold: to encourage parties to pay damages quickly and to compensate the prevailing party for the inability to use the awarded money while the appeal is pending, which can take years.³ Prejudgment interest is generally only allowed on liquidated damages (those agreed to ahead of time by the parties).⁴ In other cases, the general rule is that interest typically begins to accrue when the judgment is entered.⁵ “Prejudgment and post-judgment interest serve exactly the same purpose, albeit for different time periods: they make the plaintiff whole for having been deprived of the use of the principal loss amount.”⁶

Judgment Interest Rates

Under current Florida law, on December 1 of each year, the Chief Financial Officer is required to set the rate of interest payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate.⁷ A basis point is one one-hundredth of a percentage point, used to express the movement of interest rates or index pricing.⁸ Interest rates are adjusted annually to reflect current market conditions, which vary over time. The interest rate established in statute does not affect a rate of interest established by written contract or obligation.⁹ Florida statute additionally specifies that in all cases where interest accrues without a special contract for the rate, the statutory rate will be applied.¹⁰ Thus, the statutory interest rate applies to both prejudgment and post-judgment interest absent a different rate previously agreed upon by the parties.¹¹ Although the interest rate is adjusted annually, the rate at the time the judgment is obtained remains consistent until the judgment is fully paid.¹² The judgment interest rate for 2011 is 6 percent.¹³

II. Effect of Proposed Changes:

The bill provides for quarterly adjustments to the statutory judgment interest rate, as opposed to the annual adjustment currently in place. The bill specifies that the additional rate adjustments will be calculated on the first day of each calendar quarter. This change will result in interest

¹ Jorge A. Lopez, *Prejudgment and Postjudgment Interest: What's in a Name?*, 76 FLORIDA BAR JOURNAL 20 (Mar. 2002) (citing *Alvarado v. Rice*, 614 So. 2d 498 (Fla. 1993); *Becker Holding Corp. v. Becker*, 78 F.3d 514, 516-17 (11th Cir. 1996); *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985); *Kissimmee Util. Auth. v. Better Plastics, Inc.*, 526 So. 2d. 46 (Fla. 1988)).

² Lopez, *supra* note 1 (citing *Becker*, 78 F.3d at 516).

³ *Id.*

⁴ Lopez, *supra* note 1 (citing *Hurley v. Slingerland*, 480 So. 2d 104 (Fla. 4th DCA 1985)).

⁵ *Haskell v. Forest Land and Timber Co., Inc.*, 426 So. 2d 1251, 1253 (Fla. 1st DCA 1983).

⁶ *Becker*, 78 F.3d at 516.

⁷ Section 55.03(1), F.S.

⁸ Federal Reserve Bank of New York, *Maiden Lane Glossary*, available at http://www.newyorkfed.org/markets/ml_glossary.html (last visited Mar. 4, 2011).

⁹ Section 55.03(1), F.S.

¹⁰ Section 687.01, F.S.

¹¹ See *Amerace Corp. v. Stallings*, 823 So. 2d 110, 120 (Fla. 2002) (Pariente, J. dissenting).

¹² Section 55.03(3), F.S.

¹³ Florida Department of Financial Services, *Statutory Interest Rates Pursuant to Section 55.03, Florida Statutes* (2011), available at <http://www.myfloridacfo.com/aadir/interest.htm> (last visited Mar. 4, 2011).

rates reflecting more current market conditions, as conditions will be evaluated more frequently. Additionally, the bill lowers the number of basis points to be added to the averaged federal discount rate from 500 to 450, which may result in lower percentages. The bill also makes a conforming change to s. 717.1341, F.S., regarding invalid claims, recovery of property, and interest penalties. The section currently refers to annual adjustments to the interest rate.

The bill also amends s. 55.03(3), F.S., to provide that the interest rate established at the time the judgment is obtained will no longer remain constant until it is paid, but will be adjusted annually. With this change, judgment interest rates will be adjusted to reflect current market conditions throughout the payment period, not just market conditions at the time the judgment was entered. The bill does not specify who will be responsible for accounting for how the annual adjustment in the interest rate affects the total amount due on an unpaid judgment. Further, currently under s. 55.03(2) and (4), F.S., a judgment directed to and docketed by a sheriff shall bear on its face the rate of interest payable on the judgment. At the time the judgment is entered, however, only the initial rate will be known; the adjusted rate for future years in which the judgment may remain unpaid will not be known.

The bill provides an effective date of July 1, 2011.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Non-prevailing parties may pay lower interest rates on judgments and will also potentially see rates fluctuate in accordance with market conditions more frequently, including fluctuations throughout the payment period.

C. Government Sector Impact:

The Department of Financial Services (DFS or department) will be required to make arrangements to calculate judgment interest rates more frequently. The department

reports that the current annual process requires 15 hours of staff time to prepare and review calculations and to mail notifications. If calculations are done quarterly, DFS expects staff time to increase to 60 hours per year for calculations and mailings along with an additional 250 hours of staff time to make necessary programming changes to the Florida Accounting Information Resource (FLAIR). There will also be some cost associated with additional postage and mailing materials for notices. The department estimates a small fiscal impact associated with making these adjustments.¹⁴

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 14, 2011:

The committee substitute:

- Changes the date that the Chief Financial Officer must set judgment interest rates from “December 1 of each year” to “the first day of the month of each quarter”;
- Changes language specifying that the calculated interest rate will be payable from the beginning of each year and then will be calculated again on three other specified dates to language indicating that the calculated interest rate will be payable for the calendar quarter;
- Deletes the phrase “for the upcoming year”;
- Deletes a provision stating that the established interest rate will take effect at the beginning of each year;
- Increases the number of basis points to be added to the averaged federal rate from 300 under the original bill to 450; and
- Provides that the interest rate established at the time a judgment is obtained will not remain the same until the judgment is paid, but will be adjusted annually.

B. Amendments:

None.

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

¹⁴ Department of Financial Services, *Senate Bill 866 Fiscal Analysis* (Feb. 23, 2011) (on file with the Senate Committee on Judiciary).



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 279 - 1315
and insert:

Section 4. Subsection (21) of section 316.003, Florida
Statutes, is amended, and subsection (89) is added to that
section, to read:

316.003 Definitions.—The following words and phrases, when
used in this chapter, shall have the meanings respectively
ascribed to them in this section, except where the context
otherwise requires:

(21) MOTOR VEHICLE.—Any self-propelled vehicle not operated



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upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, swamp buggy, or moped.

(89) SWAMP BUGGY.—A motorized off-road vehicle designed to travel over swampy terrain, which may utilize large tires or tracks operated from an elevated platform, and may be used on varied terrain. A swamp buggy does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter. A swamp buggy may not be operated upon the public roads, streets, or highways of this state, except to the extent specifically authorized by a state or federal agency to be used exclusively upon lands, managed, owned, or leased by that agency.

Section 5. Section 316.1905, Florida Statutes, is amended to read:

316.1905 Electrical, mechanical, or other speed calculating devices; power of arrest; evidence.—

(1) Whenever any peace officer engaged in the enforcement of the motor vehicle laws of this state uses an electronic, electrical, mechanical, or other device used to determine the speed of a motor vehicle on any highway, road, street, or other public way, such device shall be of a type approved by the department and shall have been tested to determine that it is operating accurately. Tests for this purpose shall be made not less than once each 6 months, according to procedures and at regular intervals of time prescribed by the department.

(2) Any police officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air operating such a device that a driver of a vehicle



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has violated the speed laws of this state, may arrest the driver for violation of said laws where reasonable and proper identification of the vehicle and the speed of same has been communicated to the arresting officer.

(3) A citations for a violation of s. 316.183, s. 316.187, s. 316.189, or s. 316.1893 may not be issued or prosecuted unless a law enforcement officer used an electrical, mechanical, or other speed-calculating device that has been tested and approved in accordance with subsection (1), or unless the violation is determined to have contributed to a crash and the law enforcement officer is able to determine by other reliable measures that the driver was speeding.

(4) ~~(3)~~ (a) A witness otherwise qualified to testify shall be competent to give testimony against an accused violator of the motor vehicle laws of this state when such testimony is derived from the use of such an electronic, electrical, mechanical, or other device used in the calculation of speed, upon showing that the speed calculating device which was used had been tested. However, the operator of any visual average speed computer device shall first be certified as a competent operator of such device by the department.

(b) Upon the production of a certificate, signed and witnessed, showing that such device was tested within the time period specified and that such device was working properly, a presumption is established to that effect unless the contrary shall be established by competent evidence.

(c) Any person accused pursuant to the provisions of this section shall be entitled to have the officer actually operating the device appear in court and testify upon oral or written



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71 motion.

72 Section 6. Paragraph (a) of subsection (2) of section
73 316.1933, Florida Statutes, is amended to read:

74 316.1933 Blood test for impairment or intoxication in cases
75 of death or serious bodily injury; right to use reasonable
76 force.—

77 (2) (a) Only a physician, certified paramedic, registered
78 nurse, licensed practical nurse, other personnel authorized by a
79 hospital to draw blood, or duly licensed clinical laboratory
80 director, supervisor, technologist, or technician, acting at the
81 request of a law enforcement officer, may withdraw blood for the
82 purpose of determining the alcoholic content thereof or the
83 presence of chemical substances or controlled substances
84 therein. However, the failure of a law enforcement officer to
85 request the withdrawal of blood shall not affect the
86 admissibility of a test of blood withdrawn for medical purposes.

87 1. Notwithstanding any provision of law pertaining to the
88 confidentiality of hospital records or other medical records, if
89 a health care provider, who is providing medical care in a
90 health care facility to a person injured in a motor vehicle
91 crash, becomes aware, as a result of any blood test performed in
92 the course of that medical treatment, that the person's blood-
93 alcohol level meets or exceeds the blood-alcohol level specified
94 in s. 316.193(1)(b), or detects the presence of a controlled
95 substance listed in chapter 893, the health care provider may
96 notify any law enforcement officer or law enforcement agency.
97 Any such notice must be given within a reasonable time after the
98 health care provider receives the test result. Any such notice
99 shall be used only for the purpose of providing the law



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enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.

2. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

3. Nothing contained in s. 395.3025(4), s. 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s. 395.3025(4), s. 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

4. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

Section 7. Section 316.1957, Florida Statutes, is amended to read:

316.1957 Parking violations; designated parking spaces for



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persons who have disabilities.—When evidence is presented in any court of the fact that any motor vehicle was parked in a properly designated parking space for persons who have disabilities in violation of s. 316.1955, it is prima facie evidence that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the department ~~Division of Motor Vehicles~~.

Section 8. Subsection (3) of section 316.2085, Florida Statutes, is amended to read:

316.2085 Riding on motorcycles or mopeds.—

(3) The license tag of a motorcycle or moped must be permanently affixed to the vehicle and may not be ~~adjusted or~~ capable of being flipped up, inverted, reversed, or in any other way rendered to make the letters of the tag illegible from the rear while the vehicle is being operated. Concealing ~~No device~~ ~~for or method of concealing~~ or obscuring the legibility of the license tag of a motorcycle is prohibited ~~shall be installed or~~ ~~used~~. The license tag of a motorcycle or moped may be affixed horizontally or vertically to the ground so that the numbers and letters read from left to right or from top to bottom.

~~Alternatively, a license tag for a motorcycle or moped for which the numbers and letters read from top to bottom may be affixed perpendicularly to the ground, provided that the registered owner of the motorcycle or moped maintains a prepaid toll account in good standing and a transponder associated with the prepaid toll account is affixed to the motorcycle or moped.~~

Section 9. Section 316.2122, Florida Statutes, is amended to read:



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316.2122 Operation of a low-speed vehicle or mini truck on certain roadways.—The operation of a low-speed vehicle as defined in s. 320.01~~(42)~~ or a mini truck as defined in s. 320.01~~(45)~~ on any road as defined in s. 334.03(15) or (33) is authorized with the following restrictions:

(1) A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(2) A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(3) A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(4) Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver's license.

(5) A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(6) The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.



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Section 10. Section 316.2124, Florida Statutes, is amended to read:

316.2124 Motorized disability access vehicles.—The Department of Highway Safety and Motor Vehicles is directed to provide, by rule, for the regulation of motorized disability access vehicles as described in s. 320.01~~(34)~~. The department shall provide that motorized disability access vehicles shall be registered in the same manner as motorcycles and shall pay the same registration fee as for a motorcycle. There shall also be assessed, in addition to the registration fee, a \$2.50 surcharge for motorized disability access vehicles. This surcharge shall be paid into the Highway Safety Operating Trust Fund. Motorized disability access vehicles shall not be required to be titled by the department. The department shall require motorized disability access vehicles to be subject to the same safety requirements as set forth in this chapter for motorcycles.

Section 11. Section 316.21265, Florida Statutes, is amended to read:

316.21265 Use of all-terrain vehicles, golf carts, low-speed vehicles, or utility vehicles by law enforcement agencies.—

(1) Notwithstanding any provision of law to the contrary, any law enforcement agency in this state may operate all-terrain vehicles as defined in s. 316.2074, golf carts as defined in s. 320.01(22), low-speed vehicles as defined in s. 320.01~~(42)~~, or utility vehicles as defined in s. 320.01~~(43)~~ on any street, road, or highway in this state while carrying out its official duties.

(2) Such vehicles must be clearly marked as vehicles of a



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law enforcement agency and may be equipped with special warning lights, signaling devices, or other equipment approved or authorized for use on law enforcement vehicles.

(3) The vehicle operator and passengers must wear safety gear, such as helmets, which is ordinarily required for use by operators or passengers on such vehicles.

Section 12. Subsection (1) of section 316.3026, Florida Statutes, is amended to read:

316.3026 Unlawful operation of motor carriers.—

(1) The Office of Motor Carrier Compliance of the Department of Transportation may issue out-of-service orders to motor carriers, as defined in s. 320.01~~(33)~~, who have after proper notice failed to pay any penalty or fine assessed by the department, or its agent, against any owner or motor carrier for violations of state law, refused to submit to a compliance review and provide records pursuant to s. 316.302(5) or s. 316.70, or violated safety regulations pursuant to s. 316.302 or insurance requirements found in s. 627.7415. Such out-of-service orders shall have the effect of prohibiting the operations of any motor vehicles owned, leased, or otherwise operated by the motor carrier upon the roadways of this state, until such time as the violations have been corrected or penalties have been paid. Out-of-service orders issued under this section must be approved by the Secretary of Transportation or his or her designee. An administrative hearing pursuant to s. 120.569 shall be afforded to motor carriers subject to such orders.

Section 13. Subsection (3) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor



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fuel tax enforcement; inspection; penalty; review.—

(3) Any person who violates the overloading provisions of this chapter shall be conclusively presumed to have damaged the highways of this state by reason of such overloading, which damage is hereby fixed as follows:

(a) When the excess weight is 200 pounds or less than the maximum herein provided, the penalty shall be \$10;

(b) Five cents per pound for each pound of weight in excess of the maximum herein provided when the excess weight exceeds 200 pounds. However, whenever the gross weight of the vehicle or combination of vehicles does not exceed the maximum allowable gross weight, the maximum fine for the first 600 pounds of unlawful axle weight shall be \$10;

(c) For a vehicle equipped with fully functional idle-reduction technology, any penalty shall be calculated by reducing the actual gross vehicle weight or the internal bridge weight by the certified weight of the idle-reduction technology or by 400 pounds, whichever is less. The vehicle operator must present written certification of the weight of the idle-reduction technology and must demonstrate or certify that the idle-reduction technology is fully functional at all times. This calculation is not allowed for vehicles described in s. 316.535(6);

(d) An apportionable ~~apportioned motor~~ vehicle, as defined in s. 320.01, operating on the highways of this state without being properly licensed and registered shall be subject to the penalties as herein provided; and

(e) Vehicles operating on the highways of this state from nonmember International Registration Plan jurisdictions which



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are not in compliance with the provisions of s. 316.605 shall be subject to the penalties as herein provided.

Section 14. Paragraph (a) of subsection (5) and subsection (10) of section 316.550, Florida Statutes, are amended to read:
316.550 Operations not in conformity with law; special permits.—

(5) (a) The Department of Transportation may issue a wrecker special blanket permit to authorize a wrecker as defined in s. 320.01~~(40)~~ to tow a disabled vehicle as defined in s. 320.01(38) where the combination of the wrecker and the disabled vehicle being towed exceeds the maximum weight limits as established by s. 316.535.

(10) Whenever any motor vehicle, or the combination of a wrecker as defined in s. 320.01~~(40)~~ and a towed motor vehicle, exceeds any weight or dimensional criteria or special operational or safety stipulation contained in a special permit issued under the provisions of this section, the penalty assessed to the owner or operator shall be as follows:

(a) For violation of weight criteria contained in a special permit, the penalty per pound or portion thereof exceeding the permitted weight shall be as provided in s. 316.545.

(b) For each violation of dimensional criteria in a special permit, the penalty shall be as provided in s. 316.516 and penalties for multiple violations of dimensional criteria shall be cumulative except that the total penalty for the vehicle shall not exceed \$1,000.

(c) For each violation of an operational or safety stipulation in a special permit, the penalty shall be an amount not to exceed \$1,000 per violation and penalties for multiple



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violations of operational or safety stipulations shall be cumulative except that the total penalty for the vehicle shall not exceed \$1,000.

(d) For violation of any special condition that has been prescribed in the rules of the Department of Transportation and declared on the permit, the vehicle shall be determined to be out of conformance with the permit and the permit shall be declared null and void for the vehicle, and weight and dimensional limits for the vehicle shall be as established in s. 316.515 or s. 316.535, whichever is applicable, and:

1. For weight violations, a penalty as provided in s. 316.545 shall be assessed for those weights which exceed the limits thus established for the vehicle; and

2. For dimensional, operational, or safety violations, a penalty as established in paragraph (c) or s. 316.516, whichever is applicable, shall be assessed for each nonconforming dimensional, operational, or safety violation and the penalties for multiple violations shall be cumulative for the vehicle.

Section 15. Subsection (3) of section 316.646, Florida Statutes, is amended to read:

316.646 Security required; proof of security and display thereof; dismissal of cases.—

(3) Any person who violates this section commits a nonmoving traffic infraction subject to the penalty provided in chapter 318 and shall be required to furnish proof of security as provided in this section. If any person charged with a violation of this section fails to furnish proof at or before the scheduled court appearance date that security was in effect at the time of the violation, the court shall, upon conviction,



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notify the department to suspend the registrations ~~registration~~ and driver's license of such person. If the court fails to order the suspension of the person's registrations ~~registration~~ and driver's license for a conviction of this section at the time of sentencing, the department shall, upon receiving notice of the conviction from the court, and for all motor vehicle owners charged with operating a vehicle as defined in s. 627.732(3)(a), suspend the person's registrations ~~registration~~ and driver's license for the violation of this section. Such license and registration may be reinstated only as provided in s. 324.0221.

Section 16. Subsection (9) of section 317.0003, Florida Statutes, is amended to read:

317.0003 Definitions.—As used in this chapter, the term:

(9) "ROV" means any motorized recreational off-highway vehicle 64 inches or less in width, having a dry weight of 2,000 pounds or less, designed to travel on four or more nonhighway tires, having nonstraddle seating and a steering wheel, and manufactured for recreational use by one or more persons. The term "ROV" does not include a golf cart as defined in ss. 320.01~~(22)~~ and 316.003(68) or a low-speed vehicle as defined in s. 320.01~~(42)~~.

Section 17. Section 317.0016, Florida Statutes, is amended to read:

317.0016 Expedited service; applications; fees.—The department shall provide, through its agents and for use by the public, expedited service on title transfers, title issuances, duplicate titles, and recordation of liens, ~~and certificates of repossession~~. A fee of \$7 shall be charged for this service, which is in addition to the fees imposed by ss. 317.0007 and



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317.0008, and \$3.50 of this fee shall be retained by the processing agency. All remaining fees shall be deposited in the Incidental Trust Fund of the Division of Forestry of the Department of Agriculture and Consumer Services. Application for expedited service may be made by mail or in person. The department shall issue each title applied for pursuant to this section within 5 working days after receipt of the application except for an application for a duplicate title certificate covered by s. 317.0008(3), in which case the title must be issued within 5 working days after compliance with the department's verification requirements.

Section 18. Subsection (9) and paragraph (a) of subsection (10) of section 318.14, Florida Statutes, are amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(9) Any person who does not hold a commercial driver's license and who is cited while driving a noncommercial motor vehicle for an infraction under this section other than a violation of s. 316.183(2), s. 316.187, or s. 316.189 when the driver exceeds the posted limit by 30 miles per hour or more, s. 320.0605, s. 320.07(3)(a) or (b), s. 322.065, s. 322.15(1), s. 322.61, or s. 322.62 may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. In such a case, adjudication must be withheld and points, as provided by s. 322.27, may not be assessed. However, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may make no more



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than five elections within his or her lifetime under this subsection. The requirement for community service under s. 318.18(8) is not waived by a plea of nolo contendere or by the withholding of adjudication of guilt by a court. If a person makes an election to attend a basic driver improvement course under this subsection, 18 percent of the civil penalty imposed under s. 318.18(3) shall be deposited in the State Courts Revenue Trust Fund; however, that portion is not revenue for purposes of s. 28.36 and may not be used in establishing the budget of the clerk of the court under that section or s. 28.35.

(10)(a) Any person who does not hold a commercial driver's license and who is cited while driving a noncommercial motor vehicle for an offense listed under this subsection may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld; however, no election shall be made under this subsection if such person has made an election under this subsection in the 12 months preceding election hereunder. No person may make more than three elections under this subsection. This subsection applies to the following offenses:

1. Operating a motor vehicle without a valid driver's license in violation of the provisions of s. 322.03, s. 322.065, or s. 322.15(1), or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to s. 322.291.

2. Operating a motor vehicle without a valid registration



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in violation of s. 320.0605, s. 320.07, or s. 320.131.

3. Operating a motor vehicle in violation of s. 316.646.

4. Operating a motor vehicle with a license that has been suspended under s. 61.13016 or s. 322.245 for failure to pay child support or for failure to pay any other financial obligation as provided in s. 322.245; however, this subparagraph does not apply if the license has been suspended pursuant to s. 322.245(1).

5. Operating a motor vehicle with a license that has been suspended under s. 322.091 for failure to meet school attendance requirements.

Section 19. Paragraph (a) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the ~~Division of Driver Licenses of the~~ Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department shall immediately issue an order suspending the driver's license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). Any such suspension of the driving privilege which has not been reinstated,



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including a similar suspension imposed outside Florida, shall remain on the records of the department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed.

Section 20. Section 319.14, Florida Statutes, is amended to read:

319.14 Sale of motor vehicles registered or used as taxicabs, police vehicles, lease vehicles, ~~or~~ rebuilt vehicles, ~~and~~ nonconforming vehicles, custom vehicles, or street rod vehicles.—

(1)(a) A ~~No~~ person may not ~~shall~~ knowingly offer for sale, sell, or exchange any vehicle that has been licensed, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, or a vehicle that has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681, until the department has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle or the title has been stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle. If the certificate of title or duplicate was not so stamped upon initial issuance thereof or if, subsequent to initial issuance of the title, the use of the vehicle is changed to a use requiring the notation provided for in this section, the owner or lienholder of the vehicle shall surrender the certificate of title or duplicate to the department before ~~prior to~~ offering the vehicle for sale, and the department shall stamp the certificate or duplicate as required herein. If ~~When~~ a vehicle has been repurchased by a manufacturer pursuant to a settlement,



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determination, or decision under chapter 681, the title shall be stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle.

(b) A ~~no~~ person may not ~~shall~~ knowingly offer for sale, sell, or exchange a rebuilt vehicle until the department has stamped in a conspicuous place on the certificate of title for the vehicle words stating that the vehicle has been rebuilt or assembled from parts, or is a kit car, glider kit, replica, ~~or~~ flood vehicle, custom vehicle, or street rod vehicle unless proper application for a certificate of title for a vehicle that is rebuilt or assembled from parts, or is a kit car, glider kit, replica, ~~or~~ flood vehicle, custom vehicle, or street rod vehicle has been made to the department in accordance with this chapter and the department has conducted the physical examination of the vehicle to assure the identity of the vehicle and all major component parts, as defined in s. 319.30(1), which have been repaired or replaced. Thereafter, the department shall affix a decal to the vehicle, in the manner prescribed by the department, showing the vehicle to be rebuilt. A vehicle may not be inspected or issued a rebuilt title until all major component parts, as defined in s. 319.30, which were damaged have been repaired or replaced.

(c) As used in this section, the term:

1. "Police vehicle" means a motor vehicle owned or leased by the state or a county or municipality and used in law enforcement.

2.a. "Short-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one or more persons from time to time for a period of less than 12



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months.

b. "Long-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one person for a period of 12 months or longer.

c. "Lease vehicle" includes both short-term-lease vehicles and long-term-lease vehicles.

3. "Rebuilt vehicle" means a motor vehicle or mobile home built from salvage or junk, as defined in s. 319.30(1).

4. "Assembled from parts" means a motor vehicle or mobile home assembled from parts or combined from parts of motor vehicles or mobile homes, new or used. "Assembled from parts" does not mean a motor vehicle defined as a "rebuilt vehicle" in subparagraph 3., which has been declared a total loss pursuant to s. 319.30.

5. "Kit car" means a motor vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated motor vehicle with a new body kit.

6. "Glider kit" means a vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated truck or truck tractor.

7. "Replica" means a complete new motor vehicle manufactured to look like an old vehicle.

8. "Flood vehicle" means a motor vehicle or mobile home that has been declared to be a total loss pursuant to s. 319.30(3)(a) resulting from damage caused by water.

9. "Nonconforming vehicle" means a motor vehicle which has been purchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681.

10. "Settlement" means an agreement entered into between a



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manufacturer and a consumer that occurs after a dispute is submitted to a program, or an informal dispute settlement procedure established by a manufacturer or is approved for arbitration before the New Motor Vehicle Arbitration Board as defined in s. 681.102.

11. "Custom vehicle" means a motor vehicle that:

a. Is 25 years of age or older and of a model year after 1948, or was manufactured to resemble a vehicle that is 25 years of age or older and of a model year after 1948; and

b. Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

The model year and year of manufacture which the body of a custom vehicle resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

12. "Street rod" means a motor vehicle that:

a. Is a model year of 1948 or older or was manufactured after 1948 to resemble a vehicle of a model year of 1948 or older; and

b. Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

The model year and year of manufacture which the body of a street rod resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

(2) A ~~No~~ person may not ~~shall~~ knowingly sell, exchange, or transfer a vehicle referred to in subsection (1) without, before



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~~prior to~~ consummating the sale, exchange, or transfer,
disclosing in writing to the purchaser, customer, or transferee
the fact that the vehicle has previously been titled,
registered, or used as a taxicab, police vehicle, or short-term-
lease vehicle, ~~or~~ is a vehicle that is rebuilt or assembled from
parts, ~~or~~ is a kit car, glider kit, replica, or flood vehicle,
or is a nonconforming vehicle, custom vehicle, or street rod
vehicle, as the case may be.

(3) Any person who, with intent to offer for sale or
exchange any vehicle referred to in subsection (1), knowingly or
intentionally advertises, publishes, disseminates, circulates,
or places before the public in any communications medium,
whether directly or indirectly, any offer to sell or exchange
the vehicle shall clearly and precisely state in each ~~such~~ offer
that the vehicle has previously been titled, registered, or used
as a taxicab, police vehicle, or short-term-lease vehicle or
that the vehicle or mobile home is a vehicle that is rebuilt or
assembled from parts, ~~or~~ is a kit car, glider kit, replica, or
flood vehicle, or is a nonconforming vehicle, custom vehicle, or
street rod vehicle, as the case may be. Any person who violates
this subsection commits a misdemeanor of the second degree,
punishable as provided in s. 775.082 or s. 775.083.

(4) ~~If~~ When a certificate of title, including a foreign
certificate, is branded to reflect a condition or prior use of
the titled vehicle, the brand must be noted on the registration
certificate of the vehicle and such brand shall be carried
forward on all subsequent certificates of title and registration
certificates issued for the life of the vehicle.

(5) Any person who knowingly sells, exchanges, or offers to



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593 sell or exchange a motor vehicle or mobile home contrary to ~~the~~
594 ~~provisions of~~ this section or any officer, agent, or employee of
595 a person who knowingly authorizes, directs, aids in, or consents
596 to the sale, exchange, or offer to sell or exchange a motor
597 vehicle or mobile home contrary to ~~the provisions of~~ this
598 section commits a misdemeanor of the second degree, punishable
599 as provided in s. 775.082 or s. 775.083.

600 (6) Any person who removes a rebuilt decal from a rebuilt
601 vehicle with the intent to conceal the rebuilt status of the
602 vehicle commits a felony of the third degree, punishable as
603 provided in s. 775.082, s. 775.083, or s. 775.084.

604 (7) This section applies to a mobile home, travel trailer,
605 camping trailer, truck camper, or fifth-wheel recreation trailer
606 only when the ~~such~~ mobile home or vehicle is a rebuilt vehicle
607 or is assembled from parts.

608 (8) A ~~No~~ person is not ~~shall be~~ liable or accountable in
609 any civil action arising out of a violation of this section if
610 the designation of the previous use or condition of the motor
611 vehicle is not noted on the certificate of title and
612 registration certificate of the vehicle which was received by,
613 or delivered to, such person, unless the ~~such~~ person has
614 actively concealed the prior use or condition of the vehicle
615 from the purchaser.

616 (9) Subsections (1), (2), and (3) do not apply to the
617 transfer of ownership of a motor vehicle after the motor vehicle
618 has ceased to be used as a lease vehicle and the ownership has
619 been transferred to an owner for private use or to the transfer
620 of ownership of a nonconforming vehicle with 36,000 or more
621 miles on its odometer, or 34 months whichever is later and the



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ownership has been transferred to an owner for private use. Such owner, as shown on the title certificate, may request the department to issue a corrected certificate of title that does not contain the statement of the previous use of the vehicle as a lease vehicle or condition as a nonconforming vehicle.

Section 21. Section 319.225, Florida Statutes, is amended to read:

319.225 Transfer and reassignment forms; odometer disclosure statements.—

(1) Every certificate of title issued by the department must contain the following statement ~~on its reverse side~~:
"Federal and state law require the completion of the odometer statement set out below. Failure to complete or providing false information may result in fines, imprisonment, or both."

(2) Each certificate of title issued by the department must contain ~~on its reverse side~~ a form for transfer of title by the titleholder of record, which form must contain an odometer disclosure statement in the form required by 49 C.F.R. s. 580.5.

(3) Each certificate of title issued by the department must contain ~~on its reverse side~~ as many forms as space allows for reassignment of title by a licensed dealer as permitted by s. 319.21(3), which form or forms shall contain an odometer disclosure statement in the form required by 49 C.F.R. s. 580.5. When all dealer reassignment forms ~~provided on the back of the title certificate~~ have been filled in, a dealer may reassign the title certificate by using a separate dealer reassignment form issued by the department in compliance with 49 C.F.R. ss. 580.4 and 580.5, which form shall contain an original, ~~two carbon~~ ~~copies one of~~ which shall be submitted ~~directly~~ to the



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department by the dealer ~~within 5 business days after the~~
~~transfer~~ and a copy, ~~one of~~ which shall be retained by the
dealer in his or her records for 5 years. The provisions of this
subsection ~~shall~~ also apply to vehicles not previously titled in
this state and vehicles whose title certificates do not contain
the forms required by this section.

(4) Upon transfer or reassignment of a certificate of title
to a used motor vehicle, the transferor shall complete the
odometer disclosure statement provided for by this section and
the transferee shall acknowledge the disclosure by signing and
printing his or her name in the spaces provided. This subsection
does not apply to a vehicle that has a gross vehicle rating of
more than 16,000 pounds, a vehicle that is not self-propelled,
or a vehicle that is 10 years old or older. A lessor who
transfers title to his or her vehicle without obtaining
possession of the vehicle shall make odometer disclosure as
provided by 49 C.F.R. s. 580.7. Any person who fails to complete
or acknowledge a disclosure statement as required by this
subsection commits ~~is guilty of~~ a misdemeanor of the second
degree, punishable as provided in s. 775.082 or s. 775.083. The
department may not issue a certificate of title unless this
subsection has been complied with.

(5) The same person may not sign a disclosure statement as
both the transferor and the transferee in the same transaction
except as provided in subsection (6).

(6) (a) If the certificate of title is physically held by a
lienholder, the transferor may give a power of attorney to his
or her transferee for the purpose of odometer disclosure. The
power of attorney must be on a form issued or authorized by the



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department, which form must be in compliance with 49 C.F.R. ss. 580.4 and 580.13. The department shall not require the signature of the transferor to be notarized on the form; however, in lieu of notarization, the form shall include an affidavit with the following wording: UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE. The transferee shall sign the power of attorney form, print his or her name, and return a copy of the power of attorney form to the transferor. Upon receipt of a title certificate, the transferee shall complete the space for mileage disclosure on the title certificate exactly as the mileage was disclosed by the transferor on the power of attorney form. If the transferee is a licensed motor vehicle dealer who is transferring the vehicle to a retail purchaser, the dealer shall make application on behalf of the retail purchaser as provided in s. 319.23(6) and shall submit the original power of attorney form to the department with the application for title and the transferor's title certificate; otherwise, a dealer may reassign the title certificate by using the dealer reassignment form in the manner prescribed in subsection (3), and, at the time of physical transfer of the vehicle, the original power of attorney shall be delivered to the person designated as the transferee of the dealer on the dealer reassignment form. ~~A copy of the executed power of attorney shall be submitted to the department with a copy of the executed dealer reassignment form within 5 business days after the certificate of title and dealer reassignment form are delivered by the dealer to its transferee.~~

(b) If the certificate of title is lost or otherwise unavailable, the transferor may give a power of attorney to his



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or her transferee for the purpose of odometer disclosure. The power of attorney must be on a form issued or authorized by the department, which form must be in compliance with 49 C.F.R. ss. 580.4 and 580.13. The department shall not require the signature of the transferor to be notarized on the form; however, in lieu of notarization, the form shall include an affidavit with the following wording: UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE. The transferee shall sign the power of attorney form, print his or her name, and return a copy of the power of attorney form to the transferor. Upon receipt of the title certificate or a duplicate title certificate, the transferee shall complete the space for mileage disclosure on the title certificate exactly as the mileage was disclosed by the transferor on the power of attorney form. If the transferee is a licensed motor vehicle dealer who is transferring the vehicle to a retail purchaser, the dealer shall make application on behalf of the retail purchaser as provided in s. 319.23(6) and shall submit the original power of attorney form to the department with the application for title and the transferor's title certificate or duplicate title certificate; otherwise, a dealer may reassign the title certificate by using the dealer reassignment form in the manner prescribed in subsection (3), and, at the time of physical transfer of the vehicle, the original power of attorney shall be delivered to the person designated as the transferee of the dealer on the dealer reassignment form. If the dealer sells the vehicle to an out-of-state resident or an out-of-state dealer and the power of attorney form is applicable to the transaction, the dealer must



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photocopy the completed original of the form and mail it
directly to the department within 5 business days after the
certificate of title and dealer reassignment form are delivered
by the dealer to the purchaser. ~~A copy of the executed power of~~
~~attorney shall be submitted to the department with a copy of the~~
~~executed dealer reassignment form within 5 business days after~~
~~the duplicate certificate of title and dealer reassignment form~~
~~are delivered by the dealer to its transferee.~~

(c) If the mechanics of the transfer of title to a motor vehicle in accordance with the provisions of paragraph (a) or paragraph (b) are determined to be incompatible with and unlawful under the provisions of 49 C.F.R. part 580, the transfer of title to a motor vehicle by operation of this subsection can be effected in any manner not inconsistent with 49 C.F.R. part 580 and Florida law; provided, any power of attorney form issued or authorized by the department under this subsection shall contain an original, ~~two carbon copies, one of~~ which shall be submitted ~~directly~~ to the department by the dealer ~~within 5 business days of use by the dealer~~ to effect transfer of a title certificate as provided in paragraphs (a) and (b) and a copy, ~~one of~~ which shall be retained by the dealer in its records for 5 years.

(d) Any person who fails to complete the information required by this subsection or to file with the department the forms required by this subsection commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The department shall not issue a certificate of title unless this subsection has been complied with.



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(7) Subject to approval by the National Highway Traffic Safety Administration or any other applicable authority, if a title is held electronically and the transferee agrees to maintain the title electronically, the transferor and transferee shall complete a secure reassignment document that discloses the odometer reading and is signed by both the transferor and transferee at the tax collector's office or license plate agency. A dealer acquiring a motor vehicle that has an electronic title shall use a secure reassignment document signed by the person from whom the dealer acquired the motor vehicle. Upon transferring the motor vehicle to a purchaser, a separate reassignment document shall be executed.

(8) ~~(7)~~ Each certificate of title issued by the department must contain ~~on its reverse side~~ a minimum of three ~~four~~ spaces for notation of the name and license number of any auction through which the vehicle is sold and the date the vehicle was auctioned. Each separate dealer reassignment form issued by the department must also have the space referred to in this section. When a transfer of title is made at a motor vehicle auction, the reassignment must note the name and address of the auction, but the auction shall not thereby be deemed to be the owner, seller, transferor, or assignor of title. A motor vehicle auction is required to execute a dealer reassignment only when it is the owner of a vehicle being sold.

(9) ~~(8)~~ Upon transfer or reassignment of a used motor vehicle through the services of an auction, the auction shall complete the information in the space provided for by subsection (8) ~~(7)~~. Any person who fails to complete the information as required by this subsection commits ~~is guilty of~~ a misdemeanor



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of the second degree, punishable as provided in s. 775.082 or s. 775.083. The department shall not issue a certificate of title unless this subsection has been complied with.

~~(10)~~⁽⁹⁾ This section shall be construed to conform to 49 C.F.R. part 580.

Section 22. Subsection (6) of section 319.23, Florida Statutes, is amended, present subsections (7), (8), (9), (10), and (11) of that section are renumbered as subsections (8), (9), (10), (11), and (12), respectively, and a new subsection (7) is added to that section, to read:

319.23 Application for, and issuance of, certificate of title.—

(6) (a) In the case of the sale of a motor vehicle or mobile home by a licensed dealer to a general purchaser, the certificate of title must be obtained in the name of the purchaser by the dealer upon application signed by the purchaser, and in each other case such certificate must be obtained by the purchaser. In each case of transfer of a motor vehicle or mobile home, the application for a certificate of title, a corrected certificate, or an assignment or reassignment must be filed within 30 days after the delivery of the motor vehicle or from consummation of the sale of a mobile home to the purchaser. An applicant must pay a fee of \$20, in addition to all other fees and penalties required by law, for failing to file such application within the specified time. In the case of the sale of a motor vehicle by a licensed motor vehicle dealer to a general purchaser who resides in another state or country, the dealer is not required to apply for a certificate of title for the motor vehicle; however, the dealer must transfer



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ownership and reassign the certificate of title or manufacturer's certificate of origin to the purchaser, and the purchaser must sign an affidavit, as approved by the department, that the purchaser will title and register the motor vehicle in another state or country.

(b) If a licensed dealer acquires a motor vehicle or mobile home as a trade-in, the dealer must file with the department, within 30 days, a notice of sale signed by the seller. The department shall update its database for that title record to indicate "sold." A licensed dealer need not apply for a certificate of title for any motor vehicle or mobile home in stock acquired for stock purposes except as provided in s. 319.225.

(7) If an applicant for a certificate of title is unable to provide the department with a certificate of title that assigns the prior owner's interest in the motor vehicle, the department may accept a bond in the form prescribed by the department, along with an affidavit in a form prescribed by the department, which includes verification of the vehicle identification number and an application for title.

(a) The bond must be:

1. In a form prescribed by the department;
2. Executed by the applicant;
3. Issued by a person authorized to conduct a surety business in this state;
4. In an amount equal to two times the value of the vehicle as determined by the department; and
5. Conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the vehicle or



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persons who acquire a security interest in the vehicle, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, occurring because of the issuance of the certificate of title for the vehicle or for a defect in or undisclosed security interest on the right, title, or interest of the applicant to the vehicle.

(b) An interested person has a right to recover on the bond for a breach of the bond's condition. The aggregate liability of the surety to all persons may not exceed the amount of the bond.

(c) A bond under this subsection expires on the third anniversary of the date the bond became effective.

(d) The affidavit must:

1. Be in a form prescribed by the department;
2. Include the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle;
3. Disclose that no security interests, liens, or encumbrances against the motor vehicle are known to the applicant against the motor vehicle; and
4. State that the applicant has the right to have a certificate of title issued.

Section 23. Paragraph (b) of subsection (2) of section 319.28, Florida Statutes, is amended to read:

319.28 Transfer of ownership by operation of law.—

(2)

(b) In case of repossession of a motor vehicle or mobile home pursuant to the terms of a security agreement or similar instrument, an affidavit by the party to whom possession has passed stating that the vehicle or mobile home was repossessed



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upon default in the terms of the security agreement or other instrument shall be considered satisfactory proof of ownership and right of possession. At least 5 days prior to selling the repossessed vehicle, any subsequent lienholder named in the last issued certificate of title shall be sent notice of the repossession by certified mail, on a form prescribed by the department. If such notice is given and no written protest to the department is presented by a subsequent lienholder within 15 days from the date on which the notice was mailed, the certificate of title ~~or the certificate of repossession~~ shall be issued showing no liens. If the former owner or any subsequent lienholder files a written protest under oath within such 15-day period, the department shall not issue the certificate of title ~~or certificate of repossession~~ for 10 days thereafter. If within the 10-day period no injunction or other order of a court of competent jurisdiction has been served on the department commanding it not to deliver the certificate of title ~~or certificate of repossession~~, the department shall deliver the certificate of title ~~or repossession~~ to the applicant or as may otherwise be directed in the application showing no other liens than those shown in the application. Any lienholder who has repossessed a vehicle in this state in compliance with the provisions of this section must apply to a tax collector's office in this state or to the department for a ~~certificate of repossession or to the department for a~~ certificate of title pursuant to s. 319.323. Proof of the required notice to subsequent lienholders shall be submitted together with regular title fees. ~~A lienholder to whom a certificate of repossession has been issued may assign the certificate of title to the~~



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~~subsequent owner.~~ Any person who violates ~~found guilty of~~
~~violating~~ any requirements of this paragraph commits ~~shall be~~
~~guilty of~~ a felony of the third degree, punishable as provided
in s. 775.082, s. 775.083, or s. 775.084.

Section 24. Section 319.323, Florida Statutes, is amended
to read:

319.323 Expedited service; applications; fees.—The
department shall establish a separate title office which may be
used by private citizens and licensed motor vehicle dealers to
receive expedited service on title transfers, title issuances,
duplicate titles, and recordation of liens, ~~and certificates of~~
~~repossession~~. A fee of \$10 shall be charged for this service,
which fee is in addition to the fees imposed by s. 319.32. The
fee, after deducting the amount referenced by s. 319.324 and
\$3.50 to be retained by the processing agency, shall be
deposited into the General Revenue Fund. Application for
expedited service may be made by mail or in person. The
department shall issue each title applied for under this section
within 5 working days after receipt of the application except
for an application for a duplicate title certificate covered by
s. 319.23(4), in which case the title must be issued within 5
working days after compliance with the department's verification
requirements.

Section 25. Section 319.40, Florida Statutes, is amended to
read:

319.40 Transactions by electronic or telephonic means.—

(1) The department may ~~is authorized to~~ accept any
application provided for under this chapter by electronic or
telephonic means.



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941 (2) The department may issue an electronic certificate of
942 title in lieu of printing a paper title.

943 (3) The department may collect and use electronic mail
944 addresses as a notification method in lieu of the United States
945 Postal Service.

946 Section 26. Subsections (1), (23), (25), and (26) of
947 section 320.01, Florida Statutes, are amended, present
948 subsections (24) through (45) of that section are renumbered as
949 subsections (23) through (44), respectively, and a new
950 subsection (45) is added to that section to read:

951 320.01 Definitions, general.—As used in the Florida
952 Statutes, except as otherwise provided, the term:

953 (1) "Motor vehicle" means:

954 (a) An automobile, motorcycle, truck, trailer, semitrailer,
955 truck tractor and semitrailer combination, or any other vehicle
956 operated on the roads of this state, used to transport persons
957 or property, and propelled by power other than muscular power,
958 but the term does not include traction engines, road rollers,
959 special mobile equipment as defined in chapter 316, such
960 vehicles as run only upon a track, bicycles, swamp buggies, or
961 mopeds.

962 (b) A recreational vehicle-type unit primarily designed as
963 temporary living quarters for recreational, camping, or travel
964 use, which either has its own motive power or is mounted on or
965 drawn by another vehicle. Recreational vehicle-type units, when
966 traveling on the public roadways of this state, must comply with
967 the length and width provisions of s. 316.515, as that section
968 may hereafter be amended. As defined below, the basic entities
969 are:



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1. The "travel trailer," which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8 1/2 feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The "camping trailer," which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The "truck camper," which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The "motor home," which is a vehicular unit which does not exceed the length, height, and width limitations provided in s. 316.515, is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The "private motor coach," which is a vehicular unit which does not exceed the length, width, and height limitations provided in s. 316.515(9), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The "van conversion," which is a vehicular unit which



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does not exceed the length and width limitations provided in s. 316.515, is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7. The "park trailer," which is a transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

~~(23) "Apportioned motor vehicle" means any motor vehicle which is required to be registered, or with respect to which an election has been made to register it, under the International~~



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~~Registration Plan.~~

~~(24)~~⁽²⁵⁾ "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 ~~26,001~~ pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 ~~26,001~~ pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 ~~26,001~~ pounds or less and two-axle vehicles may be proportionally registered.

~~(25)~~⁽²⁶⁾ "Commercial motor vehicle" means any vehicle that ~~which~~ is not owned or operated by a governmental entity, that ~~which~~ uses special fuel or motor fuel on the public highways, and that ~~which~~ has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,000 ~~26,001~~ pounds gross vehicle weight. A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is



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not a commercial motor vehicle if the use is not for profit and corporate sponsorship is not involved. As used in this subsection, the term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(45) "Swamp buggy" means a motorized off-road vehicle designed to travel over swampy terrain, which may utilize large tires or tracks operated from an elevated platform, and may be used on varied terrain. A swamp buggy does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter. A swamp buggy may not be operated upon the public roads, streets, or highways of this state, except to the extent specifically authorized by a state or federal agency to be used exclusively upon lands, managed, owned, or leased by that agency.

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

And the title is amended as follows:

Delete lines 11 - 82

and insert:

license plates; conforming a reference; amending s. 316. 003, F.S.; revising the definition of the term "motor vehicle" to include swamp buggies and defining the term "swamp buggy"; amending s. 316.1905, F.S.; providing that certain traffic citations may not be issued or prosecuted unless a law enforcement officer



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used an electrical, mechanical, or other speed-calculating device that has been tested and approved; providing an exception; amending s. 316.1933, F.S.; authorizing a health care provider to notify a law enforcement agency after detecting the presence of a controlled substance in the blood of a person injured in a motor vehicle crash; amending s. 316.1957, F.S., relating to parking violations; conforming a reference; amending s. 316.2085, F.S.; requiring that license tags for mopeds and motorcycles be affixed so that the letters and numbers are legible from the rear; specifying that the tags may be displayed horizontally or vertically to the ground so that the numbers and letters read from left to right or from top to bottom; amending ss. 316.2122, 316.2124, 316.21265, 316.3026, and 316.550, F.S., relating to the operation of low-speed vehicles, motorized disability access vehicles, and all-terrain or utility vehicles, the unlawful operation of motor carriers, and special permits, respectively; conforming cross-references; amending s. 316.545, F.S.; providing for the regulation of apportionable vehicles; amending s. 316.646, F.S.; authorizing the department to suspend the registrations and driving privilege of a person convicted of failing to maintain the required security while operating a private passenger motor vehicle; amending s. 317.0003, F.S., relating to off-highway vehicles; conforming a cross-reference; amending s. 317.0016, F.S.; eliminating a requirement that the



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1115 department provide expedited service for certificates
1116 of repossession; amending s. 318.14, F.S.; clarifying
1117 provisions authorizing a person cited for a
1118 noncriminal traffic infraction to elect to attend a
1119 driver improvement course or enter a plea of nolo
1120 contendere; amending s. 318.15, F.S., relating to the
1121 suspension of driving privileges; conforming a
1122 reference; amending s. 319.14, F.S.; prohibiting a
1123 person from knowingly offering for sale, selling, or
1124 exchanging certain vehicles unless the department has
1125 stamped in a conspicuous place on the certificate of
1126 title words stating that the vehicle is a custom
1127 vehicle or street rod vehicle; defining the terms
1128 "custom vehicle" and "street rod"; amending s.
1129 319.225, F.S.; revising the requirements for the
1130 transfer and reassignment forms for vehicles;
1131 requiring that a dealer selling a vehicle out of state
1132 mail a copy of the power of attorney form to the
1133 department; providing for the electronic transfer of a
1134 vehicle title; amending s. 319.23, F.S.; providing for
1135 the application for a certificate of title, corrected
1136 certificate, or assignment or reassignment to be filed
1137 from the consummation of the sale of a mobile home;
1138 authorizing the department to accept a bond if the
1139 applicant for a certificate of title is unable to
1140 provide a title that assigns the prior owner's
1141 interest in the motor vehicle; providing requirements
1142 for the bond and the affidavit; providing for future
1143 expiration of the bond; amending s. 319.28, F.S.;



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1144 eliminating certain requirements that a lienholder
1145 obtain a certificate of repossession following
1146 repossession of a vehicle or mobile home; amending s.
1147 319.323, F.S., relating to title offices for expedited
1148 service; conforming provisions to changes made by the
1149 act; amending s. 319.40, F.S.; authorizing the
1150 department to issue electronic certificates of title
1151 and use electronic mail addresses for purposes of
1152 notification; amending s. 320.01, F.S.; revising the
1153 definition of the term "motor vehicle" to include
1154 special mobile equipment and swamp buggies and
1155 defining the term "swamp buggy"; deleting an obsolete



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 389 and 390
insert:

Section 7. Subsection (5) of section 316.2065, Florida
Statutes, is amended to read:

316.2065 Bicycle regulations.—

(5) (a) Any person operating a bicycle upon a roadway at
less than the normal speed of traffic at the time and place and
under the conditions then existing shall ride in the lane marked
for bicycle use or, if no lane is marked for bicycle use, as
close as practicable to the right-hand curb or edge of the



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roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which ~~that~~ makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

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

And the title is amended as follows:

Delete line 22

and insert:

conforming a reference; amending s. 316.2065, F.S.;
clarifying provisions relating to when a bicycle
operator must ride in a bicycle lane or along the curb
or edge of the roadway; amending s. 316.2085, F.S.;



929860

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 389 and 390
insert:

Section 7. Paragraph (d) of subsection (3) and subsection
(8) of section 316.2065, Florida Statutes, are amended to read:
316.2065 Bicycle regulations.—

(3)

(d) A bicycle rider or passenger who is under 16 years of
age must wear a bicycle helmet that is properly fitted and is
fastened securely upon the passenger's head by a strap, and that
meets the federal safety standard for bicycle helmets, final



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rule, 16 C.F.R. part 1203. Helmets purchased before October 1, 2011, and meeting standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the department may continue to be worn by riders or passengers until January 1, 2015. As used in this subsection, the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

(8) Every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear. A bicycle or its rider may be equipped with lights or reflectors in addition to those required by this section. A law enforcement officer may issue a bicycle safety brochure and a verbal warning to a bicycle rider who violates this subsection. A bicycle rider who violates this subsection may be issued a citation by a law enforcement officer and assessed a fine for a pedestrian violation, as provided in s. 318.18. The court shall dismiss the charge against a bicycle rider for a first violation of this subsection upon proof of purchase and installation of the proper lighting equipment.

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

And the title is amended as follows:

Delete line 22



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and insert:

conforming a reference; amending s. 316.2065, F.S.;
revising safety standard requirements for bicycle helmets that
must be worn by certain riders and passengers; providing for
enforcement of requirements for bicycle lighting equipment;
providing penalties for violations; providing for dismissal of
the charge following a first offense under certain
circumstances; amending s. 316.2085, F.S.;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Siplin) recommended the following:

Senate Amendment (with title amendment)

Between lines 389 and 390
insert:

Section 7. Section 316.2015, Florida Statutes, is amended
to read:

316.2015 Unlawful for person to ride on exterior of
vehicle.—

(1) The ~~It is unlawful for any~~ operator of a passenger
vehicle may not ~~to~~ permit any person to ride on the bumper,
radiator, fender, hood, top, trunk, or running board of such
vehicle when operated upon any street or highway that ~~which~~ is



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maintained by the state, county, or municipality. Any person who violates this subsection shall be cited for a moving violation, punishable as provided in chapter 318.

(2)(a) A ~~No~~ person may not ~~shall~~ ride on any vehicle or upon any portion thereof which is not designed or intended for the use of passengers. This paragraph does not apply to an employee of a fire department, an employee of a governmentally operated solid waste disposal department or a waste disposal service operating pursuant to a contract with a governmental entity, or to a volunteer firefighter when the employee or firefighter is engaged in the necessary discharge of a duty, and does not apply to a person who is being transported in response to an emergency by a public agency or pursuant to the direction or authority of a public agency. This paragraph does not apply to an employee engaged in the necessary discharge of a duty or to a person or persons riding within truck bodies in space intended for merchandise.

(b) The ~~It is unlawful for any~~ operator of a pickup truck or flatbed truck may not ~~to~~ permit a person ~~minor child~~ who is younger than ~~has not attained~~ 18 years of age to ride upon limited access facilities of the state within the open body of a pickup truck or flatbed truck unless the minor is restrained within the open body in the back of a truck that has been modified to include secure seating and safety restraints to prevent the passenger from being thrown, falling, or jumping from the truck. This paragraph does not apply in a medical emergency if the child is accompanied within the truck by an adult. A county is exempt from this paragraph if the governing body of the county, by majority vote, following a noticed public



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hearing, votes to exempt the county from this paragraph.

(c) The operator of a pickup truck or flatbed truck may not permit a child who is younger than 6 years of age to ride within the open body of a pickup truck or flatbed truck while the truck is operating on any publicly maintained street or highway having a posted speed limit that is greater than 35 miles per hour unless the minor is restrained within the open body in the back of a truck that has been modified to include secure seating and safety restraints to prevent the passenger from being thrown, falling, or jumping from the truck. This paragraph does not apply in a medical emergency if the child is accompanied within the truck by an adult. This paragraph does not apply in a medical emergency if the child is accompanied within the truck by an adult. A county is exempt from this paragraph if the governing body of the county, by a majority, vote, following a noticed public hearing, votes to exempt the county from this paragraph. An operator of a pickup truck is exempt from this paragraph if the pickup truck is the only vehicle owned by the operator or his or her immediate family.

(d)~~(e)~~ Any person who violates this subsection shall be cited for a nonmoving violation, punishable as provided in chapter 318.

(3) This section does ~~shall~~ not apply to a performer engaged in a professional exhibition or person participating in an exhibition or parade, or any such person preparing to participate in such exhibitions or parades.

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

And the title is amended as follows:



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71 Delete line 22
72 and insert:
73 conforming a reference; amending s. 316.2015, F.S.;
74 prohibiting the operator of a pickup truck or flatbed
75 truck from permitting a child who is younger than 6
76 years of age from riding within the open body of the
77 truck under certain circumstances; making technical
78 and grammatical changes; amending s. 316.2085, F.S.;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Between lines 573 and 574
insert:

Section 14. Effective January 1, 2012, subsection (1) and
paragraph (b) of subsection (2) of section 316.613, Florida
Statutes, are amended to read:

316.613 Child restraint requirements.—

(1)(a) Each ~~Every~~ operator of a motor vehicle ~~as defined~~
~~herein~~, while transporting a child in a motor vehicle operated
on the roadways, streets, or highways of this state, shall, if
the child is 7 ~~5~~ years of age or younger and is less than 4 feet



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9 inches in height, provide for protection of the child by properly using a crash-tested, federally approved child restraint device that is appropriate for the height and weight of the child. The device may include a vehicle manufacturer's integrated child seat, a separate child safety seat, or a child booster seat that displays the child's weight and height specifications for the seat on the attached manufacturer's label as required by Federal Motor Vehicle Safety Standard No. 213. The device must comply with the standards of the United States Department of Transportation and be secured in the motor vehicle in accordance with the manufacturer's instructions. The court may dismiss the charge against a motor vehicle operator for a first violation of this subsection upon proof that a federally approved child restraint device has been purchased or otherwise obtained.

(b) For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

(c) For children aged 4 through 7 ½ years who are less than 4 feet 9 inches in height, a separate carrier, an integrated child seat, or a child booster seat belt may be used. However, the requirement to use a child booster seat does not apply when a separate carrier, integrated child seat, or seat belt as required in s. 316.614(4) (a) is used and the person is:

1. Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child; or

2. Transporting a child whose medical condition necessitates an exception as evidenced by appropriate



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documentation from a health professional.

~~(d)~~ (b) The Division of Motor Vehicles shall provide notice of the requirement for child restraint devices, which notice shall accompany the delivery of each motor vehicle license tag.

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(b) A bus or a passenger vehicle designed to accommodate 10 or more persons and used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in s. 316.615(1)(b), or in conjunction with school activities.

Section 15. Effective July 1, 2011, a driver of a motor vehicle who does not violate the then-existing provisions of s. 316.613(1)(c), Florida Statutes, but whose conduct would violate that provision, as amended January 1, 2012, shall be issued a verbal warning and given educational literature by a law enforcement officer.

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

And the title is amended as follows:

Delete line 36

and insert:

vehicles; amending s. 316.613, F.S.; providing child-restraint requirements for children ages 4 through 7 years of age who are less than a specified height; providing certain exceptions; redefining the term "motor vehicle" to exclude certain vehicles from such



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71 requirements; providing a grace period; amending s.
72 316.646, F.S.; authorizing the



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 574 - 594.

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

And the title is amended as follows:

Delete lines 36 - 40

and insert:

vehicles; amending s. 317.0003, F.S.,



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1316 - 2009
and insert:

Section 26. Subsections (2) and (4) of section 320.02,
Florida Statutes, are amended, paragraphs (o), (p), and (q) are
added to subsection (15) of that section, and subsection (18) is
added to that section, to read:

320.02 Registration required; application for registration;
forms.—

(2)(a) The application for registration shall include the
street address of the owner's permanent residence or the address



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of his or her permanent place of business and shall be accompanied by personal or business identification information which may include, but need not be limited to, a driver's license number, Florida identification card number, or federal employer identification number. If the owner does not have a permanent residence or permanent place of business or if the owner's permanent residence or permanent place of business cannot be identified by a street address, the application shall include:

1. If the vehicle is registered to a business, the name and street address of the permanent residence of an owner of the business, an officer of the corporation, or an employee who is in a supervisory position.

2. If the vehicle is registered to an individual, the name and street address of the permanent residence of a close relative or friend who is a resident of this state.

If the vehicle is registered to an active-duty military member who is a Florida resident, the member is exempt from the requirement of a Florida residential address.

(b) The department shall prescribe a form upon which motor vehicle owners may record odometer readings when registering their motor vehicles.

(4) The owner of any motor vehicle registered in the state shall notify the department in writing of any change of address within 20 days of such change. The notification shall include the registration license plate number, the vehicle identification number (VIN) or title certificate number, year of vehicle make, and the owner's full name. Any owner or registrant



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42 who possesses a Florida driver's license or identification card
43 and changes residence or mailing address must obtain a
44 replacement as provided for in s. 322.19(2) before changing the
45 address on the motor vehicle record.

46 (15)

47 (o) The application form for motor vehicle registration and
48 renewal registration must include language permitting the
49 voluntary contribution of \$1 to End Hunger in Florida. The
50 proceeds shall be distributed monthly by the department to the
51 Florida Association of Food Banks, Inc., a corporation not for
52 profit under s. 501(c)(3) of the Internal Revenue Code. The
53 funds shall be used by the organization for the purpose of
54 ending hunger in Florida.

55 (p) The application form for motor vehicle registration and
56 renewal registration must include language permitting a
57 voluntary contribution of \$1 for Autism Services and Supports.
58 The proceeds shall be transferred by the department each month
59 to the Achievement and Rehabilitation Centers, Inc., Autism
60 Services Fund.

61 (q) The application form for motor vehicle registration and
62 renewal registration must include language permitting a
63 voluntary contribution of \$1 for Support Our Troops. The
64 proceeds shall be transferred by the department each month to
65 Support Our Troops, Inc.

66
67 For the purpose of applying the service charge provided in s.
68 215.20, contributions received under this subsection are not
69 income of a revenue nature.

70 (18) All electronic registration records shall be retained



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by the department for at least 10 years.

Section 27. Subsection (9) is added to section 320.023, Florida Statutes, to read:

320.023 Requests to establish voluntary checkoff on motor vehicle registration application.—

(9) The department may annually retain from the first proceeds derived from the voluntary contributions collected an amount sufficient to defray for each voluntary contribution the pro rata share of the department's costs directly related to the voluntary contributions program. Such costs include renewal notices, postage, distribution costs, direct costs to the department, and costs associated with reviewing each organization's compliance with the audit and attestation requirements of this section. The revenues retained by the department may not be less than 0.005 percent and may not exceed 0.015 percent. The balance of the proceeds from the voluntary contributions collected shall be distributed as provided by law.

Section 28. Subsections (7) and (8) of section 320.03, Florida Statutes, are amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(7) The Department of Highway Safety and Motor Vehicles shall register apportionable ~~apportioned~~ motor vehicles under the provisions of the International Registration Plan. The department may adopt rules to implement and enforce the provisions of the plan.

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), or s. 713.78(13), a license plate or revalidation sticker may not be issued until that



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person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court that provided the data showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private tag agents, such tag agents are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the percentage of license plates and revalidation stickers issued by the tag agent compared to the total issued within the county. The authority of any private agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues any license plate or revalidation sticker contrary to the provisions of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which is inclusive of the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b) ~~319.23(7)(b)~~.

Section 29. Paragraph (b) of subsection (3) and subsection (5) of section 320.05, Florida Statutes, are amended to read:



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320.05 Records of the department; inspection procedure;
lists and searches; fees.—

(3)

(b) Fees therefor shall be charged and collected as
follows:

1. For providing lists of motor vehicle or vessel records
for the entire state, or any part or parts thereof, divided
according to counties, a sum computed at a rate of not less than
1 cent nor more than 5 cents per item.

2. For providing noncertified photographic copies of motor
vehicle or vessel documents, \$1 per page.

3. For providing noncertified photographic copies of
micrographic records, \$1 per page.

4. For providing certified copies of motor vehicle or
vessel records, \$3 per record.

5. For providing noncertified computer-generated printouts
of motor vehicle or vessel records, 50 cents per record.

6. For providing certified computer-generated printouts of
motor vehicle or vessel records, \$3 per record.

7. For providing electronic access to motor vehicle,
vessel, and mobile home registration data requested by tag,
vehicle identification number, title number, or decal number, 50
cents per item.

8. For providing electronic access to driver's license
status report by name, sex, and date of birth or by driver
license number, 50 cents per item.

9. For providing lists of licensed mobile home dealers and
manufacturers and recreational vehicle dealers and
manufacturers, \$15 per list.



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10. For providing lists of licensed motor vehicle dealers,
\$25 per list.

11. For each copy of a videotape record, \$15 per tape.

~~12. For each copy of the Division of Motor Vehicles
Procedures Manual, \$25.~~

(5) The creation and maintenance of records by the Division
of Motorist Services within the department ~~and the Division of
Motor Vehicles~~ pursuant to this chapter shall not be regarded as
law enforcement functions of agency recordkeeping.

Section 30. Paragraph (d) is added to subsection (1) of
section 320.06, Florida Statutes, and subsection (5) is added to
that section, to read:

320.06 Registration certificates, license plates, and
validation stickers generally.—

(1)

(d) The department may conduct a pilot program to evaluate
designs, concepts, and technologies for alternative license
plate technologies. The pilot program shall investigate the
feasibility and use of alternative license plate technologies
and shall be limited to license plates that are used on
government-owned motor vehicles, as defined in s. 320.0655.
Government license plates in the pilot program are exempt from
current license plate requirements in s. 320.06(3)(a).

(5) All license plates issued pursuant to this chapter are
the property of the State of Florida.

Section 31. Section 320.061, Florida Statutes, is amended
to read:

320.061 Unlawful to alter motor vehicle registration
certificates, temporary license plates, license plates, mobile



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home stickers, or validation stickers or to obscure license plates; penalty.—No person shall alter the original appearance of any registration license plate, temporary license plate, mobile home sticker, validation sticker, or vehicle registration certificate issued for and assigned to any motor vehicle or mobile home, whether by mutilation, alteration, defacement, or change of color or in any other manner. No person shall apply or attach any substance, reflective matter, illuminated device, spray, coating, covering, or other material onto or around any license plate that interferes with the legibility, angular visibility, or detectability of any feature or detail on the license plate or interferes with the ability to record any feature or detail on the license plate. Any person who violates this section commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 32. Subsection (1) of section 320.071, Florida Statutes, is amended to read:

320.071 Advance registration renewal; procedures.—

(1) (a) The owner of any motor vehicle or mobile home currently registered in this state may file an application for renewal of registration with the department, or its authorized agent in the county wherein the owner resides, any time during the 3 months preceding the date of expiration of the registration period. The registration period may not exceed 27 months.

(b) The owner of any apportionable ~~apportioned motor~~ vehicle currently registered in this state under the provisions of the International Registration Plan may file an application for renewal of registration with the department any time during



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the 3 months preceding the date of expiration of the
registration period.

Section 33. Subsections (1) and (3) of section 320.0715,
Florida Statutes, are amended to read:

320.0715 International Registration Plan; motor carrier
services; permits; retention of records.—

(1) All apportionable ~~commercial motor~~ vehicles domiciled
in this state ~~and engaged in interstate commerce~~ shall be
registered in accordance with the provisions of the
International Registration Plan ~~and shall display apportioned
license plates.~~

(3)(a) If the department is unable to immediately issue the
apportioned license plate to an applicant currently registered
in this state under the International Registration Plan or to a
vehicle currently titled in this state, the department or its
designated agent is authorized to issue a 60-day temporary
operational permit. The department or agent of the department
shall charge a \$3 fee and the service charge authorized by s.
320.04 for each temporary operational permit it issues.

(b) The department shall in no event issue a temporary
operational permit for any apportionable ~~commercial motor~~
vehicle to any applicant until the applicant has shown that:

1. All sales or use taxes due on the registration of the
vehicle are paid; and

2. Insurance requirements have been met in accordance with
ss. 320.02(5) and 627.7415.

(c) Issuance of a temporary operational permit provides
~~commercial motor vehicle~~ registration privileges in each
International Registration Plan member jurisdiction designated



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on said permit and therefore requires payment of all applicable registration fees and taxes due for that period of registration.

(d) Application for permanent registration must be made to the department within 10 days following ~~from~~ issuance of a temporary operational permit. Failure to file an application within this 10-day period may result in cancellation of the temporary operational permit.

Section 34. Paragraph (d) of subsection (5) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), tri-vehicles as defined in s. 316.003, and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(d) A wrecker, as defined in s. 320.01~~(40)~~, which is used to tow a vessel as defined in s. 327.02(39), a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01~~(38)~~, or a replacement motor vehicle as defined in s. 320.01~~(39)~~: \$41 flat, of which \$11 shall be deposited into the General Revenue Fund.

Section 35. Subsection (1) of section 320.0847, Florida Statutes, is amended to read:

320.0847 Mini truck and low-speed vehicle license plates.—

(1) The department shall issue a license plate to the owner or lessee of any vehicle registered as a low-speed vehicle as



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defined in s. 320.01~~(42)~~ or a mini truck as defined in s.
320.01~~(45)~~ upon payment of the appropriate license taxes and
fees prescribed in s. 320.08.

Section 36. Subsection (4) of section 320.0848, Florida
Statutes, is amended to read:

320.0848 Persons who have disabilities; issuance of
disabled parking permits; temporary permits; permits for certain
providers of transportation services to persons who have
disabilities.—

(4) From the proceeds of the temporary disabled parking
permit fees:

(a) The Department of Highway Safety and Motor Vehicles
must receive \$3.50 for each temporary permit, to be deposited
into the Highway Safety Operating Trust Fund and used for
implementing the real-time disabled parking permit database and
for administering the disabled parking permit program.

(b) The tax collector, for processing, must receive \$2.50
for each temporary permit.

(c) The remainder must be distributed monthly as follows:

1. To the Florida Endowment Foundation for Vocational
Rehabilitation, known as "The Able Trust," ~~Florida Governor's
Alliance for the Employment of Disabled Citizens~~ for the purpose
of improving employment and training opportunities for persons
who have disabilities, with special emphasis on removing
transportation barriers, \$4. These fees must be directly
deposited into the Florida Endowment Foundation for Vocational
Rehabilitation as established in s. 413.615 ~~Transportation
Disadvantaged Trust Fund for transfer to the Florida Governor's
Alliance for Employment of Disabled Citizens.~~



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2. To the Transportation Disadvantaged Trust Fund to be used for funding matching grants to counties for the purpose of improving transportation of persons who have disabilities, \$5.

Section 37. Paragraphs (a) and (b) of subsection (2) of section 320.275, Florida Statutes, are amended to read:

320.275 Automobile Dealers Industry Advisory Board.—

(2) MEMBERSHIP, TERMS, MEETINGS.—

(a) The board shall be composed of 12 members. The executive director of the Department of Highway Safety and Motor Vehicles shall appoint the members from names submitted by the entities for the designated categories the member will represent. The executive director shall appoint one representative of the Department of Highway Safety and Motor Vehicles, ~~who must represent the Division of Motor Vehicles~~; two representatives of the independent motor vehicle industry as recommended by the Florida Independent Automobile Dealers Association; two representatives of the franchise motor vehicle industry as recommended by the Florida Automobile Dealers Association; one representative of the auction motor vehicle industry who is from an auction chain and is recommended by a group affiliated with the National Auto Auction Association; one representative of the auction motor vehicle industry who is from an independent auction and is recommended by a group affiliated with the National Auto Auction Association; one representative from the Department of Revenue; a Florida tax collector representative recommended by the Florida Tax Collectors Association; one representative from the Better Business Bureau; one representative from the Department of Agriculture and Consumer Services, who must represent the Division of Consumer



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Services; and one representative of the insurance industry who writes motor vehicle dealer surety bonds.

(b)1. The executive director shall appoint the following initial members to 1-year terms: one representative from the motor vehicle auction industry who represents an auction chain, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Department of Revenue, one Florida tax collector, and one representative from the Better Business Bureau.

2. The executive director shall appoint the following initial members to 2-year terms: one representative from the motor vehicle auction industry who represents an independent auction, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Division of Consumer Services, one representative from the insurance industry, and one representative from the department ~~Division of Motor Vehicles~~.

3. As the initial terms expire, the executive director shall appoint successors from the same designated category for terms of 2 years. If renominated, a member may succeed himself or herself.

4. The board shall appoint a chair and vice chair at its initial meeting and every 2 years thereafter.

Section 38. Subsection (1) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(1) DEFINITIONS.—As used in this section:



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(a) "Dealer" means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term "dealer" includes a recreational vehicle broker. Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more recreational vehicles in any 12-month period shall be prima facie presumed to be a dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "dealer" does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under this section. A licensed dealer may transact business in recreational vehicles with a motor vehicle auction as defined in s. 320.27(1)(c)4. Further, a licensed dealer may, at retail or wholesale, sell a motor vehicle, as described in s. 320.01(1)(a), acquired in exchange for the sale of a recreational vehicle, if such acquisition is incidental to the principal business of being a recreational vehicle dealer. However, a recreational vehicle dealer may not buy a motor vehicle for the purpose of resale unless licensed as a motor vehicle dealer pursuant to s. 320.27.

(b) "Recreational vehicle broker" means any person who is engaged in the business of offering to procure or procuring used recreational vehicles for the general public; who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures used recreational vehicles for the general public; or who acts as the agent or intermediary on behalf of the owner or seller of a used



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recreational vehicle which is for sale or who assists or represents the seller in finding a buyer for the recreational vehicle.

(c) For the purposes of this section, the term "recreational vehicle" does not include any camping trailer, as defined in s. 320.01(1)(b)2.

(d) A dealer may apply for a certificate of title to a recreational vehicle required to be registered under s. 320.08(9) using a manufacturer's statement of origin as permitted by s. 319.23(1) only if such dealer is authorized by a manufacturer/dealer agreement as defined in s. 320.3202(8) on file with the department to buy, sell, or deal in that particular line-make of recreational vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on that line-make.

Section 39. Section 320.95, Florida Statutes, is amended to read:

320.95 Transactions by electronic or telephonic means.—

(1) The department may ~~is authorized to~~ accept any application provided for under this chapter by electronic or telephonic means.

(2) The department may collect and use electronic mail addresses for the purpose of providing renewal notices in lieu of the United States Postal Service.

Section 40. Section 321.02, Florida Statutes, is amended to read:

321.02 Powers and duties of department, highway patrol.—The director of the Division of Highway Patrol of the Department of Highway Safety and Motor Vehicles shall be designated the



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419 Colonel ~~also be the commander~~ of the Florida Highway Patrol. The
420 said department shall set up and promulgate rules and
421 regulations by which the personnel of the Florida Highway Patrol
422 officers shall be examined, employed, trained, located,
423 suspended, reduced in rank, discharged, recruited, paid and
424 pensioned, subject to civil service provisions hereafter set
425 out. The department may enter into contracts or agreements, with
426 or without competitive bidding or procurement, to make
427 available, on a fair, reasonable, nonexclusive, and
428 nondiscriminatory basis, property and other structures under
429 division control for the placement of new facilities by any
430 wireless provider of mobile service as defined in 47 U.S.C. s.
431 153(27) or s. 332(d), and any telecommunications company as
432 defined in s. 364.02 when it is determined to be practical and
433 feasible to make such property or other structures available.
434 The department may, without adopting a rule, charge a just,
435 reasonable, and nondiscriminatory fee for placement of the
436 facilities, payable annually, based on the fair market value of
437 space used by comparable communications facilities in the state.
438 The department and a wireless provider or telecommunications
439 company may negotiate the reduction or elimination of a fee in
440 consideration of services provided to the division by the
441 wireless provider or the telecommunications company. All such
442 fees collected by the department shall be deposited directly
443 into the State Agency Law Enforcement Radio System Trust Fund,
444 and may be used to construct, maintain, or support the system.
445 The department is further specifically authorized to purchase,
446 sell, trade, rent, lease and maintain all necessary equipment,
447 uniforms, motor vehicles, communication systems, housing



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facilities, office space, and perform any other acts necessary for the proper administration and enforcement of this chapter. However, all supplies and equipment consisting of single items or in lots shall be purchased under the requirements of s. 287.057. Purchases shall be made by accepting the bid of the lowest responsive bidder, the right being reserved to reject all bids. The department shall prescribe a distinctive uniform and distinctive emblem to be worn by all officers of the Florida Highway Patrol. It shall be unlawful for any other person or persons to wear a similar uniform or emblem, or any part or parts thereof. The department shall also prescribe distinctive colors for use on motor vehicles and motorcycles operated by the Florida Highway Patrol. The prescribed colors shall be referred to as "Florida Highway Patrol black and tan."

Section 41. Subsection (3) of section 322.02, Florida Statutes, is amended to read:

322.02 Legislative intent; administration.—

(3) The department shall employ a director, who is charged with the duty of serving as the executive officer of the Division of Motorist Services within ~~Driver Licenses~~ of the department insofar as the administration of this chapter is concerned. He or she shall be subject to the supervision and direction of the department, and his or her official actions and decisions as executive officer shall be conclusive unless the same are superseded or reversed by the department or by a court of competent jurisdiction.

Section 42. Subsection (1) of section 322.04, Florida Statutes, is amended to read:

322.04 Persons exempt from obtaining driver's license.—



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(1) The following persons are exempt from obtaining a driver's license:

(a) Any employee of the United States Government, while operating a noncommercial motor vehicle owned by or leased to the United States Government and being operated on official business.

(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(c) A nonresident who is at least 16 years of age ~~and who has in his or her immediate possession a valid noncommercial driver's license issued to the nonresident in his or her home state or country,~~ may operate a motor vehicle of the type for which a Class E driver's license is required in this state if he or she has in their immediate possession:

1. A valid noncommercial driver's license issued in his or her name from another state or territory of the United States;
or

2. An International Driving Permit issued in his or her name by their country of residence.

~~(d) A nonresident who is at least 18 years of age and who has in his or her immediate possession a valid noncommercial driver's license issued to the nonresident in his or her home state or country may operate a motor vehicle, other than a commercial motor vehicle, in this state.~~

~~(d)~~ (e) Any person operating a golf cart, as defined in s. 320.01, which is operated in accordance with the provisions of s. 316.212.

Section 43. Paragraph (a) of subsection (1) of section



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322.051, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

322.051 Identification cards.—

(1) Any person who is 5 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit under s. 320.0848, may be issued an identification card by the department upon completion of an application and payment of an application fee.

(a) Each such application shall include the following information regarding the applicant:

1. Full name (first, middle or maiden, and last), gender, proof of social security card number satisfactory to the department, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description.

2. Proof of birth date satisfactory to the department.

3. Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

a. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraph b., sub-subparagraph c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph f., sub-subparagraph g., or sub-subparagraph h.;

b. A certified copy of a United States birth certificate;

c. A valid, unexpired United States passport;

d. A naturalization certificate issued by the United States Department of Homeland Security;



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e. A valid, unexpired alien registration receipt card
(green card);

f. A Consular Report of Birth Abroad provided by the United
States Department of State;

g. An unexpired employment authorization card issued by the
United States Department of Homeland Security; or

h. Proof of nonimmigrant classification provided by the
United States Department of Homeland Security, for an original
identification card. In order to prove such nonimmigrant
classification, applicants must provide at least one of ~~may~~
~~produce but are not limited to~~ the following documents, and, in
addition, the department may require other documents for the
sole purpose of establishing the maintenance of or efforts to
maintain continuous lawful presence:

(I) A notice of hearing from an immigration court
scheduling a hearing on any proceeding.

(II) A notice from the Board of Immigration Appeals
acknowledging pendency of an appeal.

(III) Notice of the approval of an application for
adjustment of status issued by the United States Bureau of
Citizenship and Immigration Services.

(IV) Any official documentation confirming the filing of a
petition for asylum or refugee status or any other relief issued
by the United States Bureau of Citizenship and Immigration
Services.

(V) Notice of action transferring any pending matter from
another jurisdiction to Florida, issued by the United States
Bureau of Citizenship and Immigration Services.

(VI) Order of an immigration judge or immigration officer



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granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.

(VII) Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.

(VIII) On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

An identification card issued based on documents required
~~Presentation of any of the documents described in sub-~~
~~subparagraph g. or sub-subparagraph h. is valid entitles the~~
~~applicant to an identification card~~ for a period not to exceed the expiration date of the document presented or 1 year, whichever first occurs.

(9) Notwithstanding any other provision of this section or s. 322.21 to the contrary, the department shall issue or renew a card at no charge to a person who presents good cause for a fee waiver.

Section 44. Subsection (4) of section 322.058, Florida Statutes, is amended to read:

322.058 Suspension of driving privileges due to support delinquency; reinstatement.—

(4) This section applies only to the annual renewal in the



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owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under chapter 320, except for the transfer of registrations which is inclusive of the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b) ~~319.23(7)(b)~~.

Section 45. Section 322.065, Florida Statutes, is amended to read:

322.065 Driver's license expired for 6 4 months or less; penalties.—Any person whose driver's license has been expired for 6 4 months or less and who drives a motor vehicle upon the highways of this state commits ~~is guilty of~~ an infraction and is subject to the penalty provided in s. 318.18.

Section 46. Subsection (3) of section 322.07, Florida Statutes, is amended to read:

322.07 Instruction permits and temporary licenses.—

(3) Any person who, except for his or her lack of instruction in operating a commercial motor vehicle, would otherwise be qualified to obtain a commercial driver's license under this chapter, may apply for a temporary commercial instruction permit. The department shall issue such a permit entitling the applicant, while having the permit in his or her immediate possession, to drive a commercial motor vehicle on the highways, provided that:

(a) The applicant possesses a valid Florida driver's license ~~issued in any state~~; and

(b) The applicant, while operating a commercial motor vehicle, is accompanied by a licensed driver who is 21 years of



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age or older, who is licensed to operate the class of vehicle being operated, and who is actually occupying the closest seat to the right of the driver.

Section 47. Subsection (2) of section 322.08, Florida Statutes, is amended, paragraphs (o) and (p) are added to subsection (7) of that section, and subsection (8) is added to that section, to read:

322.08 Application for license; requirements for license and identification card forms.—

(2) Each such application shall include the following information regarding the applicant:

(a) Full name (first, middle or maiden, and last), gender, proof of social security card number satisfactory to the department, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description.

(b) Proof of birth date satisfactory to the department.

(c) Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

1. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., subparagraph 7., or subparagraph 8.;

2. A certified copy of a United States birth certificate;

3. A valid, unexpired United States passport;

4. A naturalization certificate issued by the United States



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Department of Homeland Security;

5. A valid, unexpired alien registration receipt card
(green card);

6. A Consular Report of Birth Abroad provided by the United
States Department of State;

7. An unexpired employment authorization card issued by the
United States Department of Homeland Security; or

8. Proof of nonimmigrant classification provided by the
United States Department of Homeland Security, for an original
driver's license. In order to prove nonimmigrant classification,
an applicant must provide at least one of the following
documents; in addition, the department may require other
documents for the sole purpose of establishing the maintenance
of or efforts to maintain continuous lawful presence ~~may produce~~
~~the following documents, including, but not limited to:~~

a. A notice of hearing from an immigration court scheduling
a hearing on any proceeding.

b. A notice from the Board of Immigration Appeals
acknowledging pendency of an appeal.

c. A notice of the approval of an application for
adjustment of status issued by the United States Bureau of
Citizenship and Immigration Services.

d. Any official documentation confirming the filing of a
petition for asylum or refugee status or any other relief issued
by the United States Bureau of Citizenship and Immigration
Services.

e. A notice of action transferring any pending matter from
another jurisdiction to this state issued by the United States
Bureau of Citizenship and Immigration Services.



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f. An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to, asylum.

g. Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.

h. On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

A driver's license or temporary permit issued based on documents required ~~Presentation of any of the documents in subparagraph 7. or subparagraph 8. is valid entitles the applicant to a driver's license or temporary permit~~ for a period not to exceed the expiration date of the document presented or 1 year, whichever occurs first.

(d) Whether the applicant has previously been licensed to drive, and, if so, when and by what state, and whether any such license or driving privilege has ever been disqualified, revoked, or suspended, or whether an application has ever been refused, and, if so, the date of and reason for such disqualification, suspension, revocation, or refusal.

(e) Each such application may include fingerprints and other unique biometric means of identity.

(7) The application form for an original, renewal, or



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replacement driver's license or identification card shall include language permitting the following:

(o) A voluntary contribution of \$1 per applicant for Autism Services and Supports. Such contributions must be transferred by the department each month to the Achievement and Rehabilitation Centers, Inc., Autism Services Fund.

(p) A voluntary contribution of \$1 per applicant for Support Our Troops. Such contributions must be transferred by the department each month to Support Our Troops, Inc.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided in s. 215.20, contributions received under paragraphs (b)-(n) are not income of a revenue nature.

(8) The department may collect and use electronic mail addresses for the purpose of providing renewal notices in lieu of the United State Postal Service.

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

And the title is amended as follows:

Delete lines 92 - 158

and insert:

Hunger in Florida, Autism Services and Supports, and Support Our Troops; requiring that the department retain certain records for a specified period; amending s. 320.023, F.S.; authorizing the department to retain certain proceeds derived from the voluntary contributions program to cover certain specified costs to the department; amending s. 320.03, F.S., relating



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to the International Registration Plan; conforming provisions to changes made by the act; amending s. 320.05, F.S.; deleting a provision requiring that the department provide a procedures manual for a fee; clarifying that the creation and maintenance of records by the Division of Motorist Services is not a law enforcement function of agency recordkeeping; amending s. 320.06, F.S.; authorizing the department to conduct a pilot program to evaluate alternative license plate technologies for use on government-owned motor vehicles; specifying that all license plates issued by the department are the property of the state; amending s. 320.061, F.S.; providing that it is a noncriminal traffic infraction to alter a temporary license plate; amending s. 320.071, F.S.; providing for the renewal of registration for an apportionable vehicle that is registered under the International Registration Plan; amending s. 320.0715, F.S.; clarifying provisions requiring the registration of apportionable vehicles under the International Registration Plan; amending s. 320.08, F.S., relating to license taxes; conforming cross-references; amending s. 320.0847, F.S., relating to license plates for mini trucks and low-speed vehicles; conforming cross-references; amending s. 320.0848, F.S.; revising the requirements for the deposit of fee proceeds from temporary disabled parking permits; amending s. 320.275, F.S., relating to the Automobile Dealers Industry Advisory Board; conforming provisions to the



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elimination of the Division of Motor Vehicles within the department; amending s. 320.771, F.S.; specifying circumstances under which certain dealers may apply for a certificate of title to a recreational vehicle using a manufacturer's statement of origin; amending s. 320.95, F.S.; authorizing the department to use electronic mail addresses for the purpose of providing license renewal notices; amending s. 321.02, F.S.; designating the director of the Division of Highway Patrol of the department as the Colonel of the Florida Highway Patrol; amending s. 322.02, F.S.; providing for a director of the Division of Motorist Services; amending s. 322.04, F.S.; revising provisions exempting a nonresident from the requirement to obtain a driver's license under certain circumstances; amending s. 322.051, F.S.; revising requirements by which an applicant for an identification card may prove nonimmigrant classification; clarifying the validity of an identification card based on specified documents; providing for the department to waive the fees for issuing or renewing an identification card to persons who present good cause for such waiver; amending s. 322.058, F.S.; conforming a cross-reference; amending s. 322.065, F.S.; revising the period of expiration that constitutes the offense of driving with an expired driver's license; amending s. 322.07, F.S.; clarifying the qualifications for obtaining a temporary commercial instruction permit; amending s. 322.08, F.S.; revising requirements by



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796 which an applicant for a driver's license may prove
797 nonimmigrant classification; clarifying the validity
798 of a license based on specified documents; providing
799 for driver's license application forms to allow the
800 applicant to make a voluntary contribution to Autism
801 Services and Supports and Support Our Troops;
802 authorizing



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment

Delete line 1796
and insert:
name in their country of residence and a valid license issued in
that country.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 2121 and 2122
insert:

Section 53. Section 322.145, Florida Statutes, is created
to read:

322.145 Electronic authentication of licenses.—

(1) All driver's licenses issued on or after July 1, 2012,
must contain a means of electronic authentication, which
conforms to a recognized standard for such authentication, such
as public key infrastructure, symmetric key algorithms, security
tokens, mediametrics, or biometrics.



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(2) The department provide, at the applicant's option and at the time a license is issued, a security token that can be electronically authenticated through a personal computer. The token must also conform to one of the standards in subsection (1).

(3) The department shall negotiate a contract with the vendor selected to implement the electronic authentication feature which provides that the vendor pay all costs of implementing the system.

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

And the title is amended as follows:

Delete line 188

and insert:

department; creating s. 322.145, F.S.; requiring the Department of Highway Safety and Motor Vehicles to implement a system providing for the electronic authentication of driver's licenses; requiring that the department contract for implementation of the electronic verification; amending s. 322.20, F.S., relating to



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 2507
and insert:

Section 65. Sections 65-74 of this act may be cited as the
"Highway Safety Act."

Section 66. The Legislature finds that road rage and
aggressive careless driving are a growing threat to the health,
safety, and welfare of the public. The intent of the Legislature
is to reduce road rage and aggressive careless driving, reduce
the incidence of drivers' interfering with the movement of
traffic, minimize crashes, and promote the orderly, free flow of



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13 traffic on the roads and highways of the state.

14 Section 67. Subsection (89) is added to section 316.003,
15 Florida Statutes, to read:

16 316.003 Definitions.—The following words and phrases, when
17 used in this chapter, shall have the meanings respectively
18 ascribed to them in this section, except where the context
19 otherwise requires:

20 (89) ROAD RAGE.—The act of a driver or passenger to
21 intentionally or unintentionally, due to a loss of emotional
22 control, injure or kill another driver, passenger, or
23 pedestrian, or to attempt or threaten to injure or kill another
24 driver, passenger, or pedestrian.

25 Section 68. Present subsection (3) of section 316.083,
26 Florida Statutes, is redesignated as subsection (4), and a new
27 subsection (3) is added to that section, to read:

28 316.083 Overtaking and passing a vehicle.—The following
29 rules shall govern the overtaking and passing of vehicles
30 proceeding in the same direction, subject to those limitations,
31 exceptions, and special rules hereinafter stated:

32 (3) (a) On roads, streets, or highways having two or more
33 lanes that allow movement in the same direction, a driver may
34 not continue to operate a motor vehicle in the furthestmost left-
35 hand lane if the driver knows, or reasonably should know, that
36 he or she is being overtaken in that lane from the rear by a
37 motor vehicle traveling at a higher rate of speed.

38 (b) Paragraph (a) does not apply to a driver operating a
39 motor vehicle in the furthestmost left-hand lane if:

40 1. The driver is driving the legal speed limit and is not
41 impeding the flow of traffic in the furthestmost left-hand lane;



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42 2. The driver is in the process of overtaking a slower
43 motor vehicle in the adjacent right-hand lane for the purpose of
44 passing the slower moving vehicle so that the driver may move to
45 the adjacent right-hand lane;

46 3. Conditions make the flow of traffic substantially the
47 same in all lanes or preclude the driver from moving to the
48 adjacent right-hand lane;

49 4. The driver's movement to the adjacent right-hand lane
50 could endanger the driver or other drivers;

51 5. The driver is directed by a law enforcement officer,
52 road sign, or road crew to remain in the furthestmost left-hand
53 lane; or

54 6. The driver is preparing to make a left turn.

55 (c) A driver who violates s. 316.183 and this subsection
56 simultaneously shall receive a uniform traffic citation solely
57 under s. 316.183.

58 Section 69. Section 316.1923, Florida Statutes, is amended
59 to read:

60 316.1923 Aggressive careless driving.—

61 (1) "Aggressive careless driving" means committing three
62 ~~two~~ or more of the following acts simultaneously or in
63 succession:

64 (a) ~~(1)~~ Exceeding the posted speed as defined in s.
65 322.27(3) (d) 5.b.

66 (b) ~~(2)~~ Unsafely or improperly changing lanes as defined in
67 s. 316.085.

68 (c) ~~(3)~~ Following another vehicle too closely as defined in
69 s. 316.0895(1).

70 (d) ~~(4)~~ Failing to yield the right-of-way as defined in s.



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316.079, s. 316.0815, or s. 316.123.

(e) ~~(5)~~ Improperly passing or failing to yield to overtaking vehicles as defined in s. 316.083, s. 316.084, or s. 316.085.

(f) ~~(6)~~ Violating traffic control and signal devices as defined in ss. 316.074 and 316.075.

(2) Any person convicted of aggressive careless driving shall be cited for a moving violation and punished as provided in chapter 318, and by the accumulation of points as provided in s. 322.27, for each act of aggressive careless driving.

Section 70. Section 318.121, Florida Statutes, is amended to read

318.121 Preemption of additional fees, fines, surcharges, and costs.—Notwithstanding any general or special law, or municipal or county ordinance, additional fees, fines, surcharges, or costs other than the additional fees, fines, court costs, and surcharges assessed under s. 318.18(11), (13), (18), ~~and~~ (19), and (22) may not be added to the civil traffic penalties assessed in this chapter.

Section 71. Subsection (22) is added to section 318.18, Florida Statutes, to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(22) (a) In addition to any penalties or points imposed under s. 316.1923, a person convicted of aggressive careless driving shall also pay:

1. Upon a first violation, a fine of \$100.

2. Upon a second or subsequent conviction, a fine of not less than \$250 but not more than \$500 and be subject to a



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mandatory hearing under s. 318.19.

(b) The clerk of the court shall remit the moneys collected from the increased fine imposed by this subsection to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund. Of the funds deposited into the Department of Health Administrative Trust Fund, \$200,000 in the first year after October 1, 2011, and \$50,000 in the second and third years, shall be transferred into the Highway Safety Operating Trust Fund to offset the cost of providing educational materials related to this act. Funds deposited into the Department of Health Administrative Trust Fund under this subsection shall be allocated as follows:

1. Twenty-five percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

2. Twenty-five percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

3. Twenty-five percent shall be transferred to the Emergency Medical Services Trust Fund and used by the department for making matching grants to emergency medical services organizations as defined in s. 401.107.

4. Twenty-five percent shall be transferred to the Emergency Medical Services Trust Fund and made available to rural emergency medical services as defined in s. 401.107, and shall be used solely to improve and expand prehospital emergency medical services in this state. Additionally, these moneys may be used for the improvement, expansion, or continuation of



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129 services provided.

130 Section 72. Section 318.19, Florida Statutes, is amended to
131 read:

132 318.19 Infractions requiring a mandatory hearing.—Any
133 person cited for the infractions listed in this section shall
134 not have the provisions of s. 318.14(2), (4), and (9) available
135 to him or her but must appear before the designated official at
136 the time and location of the scheduled hearing:

137 (1) Any infraction which results in a crash that causes the
138 death of another;

139 (2) Any infraction which results in a crash that causes
140 “serious bodily injury” of another as defined in s. 316.1933(1);

141 (3) Any infraction of s. 316.172(1)(b);

142 (4) Any infraction of s. 316.520(1) or (2); ~~or~~

143 (5) Any infraction of s. 316.183(2), s. 316.187, or s.
144 316.189 of exceeding the speed limit by 30 m.p.h. or more; or.

145 (6) A second or subsequent infraction of s. 316.1923(1).

146 Section 73. The Department of Highway Safety and Motor
147 Vehicles shall provide information about the Highway Safety Act
148 in all driver’s license educational materials newly printed on
149 or after October 1, 2011.

150 Section 74. For the purpose of incorporating the amendments
151 made by this act to section 316.1923, Florida Statutes, in a
152 reference thereto, paragraph (a) of subsection (1) of section
153 316.650, Florida Statutes, is reenacted to read:

154 316.650 Traffic citations.—

155 (1)(a) The department shall prepare and supply to every
156 traffic enforcement agency in this state an appropriate form
157 traffic citation that contains a notice to appear, is issued in



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prenumbered books, meets the requirements of this chapter or any laws of this state regulating traffic, and is consistent with the state traffic court rules and the procedures established by the department. The form shall include a box that is to be checked by the law enforcement officer when the officer believes that the traffic violation or crash was due to aggressive careless driving as defined in s. 316.1923. The form shall also include a box that is to be checked by the law enforcement officer when the officer writes a uniform traffic citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1. as a result of the driver failing to stop at a traffic signal.

Section 75. Section 320.089, Florida Statutes, is amended to read:

320.089 Members of National Guard and active United States Armed Forces reservists; former prisoners of war; survivors of Pearl Harbor; Purple Heart medal recipients; Operation Iraqi Freedom and Operation Enduring Freedom Veterans; Combat Infantry Badge recipients; special license plates; fee.—

(1)(a) Each owner or lessee of an automobile or truck for private use or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state and an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, ~~or~~ an active or retired member of any branch of the United States Armed Forces Reserve, or a recipient of the Combat Infantry Badge shall, upon application to the department, accompanied by proof of active membership or retired status in the Florida National Guard, proof of membership in the Pearl Harbor



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Survivors Association or proof of active military duty in Pearl Harbor on December 7, 1941, proof of being a Purple Heart medal recipient, ~~or~~ proof of active or retired membership in any branch of the Armed Forces Reserve, or proof of membership in the Combat Infantrymen's Association, Inc., or other proof of being a recipient of the Combat Infantry Badge, and upon payment of the license tax for the vehicle as provided in s. 320.08, be issued a license plate as provided by s. 320.06, upon which, in lieu of the serial numbers prescribed by s. 320.06, shall be stamped the words "National Guard," "Pearl Harbor Survivor," "Combat-wounded veteran," ~~or~~ "U.S. Reserve," or "Combat Infantry Badge," as appropriate, followed by the serial number of the license plate. Additionally, the Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.

(b) Notwithstanding any other provision of law to the contrary, beginning with fiscal year 2002-2003 and annually thereafter, the first \$100,000 in general revenue generated from the sale of license plates issued under this section shall be deposited into the Grants and Donations Trust Fund, as described in s. 296.38(2), to be used for the purposes established by law for that trust fund. Any additional general revenue generated from the sale of such plates shall be deposited into the State Homes for Veterans Trust Fund and used solely to construct, operate, and maintain domiciliary and nursing homes for veterans, subject to the requirements of chapter 216.

(c) Notwithstanding any provisions of law to the contrary, an applicant for a Pearl Harbor Survivor license plate or a Purple Heart license plate who also qualifies for a disabled



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veteran's license plate under s. 320.084 shall be issued the appropriate special license plate without payment of the license tax imposed by s. 320.08.

(2) Each owner or lessee of an automobile or truck for private use, truck weighing not more than 7,999 pounds, or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state and who is a former prisoner of war, or their unremarried surviving spouse, shall, upon application therefor to the department, be issued a license plate as provided in s. 320.06, on which license plate are stamped the words "Ex-POW" followed by the serial number. Each application shall be accompanied by proof that the applicant meets the qualifications specified in paragraph (a) or paragraph (b).

(a) A citizen of the United States who served as a member of the Armed Forces of the United States or the armed forces of a nation allied with the United States who was held as a prisoner of war at such time as the Armed Forces of the United States were engaged in combat, or their unremarried surviving spouse, may be issued the special license plate provided for in this subsection without payment of the license tax imposed by s. 320.08.

(b) A person who was serving as a civilian with the consent of the United States Government, or a person who was a member of the Armed Forces of the United States who was not a United States citizen and was held as a prisoner of war when the Armed Forces of the United States were engaged in combat, or their unremarried surviving spouse, may be issued the special license plate provided for in this subsection upon payment of the



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license tax imposed by s. 320.08.

(3) Each owner or lessee of an automobile or truck for private use, truck weighing not more than 7,999 pounds, or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of this state and who is the unremarried surviving spouse of a recipient of the Purple Heart medal shall, upon application therefor to the department, with the payment of the required fees, be issued a license plate as provided in s. 320.06, on which license plate are stamped the words "Purple Heart" and the likeness of the Purple Heart medal followed by the serial number. Each application shall be accompanied by proof that the applicant is the unremarried surviving spouse of a recipient of the Purple Heart medal.

(4) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which automobile, truck, or recreational vehicle is not used for hire or commercial use who is a resident of the state and a current or former member of the United States military who was deployed and served in Iraq during Operation Iraqi Freedom or in Afghanistan during Operation Enduring Freedom shall, upon application to the department, accompanied by proof of active membership or former active duty status during one of these operations, and upon payment of the license tax for the vehicle as provided in s. 320.08, be issued a license plate as provided by s. 320.06 upon which, in lieu of the registration license number prescribed by s. 320.06, shall be stamped the words "Operation Iraqi Freedom" or "Operation Enduring Freedom," as



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appropriate, followed by the registration license number of the plate.

Section 76. This act shall take effect October 1, 2011.

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

And the title is amended as follows:

Delete lines 229 - 230

and insert:

conforming a cross-reference; creating the "Highway Safety Act"; providing legislative intent relating to road rage and aggressive careless driving; amending s. 316.003, F.S.; defining the term "road rage"; amending s. 316.083, F.S.; requiring an operator of a motor vehicle to yield the left lane when being overtaken on a multilane highway; providing exceptions; amending s. 316.1923, F.S.; revising the number of specified acts necessary to qualify as an aggressive careless driver; providing specified punishments for aggressive careless driving, including imposition of an increased fine; amending s. 318.121, F.S.; revising the preemption of additional fees, fines, surcharges, and court costs to allow imposition of the increased fine for aggressive careless driving; amending s. 318.18, F.S.; specifying the amount of the fine and the allocation of moneys received from the increased fine imposed for aggressive careless driving; amending s. 318.19, F.S.; providing that a second or subsequent infraction as an aggressive careless driver requires attendance at a mandatory hearing; requiring the



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Department of Highway Safety and Motor Vehicles to provide information about the Highway Safety Act in driver's license educational materials; reenacting s. 316.650(1)(a), F.S., relating to traffic citations, to incorporate the amendments made to s. 316.1923, F.S., in a reference thereto; amending s. 320.089, F.S.; providing for the issuance of a Combat Infantry Badge license plate; providing qualifications and requirements for the plate; providing for the use of proceeds from the sale of the plate; providing an effective date.



726264

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 2507

and insert:

Section 65. Paragraph (a) of subsection (2) of section
318.1451, Florida Statutes, is amended to read:

318.1451 Driver improvement schools.—

(2) (a) In determining whether to approve the courses
referenced in this section, the department shall consider course
content designed to promote safety, driver awareness, crash
avoidance techniques, awareness of the risks associated with
using a handheld electronic communication device while operating



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13 a motor vehicle, and other factors or criteria to improve driver
14 performance from a safety viewpoint.

15 Section 66. Subsection (1) of section 322.095, Florida
16 Statutes, is amended to read:

17 322.095 Traffic law and substance abuse education program
18 for driver's license applicants.—

19 (1) The Department of Highway Safety and Motor Vehicles
20 must approve traffic law and substance abuse education courses
21 that must be completed by applicants for a Florida driver's
22 license. The curricula for the courses must provide instruction
23 on the physiological and psychological consequences of the abuse
24 of alcohol and other drugs, the societal and economic costs of
25 alcohol and drug abuse, the effects of alcohol and drug abuse on
26 the driver of a motor vehicle, the risks associated with using a
27 handheld electronic communication device while operating a motor
28 vehicle, and the laws of this state relating to the operation of
29 a motor vehicle. All instructors teaching the courses shall be
30 certified by the department.

31 Section 67. Except as otherwise expressly provided in this
32 act, this act shall take effect July 1, 2011.

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

36 And the title is amended as follows:

37 Delete lines 229 - 230

38 and insert:

39 conforming a cross-reference; amending ss. 318.1451
40 and 322.095, F.S.; requiring the curricula of driver
41 improvement schools and education programs for



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42 driver's license applicants to include instruction on
43 the risks associated with using a handheld electronic
44 communication device while operating a motor vehicle;
45 providing effective dates.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1150

INTRODUCER: Transportation Committee and Senator Latvala

SUBJECT: Department of Highway Safety and Motor Vehicles

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	CS/Favorable
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The bill contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV or department). Examples of major provisions in the bill include:

- Creates the Division of Motorist Services within DHSMV and eliminates the Division of Driver Licenses and the Division of Motor Vehicles as two separate entities due to the reorganization of the department structure;
- Prohibits the issuance or prosecution of citations for certain speeding violations unless a law enforcement officer used an electrical, mechanical, or other speed-calculating device that had been properly tested and approved;
- Authorizes health care providers to notify a law enforcement officer or law enforcement agency after detecting the presence of controlled substances in the blood of a person injured in a motor vehicle crash;
- Modifies motorcycle and moped license tag legibility and positioning requirements;
- Directs the department to suspend all registrations and the driver's license of a person convicted of failure to maintain required security while operating a private passenger motor vehicle;

- Modernizes the format of motor vehicle certificates of title;
- Requires the application for a certificate of title be filed on a mobile home after consummation of the sale of the mobile home;
- Creates and authorizes a bonding program for replacement and issuance of motor vehicle titles;
- Revises the term “motor vehicle” to exclude “special mobile equipment” as defined in ch. 316, F.S.;
- Permits the DHSMV to use electronic methods to title motor vehicles and vessels, and to collect and use e-mail addresses for various customer notifications;
- Exempts active-duty military members, who are Florida residents, from the requirement to provide a Florida residential address on an application for vehicle registration;
- Requires an owner or registrant to obtain a driver’s license replacement that reflects changes to the residence or mailing address before changing the address on the motor vehicle record;
- Creates a voluntary contribution check-off option of \$1 on motor vehicle registration and renewal forms to End Hunger in Florida;
- Specifies all electronic registration records must be retained by the department for at least 10 years;
- Authorizes DHSMV to annually retain, from the first proceeds derived from voluntary contributions collected relating to motor vehicle registrations and renewals and driver’s license, an amount sufficient to defray the share of the department’s costs;
- Allows DHSMV to conduct a pilot project using alternative license plates on state vehicles only;
- Adds temporary license plates to the list of documents that are unlawful to alter;
- Revises the distribution of certain proceeds from temporary disabled parking permits intended for the Florida Endowment Foundation for Vocational Rehabilitation;
- Specifies circumstances when a RV dealer may apply for a certificate of title to a RV using a manufacturer’s statement of origin;
- Revises requirements by which an applicant for an identification card may prove non-immigrant status;
- Requires the department to issue or renew an identification card at no charge to a person who presents good cause for a fee waiver;
- Deletes the requirement that DHSMV conduct motorcycle examinations and specifies the motorcycle safety course for a first-time applicant include a final examination, which conforms law to practice;
- Clarifies military personnel shall be granted an automatic extension on the expiration of a Class E license when on active duty outside the state;
- Eliminates the requirement that applicants for a Class A, Class B, and Class C driver’s license must appear in person within the state for issuance of a color photographic or digital imaged driver’s license;
- Requires the department to issue a specialty driver’s license or identification card to qualified applicants for a \$25 fee;
- Provides for the distribution of funds collected from the specialty driver’s license and identification card fees;
- Repeals obsolete chauffeur’s license; and,

- Mirrors the Federal Motor Carrier Safety Administration (FMCSA) regulations and remedies inconsistencies.

This bill substantially amends the following sections of the Florida Statutes: 20.24, 261.03, 288.816, 316.1905, 316.1933, 316.1957, 316.2085, 316.2122, 316.2124, 316.21265, 316.3026, 316.545, 316.550, 316.646, 317.0003, 317.0016, 318.14, 318.15, 319.14, 319.225, 319.23, 319.28, 319.323, 319.40, 320.01, 320.02, 320.023, 320.03, 320.05, 320.06, 320.061, 320.071, 320.0715, 320.08, 320.0847, 320.0848, 320.275, 320.771, 320.95, 321.02, 322.02, 322.04, 322.051, 322.058, 322.065, 322.07, 322.08, 322.081, 322.12, 322.121, 322.14, 322.20, 322.202, 322.21, 322.53, 322.54, 322.59, 322.61, 322.64, 328.30, 413.012 and 713.78.

The bill creates s. 322.1415, F.S.

The bill also repeals s. 322.58, F.S.

II. Present Situation:

Division of Motorist Services Merger

The department was created by ch. 20.24 F.S. The mission of DHSMV is “Providing Highway Safety and Security Through Excellence in Service, Education, and Enforcement” by providing services in partnership with county tax collectors; local, state, and federal law enforcement agencies to promote a safe driving environment; issue driver licenses and identification cards; and, provide services related to consumer protection and public safety.

The department is composed of four divisions: Florida Highway Patrol, Driver Licenses, Motor Vehicles, Administrative Services and an Information Systems Administration which offers support services to all divisions. The department’s duties, responsibilities and procedures are mandated through chs. 316, 317, 318, 319, 320, 321, 322, 323, 324, 328, 488, F.S., and ss. 627.730 – 627.7405, F.S., and Chapter 15-1, F.A.C.

The agency head of DHSMV is the Executive Director and is appointed by the Governor with the approval of the Cabinet. The Executive Director supervises, directs, coordinates, and administers all activities of the department.

Division of Driver Licenses

The Division of Driver Licenses (DDL) promotes safety on the highways by licensing qualified drivers, controlling and improving problem drivers, ensuring vehicle owners and operators are responsible for injuries and damages they may cause in a crash on Florida’s roadways, and maintaining records for driver evaluation. The DDL manages the issuance of driver licenses through an examination process and creates permanent records of all licenses issued. The DDL ensures all drivers and their vehicles are properly insured and enforces sanctions imposed for violation of Florida’s highway safety laws. The DDL provides services to the driving public through a network of field offices, tax collector agent offices, and mobile units located throughout the state.

The DDL is composed of four bureaus: Records, Financial Responsibility, Driver Improvement, and Driver Education. Field Operations, although not a bureau, is the single largest element of the division and contributes significantly to services.

Field Operations is responsible for verifying identification, administering the driver license examination process (vision, written exam, and driving skills), and issuing state driver licenses and identification cards. Field Operations also oversees county tax collector offices offering driver license services.

Bureau of Records is the official custodian of Florida driver license records and manages all records for the state's licensed drivers. The Bureau ensures traffic citations are recorded on the corresponding driver record, records are maintained and purged appropriately, and that citations issued in Florida are reported to a driver's home state. Bureau of Records also prints, distributes, and accounts for all uniform traffic citations issued in Florida.

Bureau of Financial Responsibility ensures all registered vehicles and owners are properly insured, ensuring compliance with Florida's Financial Responsibility Law and Motor Vehicle No-Fault Insurance Law. Vehicle owners are required to maintain personal injury protection insurance and property damage liability insurance on all registered vehicles throughout the registration period. Bureau of Financial Responsibility maintains all insurance policy information reported by insurance companies by tracking cancelled policies and validating replacement policies.

Bureau of Driver Improvement enforces sanctions imposed on those who violate Florida's highway safety laws through suspensions, revocations, or disqualifications. Bureau of Driver Improvement ensures the collection of statutorily required fees and fines, investigates and enforces appropriate sanctions when fraud or ID theft is established, ensures only legal aliens are issued driver licenses or ID cards, and ensures customers with medical conditions unable to operate a vehicle safely are assessed. This section conducts informal and formal review hearings pertaining to administrative suspensions when requested by sanctioned drivers.

Bureau of Driver Education and DUI Programs approves, monitors, and regulates: DUI programs; commercial driving schools; commercial motor vehicle instructors and vehicles; driver improvement schools; curriculums and instructions; and, the Florida Motor Cycle Rider Training Programs. Bureau of Driver Education and DUI Programs is also maintains quality control on all driver education programs through site inspections, document evaluation, and routine review of program components.

Division of Motor Vehicles

The Division of Motor Vehicles (DMV) provides safety and consumer protection of property rights by ensuring motor vehicles, vessels, and mobile homes are properly titled and registered. Motor Vehicles also ensures commercial carriers are properly registered and pay the appropriate gasoline tax for intrastate and interstate commerce. The DMV ensures the safety of mobile home residents by requiring mobile homes to be built in accordance with national construction standards and installed in accordance with state standards. In addition to day-to-day services to Florida residents, the DMV works with other state and federal agencies on motor vehicles issues and assists the state's county tax collectors to provide vehicle services.

The DMV is composed of four bureaus: Field Operations, Titles and Registrations, Motor Carrier Services, and Mobile Home and Recreational Vehicle Construction.

Titles and Registrations registers and titles motor vehicles, vessels and mobile homes. The Bureau issues and cancels titles, records liens, and maintains records of motor vehicle and vessel title transactions. Further, Titles and Registrations issues, renews, transfers, and maintains inventory of license plates and registration decals and issues, cancels, and renews disabled parking permits.

Field Operations receives and processes both original and renewal license applications for motor vehicle manufacturers, importers, distributors, brokers and dealers and mobile home manufacturers and dealers. Field Operations investigates and resolves consumer complaints and performs records inspections of motor vehicle dealers and investigates and assists law enforcement in investigations of vehicle, title, and odometer fraud.

Motor Carrier Services registers and audits Florida-based commercial motor carriers under the International Registration Plan and the International Fuel Use Tax Agreements ensuring appropriate prorated taxes are paid.

Mobile Home and Recreational Vehicle Construction monitors the quality of Florida manufactured/mobile home units and provides training, testing and licensing of individuals who set-up and install manufactured/mobile homes. The bureau also trains local building officials on state installation requirements, performs dealer lot inspections, and investigates and resolves consumer complaints.

Speed Calculating Devices

Section 316.1905, F.S., provides that whenever any peace officer engaged in the enforcement of the motor vehicle laws uses an electronic, electrical, mechanical, or other device used to determine the speed of a motor vehicle on any highway, road, street, or other public way, such device must be of a type approved by the department and must have been tested to determine that it is operating accurately. Tests for this purpose must be made not less than once each 6 months, according to procedures and at regular intervals of time prescribed by the department.

Health Care Provider's Authorization

Section 316.1933(2)(a)1., F.S., provides notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in s. 316.193(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample.

Motorcycles/Mopeds

Section 316.2085, F.S., provides for the proper operation of a motorcycle – including a requirement that the license tag of a motorcycle must be “permanently affixed to the vehicle,” and incapable of being adjusted or “flipped up.” The section also provides a prohibition regarding the visibility or legibility of a tag specifying that “[n]o device for or method of concealing or obscuring the legibility of the license tag of a motorcycle shall be installed or used” by a rider. The license tag of a motorcycle or moped may be affixed and displayed parallel to the ground in a manner that the numbers and letters read from left to right. Alternatively, a license tag for a motorcycle or moped may be affixed and displayed perpendicularly to the ground in a manner that the numbers and letters read from top to bottom, if the registered owner of the motorcycle or moped maintains a prepaid toll account in good standing and an affixed transponder.

Driver’s License and Vehicle Registration Suspension

Section 316.646, F.S., requires drivers to maintain proof of insurance “in his or her immediate possession at all times while operating the motor vehicle.” Failure to present proof of insurance upon request is a non-moving traffic infraction, and upon being cited for this failure, the driver is required to provide proof of insurance before or at a scheduled court hearing. If the driver subsequently fails to provide proof of insurance to the court, s. 316.646, F.S., “the court shall notify” DHSMV of the conviction to suspend the registration and driver’s license” of the offender. If the court does not independently suspend the driver’s license and registration, DHSMV will do so administratively; however, only the vehicle operated at the time of the citation is subject to suspension of registration.

Forms***Certificate of Repossession***

Section 317.0016, F.S., requires the department to provide, through the department’s agents, expedited service for the issuance of a certificate of repossession relating to off-highway vehicles.

Section 319.28, F.S., requires a lienholder who has repossessed a vehicle to apply to the tax collector’s office or to the department for a certificate of repossession or to the department for a certificate of title.

Section 319.323, F.S., requires the department to provide, through the department’s agents, expedited service for the issuance of a certificate of repossession relating to vehicles and mobile homes.

According to the department, when a lienholder has repossessed an off-highway vehicle, vehicle, or mobile home he or she currently has the option of requesting either a certificate of title or a certificate of repossession. Since a title must be in the lienholders possession when he or she sells an off-highway vehicle, vehicle or mobile home there is no need for a certificate of repossession.

Transfer and Reassignment Forms - Certificate of Title; Power of Attorney

Section 319.225, F.S., provides for procedures and regulations regarding the transfer and reassignment of motor vehicle titles. Section 319.225(1), F.S., specifies certain provisions the certificate of title must contain on the reverse side. Specifically, s. 319.225(6), F.S., provides if a certificate of title is physically held by a lienholder or is lost or otherwise unavailable, the transferor may give a power of attorney to his or her transferee for the purpose of odometer disclosure. The power of attorney must be on a form issued or authorized by DHSMV. The transferee must sign the power of attorney form, print his or her name, and return a copy of the power of attorney form to the transferor. Upon receipt of a title certificate or duplicate title certificate, the transferee must complete the space for mileage disclosure on the title certificate exactly as the mileage was disclosed by the transferor on the power of attorney form. A copy of the executed power of attorney form must be submitted to DHSMV with a copy of the executed dealer reassignment form within 5 business days after the certificate of title and dealer reassignment form are delivered by the dealer to its transferee.

Custom and Street Rod Vehicles

Section 320.0863(1)(b), F.S., defines "custom vehicle" to mean a motor vehicle that:

- Is 25 years old or older and of a model year after 1948 or was manufactured to resemble a vehicle that is 25 years old or older and of a model year after 1948; and,
- Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

Section 320.0863(1)(c), F.S., defines "street rod" to mean a motor vehicle that:

- Is of a model year of 1948 or older or was manufactured after 1948 to resemble a vehicle of a model year of 1948 or older; and,
- Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

Section 320.0863(2), F.S., provides the model year and year of manufacture which the body of a custom vehicle or street rod resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

Currently, ch. 320, F.S., provides for unique license plates for custom and street rod vehicles; however, ch. 319, F.S., does not provide for a unique titling process (i.e. titling requirement, branding requirements or definitions for custom and street rod vehicles). According to the department, this has caused a lack of direction for Tax Collector agencies and regional offices in terms of titling these vehicles. Custom vehicles and street rod vehicles fall into the same category as motor vehicles registered as rebuilt vehicles and non-conforming vehicles. Consequently, the department has been titling these vehicles according to these same requirements when one of these vehicles is offered for sale.¹

¹ Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 1150*, (on file with the Senate Transportation Committee).

Currently, the department performs a physical inspection of rebuilt vehicles to assure the identity of the vehicle and that any major component parts repaired or replaced have proper ownership documentation and are not stolen. The department does not have specific statutory authority to require damaged major component parts to be repaired or replaced as a condition of inspection and or issuing a rebuilt title.²

Mobile Homes

Section 319.23(6)(a), F.S., provides in the case of the sale of a motor vehicle or mobile home by a licensed dealer to a general purchaser, the certificate of title must be obtained in the name of the purchaser by the dealer upon application signed by the purchaser, and in each other case such certificate must be obtained by the purchaser. In each case of transfer of a motor vehicle or mobile home, the application for a certificate of title, a corrected certificate, or an assignment or reassignment must be filed within 30 days after the delivery of the motor vehicle or mobile home to the purchaser. An applicant must pay a fee of \$20, in addition to all other fees and penalties required by law, for failing to file such application within the specified time.

Bonded Titles

Chapter 319.23, F.S., provides for the application and issuance of motor vehicle titles; however, ch. 319, F.S., does not authorize the DHSMV to accept a bond if an applicant for a certificate of title is unable to provide a title assigning the prior owner's interest in the motor vehicle.

Electronic Transactions - Motor Vehicle Certificates of Title, Motor Vehicle Licenses and Vessel Registration

Chapter 319, F.S., governs vehicle title certificates issued in Florida as well as fees, liens, and related issues. Section 319.40, F.S., authorizes the department to accept any application provided for in ch. 319, F.S., by "electronic or telephonic means;" however, it does not specifically allow the collection and use of email addresses or the issuing of electronic titles in lieu of printing paper titles.

Section 320.95, F.S., authorizes the department to accept any application provided for in ch. 320, F.S., by "electronic or telephonic means;" however, it does not specifically allow the collection and use of email addresses from vehicle owners and registrants.

Chapter 328, F.S., governs title certificates and registration of vessels in Florida. Section 328.30, F.S., authorizes the DHSMV to accept any application required under ch. 328, F.S., by "electronic or telephonic means," relating to vessel titles.

Motor Vehicle Registration

Permanent Address Requirements - Active Duty Military Members

Section 320.02, F.S., requires every owner or person in charge of a motor vehicle operated or driven on the roads of this state to register the vehicle in this state. The owner or person in charge must apply to the department or to its authorized agent for registration of the vehicle. The

² *Id.*

application for registration must include the street address of the owner's permanent residence or the address of his or her permanent place of business and shall be accompanied by personal or business identification information which may include, but need not be limited to, a driver's license number, Florida identification card number, or federal employer identification number.

Replacement Driver's Licenses Due to Address Change

Section 320.02(4), F.S., requires an owner of a registered motor vehicle to notify the department in writing of any change of address within 20 days of such change. The notification must include the registration license plate number, the vehicle identification number (VIN) or title certificate number, year of vehicle make, and the owner's full name.

Motor Vehicle Registration Check-offs – Florida Association of Food Banks, Inc.

During the 1998 Session, the Legislature created s. 320.023, F.S., which outlines the procedures which an organization must follow prior to seeking Legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary check-off on a motor vehicle registration application. The check-off allows a registered owner or registrant of a motor vehicle to voluntarily contribute to one or more of the authorized organizations during a motor vehicle registration transaction. Before the organization is eligible, it must submit the following requirements to DHSMV at least 90 days before the convening of the Regular Session of the Legislature:

- A request for the particular voluntary contribution being sought, describing it in general terms.
- An application fee of up to \$10,000 to defray DHSMV's costs for reviewing the application and developing the check-off, if authorized. State funds may not be used to pay the application fee.
- A short and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contributions.

DHSMV must discontinue the check-off if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent five-year period.

Registration Check-offs/Voluntary Contribution	Statutory Authorization	Effective Date	Revenue Collected in 09-10	Total Revenue Collected as of 6/30/10
Save the Manatee TF (\$2 or \$5)	1984-338, L.O.F.	7/1/1985	\$64,414	\$3,257,426
Nongame Wildlife Trust Fund (\$1)	1984-194, L.O.F.	10/1/1984	\$64,076	\$19,308,944
Marine Resources Conservation TF (\$5) Turtle Sticker is issued	1991-215, L.O.F.	7/1/1992	\$59,796	\$1,127,329
Organ & Tissue Donor Education (\$1)	95-423, L.O.F.	7/1/1995	\$35,689	\$621,832
Highway Safety Operating Trust Fund, used to purchase child safety seats (\$2)	1995-333, L.O.F.	10/1/1995	\$33,436	\$683,187
Transportation Disadvantaged Trust Fund (\$1)	1994-306, L.O.F.	7/1/1994	\$22,039	\$384,281

Prevent Blindness Florida (\$1)	1997-300, L.O.F.	10/1/1997	\$45,367	\$1,014,046
Florida Mothers Against Drunk Driving, Inc. (unspecified \$)	1999-233, L.O.F.	7/1/1999	\$55,819	\$598,792
Southeastern Guide Dogs, Inc. (\$1)	2005-254, L.O.F.	7/1/2005	\$44,920	\$270,176
Miami Heart Research Institute, Inc. (\$1)	2006-44, L.O.F.	7/1/2006	\$31,006	\$129,471
Children's Hearing Help Fund (\$1)	2007-50, L.O.F.	10/1/2007	\$32,410	\$93,296
State Homes for Veterans Trust Fund (\$1)	2008-87, L.O.F.	10/1/2008	\$70,175	\$152,981
Family First (\$1)	2008-102, L.O.F.	10/1/2008	\$32,893	\$49,258
Florida Sheriffs Youth Ranches, Inc. (\$1)	2009-110, L.O.F.	7/1/2009	\$44,975	\$45,151
Florida Network of Children's Advocacy Centers, Inc.	2010-186, L.O.F.	7/1/2010	N/A	N/A
League Against Cancer	2010-223, L.O.F.	9/1/2010	N/A	N/A
Lauren's Kid's Inc.	2010-82, L.O.F.	10/1/2010	N/A	N/A
Florida Association of Agencies Serving the Blind, Inc.	2010-86, L.O.F.	10/1/2010	N/A	N/A
The ARC of Florida	2010-86, L.O.F.	10/1/2010	N/A	N/A
Ronald McDonald House Charities of Tampa Bay, Inc.	2010-86, L.O.F.	10/1/2010	N/A	N/A
Total			\$639,015	\$27,739,170

Section 320.02, F.S., specifies the language that must appear on the State of Florida vehicle's registration and renewal application forms. Included in s. 320.02, F.S., are options for voluntary contributions to the above corporations, trust funds, and organizations as shown in the chart above. The chart includes three additional voluntary contributions relating to registrations authorized in other sections of law.³

These contributions are not income revenue and are not subject to the trust fund service charge detailed in s. 215.20, F.S., with the exception of the Organ and Tissue Donor trust fund.⁴

In 2010, the Legislature passed HB 971, which included a moratorium on the creation of new voluntary contributions on motor vehicle registration and driver's license forms by DHSMV. The moratorium is effective from July 1, 2010 to July 1, 2013, but contains an exception to "establish a voluntary contribution for an organization that has submitted a request to the Department of Highway Safety and Motor Vehicles before May 1, 2010 and submitted a valid financial analysis, marketing strategy, and application fee before September 1, 2010" or "which

³ Specifically, s. 320.08047, F.S., allows a \$1 voluntary contribution to be deposited into the Health Care Trust Fund for organ and tissue donor education and for maintaining the organ and tissue donor registry. Section 328.72(11), F.S., requires that vessel registration and renewal application forms include a provision allowing for a voluntary contribution of \$2 or \$5 to the Save the Manatee Trust Fund to fund an impartial scientific benchmark census of the manatee population in the state and other activities intended to provide manatee and marine mammal protection and recovery efforts. Lastly, s. 328.72(16), F.S., requires the DHSMV to offer for sale with vessel registrations a marine turtle sticker for \$5 with proceeds deposited into the Marine Resource Conservation Trust Fund to be used for marine turtle protection, research, and recovery efforts.

⁴ Section 320.02, F.S., and s. 322.081, F.S.

was included in a bill filed during the 2010 Legislative Session and met the requirements.”⁵ According to DHSMV, there were five organizations which met the moratorium exceptions.

Administrative Costs of Voluntary Contribution Check-offs

Currently, DHSMV is not authorized to retain certain proceeds derived from the motor vehicle registrations or driver license voluntary contributions program to defray the pro rata share of the department’s costs that are directly related to the voluntary contributions program. Funds collected are distributed in full to the respective organizations as provided by law.

Alternative License Plate Technologies Pilot Program

Section 320.06, F.S., requires registration license plates be made of metal specially treated with a retroreflection material, as specified by the department. The registration license plate is designed to increase nighttime visibility and legibility and must be at least 6 inches wide and not less than 12 inches in length, unless a plate with reduced dimensions is deemed necessary by the department to accommodate motorcycles, mopeds, or similar smaller vehicles. Validation stickers must also be treated with a retroreflection material, must be of such size as specified by the department, and must adhere to the license plate. The registration license plate must be imprinted with a combination of bold letters and numerals or numerals, not to exceed seven digits, to identify the registration license plate number. The license plate must be imprinted with the word “Florida” at the top and the name of the county in which it is sold, the state motto, or the words “Sunshine State” at the bottom.

Temporary License Plates

Section 320.061, F.S., prohibits altering the original appearance of any motor vehicle registration certificates, license plates, mobile home stickers, or validation stickers or to obscure license plates; however, the prohibition does not include temporary license plates. A violation of this provision is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.

Temporary Disabled Parking Permits – Florida Governor’s Alliance for the Employment of Disabled Citizens, Inc.

Section 320.0848, F.S., provides for the disbursement of the \$15 fee for a temporary disabled parking permit. Specifically, from the proceeds of each temporary disabled parking permit fee:

- The department must receive \$3.50, to be deposited into the Highway Safety Operating Trust Fund and used for implementing the real-time disabled parking permit database and for administering the disabled parking permit program.
- The tax collector, for processing, must receive \$2.50.
- The remainder must be distributed monthly as follows:
 - To the Florida Governor’s Alliance for the Employment of Disabled Citizens for the purpose of improving employment and training opportunities for persons who have disabilities, with special emphasis on removing transportation barriers, \$4. These fees

⁵ S. 45, 2008-176, Laws of Florida

- must be deposited into the Transportation Disadvantaged Trust Fund for transfer to the Florida Governor's Alliance for Employment of Disabled Citizens.
- To the Transportation Disadvantaged Trust Fund to be used for funding matching grants to counties for the purpose of improving transportation of persons who have disabilities, \$5.

Recreational Vehicle Dealers

Section 320.771, F.S., governs recreational vehicle (RV) dealers' licenses.

Persons Exempt from Obtaining a Florida Driver's License

Section 322.04(1)(c), F.S., provides a nonresident who is at least 16 years of age and who has in his or her immediate possession a valid noncommercial driver's license issued to the nonresident in his or her home state or country, may operate a motor vehicle of the type for which a Class E driver's license is required in Florida.

Section 322.04(1)(d), F.S., provides a nonresident who is at least 18 years of age and who has in his or her immediate possession a valid noncommercial driver's license issued to the nonresident in his or her home state or country may operate a motor vehicle, other than a commercial motor vehicle, in Florida.

Identity Documents

Sections 322.051 and 322.08, F.S., provide requirements for the issuance of an identification card or driver's license. An applicant must submit the following proof of identity:

- 1) Full name (first, middle or maiden, and last), gender, proof of social security card number satisfactory to the department, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description.
- 2) Proof of birth date satisfactory to the department.
- 3) Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:
 - a) A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraph b., sub-subparagraph c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph f., or sub-subparagraph g.;
 - b) A certified copy of a United States birth certificate;
 - c) A valid, unexpired United States passport;
 - d) A naturalization certificate issued by the United States Department of Homeland Security;
 - e) An valid, unexpired alien registration receipt card (green card);
 - f) A Consular Report of Birth Abroad provided by the United States Department of State;
 - g) An unexpired employment authorization card issued by the United States Department of Homeland Security; or
 - h) Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove such

nonimmigrant classification, applicants may produce but are not limited to the following documents:

- A notice of hearing from an immigration court scheduling a hearing on any proceeding.
- A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
- Notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services.
- Any official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.
- Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services.
- Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.
- Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.
- On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

Presentation of any of the documents in (3)(g) or (3)(h) entitles the applicant to a driver's license or temporary permit for a period not to exceed the expiration date of the document presented or 1 year, whichever occurs first.

Expired Driver's Licenses

Section 322.065, F.S., provides that a person whose driver's license is expired for four months or less and who drives a motor vehicle upon the highways of this state is guilty of an infraction and subject to penalty provided in s. 318.18, Florida Statutes.

Examination of Motorcycle Applicants

Section 322.12(5), F.S., contains obsolete provisions directing the DHSMV to formulate a separate examination for applicants for licenses to operate motorcycles. The examination must test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating thereto and must include an actual demonstration of his or her ability to exercise ordinary and reasonable control in the operation of a motorcycle. Effective July 1, 2008, s. 322.12(5), F.S., requires every first-time applicant, regardless of age, for licensure to operate a motorcycle to provide proof of completion of a DHSMV approved motorcycle safety course, as provided in s. 322.0255, F.S., prior to the applicant being issued a license to operate a motorcycle. According to the department, an examination is included with the motorcycle safety course. DHSMV does not offer any motorcycle examinations.

Military Driver's License Extensions

Section 322.121(5), F.S., grants members of the Armed Forces, or their dependents residing with them, an automatic extension for the expiration of their licenses without reexamination while serving on active duty outside the state. The extension is valid for 90 days after the member of the Armed Forces is either discharged or returns to Florida to live.

Driver's License Photographs

Section 322.14, F.S., requires applicants qualifying to receive a Class A, Class B, or Class C driver's license must appear in person within the state for issuance of a color photographic or digital imaged driver's license.

Driver's License Renewals

Section 322.21(4), F.S., provides a licensee shall be issued a renewal license, after reexamination, if required, during the 30 days immediately preceding his or her birthday upon presenting a renewal notice, his or her current license, and the fee for renewal to the department at any driver's license examining office. However, the department currently allows a person to renew his or her driver's license 18 months prior to his or her birthday. This change would codify the correct early renewal period and reflect current practice.

Chauffeurs' Licenses

Section 322.58, F.S., enacted in 1989, provides a period of time for holders of chauffeur's licenses to transfer to uniform Commercial Driver's License requirements. The 'phasing out' period ended on April 1, 1991, after which time chauffeurs' licenses were no longer issued nor recognized as valid.

Motor Carrier Compliance

The International Registration Plan; Apportioned Motor Vehicles; Definitions

The International Registration Plan (IRP) is a program for licensing commercial vehicles in interstate operations among member jurisdictions. The member jurisdictions of IRP are all states (except Alaska and Hawaii), the District of Columbia, and the Canadian provinces (except Yukon and Northwest Territory).

Under this program, an interstate carrier files an apportioned registration application in the state or province where the carrier is based (the base jurisdiction). The fleet vehicles and the miles traveled in each state are listed on the application. The base jurisdiction collects the full license registration fee and then distributes the fees to the other jurisdictions based on the percentage of miles the carrier will travel, or has traveled in each jurisdiction. The base jurisdiction also issues a license plate showing the word "apportioned" and a cab card showing the jurisdictions and weights for which the carrier has paid fees.

Section 320.01, F.S., defines the terms "motor vehicle," "apportioned motor vehicle," "apportionable vehicle," and "commercial motor vehicle."

Section 320.03(7), F.S., requires the DHSMV to register apportioned motor vehicles under the provisions of the IRP and may adopt rules to implement and enforce the provisions of the plan.

Section 320.071, F.S., provides an owner of any apportioned motor vehicle currently registered in the state may apply for renewal of the registration with the department any time during the three months preceding the date of expiration of the registration period.

Section 320.0715(1), F.S., requires all commercial motor vehicles domiciled in Florida and engaged in interstate commerce to be registered in accordance with the provisions of the IRP and display apportioned license plates.

Section 320.0715(3), F.S., provides the department may in no event issue a temporary operational permit for any commercial motor vehicle to any applicant until the applicant has shown that:

- All sales or use taxes due on the registration of the vehicle are paid; and,
- Insurance requirements have been met in accordance with ss. 320.02(5) and 627.7415, F.S.

Issuance of a temporary operational permit provides commercial motor vehicle registration privileges in each IRP member jurisdiction designated on said permit and therefore requires payment of all applicable registration fees and taxes due for that period of registration.

Commercial Vehicles; Federal Requirements - Inconsistencies

The Federal Motor Carrier Safety Administration (FMCSA) requires states to comply with federal commercial motor vehicle and licensing regulations. The FMCSA has requested minor modifications to current Florida law regarding the following commercial motor vehicle issues:

Driver Improvement Courses; Withhold of Adjudication

Sections 318.14(9) and (10) F.S., provide conditions for the court to withhold adjudication for certain violations and upon such action it shall not be considered a conviction.

Section 318.14(9)F.S., provides a person who does not hold a commercial driver's license and who is cited for certain violations may, in lieu of a court appearance, elect to attend a basic driver improvement course approved by the department. In such a case, adjudication must be withheld, points may not be assessed, and the civil penalty must be reduced by 18 percent; however, a person may not elect to attend such course if he or she has attended the course within the preceding 12 months. In addition, a person may make no more than five elections in a lifetime.

Section 318.14(10), F.S., provides any person who does not hold a commercial driver's license and who is cited for a listed offense, in lieu of payment of the fine or court appearance, may elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld; however, no election shall be made if the person has made an election in the past 12 months, and no person may make more than three elections.

Temporary Commercial Instruction Permits

Section 322.07(3), F.S., provides any person who, except for his or her lack of instruction in operating a commercial motor vehicle, would otherwise be qualified to obtain a commercial driver's license under this chapter, may apply for a temporary commercial instruction permit. The department shall issue such a permit entitling the applicant, while having the permit in his or her immediate possession, to drive a commercial motor vehicle on the highways, provided that:

- The applicant possesses a valid driver's license issued in any state; and,
- The applicant, while operating a commercial motor vehicle, is accompanied by a licensed driver who is 21 years of age or older, who is licensed to operate the class of vehicle being operated, and who is actually occupying the closest seat to the right of the driver.

Farm Vehicles and Straight Trucks

Section 322.53, F.S., requires every person driving a commercial vehicle to possess a commercial driver's license (CDL). The section also lists several exemptions from this requirement, including:

- Drivers of authorized emergency vehicles;
- Military personnel driving vehicles operated for military purposes;
- Farmers transporting farm supplies or farm machinery within 150 miles of their farm, or transporting agricultural products to or from the first place of storage or processing or directly to or from market, within 150 miles of their farm;
- Drivers of recreational vehicles;
- Drivers of straight trucks that are exclusively transporting their own tangible property personal property which is not for sale; and,
- Employees of a public transit system when moving the vehicle for maintenance or parking.

Notwithstanding these exemptions, all drivers of for-hire commercial motor vehicles are required to possess a valid CDL.

Commercial Motor Vehicle Weight

Section 322.54, F.S., provides for the classification of vehicles and driver's licenses. Currently, any vehicle with a declared and actual weight of 10,001 pounds or more is classified as a commercial motor vehicle for CDL purposes. Under the provisions, the department is directed to issue driver's licenses for three classes of CDLs, Class A, Class B, and Class C, (as well as one class of non-commercial driver's license, Class E.) The class of CDL required for the legal operation of a commercial motor vehicle is determined by the weight of the vehicle, with heavier vehicles and load requiring a more stringently administered CDL. For example, a combination vehicle with a gross vehicle weight rating (GVWR) of 26,001 pounds requires the operator to possess a Class A CDL, whereas a vehicle with a GVWR of 10,001 pounds may require only a Class B CDL. Rather than weighing each vehicle, the classification is based on the GVWR ascribed to each vehicle by the manufacturer. The GVWR is typically identified by in the Vehicle Identification Number (VIN) plate or by a separate plate.

Federal Medical Certification

Section 322.59, F.S., provides the department shall not issue a commercial driver's license to any person who is required by the laws of this state or by federal law to possess a medical examiner's certificate, unless such person presents a valid certificate prior to licensure.

Federal Motor Carrier Safety Administration Regulations – Disqualifications

Section 322.61, F.S., establishes criteria for disqualifying a commercial driver licensee from operating a commercial motor vehicle if the violations were committed in a commercial motor vehicle. The criteria consist of specified violations that, if made within certain timeframes, result in a temporary disqualification to operate a commercial motor vehicle. These violations and specifications mirror requirements provided by the FMCSA regulations, which the states are required to implement. Florida is required to change its laws to mirror the federal standards. Failure to comply can result in consequences ranging from loss of federal funds to decertification of the state to issue commercial driver's licenses.

Currently, the law provides for disqualification of a commercial motor vehicle operator for 60 days if he or she is convicted of committing two of the following traffic violations while driving a commercial motor vehicle within three years, or 120 days if convicted of three violations within three years. Current law also provides for the disqualification to operate a commercial motor vehicle for 60 or 120 days if the holder of a commercial driver's license commits the listed violations while operating a non-commercial motor vehicle and the violations result in suspension, revocation, or cancellation of the license holder's driving privilege:

- A violation of any traffic control law arising in connection with a crash resulting in death or personal injury to any person;
- Reckless driving;
- Careless driving;
- Fleeing or attempting to elude law enforcement;
- Unlawful speed of 15 mph or more above the limit;
- Driving a self-owned commercial vehicle that is not properly insured;
- Improper lane change;
- Following too closely;
- Driving a commercial motor vehicle without obtaining a commercial driver's license;
- Driving a commercial motor vehicle without a commercial driver's license in possession; or
- Driving a commercial motor vehicle without the proper class of commercial driver's license or without the proper endorsements.

If a commercial driver is convicted of committing one of the following violations while operating a commercial motor vehicle or any holder of a commercial driver's license is convicted of committing one of the following violations while operating a non-commercial motor vehicle, he or she will be disqualified for one year from operating a commercial motor vehicle:

- Driving a motor vehicle under the influence;
- Driving a commercial motor vehicle with a blood alcohol content (BAC) of .04 percent or higher;
- Leaving the scene of a crash involving a commercial motor vehicle driven by the driver;
- Using a motor vehicle in the commission of a felony;
- Driving a commercial motor vehicle while in possession of a controlled substance;
- Refusing to submit to test of alcohol concentration while driving a motor vehicle;
- Driving a commercial motor vehicle while the commercial driver's license is suspended, revoked, cancelled or while the driver is disqualified from driving a commercial motor vehicle; or

- Causing a fatality through the negligent operation of a commercial motor vehicle.

Section 322.61(5), F.S., specifies any holder of a commercial driver's license who is convicted of two of the violations listed above, which were committed while operating a noncommercial motor vehicle, or any combination thereof, arising in separate incidents shall be permanently disqualified from operating a commercial motor vehicle.

Section 322.64, F.S., provides law enforcement officers or correctional officers shall disqualify commercial vehicle operators who have been arrested for a violation of driving with an unlawful blood alcohol level (BAL) or have refused to submit to a breath, urine, or blood test from operating a commercial motor vehicle. Such officers shall provide the person disqualified with a 10-day temporary driving permit for the operation of a noncommercial vehicle, if otherwise eligible for the driving privilege, and also issue the person a notice of disqualification.

Section 322.64(8), F.S., provides the department must sustain the disqualification:

- For a period of 1 year if the person was driving or in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver's license, and had an unlawful BAL of 0.08 percent or higher; or
- Permanently if the person has been previously disqualified from operating a commercial motor vehicle or his or her driving privilege has been previously suspended for driving or in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver's license, and had an unlawful BAL of 0.08 percent or higher.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.24, F.S., to specify an Executive Director shall serve at the pleasure of the Governor and Cabinet, who are the head of the department. The Executive Director is authorized to establish a command, operational, and administrative services structure to assist, manage, and support the department in operating programs and delivering services.

In addition, this section is amended to create the Division of Motorist Services within DHSMV and eliminate the Division of Driver Licenses and the Division of Motor Vehicles as two separate entities due to the reorganization of the department structure. The Division of Motorist Services is a merger of the DDL and the DMV. According to DHSMV, the two divisions have similar functions and serve the same customers, merging the divisions will allow the department to capitalize on operational efficiencies and will result in significant cost savings while enhancing customer service delivery.

Section 2. Amends s. 261.03, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 3. Amends s. 288.816, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 4. Amends s. 316.1905, F.S., to provide citations for certain speeding violations may not be issued or prosecuted unless a law enforcement officer used an electrical, mechanical, or other speed-calculating device that has been tested and approved in accordance with established

procedures, and unless the violation is determined to have contributed to a crash and the law enforcement officer is able to determine by other reliable measures that the driver was speeding.

Section 5. Amends s. 316.1933, F.S., to authorize health care providers to notify any law enforcement officer or law enforcement agency after detecting the presence of controlled substances, as specified in ch. 893, F.S., in the blood of a person injured in a motor vehicle crash, in addition to cases where the level of alcohol is determined as meeting or exceeding the blood-alcohol limits specified in s. 316.193(1)(b), F.S.

Section 6. Amends s. 316.1957, F.S., to conform provisions relating to the creation of the Division of Motorists Services. Specifically, this section refers to records of the department instead of the DMV due to the reorganized structure that eliminates DMV as an entity.

Section 7. Amends s. 316.2085, F.S., to prohibit the license tag of a motorcycle or moped to be inverted, reversed, or in any other way rendered to make the letters of the tag illegible from the rear while the vehicle is being operated. In addition, this section is amended to allow the license tag of a motorcycle or moped to be affixed and displayed vertically to the ground in a manner that the numbers and letters read from top to bottom. The section is amended to eliminate the requirement that the registered owner of the motorcycle or moped maintain a prepaid toll account in good standing and an affixed transponder in order to display the motorcycle or moped license tag perpendicular to the ground.

Section 8. Amends s. 316.2122, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 9. Amends s. 316.2124, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 10. Amends s. 316.21265, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 11. Amends s. 316.3026, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 12. Amends s. 316.545, F.S., to replace the term “apportioned motor vehicle” with “apportionable vehicle.”

Section 13. Amends s. 316.550, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 14. Amends the provisions of s. 316.646, F.S., dealing with suspension of a driver’s registration and license. The bill directs the department to suspend all registrations of all vehicles owned and the driver’s license of a person convicted of failure to maintain required security while operating a private passenger motor vehicle.

Section 15. Amends s. 317.0003, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 16. Amends s. 317.0016, F.S., to remove the certificate of repossession as a form of indicia that can be issued by the department's agents.

Section 17. Amends s. 318.14, F.S., to comply with a federal regulation denying eligibility for elective withholding of adjudication to persons cited for traffic violations who either hold a CDL, regardless of the vehicle being driven, or who hold a regular operator license but are cited while driving a vehicle requiring a CDL. Eligibility for that option would be restricted to drivers who have regular operator's licenses and were not driving a commercial motor vehicle when cited.

Section 18. Amends s. 318.15, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 19. Amends s. 319.14, F.S., to include the terms and definitions of "custom vehicle" and street rod vehicle" to conform the titling process of unique license plates for custom and street rod vehicles. Section 319.14(1)(b), F.S., also provides a vehicle may not be inspected or issued a rebuilt title until all major component parts, as defined in s. 319.30, F.S., (any fender, hood, bumper, cowl assembly, rear quarter panel, trunk lid, door, decklid, floor pan, engine, frame, transmission, catalytic converter, or airbag) which were damaged have been repaired or replaced.

Section 20. Amends s. 319.225, F.S., to modernize the format of motor vehicle certificates of title.

According to DHSMV, currently, when a customer sells a motor vehicle, they must sign over a paper title to the buyer to comply with federal and state odometer disclosure laws.

The bill amends s. 319.225(1) through 319.225(6)(a), F.S., to eliminate the requirements for actions to be taken on the back of certificate of title form to allow odometer disclosures and reassignments to take place on forms provided by the department.

The bill amends s. 319.225(6)(b), F.S., relating to power of attorney forms to provide if the dealer sells the vehicle to an out-of-state resident or an out-of-state dealer and the power of attorney form is applicable to the transaction, the dealer must photocopy the completed original of the form and mail it directly to the department within 5 business days after the certificate of title and dealer reassignment form are delivered by the dealer to the purchaser.

The bill creates s. 319.225(7), F.S., which would allow titles to remain electronic in sales of a motor vehicle. This is subject to approval of the National Highway Traffic Safety Administration or any other applicable authority to allow the transferor and transferee to complete the federally required odometer disclosure on a secure reassignment document. Both the transferor and transferee must execute the secure reassignment document at a tax collector office or license plate agency. A dealer acquiring a motor vehicle that has an electronic title is also to use a secure reassignment document signed by the person from whom the dealer acquired the motor vehicle. Upon transfer of the motor vehicle to another person, a separate reassignment document must be executed.

Section 21. Amends s. 319.23(6), F.S., to require the application for a certificate of title be filed on a mobile home after consummation of the sale of the mobile home.

The bill creates s. 319.23(7), F.S., to allow the department to accept a bond and affidavit, which includes verification of the vehicle identification number and application for title, if an applicant for a certificate of title is unable to provide the department with a certificate of title assigning the prior owner's interest in the motor vehicle. The bond must be:

- In a form prescribed by the department;
- Executed by the applicant;
- Issued by a person authorized to conduct a surety business in this state;
- In an amount equal to two times the value of the vehicle as determined by the department; and,
- Conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the vehicle or persons who acquire a security interest in the vehicle, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, occurring because of the issuance of the certificate of title for the vehicle or for a defect in or undisclosed security interest on the right, title, or interest of the applicant to the vehicle.

An interested person has a right to recover on the bond for a breach of the bond's condition. The aggregate liability of the surety to all persons may not exceed the amount of the bond. A bond under this subsection expires on the third anniversary of the date the bond became effective.

The affidavit must:

- Be in a form prescribed by the department;
- Include the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle;
- Disclose that no security interests, liens, or encumbrances against the motor vehicle are known to the applicant against the motor vehicle; and,
- State that the applicant has the right to have a certificate of title issued.

According to the department, this provision will align Florida with many other states that offer bonding as a way to provide consumer protection and allow the issuance of a title without having to obtain a court order or provide other acceptable alternative proof of ownership.⁶

Section 22. Amends s. 319.28, F.S., to remove the certificate of repossession as a form of indicia that can be issued by the department's agents.

Section 23. Amends s. 319.323, F.S., to remove the certificate of repossession as a form of indicia that can be issued by the department's agents.

Section 24. Amends s. 319.40, F.S., to authorize the department to issue electronic certificates of title and to collect e-mail addresses of vehicle owners and registrants for notification purposes related to vehicle titles in lieu of the United States Postal Service.

⁶ *Id.*

Section 25. Amends s. 320.01(1), F.S., to revise the term “motor vehicle” to exclude “special mobile equipment” as defined in ch. 316, F.S.

The section is also amended to conform definitions to the IRP relating to the term “apportionable vehicle.” Specifically, this section is amended to delete the disused definition “apportioned motor vehicle,” and to revise the gross vehicle weight for purposes of defining the terms “apportionable vehicle” and “commercial motor vehicle”.

Section 26. Amends s. 320.02(2), F.S., to exempt active-duty military members, who are Florida residents, from the requirement to provide a Florida residential address on an application for vehicle registration.

Section 320.02(4), relates to notification of address changes on motor vehicle records. This section is amended to require an owner or registrant to obtain a driver’s license replacement that reflects changes to the residence or mailing address before changing the address on the motor vehicle record.

Section 320.02(15), F.S., is amended to include a voluntary contribution check-off option of \$1 on motor vehicle registration and renewal forms to End Hunger in Florida. The department must distribute the proceeds monthly to the Florida Association of Food Banks, Inc., a non-profit 501(c)(3) corporation to be used for the purpose of ending hunger in Florida. Contributions are not income of a revenue nature for the purposes of applying the service charge provided in s. 215.20, F.S. According to DHSMV, the Florida Association of Food Banks, Inc. has met the requirements set forth in s. 320.023, F.S.

Section 320.02(18), F.S., is created to specify all electronic registration records must be retained by the department for at least 10 years.

Section 27. Amends s. 320.023, F.S., to authorize DHSMV to annually retain, from the first proceeds derived from voluntary contributions collected relating to motor vehicle registrations, an amount sufficient to defray the share of the department’s costs. These costs include renewal notices, postage, distribution costs, direct costs to the department, and costs associated with ensuring an organization’s compliance with auditing and attestation. The revenues retained by the department may not be less than 0.005 percent and it may not exceed 0.015 percent. The balance of the proceeds from voluntary contribution collections are to be distributed as provided by law. The department estimates an annual retention between \$3,089 and \$9,266 of the proceeds from the voluntary contribution collections.

Section 28. Amends s. 320.03, F.S., to replace the term “apportioned motor vehicles” with the term “apportionable vehicles” and to correct a cross-reference relating to s. 319.23, F.S., which will change as a result of the bill.

Section 29. Amends s. 320.05, F.S., to delete a \$25 fee for a copy of the Division of Motor Vehicles Procedures Manual and to conform provisions relating to the creation of the Division of Motorists Services.

According to the department, the Division of Motor Vehicles Procedures Manual is maintained electronically and hard copies are no longer available for sale.

Section 30. Amends s. 320.06, F.S., to allow DHSMV to perform a pilot program limited to state-owned vehicles, in order to evaluate designs, concepts, and alternative technologies for license plates. The section also specifies all license plates issued by the department are the property of the state.

According to DHSMV, Florida law specifically describes the physical attributes of a license plate and by doing so prohibits the testing of some emerging plate technologies on the roads of Florida. This pilot program will allow the department to investigate newly available license plate designs, concepts and technologies, possibly resulting in going beyond current production standards. By doing so, the pilot will provide answers to questions involving alternative license plate technologies. This may be an additional revenue source, currently indeterminate, if a less expensive option is available.⁷

Section 31. Amends s. 320.061, F.S., to prohibit the alteration of temporary license plates and provide such violation is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.

Section 32. Amends s. 320.071, F.S., to conform to the IRP relating to the term “apportionable vehicle.” Specifically, this section is amended to replace the term “apportioned motor vehicle” with the term “apportionable vehicle” and to clarify such vehicles are registered under the provisions of the IRP.

Section 33. Amends s. 320.0715, F.S., to conform to the IRP relating to the term “apportionable vehicle.” Specifically, this section is amended to replace the term “commercial motor vehicle” with the term “apportionable vehicle.”

Section 34. Amends s. 320.08, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 35. Amends s. 320.0847, F.S., to correct a statutory cross-reference relating to s. 320.01, F.S., which will change as a result of the bill.

Section 36. Amends s. 320.0848, F.S., to replace the Florida Governor’s Alliance for the Employment of Disabled Citizens and name the Florida Endowment Foundation for Vocational Rehabilitation, known as “The Able Trust,” as the recipient organization of the \$4 proceeds from temporary disabled parking permits. The department must directly deposit these fees into the Florida Endowment Foundation for Vocational Rehabilitation as established in s. 413.615, F.S.

Section 37. Amends s. 320.275, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

⁷ *Id.*

Section 38. Amends s. 320.771, F.S., to specify circumstances when a RV dealer may apply for a certificate of title to a RV using a manufacturer's statement of origin. Specifically, RV dealers cannot apply for a certificate of title on RVs within a line-make unless he or she is authorized by a manufacturer/dealer agreement to buy, sell, or deal in a specified line-make and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on that line-make. The definition of line-make in s. 320.3202(6), F.S., specifies sufficiently the uniqueness of features to imply that the agreements would authorize a class of models targeted to a specific market segment, further identifying the product line-make to a model.

According to DHSMV, this will have an operational and fiscal impact. Operationally, the tax collectors will no longer title a recreational vehicle unless the dealer is authorized to buy, sell, or deal in the specified model within the line-make. Fiscally, this will require programming to identify a model number associated with each line-make for each of the current 107 manufacturers and 131 dealers. The line-makes have a range of models from 1-18. This section will also require programming for vendors that provide the industry access to the department's FRVIS system for titling and registration via the electronic filing system (EFS).

Section 39. Amends s. 320.95, F.S., to expressly permit the department to collect and use e-mail addresses of motor vehicle owners and registrants as a method of notification relating to motor vehicle licenses in lieu of the United States Postal Service.

Section 40. Amends s. 321.02, F.S., to designate the director of the Division of Highway Patrol as the "Colonel" of the Florida Highway Patrol.

Section 41. Amends s. 322.02, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 42. Amends s. 322.04, F.S., revises provisions exempting a nonresident from the requirement to obtain a driver's license. Specifically, international visitors are permitted to use an International Driving Permit (IDP) issued in his or her name by their country of residence to operate a motor vehicle of the type for which a Class E driver's license is required if he or she has the IDP in their immediate possession.

Section 43. Amends s. 322.051(1), F.S., to revise requirements by which an applicant for an identification card may prove non-immigrant status. Specifically, every applicant for an identification card must have documents to prove evidence of lawful presence and the department is authorized to require other documents from those listed in the statute in order to establish efforts to maintain continuous lawful presence.

In addition, this section is amended to ensure the revised documentary evidence does not make the applicant entitled to an identification card, but only eligible for one which, when issued, will be valid for a period not to exceed one year from the date of issue or until the date of expiration of the document, whichever first occurs.

Section 322.051(9), F.S., is created to require the department to issue or renew an identification card at no charge to a person who presents good cause for a fee waiver, notwithstanding any other provision of this section or s. 322.21, F.S., to the contrary.

Section 44. Amends s. 322.058, F.S., to correct a statutory cross-reference relating to s. 319.23, F.S., which will change as a result of the bill.

Section 45. Amends s. 322.065, F.S., to revise the period of expiration from 4 months to 6 months that constitutes the offense of driving with an expired driver license, in order to conform with other statutes.

Section 46. Amends s. 322.07, F.S., requires an applicant for a temporary commercial instruction permit to have a valid Florida license.

Section 47. Amends s. 322.08(2), F.S., to revise requirements by which an applicant for driver license may prove non-immigrant status. Specifically, every applicant for a driver license must have documents to prove evidence of lawful presence and the department is authorized to require other documents from those listed in the statute in order to establish efforts to maintain continuous lawful presence.

In addition, this section is amended to ensure the revised documentary evidence does not make the applicant entitled to a driver license or temporary permit, but only eligible for one which, when issued, will be valid for a period not to exceed one year from the date of issue or until the date of expiration of the document, whichever first occurs.

Section 322.08(8), F.S., is created to authorize the department to collect and use e-mail addresses for the purpose of providing renewal notices in lieu of the United States Postal Service. According to the department, this would result in substantial savings by reducing mailing costs. However, the renewals mailed in are a small segment of the overall renewals. Currently, all renewal mail-ins from customers are sent to the Department of Revenue (DOR). The formatting of the coupon or the notice that is mailed back is specifically designed to fit the DOR electronic systems. Until the electronic addresses that the department may gather can be interfaced with the DOR systems for processing, this change cannot be made for those who may choose to renew by mail. In addition, this will enable the department to continue its efforts doing business electronically, as well as reduce costs associated with printing and mailing renewal notices.⁸

Section 48. Amends s. 322.081, F.S., to authorize DHSMV to annually retain, from the first proceeds derived from voluntary contributions collected relating to driver's license applications and renewals, an amount sufficient to defray the share of the department's costs. These costs include renewal notices, postage, distribution costs, direct costs to the department, and costs associated with ensuring an organization's compliance with auditing and attestation. The revenues retained by the department may not be less than 0.005 percent and it may not exceed 0.015 percent. The balance of the proceeds from voluntary contribution collections are to be distributed as provided by law. The department estimates an annual retention between \$2,794 and \$8,382 of the proceeds from the voluntary contribution collections.

⁸ *Id.*

Section 49. Amends s. 322.12, F.S., to delete the requirement that DHSMV conduct motorcycle examinations and to specify the motorcycle safety course for a first-time applicant include a final examination, which conforms law to practice.

Section 50. Amends s. 322.121, F.S., to clarify that military personnel shall be granted an automatic extension on the expiration of a Class E license when on active duty outside the state.

Section 51. Amends s. 322.14, F.S., to eliminate the requirement that applicants for a Class A, Class B, and Class C driver's license must appear in person within the state for issuance of a color photographic or digital imaged driver's license.

Section 52. Creates s. 322.1415, F.S., to establish a specialty driver's license and identification card program. The department is required to issue to any applicant qualified pursuant to s. 322.14, F.S., a specialty driver's license or identification card upon payment of the \$25 fee. Department-approved specialty driver's licenses and identification cards must, at a minimum, be available for state and independent universities domiciled in Florida, all Florida professional sports teams designated in s. 320.08058(9)(a), F.S., and all branches of the United States military. The design and use of each specialty driver's license and identification card must be approved by the department and the organization that is recognized by the driver's license or card.

Section 53. Amends s. 322.20, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 54. Amends s. 322.202, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 55. Creates paragraph (i) of s. 322.21(1), F.S., to provide a specialty license or identification card issued pursuant to s. 322.1415 is \$25, which is in addition to other fees. The specialty fee shall be distributed as follows:

- Twenty percent must be distributed to the appropriate state or independent university foundation, the Florida Sports Foundation, or the State Homes for Veterans Trust Fund, as designated by the purchaser, for deposit into an unrestricted account; and,
- Eighty percent must be distributed to the department for department costs directly related to the specialty driver's license and identification card program and to defray costs of production enhancements and distribution.

This bill also amends s. 322.21(2), F.S., to conform provisions relating to the creation of the Division of Motorists Services. Section 322.21(4), F.S., is also amended to extend the license renewal period up to 18 months prior to expiration. The department currently allows a person to renew his or her driver's license 18 months prior to his or her birthday. This change would codify the correct early renewal period and reflect current practice

Section 56. Amends s. 322.53, F.S. Specifically, s. 322.53(2), F.S., is revised to clarify two exemptions to the requirement for drivers of commercial motor vehicles to possess a CDL.

- Paragraph (c) is amended to clarify that farmers are exempt from CDL requirements only when transporting agricultural products, farm machinery, and farm supplies, within 150 miles of, and to or from, their farms. The exemption does not apply if the products, machinery, or supplies are being transported by a vehicle used by a common or contract carrier.
- Paragraph (e) is amended to clarify the exemption for drivers of straight trucks used exclusively for transporting their own personal property which is not for sale. In compliance with federal regulations, the bill clarifies that in order for the exemption to apply, the vehicle must not be engaged in commerce, or be for-hire. For example, if a construction company transports construction debris to a landfill, the fact that the property being transported is not for sale would not exempt the driver from CDL requirements since the vehicle is being used in a commercial enterprise.

Section 57. Amends s. 322.54, F.S., to add a new subsection (5), to allow the vehicle's actual weight to be used in the determination of the class of CDL required when the GVWR or VIN plate is not available.

Section 58. Repeals s. 322.58, F.S., relating to chauffeur's licenses, which were phased out and replaced by Commercial Driver's Licenses in the early 1990's.

Section 59. Amends s. 322.59, F.S., to mirror the FMCSA regulations and remedy inconsistencies. Specifically, s. 322.59, F.S., is amended to require the department to disqualify a driver holding a CDL who fails to comply with the medical certification requirements described in 49 C.F.R. s. 383.71.

Section 60. Amends s. 322.61, F.S., to mirror the FMCSA regulations and remedy inconsistencies. Specifically, s. 322.61(5), F.S., is amended to provide any holder of a commercial driver's license who is convicted of two violations of specified offenses listed in s. 322.61(3), F.S., which were committed while operating *any* motor vehicle arising in separate incidents shall be permanently disqualified from operating a commercial motor vehicle.

Section 61. Amends s. 322.64, F.S., to mirror the FMCSA regulations and remedy inconsistencies. Specifically, s. 322.64, F.S., is amended to provide a notice of disqualification from operating a commercial motor vehicle acts as a conviction for purposes of certain federal restrictions imposed for the offense of operating a commercial motor vehicle while under the influence of alcohol. In addition, the section is amended to delete provisions authorizing the department to impose certain restrictions for certain offenses and replace those provisions with the federal reference, in order to negate the need to continuously modify state law with FMCSA regulations.

Section 62. Amends s. 328.30, F.S., to provide DHSMV may issue an electronic certificate of title for vessels in lieu of printing a paper title and to permit DHSMV to collect and use e-mail addresses as a method of notification regarding vessel titles and registration in lieu of the United States Postal Service.

Section 63. Amends s. 413.012, F.S., to conform provisions relating to the elimination of the Division of Driver Licenses and the creation of the Division of Motorists Services .

Section 64. Amends s. 713.78, F.S., to correct a statutory cross-reference relating to s. 319.23, F.S., which will change as a result of the bill.

Section 65. Provides this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who elect to donate to a charitable cause on a motor vehicle registration application or renewal, will be required to pay an additional \$1 for each check-off they elect. It is impossible to determine how many people will elect to donate on applications or renewals. Therefore, the aggregate impact to the private sector cannot be determined.

Persons who present good cause for a fee waiver, may be issued a new or renewal identification card at no charge.

Persons who elect to purchase a specialty driver's license or identification card will be required to pay an additional \$25 fee.

C. Government Sector Impact:

According to DHSMV, authorizing the collection of email addresses and telephone numbers will allow the department to provide enhanced customer service by facilitating electronic and telephonic communication. Postal costs may be reduced in the future depending on the number of customers participating in the electronic service. Also provides electronic tracking of correspondence.

The department estimates an annual retention between \$3,089 and \$9,266 of the proceeds from the voluntary contribution collections relating to motor vehicle registrations.

The department estimates an annual retention between \$2,794 and \$8,382 of the proceeds from the voluntary contribution collections relating to driver's license applications and renewals.

According to DHSMV, amending s. 320.771, F.S., as provided in the bill, will have an operational and fiscal impact. Operationally, the tax collectors will no longer title a recreational vehicle unless the dealer is authorized to buy, sell, or deal in the specified model within the line-make. Fiscally, this will require programming to identify a model number associated with each line-make for each of the current 107 manufacturers and 131 dealers. The line-makes have a range of models from 1-18. This section will also require programming for vendors that provide the industry access to the department's FRVIS system for titling and registration via the electronic filing system (EFS)

The Florida Association of Food Banks, Inc., has paid an application fee of \$10,000 for motor vehicle registrations to defray DHSMV's costs for reviewing the application and developing the check-off.

Therefore, the Highway Safety Operating Trust Fund has received \$10,000 in revenues from application fees, which, should this bill pass, would be expended in programming costs in the same amount, through the Highway Safety Operating Trust Fund, for a zero net gain or loss of state revenue.

Issuance of specialty driver's license and identification cards for a \$25 fee will have an indeterminate fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation on March 9, 2011:

- Provides citations for certain speeding violations may not be issued or prosecuted unless a law enforcement officer used an electrical, mechanical, or other speed-calculating device that has been properly tested and approved. However, a speeding citation may be issued or prosecuted without the use of an electrical, mechanical, or other speed calculating device if the speeding violation is determined to have

contributed to a crash and a law enforcement officer determines by other reliable measures that a driver was speeding.

- Modifies motorcycle and moped license tag legibility and positioning requirements.
- Requires the application for a certificate of title be filed on a mobile home after consummation of the sale of the mobile home.
- Revises the term “motor vehicle” to exclude “special mobile equipment” as defined in ch. 316, F.S.
- Requires the department to issue a specialty driver’s license or identification card to qualified applicants for a \$25 fee.
- Provides for the distribution of funds collected from the specialty driver’s license and identification card fees.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SM 954

INTRODUCER: Senator Flores and others

SUBJECT: Parental Rights Amendment

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland	Maclure	JU	Favorable
2.	Preston	Walsh	CF	Favorable
3.	Mason	Roberts	GO	Pre-meeting
4.				
5.				
6.				

I. Summary:

This Senate Memorial petitions the United States Congress present to the states for ratification an amendment to the United States Constitution establishing an enumerated fundamental parental right.

Although the right of parents to direct the upbringing and education of their children has long been recognized by the United States Supreme Court, this memorial, if the amendment therein proposed were to be enacted, would solidify the fundamental parental right as a constitutionally enumerated right. By enumerating a fundamental parental right, rather than relying on precedent of the United States Supreme Court, this amendment seeks to ensure that the fundamental parental right is preserved as it now stands and protected from future revision or interpretation due to shifting ideologies of the United States Supreme Court.

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, and each member of the Florida delegation to the United States Congress.

II. Present Situation:

Fundamental Rights, Penumbras, and Non-Enumerated Rights

There are certain rights that the United States Supreme Court has deemed “fundamental” to every American citizen. In the broadest view, those fundamental rights are enumerated in the Bill of Rights. However, the Court has found that fundamental rights are not limited to those specifically enumerated in the United States Constitution. There are other, non-enumerated,

fundamental rights that emanate from the “penumbras” of the enumerated rights. In *Griswold v. Connecticut*, the Court held that “specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.”¹ Many long-established and highly regarded fundamental rights are founded in penumbras formed by emanations from enumerated rights, and the Court, generally, treats these like any other fundamental rights.

The association of people, the right to educate a child in a school of the parents’ choice, and the right to study any subject that one chooses are all rights not mentioned in the Constitution or the Bill of Rights. However, the First Amendment has been interpreted to include those rights. Likewise, the right to educate one’s child as one chooses is not specifically enumerated in the Constitution or Bill of Rights. Rather, it stems from the force of the First and Fourteenth Amendments.² In *Griswold*, the Court stated, “Without those peripheral rights the specific rights would be less secure.”³

These penumbral rights are often derived from history and tradition. This derivation from history and tradition, while logical, creates a more malleable right than could be achieved by enumeration. Because of these characteristics, non-enumerated rights, by their very nature, are subject to revision based on the ebb and flow of differing American and legal ideologies.

Case Law Concerning Parental Rights

In *Wisconsin v. Yoder*, the United States Supreme Court first recognized a fundamental right to parent one’s child.⁴ There, the Court stated:

this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.⁵

The Court recognized the state’s role as *parens patriae* (“parent of his or her country”) to save children from abusive or unfit parents, but recognized that this state interest must be balanced with an understanding that, absent such abuse or danger, parents do traditionally retain certain fundamental rights to direct the upbringing of their children.⁶ However, the Court’s decision in *Yoder* was somewhat limited by the fact that the Court based its holding on a combination of a fundamental parental right and the right to free exercise of religion.

¹ *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

² *Id.* at 482.

³ *Id.* at 482-83.

⁴ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁵ *Id.*

⁶ *Id.* at 230.

In *Troxel v. Granville*, the Court further defined, and definitively established, a fundamental parental right.⁷ The Court stated, “The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.”⁸ The Court recognized a cardinal tenant that the parents’ function and freedom “include preparation for obligations the state can neither supply nor hinder.”⁹ In defining the extent and boundaries of the fundamental parental right, the *Troxel* Court noted that as long as a parent is fit and sufficiently cares for his or her children, the state will have no reason to inject itself into the private realm, nor shall it further question a parent’s ability to make decisions in the best interest of the child.¹⁰

Yet, even with such seemingly established precedent, Justice Souter noted in his concurrence to the *Troxel* decision, “Our cases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child.”¹¹ The lack of exact boundaries pointed to by Justice Souter highlights the possibility that the fundamental parental right, as it now stands, is subject to shifting views, legal interpretations, and ideologies. Currently, there exists a fundamental parental right; however, it may be argued that the right and its exact parameters have not been solidified as firmly as they might be if the fundamental parental right were to become an enumerated right.

Methods of Proposing Amendments to the U.S. Constitution

The Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress – upon the agreement of two-thirds of both houses – may propose an amendment itself. Under the second, Congress – upon application from legislatures in two-thirds of the states – “shall call a convention for proposing Amendments.”¹² Under either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by convention in three-fourths of the states.¹³

III. Effect of Proposed Changes:

This Senate Memorial petitions the United States Congress to propose and submit to the states for ratification an amendment to the United States Constitution enumerating a fundamental parental right. In accompanying “whereas clauses,” the memorial expresses an intent to ensure that the fundamental parental right recognized in case law by the United States Supreme Court is preserved as it now stands and protected from future revision or interpretation due to shifting ideologies of the United States Supreme Court. The memorial contemplates the creation of a new article of the United States Constitution.

Section 1 of the proposed amendment states that the liberty of parents to direct the upbringing and education of their children is a fundamental right. This provision would have the effect of

⁷ See *Troxel v. Granville*, 530 U.S. 57 (2000).

⁸ *Id.* at 65.

⁹ *Id.* at 65-66.

¹⁰ *Id.* at 68-69.

¹¹ *Id.* at 78.

¹² U.S. CONST. art. V.

¹³ *Id.*

making the fundamental parental right a constitutionally enumerated right. This designation would afford the right the greatest degree of protection from infringement and put the fundamental parental right on the same level with rights such as freedom of speech and the right to bear arms.

Section 2 of the proposed amendment provides that no state, nor the United States itself, may infringe on this right without a showing that such infringement is the only way of achieving a governmental interest of the highest order. This section essentially codifies the standard of strict scrutiny that courts impose when determining whether or not a law that infringes on a fundamental right is constitutional. As a matter of course, most laws or governmental actions analyzed under strict scrutiny will fail on constitutional grounds and be struck down by the courts.

Section 3 of the proposed amendment further solidifies the sanctity of the fundamental parental right. It ensures that no court can apply any international law, nor may the United States adopt any treaty, which would supersede, modify, interpret, or apply to the rights guaranteed by this article. Courts will sometimes interpret the Constitution or laws of the United States by looking to the traditions and laws of other countries as the applicable “history or tradition” on which the United States’ Constitution or law is based. This final provision of the proposed amendment would ensure that the above practice is not permitted.

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, and each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 295 and 296
insert:

(n) The department shall contract with the Department of Revenue, through an interagency agreement, to perform the tax collection and financial audit services for the taxes required to be collected by entities licensed or regulated by chapter 550, chapter 551, or chapter 849. The interagency agreement shall also allow the Department of Revenue to assist in any financial investigations of licensees or applications for licenses by the Department of Gaming Control or law enforcement



263752

agencies.

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

And the title is amended as follows:

Delete line 26

and insert:

department to employ law enforcement officers;
directing the department to contract with the
Department of Revenue for tax collection and financial
audit services; authorizing the Department of Revenue
to assist in financial investigations of licensees and
applicants for licenses;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 376 and 377
insert:

Section 6. Paragraph (a) of subsection (1) of section
212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for
noncompliance; powers of Department of Revenue in dealing with
delinquents; brackets applicable to taxable transactions;
records required.—

(1) Notwithstanding any other provision of law and for the
purpose of compensating persons granting licenses for and the



221708

13 lessors of real and personal property taxed hereunder, for the
14 purpose of compensating dealers in tangible personal property,
15 for the purpose of compensating dealers providing communication
16 services and taxable services, for the purpose of compensating
17 owners of places where admissions are collected, and for the
18 purpose of compensating remitters of any taxes or fees reported
19 on the same documents utilized for the sales and use tax, as
20 compensation for the keeping of prescribed records, filing
21 timely tax returns, and the proper accounting and remitting of
22 taxes by them, such seller, person, lessor, dealer, owner, and
23 remitter (except dealers who make mail order sales) shall be
24 allowed 2.5 percent of the amount of the tax due and accounted
25 for and remitted to the department, in the form of a deduction
26 in submitting his or her report and paying the amount due by him
27 or her; the department shall allow such deduction of 2.5 percent
28 of the amount of the tax to the person paying the same for
29 remitting the tax and making of tax returns in the manner herein
30 provided, for paying the amount due to be paid by him or her,
31 and as further compensation to dealers in tangible personal
32 property for the keeping of prescribed records and for
33 collection of taxes and remitting the same. However, if the
34 amount of the tax due and remitted to the department for the
35 reporting period exceeds \$1,200, no allowance shall be allowed
36 for all amounts in excess of \$1,200. The executive director of
37 the department is authorized to negotiate a collection
38 allowance, pursuant to rules promulgated by the department, with
39 a dealer who makes mail order sales. The rules of the department
40 shall provide guidelines for establishing the collection
41 allowance based upon the dealer's estimated costs of collecting



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the tax, the volume and value of the dealer's mail order sales to purchasers in this state, and the administrative and legal costs and likelihood of achieving collection of the tax absent the cooperation of the dealer. However, in no event shall the collection allowance negotiated by the executive director exceed 10 percent of the tax remitted for a reporting period.

(a) The Department of Revenue may deny the collection allowance if a taxpayer files an incomplete return or if the required tax return or tax is delinquent at the time of payment.

1. An "incomplete return" is, for purposes of this chapter, a return which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, review of the return, or determination of other taxes and fees reported on the return may not be readily accomplished.

2. The department shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, reported, and enforced, including, but not limited to: the amount of gross sales; the amount of taxable sales; the amount of tax collected or due; the amount of lawful refunds, deductions, or credits claimed; the amount claimed as the dealer's collection allowance; the amount of penalty and interest; the amount due with the return; and such other information as the Department of Revenue may specify. The department shall require that transient rentals and agricultural equipment transactions be separately shown. Sales made through vending machines as defined in s. 212.0515 must be separately shown on the return. Sales made through coin-operated amusement machines as defined by s. 212.02 and the number of machines



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operated in the aggregate and segregated according to machine type based on the exemptions for amusement machines specified under s. 849.161 must be separately shown on the return or on a form prescribed by the department. If a separate form is required, the same penalties for late filing, incomplete filing, or failure to file as provided for the sales tax return shall apply to said form. The department shall report quarterly to the Department of Gaming Control the businesses operating coin-operated amusement machines, the number of amusement machines operated by each business, and the location of each business.

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

And the title is amended as follows:

Delete line 34

and insert:

Department of Gaming Control; amending s. 212.12, F.S.; revising the information that must be shown on a return for the operation of coin-operated amusement machines; requiring the Department of Revenue to report certain information relating to coin-operated amusement machines to the Department of Gaming Control; amending s. 285.710,



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 5343 and 5344
insert:

Section 74. Section 849.0915, Florida Statutes, is amended
to read:

849.0915 Referral selling.—

(1) Referral selling, whereby the seller gives or offers a
rebate or discount to the buyer as an inducement for a sale in
consideration of the buyer's providing the seller with the names
of prospective purchasers, is declared to be a lottery if
earning the rebate or discount is contingent upon the occurrence



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of an event subsequent to the time the buyer agrees to buy.

(2) Any person conducting a lottery by referral selling is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In addition to the penalty provided herein, the Attorney General and her or his assistants, the state attorneys and their assistants, and the Department of Gaming Control ~~Division of Consumer Services of the Department of Agriculture and Consumer Services~~ are authorized to apply to the circuit court within their respective jurisdictions, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating the provisions of this section, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

Between lines 5510 and 5511
insert:

Section 76. Section 849.12, Florida Statutes, is amended to read:

849.12 Money and prizes to be forfeited.—All sums of money and every other valuable thing drawn and won as a prize, or as a share of a prize, or as a share, percentage or profit of the principal promoter or operator, in any lottery, and all money, currency or property of any kind to be disposed of, or offered to be disposed of, by chance or device in any scheme or under any pretext by any person, and all sums of money or other thing of value received by any person by reason of her or his being the owner or holder of any ticket or share of a ticket in a



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lottery, or pretended lottery, or of a share or right in any such schemes of chance or device and all sums of money and other thing of value used in the setting up, conducting or operation of a lottery, and all money or other thing of value at stake, or used or displayed in or in connection with any illegal gambling or any illegal gambling device contrary to the laws of this state, shall be forfeited, and may be recovered by civil proceedings, filed, or by action for money had and received, to be brought by the Department of Gaming Control, the Department of Legal Affairs, or any state attorney, or other prosecuting officer, in the circuit courts in the name and on behalf of the state; the same to be applied when collected as all other penal forfeitures are disposed of.

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

And the title is amended as follows:

Delete lines 76 - 83

and insert:

Gaming Control; amending s. 849.0915, F.S.; adding the Department of Gaming Control to the group of entities authorized to seek an injunction against a person who is engaged in referral selling; amending s. 849.094, F.S.; providing for the regulation of game promotions by the Department of Gaming Control, rather than the Department of Agriculture and Consumer Services; deleting a reference to charitable nonprofit organizations; deleting a reference to the Department of Business and Professional Regulation to conform to changes made by the act; amending s. 849.12, F.S.;



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71 adding the Department of Gaming Control to the group
72 of entities authorized to recover moneys and other
73 items used in illegal gambling activities; providing
74 an effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 5510 and 5511
insert:
Section 75. Section 849.48, Florida Statutes, is created to
read:

849.48 Gambling operator, manufacturer, distributor
licenses; application; qualifications; fees; renewal;
duplicates.—

(1) (a) Unless exempt under the rules of the Department of
Gaming Control, each person, firm, association, partnership, or
corporate entity that seeks to operate a gambling business or to



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13 allow gambling to occur on its premises must obtain a license
14 from the department. Any person, firm, association, partnership,
15 or corporate entity owning, leasing, furnishing, manufacturing,
16 distributing, or operating gambling devices must obtain a
17 license from the Department of Gaming Control.

18 (b) An application for a license must be made on a form
19 adopted by rule of the department. The form must require the
20 applicant to set forth the name under which the applicant
21 transacts or intends to transact business, the address of the
22 location of the applicant's place of business, and any other
23 information the department requires. If the applicant has, or
24 intends to have, more than one place of business where gambling
25 will occur or gambling devices will be located, a separate
26 application must be made for each place of business. If the
27 applicant is a firm, association, partnership, or corporate
28 entity, the application must set forth the names and addresses
29 of the persons owning more than 5 percent of, or exercising any
30 decisionmaking control over, the business. If the applicant is a
31 corporate entity, the application must additionally set forth
32 the names and addresses of the principal officers of the
33 corporation. The application must also set forth any other
34 information prescribed by the department for the purpose of
35 identifying the applicant, its owners, or its decisionmaking
36 principals. The application must be signed and verified by oath
37 or affirmation by the owner. If the owner is a firm,
38 association, or partnership, the application must be signed by
39 the members or partners thereof, or, if the owner is a corporate
40 entity, by a decisionmaking principal authorized by the entity
41 to sign the application, together with the written evidence of



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42 the principal's authority. The application must be accompanied
43 by the annual license fee prescribed by the department.

44 (c) Licenses shall be issued annually, upon payment of the
45 annual license fee prescribed by the department. The department
46 shall fix the fee in an amount sufficient to meet the costs of
47 carrying out its licensing, enforcement, and administrative
48 responsibilities under this chapter, but the fee may not exceed
49 \$1,000. The proceeds of the fee shall be deposited into the
50 Department of Gaming Control Trust Fund.

51 (d) The holder of a license may renew the license each
52 year, on or before January 15, upon payment of the annual
53 license fee. A licensee that does not timely renew its license
54 must pay a delinquent renewal fee of \$500 for each month or
55 portion of a month occurring after expiration, and before
56 renewal, of the license.

57 (e) The department may not grant an exemption from the
58 license fees prescribed in this subsection to any applicant.

59 (f) The department shall establish a procedural rule that,
60 to the greatest extent possible, provides for the Department of
61 Law Enforcement to conduct background investigations for the
62 initial licensing and licensing renewals.

63 (2)(a) A license may be issued only to a person who is at
64 least 18 years of age or to a corporation having officers who
65 are at least 18 years of age.

66 (b) The department may refuse to issue a license to:

67 1. Any person, firm, association, partnership, or corporate
68 entity whose license has been revoked by the department;

69 2. Any corporation having an officer whose license has been
70 revoked by the department; or



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71 3. Any person who is or has been an officer of a
72 corporation whose license has been revoked by the department or
73 who is or has been an officer of a corporation whose license
74 relating to gambling activities has been revoked in another
75 jurisdiction.

76 (c) The department shall revoke any license issued to a
77 firm, association, partnership, or corporate entity that is
78 prohibited from licensure under this section.

79 (3) Upon approval of an application for a license, the
80 Department of Gaming Control shall issue to the applicant a
81 license for the place of business or premises specified in the
82 application. A license is not assignable and is valid only for
83 the person in whose name the license is issued and for the place
84 designated in the license. The license must be conspicuously
85 displayed at all times at the place for which issued.

86 (4) If a license has been destroyed or lost, the licensee
87 may apply to the Department of Gaming Control for the issuance
88 of a duplicate license. The department shall issue a duplicate
89 license upon payment of a \$150 fee, which the department shall
90 deposit into the Department of Gaming Control Trust Fund.

91
92 ===== T I T L E A M E N D M E N T =====

93 And the title is amended as follows:

94 Delete line 83

95 and insert:

96 changes made by the act; creating s. 849.48, F.S.;

97 requiring that a person or entity seeking to operate a

98 gambling business, to allow gambling on the person's

99 or entity's premises, or to lease, manufacture, or



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100 distribute gambling devices apply for licensure from
101 the Department of Gaming Control; providing for the
102 application to be made on a form adopted by rule of
103 the Department of Gaming Control; specifying the
104 maximum annual licensure fee; providing for the
105 deposit of the fees into a certain trust fund;
106 providing for a fine if the licenseholder does not
107 renew the license by a certain date each year;
108 prohibiting the department from granting an exemption
109 from the license fees; requiring the Department of
110 Gaming Control to work with the Department of Law
111 Enforcement to conduct background investigations of
112 applicants for a license; providing for a minimum age
113 for the license; specifying grounds for the Department
114 of Gaming Control to revoke or deny a license;
115 providing that the license is valid only for the
116 person in whose name the license is issued and for the
117 place designated in the license; providing an
118 effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 666

INTRODUCER: Regulated Industries Committee and Senator Ring

SUBJECT: Governmental Reorganization/Gaming

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) creates the Department of Gaming Control using a type two transfer as defined in s. 20.06(2), F.S. The CS transfers and reassigns all statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 550, F.S., concerning pari-mutuel wagering, ch. 551, F.S., concerning slot machine gaming, and s. 849.086, F.S., concerning cardroom operations from the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to the Department of Gaming Control. The Department of Gaming Control is headed by the gaming commission, which is composed of the Governor and Cabinet.

The CS requires the Department of Gaming Control to issue advisory opinions when requested by any law enforcement official, state attorney, or entity licensed by the department relating to the application of state gaming laws.

The CS moves the game promotions or sweepstakes registration from the Department of Agriculture and Consumer Services to the Department of Gaming Control.

This CS substantially amends ss. 11.905, 20.165, 120.80, 285.710, 455.116, 550.002, 550.0115, 550.01215, 550.0235, 550.0251, 550.0351, 550.054, 550.0555, 550.0651, 550.0745, 550.0951, 550.09511, 550.09512, 550.09514, 550.09515, 550.105, 550.1155, 550.0125, 550.135, 550.155, 550.1648, 550.175, 550.1815, 550.24055, 550.2415, 550.2614, 550.26165, 550.2625, 550.26352, 550.2704, 550.334, 550.3345, 550.3355, 550.3551, 550.3615, 550.375, 550.495, 550.505, 550.5251, 550.625, 550.6305, 550.6308, 550.70, 550.902, 550.907, 551.102, 551.103, 551.104, 551.1045, 551.105, 551.106, 551.107, 551.108, 551.109, 551.112, 551.114, 551.117, 551.118, 551.121, 551.122, 551.123, 565.02, 616.09, 616.241, 817.37, 849.086, and 849.094, F.S.

This CS creates s. 20.318, F.S.

II. Present Situation:

Gaming Regulation

Currently, gaming is regulated by multiple state agencies. Although gambling is generally illegal,¹ certain gaming activities are authorized. The Department of Business and Professional Regulation (DBPR) oversees the regulation of pari-mutuel wagering, cardrooms, and slot machine gaming. DBPR is also the state compliance agency charged with the oversight of the Seminole Indian Compact. The Department of Lottery conducts all legal lottery gaming. The Department of Agriculture and Consumer Services (DACCS) registers and regulates certain game promotions. All other gaming activity is enforced by state attorneys and local law enforcement agencies.

Division of Pari-mutuel Wagering

From 1932 to 1969 Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became the Division of Pari-mutuel Wagering (division) within the Department of Business Regulation.² In 1993, the Department of Business Regulation merged with the Department of Professional Regulation and became the Department of Business and Professional Regulation.³ The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.⁴

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;
- Collecting state revenue accurately and timely;
- Issuing occupational and permitholder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

¹ Section 849.08, F.S.

² Chapter 69-106, L.O.F.

³ Chapter 93-220, L.O.F.

⁴ <http://www.myflorida.com/dbpr/pmw/index.html> (last visited February 28, 2011).

The division is funded by the Pari-mutuel Wagering Trust Fund and has a \$13.8 million operating budget for fiscal year 2010-2011:

- \$9.1 million for the regulation of pari-mutuel wagering and cardrooms; and,
- \$4.7 million for the regulation of slot operations (Approximately \$400,000 is transferred to the Florida Department of Law Enforcement).

The division has 118 full time positions:

- 66 full time positions for the regulation of pari-mutuel wagering and cardrooms;
- 48 full time positions for the regulation of slot machine gaming; and,
- 4 full time positions for the State Compliance Agency for the Gaming Compact.

The division is divided into six functional areas:

- The Director's Office – Provides general oversight and administration of the division and oversees the division's budget and safeguards state revenues.
- The Office of Auditing - Conducts audits of permitholders to ensure integrity of wagering activity.
- The Office of Investigations – Examines possible rule, statute, or criminal violations and conducts criminal history and background checks on applicants.
- The Office of Operations - Issues operating licenses to permitholders and issues occupational licenses to businesses and individuals as well as serves as the primary regulator of pari-mutuel operations at pari-mutuel facilities.
- The Office of Slot Operations – Serves as the primary regulator of slot machine operations at pari-mutuel wagering facilities.
- State Compliance Agency - Ensures compliance with the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

The division collects revenue from the following:

- Taxes and fees from the operation of pari-mutuel events;
- Occupational license fees from businesses and individuals associated with a facility;
- Cardroom license fee of \$1,000 per table;
- 10 percent tax on cardroom gross receipts;
- \$2.5 million annual slot machine operating license fee from each slot facility for fiscal year 2010-2011 (\$2 million each fiscal year thereafter);
- 35 percent tax on net slot machine revenue; and,
- \$250,000 compulsive and addictive gambling prevention program fee paid annually by each slot facility.⁵

The division provides oversight to:

- 35 permitholders operating at 28 facilities:
 - 16 Greyhound;

⁵ Section 551.118(2), Florida Statutes, require the Division of Pari-mutuel Wagering to contract with a vendor for the prevention of compulsive and addictive gambling. The division currently has a contract with the Florida Council on Compulsive and Addictive Gambling. The division does not have any employees dedicated to the implementation of this program.

- 3 Thoroughbred;
- 1 Harness;
- 6 Jai-Alai;
- 1 track offering limited intertrack wagering and horse sales; and,
- 1 Quarter Horse.
- 23 Cardrooms operating at pari-mutuel facilities; and,
- 6 Slot facilities located in Broward and Miami-Dade County pari-mutuel facilities.

Greyhound racing was authorized in Florida in 1931.⁶ Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a “lure,” which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.⁷

Horse Racing, like greyhound racing, was also authorized in the State of Florida in 1931. Currently, the state authorizes three forms of horse racing classes for betting: thoroughbred, harness, and quarter horse racing. Florida currently has approximately 500 horse farms throughout the state which generate an estimated direct economic impact of approximately \$2 billion.⁸

Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing bodies. Thoroughbred horses are defined as “a purebred horse whose ancestry can be traced back to one of three foundation sires and whose pedigree is registered in the American Stud Book or in a foreign stud book that is recognized by the Jockey Club and the International Stud Book Committee.”⁹ Pari-mutuel betting is allowed on the outcome of the race which runs typically from one mile to one and one-quarter mile.¹⁰

Harness racing in the State of Florida is currently only permitted at the Pompano Park facility. Harness racing uses standardbred horses, which are a “pacing or trotting horse ... that has been registered as a standardbred by the United States Trotting Association” (USTA) or by a foreign registry whose stud book is recognized by the USTA.¹¹

Quarter horse racing is currently only conducted at the Hialeah Park facility located in Miami-Dade County.¹² In addition to Hialeah Park, there are 12 additional quarter horse racing permits issued by DBPR but not licensed to conduct racing.¹³ Quarter horses are defined as those developed in the western United States which are capable of high speed for a short distance.¹⁴

⁶ *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

⁷ Section 550.002(29), F.S.

⁸ <http://www.floridahorse.com/> (last visited on March 2, 2011).

⁹ Section 550.002(35), F.S.

¹⁰ Anything over 870 yards is considered a thoroughbred racing distance.

¹¹ Section 550.002(33), F.S.

¹² As of February 28, 2011.

¹³ *Id.*

¹⁴ Section 550.002(28), F.S.

They are registered with the American Quarter Horse Association. Quarter horse racing is over a much shorter distance than either the thoroughbred or harness race classes with races only permitted at less than 870 yards.

Jai Alai is a game originating from the Basque region in Spain played in a fronton¹⁵ in which a ball is hurled through the court and points are assessed based on legal throws and catches. Jai Alai was first permitted in 1935. Florida is now the only state where Jai Alai is currently played.

Slot Machines - During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County: Gulfstream Park Racing Association (a thoroughbred permitholder), The Isle Casino and Racing at Pompano Park (a harness racing permitholder), Dania Jai Alai (a jai alai permitholder), and Mardi Gras Race Track and Gaming Center (a greyhound permitholder). Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4 pursuant to the provisions of the constitutional amendment. The division is charged with regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, three are operating slot machines.¹⁶

On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Three additional pari-mutuel facilities are eligible to conduct slot machine gaming in Miami-Dade County: Miami Jai-Alai (a jai-alai permitholder), Flagler Greyhound Track (a greyhound permitholder), and Calder Race Course (a thoroughbred permitholder). Calder and Flagler are currently operating slot machines.

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.¹⁷ Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming: Hialeah Park (a quarter horse facility). Hialeah Park has applied for a license to conduct slot machine gaming but is not currently operating slot machine gaming.

Slot machine licensees are required to pay a licensure fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to \$2 million.¹⁸

¹⁵ “A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of Jai Alai or pelota.” Section 550.002(10), F.S.

¹⁶ Dania Jai Alai has not applied for a license to operate slot machine gaming.

¹⁷ See, ch. 2010-29, L.O.F. and s 551.102(4), F.S.

¹⁸ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.¹⁹ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.²⁰

Section 551.114(5), F.S., requires a slot machine licensee to provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machine operations. The division must adopt rules establishing the criteria for adequate space, configuration, and location and needed electronic and technological requirements for office space required by this subsection.

Public Fairs and Expositions

Twenty-five or more persons who are residents and qualified electors of a county where a public fair is to be located and who wish to form a not-for-profit association for the purpose of conducting and operating public fairs or expositions, may become incorporated by submitting a proposed charter to the Department of Agriculture and Consumer Services (DACS) for review and approval and then presenting the proposal to the judge of the circuit court for the county in which the principal office of the association is to be located.²¹ Prior to conducting any fair, the association must apply for and receive a permit from DACS.²² Fair associations are not authorized to permit any gambling, betting, lottery, or similar act on fair grounds.²³ Any association who commits such a violation is subject to forfeiture of its charter. The Department of Legal Affairs is charged with prosecuting the fair association for such a violation in such a proceeding to annul the association's charter.²⁴ In addition, any violation of illegal gambling is enforced by local boards and authorities.²⁵

Game Promotions

In 1971, the Legislature enacted s. 849.094, F.S., which authorizes game promotions (also known as sweepstakes) in connection with the sale of consumer products. Section 849.094(1)(a), F.S., defines "game promotion" as:

- a contest, game of chance, or gift enterprise, conducted within or throughout;
- the state or other states in connection with the sale of consumer products; or
- or services, and in which the elements of chance and prize are present.

¹⁹ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

²⁰ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

²¹ Section 616.01, F.S.

²² Section 616.15(1), F.S.

²³ Section 616.09, F.S.

²⁴ *Id.*

²⁵ Section 616.241(9), F.S.

This provision is intended to allow companies to promote their products or services with a game promotion. For the purposes of this section, a game promoter, or “operator,” cannot be a charitable, nonprofit organization.

The law prohibits operators from manipulating their sweepstakes so that all or part of the winning game pieces are allocated to certain franchisees, agents, or lessees, or to certain geographic areas of the state. Operators may not:

- Arbitrarily remove, disqualify, disallow, or reject any entry;
- Fail to award the prizes advertised;
- Publish false or misleading advertising about the game promotion;
- Require an entry fee, payment, or proof of purchase as a condition of entering the game promotion; or
- Force a lessee, agent, or franchisee to participate in a game promotion.²⁶

There is no licensure requirement to conduct game promotions. Instead, operators of a game promotion with an announced total prize value of greater than \$5,000 must register the game promotion with DACS²⁷ and comply with the following requirements:

- File with DACS at least seven days before the commencement of a game promotion a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered. A \$100 non-refundable fee to DACS must accompany each filing.²⁸
- Conspicuously post the rules and regulations of the game promotion in each retail outlet or place where the game is played or participated in by the public.²⁹
- Legibly publish the rules and regulations in all advertising copy about the game promotion. If the advertisements include a website, a toll-free telephone number, or a mailing address where the full rules and regulations may be viewed, heard, or obtained for the duration of the promotion, the advertising copy only has to include the material terms of the rules and regulations.³⁰
- Financially back the prize pool with either a trust account or a surety bond.³¹
 - The trust account must be in a national or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. On a DACS-supplied form, an officer of the financial institution holding the trust account shall report the amount of money in the account, who established the trust account, and the name of the game promotion for which the account was established. The form must be filed within seven days of the game promotion.
 - In lieu of the trust account, the operator may demonstrate to DACS that it has obtained a surety bond equal to the total amount of prizes offered.
 - DACS may waive this requirement if the operator has conducted game promotions in Florida for at least five consecutive years and has not had any criminal, civil, or administrative actions filed against him by the state related to s. 849.094, F.S.

²⁶ Sections 849.094(2) and (7), F.S.

²⁷ Section 849.094(3), F.S.

²⁸ *Id.*

²⁹ Section 849.094(3), F.S.

³⁰ *Id.*

³¹ Section 849.094(4), F.S.

- Furnish DACS with a certified list of the names and addresses of all persons who won prizes valued at \$25 or more, and the dates on which they won. This list must be provided to DACS within 60 days of the winners being determined. DACS must retain this list for at least six months before disposing of it.³²

The Department of Agriculture and Consumer Services has the authority to adopt rules to enforce the game-promotion statute. Also, DACS and the Department of Legal Affairs have the authority to bring action in circuit court against any operator that they have reason to believe is in violation of s. 849.094, F.S.

Violators of the provisions in s. 849.094, F.S., or the rules adopted by DACS, are guilty of a second-degree misdemeanor, punishable by a maximum 60 days in jail and a \$500 fine.³³ Also, DACS may pursue civil penalties against violators of up to \$1,000 per violation.³⁴

Exempted from the provisions of s. 849.094, F.S., are activities regulated by the Department of Business and Professional Regulation, the activities of nonprofit organizations, and any organization engaged in activities that do not involve the sale of consumer products or services. Also, the registration and oversight provisions do not apply to television or radio broadcasting companies licensed by the Federal Communications Commission.

When s. 849.094, F.S., was created in 1971, the Internet as we know it today did not exist, nor were computers or machines routinely used in connection with game promotions. Utilizing electronic machines as game promotions in so-called “Internet cafes” is a relatively new occurrence in Florida.

In 2006, DACS received a game promotion filing from a company to put free-standing game promotion machines in truck stops.³⁵ The machines would dispense phone cards for \$5, and award the consumer a certain number of credits or game points which would have no cash value, but could be used to play a video game. The games resembled traditional slot machines, including three rows of three symbols that appear to spin, and depending on the final configuration revealed as a result of the predetermined game promotion entry, the consumer could earn prize credits which could be redeemed for cash. This company filed 20 separate game promotions in February 2007, and DACS treated each machine as a separate game promotion. Also in that same month, DACS began to see an influx of similar game promotions in different regions of the state.

As of November 6, 2008, there were at least 61 electronic game promotions registered with DACS. As of January 25, 2011, there are 15,586 registered game promotions.³⁶

³² Section 849.094(5), F.S.

³³ Section 849.094(9), F.S.

³⁴ Violations may include failing to post the game promotion rules or failing to maintain a surety bond in the amount of the total prize pot.

³⁵ *Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions*, Interim Report No. 2009-123, Florida Senate Committee on Regulated Industries, November 2008. A copy of the report is available at: http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-123ri.pdf.

³⁶ According to the numbers provided by DACS. The number of registered game promotions changes daily as new game promotions begin and old game promotions end.

Although there are no official numbers, several representatives of the larger sweepstakes software and Internet café operations estimate there are about 1,000 locations in Florida where electronic game promotion machines are used. According to those representatives, about half are state law compliant, meaning they provide game promotion entries in conjunction with the sale of a consumer product, register their game promotion with DACS when applicable, and operate a true game promotion with a finite number of winning entries that are paid out to the winners.

Type Two Transfers

Section 20.06(2), F.S., provides for a type-two transfer:

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

(a) Any agency or department or a program, activity, or function thereof transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

(b) Unless otherwise provided by law, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions, to the extent authorized in this chapter.

(c) Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

III. Effect of Proposed Changes:

The CS creates the Department of Gaming Control, which will have oversight authority over pari-mutuel wagering, cardrooms, slot machine gaming, and game promotions.

Section 1. Transfers the administration of chs. 550, 551, and 849, F.S., of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to the Department of Gaming Control by a type two transfer. This section also transfers the Pari-mutuel Wagering

and Racing Scholarship Trust Funds from the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to the Department of Gaming Control.

Section 2. Amends s. 11.905, F.S., requiring a review of the Department of Gaming Control by July 1, 2022.

Section 3. Amends s. 20.165, F.S., removing the Division of Pari-mutuel Wagering from the Department of Business and Professional Regulation.

Section 4. Creates the Department of Gaming Control (department) and the Gaming Commission (commission). The CS provides that the commission shall be composed of the Governor and Cabinet and shall serve as agency head for the department. The commission shall be responsible for appointing and removing the executive director and general counsel for the department.

This section creates five divisions within the department, including a division of licensing, revenue and audits, investigation, law enforcement, and prosecution. The department is required to submit an annual budget to the Legislature and adopt rules to administer the laws under its authority. In addition, the commission is authorized to issue subpoenas and to exclude persons from gaming establishments within its jurisdiction.

This section requires the department to provide advisory opinions when requested by any law enforcement official, state attorney, or entity licensed by the department relating to the application of state gaming laws with respect to whether a particular act or device constitutes legal or illegal gambling under state laws and administrative rules. The CS provides that any person acting in good faith upon an advisory opinion that such person requested is not subject to any criminal penalty for illegal gambling.

This section provides that the department may employ sworn law enforcement officers. The section provides that the department must work with the Department of Revenue to ensure that licensees are in compliance with child support laws concerning support orders, subpoenas, orders to show cause, or written agreements with the Department of Revenue. In addition, this section provides that the department must close licenses after two year of providing notice of any deficiency to the applicant and must approve licenses that meet all statutory and rule requirements for licensure.

Section 5. Amends s. 120.80, F.S., deleting the exemption for hearing and notice requirements that applied to the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation. The section creates the same exemptions for the activities of the Department of Gaming Control.

Section 6. Provides that the Department of Gaming Control is the state compliance agency having the authority to carry out the state's oversight responsibilities under the Seminole Indian Compact and removes the reference to the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

Section 7. Removes the Pari-mutuel Wagering Trust Fund from the Department of Business and Professional Regulation.

Sections 8 - 69. Delete references to the Division of Pari-mutuel Wagering and replaces them with Department of Gaming Control. These sections require annual reports to be sent to the President of the Senate and Speaker of the House of Representatives instead of the Governor. These sections correct cross references and remove expired terms. In addition, these sections amend language to conform to current bill drafting conventions.

Section 70. Amends s. 616.09, F.S., to provide that the Department of Gaming Control as well as the Department of Legal Affairs shall be responsible for instituting and prosecuting cases against fairs, for purposes of annulling the fair charter, alleging that the association was organized for or is being used as a cover to evade any of the laws of Florida against crime.

Section 71. Amends s. 616.241, F.S., providing that enforcement of illegal gaming violations at public fairs and expositions is the responsibility of the Department of Gaming Control, local boards, and authorities.

Section 72. Amends s. 817.37, F.S., removing references to the Division of Pari-mutuel Wagering and replacing them with the Department of Gaming Control.

Section 73. Amends s. 849.086, F.S., pertaining to cardrooms. The section removes references to the Division of Pari-mutuel wagering and replaces them with the Department of Gaming Control. In addition, this section also allows cardrooms to utilize mechanical card shufflers.

Section 74. Amends s. 849.094, F.S., pertaining to game promotions. The section provides that the oversight of the game promotion regulations shall be the responsibility of the Department of Gaming Control instead of the Department of Agriculture and Consumer Services. The section strikes reference to charitable nonprofit organizations clarifying that those organizations must comply with the game promotion requirements when conducting a game promotion.

Section 75. Provides that the act shall take effect on October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A “department” is the basic building block of government activity and is the structure through which authority is exercised and to which money and positions are appropriated. Its principal subcomponent is a “division.” Units below that level may be created by departments; above that level they are created by statute. Since the governmental reorganization of 1969, a variety of structures have entered into the ch. 20, F.S., taxonomy. The most common of these are “offices” or “agencies” which are hybrids of departments and divisions but operating below the departmental level. Some of these were created to execute a matrix form of operations in which considerable autonomy was delegated to division-like units outside of the headquarters location. Chief among these has been the Department of Children and Family Services; the Department of Corrections; the Department of Financial Services; the Department of Revenue; and, the Department of Transportation.

Article IV of the State Constitution limits executive departments to twenty-five in number, excluding those authorized or created in that document. Using that benchmark, the following count is obtained:

- Constitutionally created or authorized (5): State Board of Administration, Department of Veterans’ Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and, Parole Commission.
- Authorized by statute (21): Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and, Department of Health.
- Functional equivalent to department (1): Executive Office of the Governor.
- Department-like but statutorily proclaimed as subordinate (3): Agency for Persons With Disabilities; Agency for Workforce Innovation (DMS); and, Agency for Enterprise Information Technology (EOG).
- Total influenced by constitutional limitation: 22.

Unaffected by the limitation are a number of divisions with powers independent of the nominal department head. Examples of these are the Division of Emergency Management (DCA); the Division of Bond Finance (SBA), and the Division of Administrative Hearings (DMS). The Public Service Commission is excluded from the limitation since it is, by statute, a legislative branch agency.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A type-two transfer assumes that the positions and budget will be transferred and remain the same; however, with the new structuring and creation of a new agency, workload and positions may differ. This fiscal impact is indeterminate at this time.

For DBPR, the impact of removing the division on workload and staffing is indeterminate.

According to the division, the CS does not transfer the personnel and functions of the division's legal section within DBPR's Office of the General Counsel. The legal section includes four attorneys, two administrative assistants, and a law clerk position that currently provide direct legal support to the division.

Additionally, the CS authorizes the Department of Gaming Control to employ sworn law enforcement officers and establishes a Division of Law Enforcement. Currently, the division does not employ sworn law enforcement officers. Consequently, additional full time employees, including law enforcement officers and support staff, may also be needed. It is unclear if there will be a fiscal impact for the provision that establishes law enforcement personnel within the new department.

The division indicated that it utilizes a system called LicenseEase for the issuance of pari-mutuel, cardroom, and slot machine operating licenses; occupational licenses; and administrative complaints. Other entities within DBPR utilize this system. In addition, the division utilizes a revenue system called the Central Management System. This system is made specifically for the division and is only used by the division. If the CS is passed, the Department of Gaming Control may need to develop a new licensing system. In addition, the contract for the revenue system is between DBPR and ESI. A new contract may need to be negotiated or a new revenue system may need to be developed as a result of this transition. Additionally, DBPR has electronic images and workflow automation in an OnBase Document Management System that will require conversion to the new agency.

The division noted that the entirety of the division's technology systems will need to be separated from DBPR's systems. This involves building extract files to pull data from the Single Licensing System, the OnBase Document Management System and the Central Management System. The Department of Business and Professional Regulation will need to contract with the product vendors for these systems to create these extract routines that will compile division specific data from these systems and provide that information to the

new department to allow for the continuation of the licensing and compliance functions. This work effort is estimated to be a non-recurring contracted services expense of \$168,000.

After the new agency is formed, DBPR pointed out that it will need to receive the requirements for the extract file formats needed to load data into the data systems established by the Department of Gaming Control. The Division of Technology cannot begin work until these requirements have been defined.

The Department of Agriculture and Consumer Services estimates that the transfer of game promotion regulations to the new agency will result in a loss of \$499,817 in revenue and \$250,140 in employee salary and related expenses in authority from the General Inspection Trust Fund within DACS. The net costs to DACS is estimated to be \$314,508.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The rulemaking authority in section 4 of the bill should be consolidated for clarity, and made consistent with other rulemaking grants throughout the bill.

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Games legal as of February 1, 2010 have no impact on payments from the Tribe. This CS merges the regulation of pari-mutuel wagering, cardrooms, slot machines, and the regulation of game promotions into one agency. The CS creates an agency for the purpose of issuing advisory opinions on the issues of permitted gaming in the state. The CS does not authorize any new Class III or casino-style game. Instead, the CS only combines multiple regulatory agencies into one agency. As a result, the CS should have no effect on the revenue sharing payments with the Tribe.

VIII. Additional Information:

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

CS by Regulated Industries on March 9, 2011:

The CS makes technical changes to the bill to correct references in the bill from commission and board to Department of Gaming Control. The CS expands the powers and duties of the new department to include the ability to create rules, issue subpoenas, and to exclude certain persons from gaming establishments within the jurisdiction of the department. The CS authorizes both the Department of Legal Affairs and the Department of Gaming Control to prosecute public fair association charters to terminate the association's charter for violation of gaming provisions. The CS restores the current criminal penalties for game promotion violations and restores registration thresholds to \$5,000. The CS removes all references to arcade amusement games and machines. The

CS removes the contingency from the effective date that linked the bill with SB 668 as a trust fund bill is no longer necessary upon the removal of the amusement arcade taxation. In addition, the CS changes the effective date of the bill to October 1, 2011.

B. Amendments:

None.

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

The Florida Senate
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 Governmental Oversight and Accountability Committee

BILL: SB 668

INTRODUCER: Senator Ring

SUBJECT: Florida Gaming Trust Fund

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/1 amendment
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | ☐ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☒ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This bill creates the Florida Gaming Trust Fund within the Department of Gaming Control. The bill provides that money in the fund shall be used for the regulation of skill-based machine gaming and slot machine gaming. The bill is linked to CS/SB 666, which creates the Department of Gaming Control.

This bill creates an unnumbered section of law.

II. Present Situation:

Creation and Operation of Trust Funds

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law.¹ Section 19(f), Art. III, of the Florida Constitution governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the

¹ Section 215.32(2)(b)1., F.S.

membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and,
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.²

The Chief Financial Officer is directed to invest all trust funds and all agency funds of each state agency.³ Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for reappropriation by the Legislature.⁴ Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.⁵

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the House and the Senate.

Slot Machine Gaming

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation is responsible for the regulation of slot machine gaming.⁶

Slot machine licensees are required to pay a licensure fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to \$2 million.⁷ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.⁸ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.⁹

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1)(b), F.S.

⁵ Section 216.301(1)(d), F.S.

⁶ See, ch. 551, F.S.

⁷ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

⁸ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

⁹ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in

All license fees and taxes paid by slot machine licensees are deposited into the Pari-mutuel Wagering Trust Fund.¹⁰ Slot machine license fees are accounted for separately from other taxes and fees from other pari-mutuel gaming activities and are used solely for investigations of slot machine facilities, slot machine regulation, and enforcement of slot machine regulations.¹¹

Arcade Games

Numerous arcade games are currently in operation throughout the State of Florida. Unfortunately, no concrete information may be formulated as these machines are not required to be registered or regulated by any specific state entity.

Section 849.161, F.S., provides an exception to the slot machine prohibition in ch. 849, F.S.¹² Amusement games and machines are authorized in an arcade amusement center¹³ that operate by means of the insertion of a coin and which, by application of skill, the person playing the game receives points or coupons redeemable for merchandise only, excluding cash and alcoholic beverages. The value of the prize cannot exceed 75 cents on any game played.¹⁴

Similar provisions govern retail dealers who operate truck stops with a minimum of six functional diesel fuel pumps. The merchandise for these machines is limited to “noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.”¹⁵

III. Effect of Proposed Changes:

The bill creates the Florida Gaming Trust Fund within the Department of Gaming Control. The money deposited into the fund shall be from sources designated by law. In a related bill, CS/SB 666, the Department of Gaming Control is created. In CS/SB 666, the new department does not regulate or impose any taxation on skill-based arcade amusement games. In CS/SB 666, no monies are deposited into the Florida Gaming Trust Fund. However, this bill provides that the fund will be utilized by the department to fund the regulation of skill-based machine gaming and slot machine gaming. The balance of the trust fund at the end of any fiscal year is to remain in the trust fund for use in subsequent years.

January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

¹⁰ See, s. 551.106(1)(a), F.S.

¹¹ *Id.*

¹² See ss. 849.15 and 849.16, F.S.

¹³ Amusement center is defined in s. 849.161(2), F.S. as “a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.”

¹⁴ Section 849.161(1)(a)1., F.S.

¹⁵ Section 849.161(1)(a)2., F.S.

The trust fund must be terminated on July 1, 2015, unless terminated sooner, in accordance with the Florida Constitution.¹⁶ State trust funds shall terminate within four years after the effective date of the act authorizing the trust fund unless a shorter time period is set by the legislature.

The bill provides a contingent effective date of July 1, 2011, if legislation creating the Gaming Commission and Department of Gaming Control is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

In accordance with s. 19(f)(2), Art. III of the Florida Constitution, the trust fund shall be terminated on July 1, 2015. Before its scheduled termination, the fund shall be reviewed in accordance with s. 215.3206(1) and (2), F.S.

In addition, s. 19(f)(1), Art. III of the Florida Constitution provides that “[n]o trust fund of the State of Florida or other public body may be created or re-created by law without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only.”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Gaming Control, as provided in CS/SB 666, will regulate pari-mutuel wagering, slot machines, cardrooms, and game promotions. Revenues received from taxation and fees for every regulated entity of the department are deposited into the Pari-mutuel Wagering Trust Fund. Nothing in CS/SB 666 requires any funds to be deposited into the Florida Gaming Trust Fund.

¹⁶ Section 19(f)(2), Art. III, Florida Constitution.

VI. Technical Deficiencies:

The bill provides that the money in the trust fund will be used for the regulation of slot machine gaming and skill-based machine gaming. Under ch. 551, F.S., slot machine gaming regulation is funded from an annual slot machine license fee per facility. The slot machine license fee is deposited in the Pari-mutuel Wagering Trust Fund, and not the Florida Gaming Trust Fund.

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:**C. Barcode 892426 by Regulated Industries on March 22, 2011:**

The amendment corrects the effective date and ties it to the related bill, SB 666.



892426

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/22/2011	.	
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The Committee on Regulated Industries (Sachs) recommended the following:

Senate Amendment

Delete line 30
and insert:
666, or similar legislation creating the Gaming Commission and



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 59
and insert:

Section 1. Subsections (1), (2) and (3) of section 215.44,
Florida Statutes, are amended to read:

215.44 Board of Administration; powers and duties in
relation to investment of trust funds.—

(1) Except when otherwise specifically provided by the
State Constitution and subject to any limitations of the trust
agreement relating to a trust fund, the Board of Administration,
sometimes referred to in this chapter as “board” or “Trustees of



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the State Board of Administration," composed of the Governor as chair, the Chief Financial Officer, and the Attorney General, shall invest all the funds in the System Trust Fund, as defined in s. 121.021(36), and all other funds specifically required by law to be invested by the board pursuant to ss. 215.44-215.53 to the fullest extent that is consistent with the cash requirements, trust agreement, and investment objectives of the fund. Notwithstanding any other law to the contrary, the State Board of Administration may invest any funds of any state agency, any state university or college, any unit of local government, or any direct-support organization thereof pursuant to the terms of a trust agreement with the head of the state agency or the governing body of the state university or college, unit of local government, or direct-support organization thereof, ~~or pursuant to the enrollment requirements stated in s. 218.407,~~ and may invest such funds in the Local Government Surplus Funds Trust Fund created by s. 218.405, without a trust agreement, upon completion of enrollment materials provided by the board. The board shall approve the undertaking of investments subject to a trust agreement before execution of such trust agreement by the State Board of Administration. The funds and the earnings therefrom are exempt from the service charge imposed by s. 215.20. As used in this subsection, the term "state agency" has the same meaning as that provided in s. 216.011, and the terms "governing body" and "unit of local government" have the same meaning as that provided in s. 218.403.

(2)(a) The board shall have the power to make purchases, sales, exchanges, investments, and reinvestments for and on



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42 behalf of the funds referred to in subsection (1), and it shall
43 be the duty of the board to see that moneys invested under the
44 provisions of ss. 215.44-215.53 are at all times handled in the
45 best interests of the state.

46 (b) In exercising investment authority pursuant to s.
47 215.47, the board may retain investment advisers or managers, or
48 both, external to in-house staff, to assist the board in
49 carrying out the power specified in paragraph (a).

50 (c) The board shall create an audit committee to assist the
51 board in fulfilling its oversight responsibilities. The
52 committee shall consist of three members appointed by the board.
53 Members shall be appointed for 4-year terms. A vacancy shall be
54 filled for the remainder of the unexpired term. The committee
55 shall annually elect a chair and vice chair from its membership.
56 A member may not be elected to consecutive terms as chair or
57 vice chair. Persons appointed to the audit committee must have
58 relevant knowledge and expertise as determined by the board. The
59 audit committee shall serve as an independent and objective
60 party to monitor processes for financial reporting, internal
61 controls and risk assessment, audit processes, and compliance
62 with laws, rules, and regulations. The audit committee shall
63 direct the efforts of the board's independent external auditors
64 and the board's internal audit staff. The committee shall
65 periodically, but at least ~~not less than~~ quarterly, report to
66 the board and the executive director of the board.

67 (d) The board shall produce a set of financial statements
68 for the Florida Retirement System on an annual basis, which
69 shall be reported to the Legislature and audited by a commercial
70 independent third-party audit firm under the direction of the



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71 audit committee.

72 (e) Pursuant to s. 110.205, the board shall establish and
73 maintain the salaries and benefits of its officers and employees
74 in a manner consistent with the board's fiduciary responsibility
75 to recruit and retain highly qualified and effective key
76 personnel. At least every 5 years, the Investment Advisory
77 Council shall cause a total compensation study to be conducted
78 by a private consulting firm having expertise in salary and
79 benefits administration of institutional investment entities.
80 The study shall be designed to determine competitive salary
81 ranges, other compensation, and benefits for positions within
82 the board based on comparable public-sector peer investment
83 entities. The council shall present the total compensation
84 study, along with its recommendations, to the board. The
85 recommendations are subject to review and ratification or
86 reversal by the board. The board may delegate to the executive
87 director the authority and duty to set staff salaries within the
88 ranges approved by the board.

89 (f)(e) The board shall meet at least quarterly and shall
90 receive reports from the audit committee, the investment
91 advisory committee, ~~the inspector general, the general counsel,~~
92 the executive director, and such other persons or entities as
93 the board may require about the financial status, operations,
94 and investment activities of the board.

95 (3) Notwithstanding any law to the contrary, all
96 investments made by the State Board of Administration pursuant
97 to ss. 215.44-215.53 shall be subject to the restrictions and
98 limitations contained in s. 215.47, except that investments made
99 by the board under a trust agreement pursuant to subsection (1)



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are subject only to the restrictions and limitations contained
in that trust agreement.

Section 2. Section 215.441, Florida Statutes, is amended to
read:

215.441 Board of Administration; appointment of executive
director.—The appointment of the executive director of the State
Board of Administration is ~~shall be~~ subject to the approval by a
majority vote of the Board of Trustees of the State Board of
Administration, and the Governor must vote on the prevailing
side. Such appointment must be reaffirmed in the same manner by
the board of trustees on an annual basis.

(1) Before appointing the executive director, the board
shall appoint a search committee to develop minimum position
requirements, review applications, and make recommendations to
the board with regard to qualified applicants for the position.
At a minimum, the search committee shall consist of at least
three members of the Investment Advisory Council.

(2) The executive director shall, at a minimum, possess
substantial experience, knowledge, and expertise in the
oversight of investment portfolios and must meet any other
requirements determined by the board to be necessary to the
overall management and investment of funds.

(3) The compensation for the executive director shall be
determined by the board, consistent with s. 215.44(2)(d).

Section 3. Subsection (1) of section 215.442, Florida
Statutes, is amended to read:

215.442 Executive director; reporting requirements; public
meeting.—

(1) Beginning October 2007 and quarterly thereafter, the



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executive director shall present to the Board of Trustees and
the Investment Advisory Council of the State Board of
Administration a quarterly report to include the following:

(a) The name of each equity in which the State Board of
Administration has invested for the quarter.

(b) The industry category of each equity.

Section 4. Section 215.444, Florida Statutes, is amended to
read:

215.444 Investment Advisory Council.—

(1) ~~There is created~~ A five-member ~~six-member~~ Investment
Advisory Council is created to review the investments made by
the staff of the Board of Administration and to make
recommendations to the board regarding investment policy,
strategy, and procedures.

(2) Beginning February 1, 2011, the membership of the
council shall be expanded to nine members. Beginning July 1,
2011, board membership shall be reduced by not refilling board
positions as the terms of the members expire until board
membership consists of five members. Thereafter, three of those
members shall be appointed by the Governor, one member shall be
appointed by the Chief Financial Officer, and one member shall
be appointed by the Attorney General. Members shall be appointed
for 4-year terms. A vacancy shall be filled for the remainder of
the unexpired term. The council shall annually elect a chair and
a vice chair from its membership. A member may not be elected to
consecutive terms as chair or vice chair. ~~The council shall meet~~
~~with staff of the board at least once each quarter and shall~~
~~provide a quarterly report directly to the Board of Trustees of~~
~~the State Board of Administration at a meeting of the board.~~



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~~(2) The members of the council shall be appointed by the board as a resource to the Board of Trustees of the State Board of Administration and shall be subject to confirmation by the Senate.~~

(3) In order to be appointed, an individual must ~~These individuals shall~~ possess special knowledge, experience, and familiarity with portfolio management, institutional investments, and fiduciary responsibilities, have been in a position that oversaw \$1 billion in assets, and may have had extensive experience in managing or overseeing investment portfolios or conducting research in any two or more of the following areas: domestic equities, international equities, fixed-income securities, cash management, marketable and nonmarketable alternative investments, or real estate. ~~Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The council shall annually elect a chair and a vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair.~~

(4) ~~(3)~~ The council members must undergo regular fiduciary training as required by the board and must complete an annual conflict disclosure statement. In carrying out their duties, council members must make recommendations consistent with the fiduciary standards applicable to the board.

(5) In addition to the duties in subsection (1), the council shall approve the investment policy statements of the board, participate in the selection process regarding an executive director, obtain periodic compensation studies and provide recommendations thereon, meet quarterly to review the



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investment performance of funds, and perform any other duties as determined by the board. The council shall meet with board staff at least once each quarter and provide a quarterly report directly to the Board of Administration at a meeting of the board.

(6) ~~(4)~~ The council may create subcommittees as necessary to carry out its duties and responsibilities and may direct the executive director to enter into contracts with independent compensation consultants.

(7) In carrying out the provisions of this subsection, a member of the council is an officer, employee, or agent of the state for purposes of the state's waiver of sovereign immunity as provided in s. 768.28.

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

amending s. 215.44, F.S.; authorizing the board to invest the assets of a governmental entity in the Local Government Surplus Funds Trust Fund without a trust agreement with that governmental entity; requiring the board to establish and maintain the salaries of its officers and employees in a manner consistent with its fiduciary duties; requiring that the Investment Advisory Council initiate a study at specified intervals to evaluate compensation; requiring that the council present the results of such study to the board; authorizing the board to delegate



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certain authority and duties relating to salaries to
the executive director; revising the entities that
submit reports to the board; providing that certain
investments made by the board under a trust agreement
are subject only to the restrictions and limitations
contained in the trust agreement; amending s. 215.441,
F.S.; providing for the creation, operation, and
membership of a search committee for the purpose of
selecting the executive director; providing
requirements for the appointment as executive
director; providing for the determination of the
executive director's compensation; amending s.
215.442, F.S.; requiring that the executive director
present certain information quarterly to the
Investment Advisory Council; amending s. 215.444,
F.S.; reducing the number of council members and
providing for the appointment of such members;
expanding prerequisites for membership on the council;
providing additional duties of the council;
authorizing the council to create subcommittees and
direct the executive director to enter into certain
contracts; providing that a council member is an
officer, employee, or agent of the state for the
purpose of sovereign immunity; amending s. 215.4755,
F.S.; correcting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 1182

INTRODUCER: Senator Ring

SUBJECT: State Board of Administration

DATE: March 19, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends s. 215.44(1), F.S., to specify that the State Board of Administration does not need a trust agreement with a governmental entity to invest their assets in the Local Government Surplus Funds Trust Fund; these entities will instead be required to complete enrollment materials provided by the board. The bill clarifies that any investments done through a trust agreement are not restricted by the list of authorized investments. The bill also corrects cross references, and changes terminology used in certification and disclosure provisions.

This bill amends the following sections of the Florida Statutes: 215.44 and 215.4755.

II. Present Situation:

The State Board of Administration

The State Board of Administration (SBA) is comprised of the Governor, Chief Financial Officer and Attorney General.¹ The SBA manages thirty-six separate statutory investment portfolios, the largest one of which is the multi-employer Florida Retirement System. The SBA must invest and reinvest available funds of the System Trust Fund in accordance with the specified statutory provisions.² The System Trust Fund is the trust fund established by statute in the State Treasury for the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may become entitled.³ Other trust

¹ Section 16, art. IX, Constitution of 1885, and continued by s. 9, art. IX, State Constitution, as revised in 1968 and subsequently amended.

² Section 121.151, F.S.

³ Section 121.021(36), F.S.

funds may be established in the State Treasury to administer the System Trust Fund. In making investments for the System Trust Fund the board may not make any investments not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement.⁴

The SBA also manages investments on behalf of the Hurricane Catastrophe Fund, the Florida Lottery, the Pre-Paid College Fund, its own separately constituted Division of Bond Finance, and pooled money market funds for local governments (Florida Prime), among others. Assets under management as of November 30, 2010, totaled \$145.6 billion.

The Trustees and agency investment personnel are named fiduciaries for the management of funds under their control. As such, they must adhere to the duties of prudence, loyalty, sole and exclusive benefit in the discharge of their responsibilities. The SBA also houses a statutory Investment Advisory Council whose purpose is to provide the staff and Trustees with non-fiduciary advice on trends and conditions in the institutional investment marketplace. The SBA participates with its peer plans in a number of institutional investor organizations on matters affecting national and international finance.

Section 215.47, F.S., specifies the types of investments authorized for use by the SBA. Section 215.477, specifying the certification and disclosure requirements for investment advisors and managers, was created by House Bill 1307 in the 2010 Regular Session.⁵

III. Effect of Proposed Changes:

Section 1 amends s. 215.44(1), F.S., to specify that the State Board of Administration does not need a trust agreement with a governmental entity to invest their assets in the Local Government Surplus Funds Trust Fund created in s. 218.405, F.S. These entities will be required to complete enrollment materials provided by the board, which simplifies the investment process. The bill also amends subsection (3) to clarify that any investments done through a trust agreement are not restricted by the list provided in s. 215.47, F.S.

Section 2 amends s. 215.4755, F.S., to correct cross-references, replace the word “individual” with “employee at a broker-dealer firm,” and deletes “perceived” from the types of conflicts of interest that must be disclosed, leaving “actual or potential” conflicts.

The bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ Section 215.475(1), F.S.

⁵ Section 11 of Chapter 2010-180, L.O.F.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 14.204, Florida Statutes, is
transferred, renumbered as section 20.51, Florida Statutes, and
amended to read:

20.51 ~~14.204~~ Department of ~~Agency for Enterprise~~
Information Technology.—The Department of ~~Agency for Enterprise~~
Information Technology is created ~~within the Executive Office of~~
~~the Governor.~~

(1) The head of the department is ~~agency shall be~~ the



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Governor and Cabinet.

~~(2) The agency is a separate budget entity and is not subject to control, supervision, or direction by the Executive Office of the Governor, including, but not limited to, purchasing, transactions involving real or personal property, personnel, or budgetary matters.~~

(2)(3) The department agency shall have an executive director who is the state's Chief Technology Information Officer and who must, at a minimum:

(a) Have a degree from an accredited postsecondary institution in engineering, computer science, information science, or information systems;

(b) Have at least 7 years of executive-level experience in managing information technology organizations; and

(c) Be appointed by the Governor and confirmed by the Cabinet, subject to confirmation by the Senate, and serve at the pleasure of the Governor and Cabinet.

(3) The department shall consist of the following divisions:

(a) The Division of Strategic Procurement, which includes the development of all enterprise information technology procurement and acquisition-management systems across state agencies, whether owned or contracted, and has the objective of achieving unified accountability.

(b) The Division of Policy Formation, Development, and Standards, which, by rule, sets the technical and architectural expectations for current and emerging technologies and establishes new human capital skill sets, competency expectations, and total compensation for all information



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42 technology professions within state agencies.

43 (c) The Division of Implementation, which is responsible
44 for the execution, timing, and integration of specific
45 technology components and business domain management and the
46 retention of agency expertise in key legacy applications in
47 nonstrategic management systems.

48 (4) The department ~~agency~~ shall have the following duties
49 and responsibilities:

50 (a) Develop strategies for the design, delivery, and
51 management of the enterprise information technology services
52 established in law.

53 (b) Monitor the delivery and management of the enterprise
54 information technology services as established in law.

55 (c) Make recommendations to the agency head and the
56 Legislature concerning other information technology services
57 that should be designed, delivered, and managed as enterprise
58 information technology services as defined in s. 282.0041.

59 (d) Plan and establish policies for managing proposed
60 statutorily authorized enterprise information technology
61 services, which includes:

62 1. Developing business cases that, when applicable, include
63 the components identified in s. 287.0571;

64 2. Establishing and coordinating project-management teams;

65 3. Establishing formal risk-assessment and mitigation
66 processes; and

67 4. Providing for independent monitoring of projects for
68 recommended corrective actions.

69 (e) Beginning October 1, 2010, develop, publish, and
70 biennially update a long-term strategic enterprise information



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71 technology plan that identifies and recommends strategies and
72 opportunities to improve the delivery of cost-effective and
73 efficient enterprise information technology services to be
74 proposed for establishment pursuant to s. 282.0056.

75 (f) Perform duties related to the state data center system
76 as provided in s. 282.201.

77 (g) Coordinate acquisition planning and procurement
78 negotiations for hardware and software products and services in
79 order to improve the efficiency and reduce the cost of
80 enterprise information technology services.

81 (h) In consultation with the Division of Purchasing in the
82 Department of Management Services, coordinate procurement
83 negotiations for information technology products as defined in
84 s. 282.0041 which will be used by multiple agencies.

85 (i) In coordination with, and through the services of, the
86 Division of Purchasing in the Department of Management Services,
87 establish best practices for the procurement of information
88 technology products as defined in s. 282.0041 in order to
89 achieve savings for the state.

90 (j) Develop information technology standards for enterprise
91 information technology services.

92 (k) Provide annually, by December 31, recommendations to
93 the Legislature relating to techniques for consolidating the
94 purchase of information technology commodities and services,
95 which result in savings for the state, and for establishing a
96 process to achieve savings through consolidated purchases.

97 (5) The Office of Information Security shall be created
98 within the department ~~agency~~. The department ~~agency~~ shall
99 designate a state Chief Information Security Officer who shall



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oversee the office and report directly to the executive director.

(6) The department ~~agency~~ shall operate in a manner that ensures the participation and representation of state agencies and the Agency Chief Information Officers Council established in s. 282.315.

(7) The department ~~agency~~ may adopt rules to carry out its statutory duties.

Section 2. Subsection (1) and paragraph (g) of subsection (2) of section 17.0315, Florida Statutes, are amended to read:
17.0315 Financial and cash management system; task force.—

(1) The Chief Financial Officer, as the constitutional officer responsible for settling and approving accounts against the state and keeping all state funds pursuant to s. 4, Art. IV of the State Constitution, shall be the head of and appoint members to a task force established to develop a strategic business plan for a successor financial and cash management system. The task force shall include the executive director of the Department of ~~Agency for Enterprise~~ Information Technology and the director of the Office of Policy and Budget in the Executive Office of the Governor. Any member of the task force may appoint a designee.

(2) The strategic business plan for a successor financial and cash management system must:

(g) Be coordinated with the information technology strategy development efforts of the Department of ~~Agency for Enterprise~~ Information Technology;

Section 3. Paragraph (e) of subsection (2) of section 110.205, Florida Statutes, is amended to read:



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110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(e) The Chief Information Officer in the Department of ~~Agency for Enterprise~~ Information Technology. Unless otherwise fixed by law, the Department of ~~Agency for Enterprise~~ Information Technology shall set the salary and benefits of this position in accordance with the rules of the Senior Management Service.

Section 4. Subsections (2) and (9) of section 215.322, Florida Statutes, are amended to read:

215.322 Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch.—

(2) A state agency as defined in s. 216.011, or the judicial branch, may accept credit cards, charge cards, debit cards, or electronic funds transfers in payment for goods and services with the prior approval of the Chief Financial Officer. If the Internet or other related electronic methods are to be used as the collection medium, the Department of ~~Agency for Enterprise~~ Information Technology shall review and recommend to the Chief Financial Officer whether to approve the request with regard to the process or procedure to be used.

(9) For payment programs in which credit cards, charge cards, or debit cards are accepted by state agencies, the judicial branch, or units of local government, the Chief Financial Officer, in consultation with the Department of ~~Agency for Enterprise~~ Information Technology, may adopt rules to establish uniform security safeguards for cardholder data and to



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ensure compliance with the Payment Card Industry Data Security Standards.

Section 5. Paragraph (c) of subsection (4) and subsection (6) of section 216.235, Florida Statutes, are amended to read:

216.235 Innovation Investment Program.—

(4) There is hereby created the State Innovation Committee, which shall have final approval authority as to which innovative investment projects submitted under this section shall be funded. Such committee shall be comprised of seven members. Appointed members shall serve terms of 1 year and may be reappointed. The committee shall include:

(c) The executive director of the Department of ~~Agency for Enterprise~~ Information Technology.

(6) Any agency developing an innovative investment project proposal that involves information technology resources may consult with and seek technical assistance from the Agency for Enterprise Information Technology. The office shall consult with the Department of ~~Agency for Enterprise~~ Information Technology concerning any project proposal that involves enterprise information technology resources. The department ~~Agency for Enterprise Information Technology~~ shall evaluate the project and advise the committee and review board of the technical feasibility and any transferable benefits of the proposed technology. In addition to the requirements of subsection (5), the agencies shall provide to the department ~~Agency for Enterprise Information Technology~~ any information requested by the department ~~Agency for Enterprise Information Technology~~ to aid in determining whether the proposed technology is appropriate for the project's success.



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Section 6. Subsection (4) of section 282.0041, Florida Statutes, is repealed.

Section 7. Section 282.0055, Florida Statutes, is amended to read:

282.0055 Assignment of information technology.—In order to ensure the most effective and efficient use of the state's information technology and information technology resources and notwithstanding other provisions of law to the contrary, policies for the design, planning, project management, and implementation of enterprise information technology services shall be the responsibility of the Department of ~~Agency for Enterprise~~ Information Technology for executive branch agencies created or authorized in statute to perform legislatively delegated functions. The supervision, design, delivery, and management of agency information technology shall remain within the responsibility and control of the individual state agency.

Section 8. Section 282.0056, Florida Statutes, is amended to read:

282.0056 Development of work plan; development of implementation plans; and policy recommendations.—

(1) For the purposes of carrying out its responsibilities under s. 282.0055, the Department of ~~Agency for Enterprise~~ Information Technology shall develop an annual work plan within 60 days after the beginning of the fiscal year describing the activities that the department ~~agency~~ intends to undertake for that year, including proposed outcomes and completion timeframes. The work plan must be presented at a public hearing that includes the Agency Chief Information Officers Council, which may review and comment on the plan. The work plan must



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thereafter be approved by the Governor and Cabinet and submitted to the President of the Senate and the Speaker of the House of Representatives. The work plan may be amended as needed, subject to approval by the Governor and Cabinet. The work plan must, at a minimum, include proposals for:

(a) The development of a revised financial management infrastructure for state government which causes the reengineering of subsystem components, including, but not limited to, the legislative appropriations and planning and budget system, cash management, human resources, a successor accounting system, and strategic and tactical procurement and acquisition management;

(b) Creation of successor customer-relationship management systems, including, but not limited to, professional licensure, facility licensure, regulatory inspections, and compliance and monitoring systems; and

(c) Consolidation of all state data centers by January 1, 2014.

(2) The Department of Information Technology ~~agency~~ may develop and submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor by October 1 of each year implementation plans for proposed enterprise information technology services to be established in law.

(3) In developing policy recommendations and implementation plans for established and proposed enterprise information technology services, the Department of Information Technology ~~agency~~ shall describe the scope of operation, conduct costs and requirements analyses, conduct an inventory of all existing information technology resources that are associated with each



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service, and develop strategies and timeframes for statewide migration.

(4) For the purpose of completing its work activities, each state agency shall provide to the Department of Information Technology ~~agency~~ all requested information, including, but not limited to, the state agency's costs, service requirements, and equipment inventories.

(5) Within 60 days after the end of each fiscal year, the Department of Information Technology ~~agency~~ shall report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on what was achieved or not achieved in the prior year's work plan.

Section 9. Subsection (2), paragraphs (a), (b), and (c) of subsection (3), paragraph (b) and (d) of subsection (4), and subsection (5) of section 282.201, Florida Statutes, are amended to read:

282.201 State data center system; agency duties and limitations.—A state data center system that includes all primary data centers, other nonprimary data centers, and computing facilities, and that provides an enterprise information technology service as defined in s. 282.0041, is established.

(2) DEPARTMENT OF ~~AGENCY FOR ENTERPRISE~~ INFORMATION TECHNOLOGY DUTIES.—The department ~~Agency for Enterprise Information Technology~~ shall:

- (a) Collect and maintain information necessary for developing policies relating to the data center system, including, but not limited to, an inventory of facilities.
- (b) Annually approve cost-recovery mechanisms and rate



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structures for primary data centers which recover costs through charges to customer entities.

(c) By December 31 of each year, submit to the Legislature recommendations to improve the efficiency and effectiveness of computing services provided by state data center system facilities. Such recommendations may include, but need not be limited to:

1. Policies for improving the cost-effectiveness and efficiency of the state data center system.

2. Infrastructure improvements supporting the consolidation of facilities or preempting the need to create additional data centers or computing facilities.

3. Standards for an objective, credible energy performance rating system that data center boards of trustees can use to measure state data center energy consumption and efficiency on a biannual basis.

4. Uniform disaster recovery standards.

5. Standards for primary data centers providing transparent financial data to user agencies.

6. Consolidation of contract practices or coordination of software, hardware, or other technology-related procurements.

7. Improvements to data center governance structures.

(d) By October 1 of each year beginning in 2009, recommend to the Governor and Legislature at least two nonprimary data centers for consolidation into a primary data center or nonprimary data center facility.

1. The consolidation proposal must provide a transition plan that includes:

a. Estimated transition costs for each data center or



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computing facility recommended for consolidation;

b. Detailed timeframes for the complete transition of each data center or computing facility recommended for consolidation;

c. Proposed recurring and nonrecurring fiscal impacts, including increased or decreased costs and associated budget impacts for affected budget entities;

d. Substantive legislative changes necessary to implement the transition; and

e. Identification of computing resources to be transferred and those that will remain in the agency. The transfer of resources must include all hardware, software, staff, contracted services, and facility resources performing data center management and operations, security, backup and recovery, disaster recovery, system administration, database administration, system programming, job control, production control, print, storage, technical support, help desk, and managed services but excluding application development.

2. Recommendations shall be based on the goal of maximizing current and future cost savings. The department ~~agency~~ shall consider the following criteria in selecting consolidations that maximize efficiencies by providing the ability to:

a. Consolidate purchase decisions;

b. Leverage expertise and other resources to gain economies of scale;

c. Implement state information technology policies more effectively;

d. Maintain or improve the level of service provision to customer entities; and

e. Make progress towards the state's goal of consolidating



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data centers and computing facilities into primary data centers.

3. The department ~~agency~~ shall establish workgroups as necessary to ensure participation by affected agencies in the development of recommendations related to consolidations.

(e) By December 31, 2010, the department ~~agency~~ shall develop and submit to the Legislature an overall consolidation plan for state data centers. The plan shall indicate a timeframe for the consolidation of all remaining nonprimary data centers into primary data centers, including existing and proposed primary data centers, by 2019.

(f) Develop and establish rules relating to the operation of the state data center system which comply with applicable federal regulations, including 2 C.F.R. part 225 and 45 C.F.R. The rules may address:

1. Ensuring that financial information is captured and reported consistently and accurately.

2. Requiring the establishment of service-level agreements executed between a data center and its customer entities for services provided.

3. Requiring annual full cost recovery on an equitable rational basis. The cost-recovery methodology must ensure that no service is subsidizing another service and may include adjusting the subsequent year's rates as a means to recover deficits or refund surpluses from a prior year.

4. Requiring that any special assessment imposed to fund expansion is based on a methodology that apportions the assessment according to the proportional benefit to each customer entity.

5. Requiring that rebates be given when revenues have



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exceeded costs, that rebates be applied to offset charges to those customer entities that have subsidized the costs of other customer entities, and that such rebates may be in the form of credits against future billings.

6. Requiring that all service-level agreements have a contract term of up to 3 years, but may include an option to renew for up to 3 additional years contingent on approval by the board, and require at least a 180-day notice of termination.

7. Designating any nonstate data center as a primary data center if the center:

a. Has an established governance structure that represents customer entities proportionally.

b. Maintains an appropriate cost-allocation methodology that accurately bills a customer entity based on the actual direct and indirect costs to the customer entity, and prohibits the subsidization of one customer entity's costs by another entity.

c. Has sufficient raised floor space, cooling, and redundant power capacity, including uninterruptible power supply and backup power generation, to accommodate the computer processing platforms and support necessary to host the computing requirements of additional customer entities.

8. Removing a nonstate data center from primary data center designation if the nonstate data center fails to meet standards necessary to ensure that the state's data is maintained pursuant to subparagraph 7.

(3) STATE AGENCY DUTIES.—

(a) For the purpose of completing its work activities as described in subsection (1), each state agency shall provide to



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the Department of ~~Agency for Enterprise~~ Information Technology all requested information and any other information relevant to the agency's ability to effectively transition its computer services into a primary data center. The agency shall also participate as required in workgroups relating to specific consolidation planning and implementation tasks as assigned by the department ~~Agency for Enterprise Information Technology~~ and determined necessary to accomplish consolidation goals.

(b) Each state agency shall submit to the department ~~Agency for Enterprise Information Technology~~ information relating to its data centers and computing facilities as required in instructions issued by July 1 of each year by the Department of ~~Agency for Enterprise~~ Information Technology. The information required may include:

1. Amount of floor space used and available.
2. Numbers and capacities of mainframes and servers.
3. Storage and network capacity.
4. Amount of power used and the available capacity.
5. Estimated expenditures by service area, including hardware and software, numbers of full-time equivalent positions, personnel turnover, and position reclassifications.
6. A list of contracts in effect for the fiscal year, including, but not limited to, contracts for hardware, software and maintenance, including the expiration date, the contract parties, and the cost of the contract.

7. Service-level agreements by customer entity.

(c) The chief information officer of each state agency shall assist the Department of ~~Agency for Enterprise~~ Information Technology at the department's request ~~of the Agency for~~



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~~Enterprise Information Technology.~~

(4) AGENCY LIMITATIONS.—

(b) Exceptions to the limitations in subparagraphs (a)1., 2., and 4. may be granted by the Department of ~~Agency for~~ ~~Enterprise~~ Information Technology if there is insufficient capacity in a primary data center to absorb the workload associated with agency computing services.

1. A request for an exception must be submitted in writing to the Department of ~~Agency for Enterprise~~ Information Technology. The department ~~agency~~ must accept, accept with conditions, or deny the request within 60 days after receipt of the written request. The department's ~~agency's~~ decision is not subject to chapter 120.

2. At a minimum, the department ~~agency~~ may not approve a request unless it includes:

a. Documentation approved by the primary data center's board of trustees which confirms that the center cannot meet the capacity requirements of the agency requesting the exception within the current fiscal year.

b. A description of the capacity requirements of the agency requesting the exception.

c. Documentation from the agency demonstrating why it is critical to the agency's mission that the expansion or transfer must be completed within the fiscal year rather than when capacity is established at a primary data center.

(d) Upon the termination of or transfer of agency computing services from the primary data center, the primary data center shall require information sufficient to determine compliance with this section. If a primary data center determines that an



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agency is in violation of this section, it shall report the violation to the Department of ~~Agency for Enterprise~~ Information Technology.

(5) RULES.—The Department of ~~Agency for Enterprise~~ Information Technology ~~may is authorized to~~ adopt rules pursuant ~~to ss. 120.536(1) and 120.54~~ to administer the provisions of this part relating to the state data center system including the primary data centers.

Section 10. Paragraphs (c), (d), (h), and (i) of subsection (1), paragraph (e) of subsection (2), paragraph (b), (e), (h), and (k) of subsection (3) of section 282.203, Florida Statutes, are amended to read:

282.203 Primary data centers.—

(1) DATA CENTER DUTIES.—Each primary data center shall:

(c) Comply with rules adopted by the Department of ~~Agency for Enterprise~~ Information Technology, pursuant to this section, and coordinate with the agency in the consolidation of data centers.

(d) Provide transparent financial statements to customer entities, the center's board of trustees, and the Department of ~~Agency for Enterprise~~ Information Technology. The financial statements shall be provided as follows:

1. Annually, by July 30 for the current fiscal year and by December 1 for the subsequent fiscal year, the data center must provide the total annual budgeted costs by major expenditure category, including, but not limited to, salaries, expense, operating capital outlay, contracted services, or other personnel services, which directly relate to the provision of each service and which separately indicate the administrative



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overhead allocated to each service.

2. Annually, by July 30 for the current fiscal year and by December 1 for the subsequent fiscal year, the data center must provide total projected billings for each customer entity which are required to recover the costs of the data center.

3. Annually, by January 31, the data center must provide updates of the financial statements required under subparagraphs 1. and 2. for the current fiscal year.

4. By February 15, for proposed legislative budget increases, the data center must provide updates of the financial statements required under subparagraphs 1. and 2. for the subsequent fiscal year.

The financial information required under subparagraphs 1., 2., and 3. must be based on current law and current appropriations.

(h) Develop a business continuity plan and conduct a live exercise of the plan at least annually. The plan must be approved by the board and the Department of ~~Agency for~~ ~~Enterprise~~ Information Technology.

(i) Enter into a service-level agreement with each customer entity to provide services as defined and approved by the board in compliance with rules of the Department of ~~Agency for~~ ~~Enterprise~~ Information Technology. A service-level agreement may not have a term exceeding 3 years but may include an option to renew for up to 3 years contingent on approval by the board.

1. A service-level agreement, at a minimum, must:

a. Identify the parties and their roles, duties, and responsibilities under the agreement;

b. Identify the legal authority under which the service-



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level agreement was negotiated and entered into by the parties;

c. State the duration of the contractual term and specify the conditions for contract renewal;

d. Prohibit the transfer of computing services between primary data center facilities without at least 180 days' notice of service cancellation;

e. Identify the scope of work;

f. Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit;

g. Establish the services to be provided, the business standards that must be met for each service, the cost of each service, and the process by which the business standards for each service are to be objectively measured and reported;

h. Identify applicable funds and funding streams for the services or products under contract;

i. Provide a timely billing methodology for recovering the cost of services provided to the customer entity;

j. Provide a procedure for modifying the service-level agreement to address changes in projected costs of service;

k. Provide that a service-level agreement may be terminated by either party for cause only after giving the other party and the department ~~Agency for Enterprise Information Technology~~ notice in writing of the cause for termination and an opportunity for the other party to resolve the identified cause within a reasonable period; and

1. Provide for mediation of disputes by the Division of Administrative Hearings pursuant to s. 120.573.

2. A service-level agreement may include:



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535 a. A dispute resolution mechanism, including alternatives
536 to administrative or judicial proceedings;

537 b. The setting of a surety or performance bond for service-
538 level agreements entered into with nonstate agency primary data
539 centers, which may be designated by the department ~~Agency for~~
540 ~~Enterprise Information Technology~~; or

541 c. Additional terms and conditions as determined advisable
542 by the parties if such additional terms and conditions do not
543 conflict with the requirements of this section or rules adopted
544 by the department ~~Agency for Enterprise Information Technology~~.

545 3. The failure to execute a service-level agreement within
546 60 days after service commencement shall, in the case of an
547 existing customer entity, result in a continuation of the terms
548 of the service-level agreement from the prior fiscal year,
549 including any amendments that were formally proposed to the
550 customer entity by the primary data center within the 3 months
551 before service commencement, and a revised cost-of-service
552 estimate. If a new customer entity fails to execute an agreement
553 within 60 days after service commencement, the data center may
554 cease services.

555 (2) BOARD OF TRUSTEES.—Each primary data center shall be
556 headed by a board of trustees as defined in s. 20.03.

557 (e) The executive director of the Department of ~~Agency for~~
558 ~~Enterprise~~ Information Technology shall be the advisor to the
559 board.

560 (3) BOARD DUTIES.—Each board of trustees of a primary data
561 center shall:

562 (b) Establish procedures for the primary data center to
563 ensure that budgeting and accounting procedures, cost-recovery



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methodologies, and operating procedures are in compliance with laws governing the state data center system, rules adopted by the Department of ~~Agency for Enterprise~~ Information Technology, and applicable federal regulations, including 2 C.F.R. part 225 and 45 C.F.R.

(e) Ensure the sufficiency and transparency of the primary data center financial information by:

1. Establishing policies that ensure that cost-recovery methodologies, billings, receivables, expenditure, budgeting, and accounting data are captured and reported timely, consistently, accurately, and transparently and, upon adoption of rules by the Department of ~~Agency for Enterprise~~ Information Technology, are in compliance with such rules.

2. Requiring execution of service-level agreements by the data center and each customer entity for services provided by the data center to the customer entity.

3. Requiring cost recovery for the full cost of services, including direct and indirect costs. The cost-recovery methodology must ensure that no service is subsidizing another service without an affirmative vote of approval by the customer entity providing the subsidy.

4. Establishing special assessments to fund expansions based on a methodology that apportions the assessment according to the proportional benefit to each customer entity.

5. Providing rebates to customer entities when revenues exceed costs and offsetting charges to those who have subsidized other customer entity costs based on actual prior year final expenditures. Rebates may be credited against future billings.

6. Approving all expenditures committing over \$50,000 in a



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fiscal year.

7. Projecting costs and revenues at the beginning of the third quarter of each fiscal year through the end of the fiscal year. If in any given fiscal year the primary data center is projected to earn revenues that are below costs for that fiscal year after first reducing operating costs where possible, the board shall implement any combination of the following remedies to cover the shortfall:

a. The board may direct the primary data center to adjust current year chargeback rates through the end of the fiscal year to cover the shortfall. The rate adjustments shall be implemented using actual usage rate and billing data from the first three quarters of the fiscal year and the same principles used to set rates for the fiscal year.

b. The board may direct the primary data center to levy one-time charges on all customer entities to cover the shortfall. The one-time charges shall be implemented using actual usage rate and billing data from the first three quarters of the fiscal year and the same principles used to set rates for the fiscal year.

c. The customer entities represented by each board member may provide payments to cover the shortfall in proportion to the amounts each entity paid in the prior fiscal year.

(h) By July 1 of each year, submit to the Department of ~~Agency for Enterprise~~ Information Technology proposed cost-recovery mechanisms and rate structures for all customer entities for the fiscal year including the cost-allocation methodology for administrative expenditures and the calculation of administrative expenditures as a percent of total costs.



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(k) Coordinate with other primary data centers and the Department of ~~Agency for Enterprise~~ Information Technology in order to consolidate purchases of goods and services and lower the cost of providing services to customer entities.

Section 11. Subsection (2) of section 282.204, Florida Statutes, is amended to read:

282.204 Northwood Shared Resource Center.—The Northwood Shared Resource Center is an agency established within the Department of Children and Family Services for administrative purposes only.

(2) The center shall be headed by a board of trustees as provided in s. 282.203, who shall comply with all requirements of that section related to the operation of the center and with the rules of the Department of ~~Agency for Enterprise~~ Information Technology related to the design and delivery of enterprise information technology services.

Section 12. Subsection (2) of section 282.205, Florida Statutes, is amended to read:

282.205 Southwood Shared Resource Center.—The Southwood Shared Resource Center is an agency established within the department for administrative purposes only.

(2) The center shall be headed by a board of trustees as provided in s. 282.203, who shall comply with all requirements of that section related to the operation of the center and with the rules of the Department of ~~Agency for Enterprise~~ Information Technology related to the design and delivery of enterprise information technology services.

Section 13. Paragraphs (b) and (e) of subsection (2) of section 282.3055, Florida Statutes, are amended to read:



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282.3055 Agency chief information officer; appointment;
duties.—

(2) The duties of the agency chief information officer
include, but are not limited to:

(b) Implementing agency information technology planning and
management procedures, guidelines, and standards that are
consistent with the procedures and standards adopted by the
Department of ~~Agency for Enterprise~~ Information Technology.

(e) Assisting the Department of ~~Agency for Enterprise~~
Information Technology in the development of strategies for
implementing the enterprise information technology services
established in law and developing recommendations for enterprise
information technology policy.

Section 14. Subsections (1) and (3) of section 282.315,
Florida Statutes, are amended to read:

282.315 Agency Chief Information Officers Council;
creation.—The Legislature finds that enhancing communication,
consensus building, coordination, and facilitation with respect
to issues concerning enterprise information technology resources
are essential to improving the management of such resources.

(1) There is created an Agency Chief Information Officers
Council to:

(a) Enhance communication and collaboration among the
Agency Chief Information Officers and the Department of ~~Agency~~
~~for Enterprise~~ Information Technology.

(b) Identify and recommend best practices that are
characteristic of highly successful technology organizations, as
well as exemplary information technology applications for use by
state agencies, and assist the Department of ~~Agency for~~



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Enterprise Information Technology in developing strategies for implementing the enterprise information technology services established in law and developing recommendations for enterprise information technology policy.

(c) Identify efficiency opportunities among state agencies and make recommendations for action to the Department of ~~Agency~~ ~~for Enterprise~~ Information Technology. This includes recommendations relating to the consolidation of agency data center and computing facilities, including operational policies, procedures and standards for the consolidated facilities, and procedures and standards for planning the migration to consolidated facilities.

(d) Assist the Department of ~~Agency for Enterprise~~ Information Technology in identifying critical enterprise information technology issues and, when appropriate, make recommendations for solving enterprise resource planning and management deficiencies.

(e) Annually, by October 1, identify information technology products, as defined in s. 282.0041, which, if purchased in a consolidated manner, would result in savings to the state, and develop recommendations regarding a process for consolidating such purchases. The council shall transmit its recommendations to the Department of ~~Agency for Enterprise~~ Information Technology.

(3) The Department of ~~Agency for Enterprise~~ Information Technology shall provide administrative support to the council.

Section 15. Subsection (3), paragraph (c), (d), and (f) of subsection (4), subsection (6), and subsection (7) of section 282.318, Florida Statutes, are amended to read:



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282.318 Enterprise security of data and information technology.—

(3) The Office of Information Security within the Department of ~~Agency for Enterprise~~ Information Technology is responsible for establishing rules and publishing guidelines for ensuring an appropriate level of security for all data and information technology resources for executive branch agencies. The office shall also perform the following duties and responsibilities:

(a) Develop, and annually update by February 1, an enterprise information security strategic plan that includes security goals and objectives for the strategic issues of information security policy, risk management, training, incident management, and survivability planning.

(b) Develop enterprise security rules and published guidelines for:

1. Comprehensive risk analyses and information security audits conducted by state agencies.

2. Responding to suspected or confirmed information security incidents, including suspected or confirmed breaches of personal information or exempt data.

3. Agency security plans, including strategic security plans and security program plans.

4. The recovery of information technology and data following a disaster.

5. The managerial, operational, and technical safeguards for protecting state government data and information technology resources.

(c) Assist agencies in complying with the provisions of



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this section.

(d) Pursue appropriate funding for the purpose of enhancing domestic security.

(e) Provide training for agency information security managers.

(f) Annually review the strategic and operational information security plans of executive branch agencies.

(4) To assist the Office of Information Security in carrying out its responsibilities, each agency head shall, at a minimum:

(c) Conduct, and update every 3 years, a comprehensive risk analysis to determine the security threats to the data, information, and information technology resources of the agency. The risk analysis information is confidential and exempt from the provisions of s. 119.07(1), except that such information shall be available to the Auditor General and the Department of ~~Agency for Enterprise~~ Information Technology for performing postauditing duties.

(d) Develop, and periodically update, written internal policies and procedures, which include procedures for notifying the office when a suspected or confirmed breach, or an information security incident, occurs. Such policies and procedures must be consistent with the rules and guidelines established by the office to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except



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that such information shall be available to the Auditor General and the Department of ~~Agency for Enterprise~~ Information Technology for performing postauditing duties.

(f) Ensure that periodic internal audits and evaluations of the agency's security program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General and the Department of ~~Agency for Enterprise~~ Information Technology for performing postauditing duties.

(6) The Department of ~~Agency for Enterprise~~ Information Technology may adopt rules relating to information security and to administer the provisions of this section.

~~(7) By December 31, 2010, the Agency for Enterprise Information Technology shall develop, and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a proposed implementation plan for information technology security. The agency shall describe the scope of operation, conduct costs and requirements analyses, conduct an inventory of all existing security information technology resources, and develop strategies, timeframes, and resources necessary for statewide migration.~~

Section 16. Subsections (1) through (3) of section 282.33, Florida Statutes, are amended to read:

282.33 Objective standards for data center energy efficiency.—

(1) ~~By July 1, 2009, The~~ Department of ~~Agency for Enterprise~~ Information Technology shall define objective



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standards for:

(a) Measuring data center energy consumption and efficiency, including, but not limited to, airflow and cooling, power consumption and distribution, and environmental control systems in a data center facility.

(b) Calculating total cost of ownership of energy-efficient information technology products, including initial purchase, installation, ongoing operation and maintenance, and disposal costs over the life cycle of the product.

(2) State shared resource data centers and other data centers that the Department of ~~Agency for Enterprise~~ Information Technology has determined will be recipients for consolidating data centers, which are designated by the department ~~Agency for Enterprise Information Technology~~, shall evaluate their data center facilities for energy efficiency using the standards established in this section.

(a) Results of these evaluations shall be reported to the department ~~Agency for Enterprise Information Technology~~, the President of the Senate, and the Speaker of the House of Representatives. Reports shall enable the tracking of energy performance over time and comparisons between facilities.

(b) By December 31, 2010, and biennially thereafter, the department ~~Agency for Enterprise Information Technology~~ shall submit to the Legislature recommendations for reducing energy consumption and improving the energy efficiency of state primary data centers.

(3) The primary means of achieving maximum energy savings across all state data centers and computing facilities shall be the consolidation of data centers and computing facilities as



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determined by the Department of ~~Agency for Enterprise~~
Information Technology. State data centers and computing
facilities in the state data center system shall be established
as an enterprise information technology service as defined in s.
282.0041. The department ~~Agency for Enterprise Information~~
~~Technology~~ shall make recommendations on consolidating state
data centers and computing facilities, pursuant to s. 282.0056,
by December 31, 2009.

Section 17. Subsection (2) through (5), (7), and (9)
through (11) of section 282.34, Florida Statutes, are amended to
read:

282.34 Statewide e-mail service.—A state e-mail system that
includes the delivery and support of e-mail, messaging, and
calendaring capabilities is established as an enterprise
information technology service as defined in s. 282.0041. The
service shall be designed to meet the needs of all executive
branch agencies. The primary goals of the service are to
minimize the state investment required to establish, operate,
and support the statewide service; reduce the cost of current e-
mail operations and the number of duplicative e-mail systems;
and eliminate the need for each state agency to maintain its own
e-mail staff.

(2) The Department of ~~Agency for Enterprise~~ Information
Technology, in consultation with the Southwood Shared Resource
Center, shall establish and coordinate a multiagency project
team to develop a competitive solicitation for establishing the
statewide e-mail service.

(a) The Southwood Shared Resource Center shall issue the
competitive solicitation by August 31, 2010, with vendor



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responses required by October 15, 2010. Issuance of the competitive solicitation does not obligate the agency and the center to conduct further negotiations or to execute a contract. The decision to conduct or conclude negotiations, or execute a contract, must be made solely at the discretion of the agency.

(b) The competitive solicitation must include detailed specifications describing:

1. The current e-mail approach for state agencies and the specific business objectives met by the present system.

2. The minimum functional requirements necessary for successful statewide implementation and the responsibilities of the prospective service provider and the agency.

3. The form and required content for submitted proposals, including, but not limited to, a description of the proposed system and its internal and external sourcing options, a 5-year life-cycle-based pricing based on cost per mailbox per month, and a decommissioning approach for current e-mail systems; an implementation schedule and implementation services; a description of e-mail account management, help desk, technical support, and user provisioning services; disaster recovery and backup and restore capabilities; antispam and antivirus capabilities; remote access and mobile messaging capabilities; and staffing requirements.

(c) Other optional requirements specifications may be included in the competitive solicitation if not in conflict with the primary goals of the statewide e-mail service.

(d) The competitive solicitation must permit alternative financial and operational models to be proposed, including, but not limited to:



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1. Leasing or usage-based subscription fees;
2. Installing and operating the e-mail service within the Southwood Shared Resource Center or in a data center operated by an external service provider; or

3. Provisioning the e-mail service as an Internet-based offering provided to state agencies. Specifications for proposed models must be optimized to meet the primary goals of the e-mail service.

(3) By December 31, 2010, or within 1 month after negotiations are complete, whichever is later, the multiagency project team and the Department of ~~Agency for Enterprise~~ Information Technology shall prepare a business case analysis containing its recommendations for procuring the statewide e-mail service for submission to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives. The business case is not subject to challenge or protest pursuant to chapter 120. The business case must include, at a minimum:

(a) An assessment of the major risks that must be managed for each proposal compared to the risks for the current state agency e-mail system and the major benefits that are associated with each.

(b) A cost-benefit analysis that estimates all major cost elements associated with each sourcing option, focusing on the nonrecurring and recurring life-cycle costs of each option. The analysis must include a comparison of the estimated total 5-year life-cycle cost of the current agency e-mail systems versus each enterprise e-mail sourcing option in order to determine the feasibility of funding the migration and operation of the



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statewide e-mail service and the overall level of savings that can be expected. The 5-year life-cycle costs for each state agency must include, but are not limited to:

1. The total recurring operating costs of the current agency e-mail systems, including monthly mailbox costs, staffing, licensing and maintenance costs, hardware, and other related e-mail product and service costs.

2. An estimate of nonrecurring hardware and software refresh, upgrade, or replacement costs based on the expected 5-year obsolescence of current e-mail software products and equipment through the 2014 fiscal year, and the basis for the estimate.

3. An estimate of recurring costs associated with the energy consumption of current agency e-mail equipment, and the basis for the estimate.

4. Any other critical costs associated with the current agency e-mail systems which can reasonably be estimated and included in the business case analysis.

(c) A comparison of the migrating schedules of each sourcing option to the statewide e-mail service, including the approach and schedule for the decommissioning of all current state agency e-mail systems beginning with phase 1 and phase 2 as provided in subsection (4).

(4) All agencies must be completely migrated to the statewide e-mail service as soon as financially and operationally feasible, but no later than June 30, 2015.

(a) The following statewide e-mail service implementation schedule is established for state agencies:

1. Phase 1.—The following agencies must be completely



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migrated to the statewide e-mail system by June 30, 2012: the Department of ~~Agency for Enterprise~~ Information Technology; the Department of Community Affairs, including the Division of Emergency Management; the Department of Corrections; the Department of Health; the Department of Highway Safety and Motor Vehicles; the Department of Management Services, including the Division of Administrative Hearings, the Division of Retirement, the Commission on Human Relations, and the Public Employees Relations Commission; the Southwood Shared Resource Center; and the Department of Revenue.

2. Phase 2.—The following agencies must be completely migrated to the statewide e-mail system by June 30, 2013: the Department of Business and Professional Regulation; the Department of Education, including the Board of Governors; the Department of Environmental Protection; the Department of Juvenile Justice; the Department of the Lottery; the Department of State; the Department of Law Enforcement; the Department of Veterans' Affairs; the Judicial Administration Commission; the Public Service Commission; and the Statewide Guardian Ad Litem Office.

3. Phase 3.—The following agencies must be completely migrated to the statewide e-mail system by June 30, 2014: the Agency for Health Care Administration; the Agency for Workforce Innovation; the Department of Financial Services, including the Office of Financial Regulation and the Office of Insurance Regulation; the Department of Agriculture and Consumer Services; the Executive Office of the Governor; the Department of Transportation; the Fish and Wildlife Conservation Commission; the Agency for Persons With Disabilities; the Northwood Shared



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Resource Center; and the State Board of Administration.

4. Phase 4.—The following agencies must be completely migrated to the statewide e-mail system by June 30, 2015: the Department of Children and Family Services; the Department of Citrus; the Department of Elderly Affairs; and the Department of Legal Affairs.

(b) Agency requests to modify their scheduled implementing date must be submitted in writing to the Department of Agency ~~for Enterprise~~ Information Technology. Any exceptions or modifications to the schedule must be approved by the Department of Agency ~~for Enterprise~~ Information Technology based only on the following criteria:

1. Avoiding nonessential investment in agency e-mail hardware or software refresh, upgrade, or replacement.

2. Avoiding nonessential investment in new software or hardware licensing agreements, maintenance or support agreements, or e-mail staffing for current e-mail systems.

3. Resolving known agency e-mail problems through migration to the statewide e-mail service.

4. Accommodating unique agency circumstances that require an acceleration or delay of the implementation date.

(5) In order to develop the implementation plan for the statewide e-mail service, the Department of Agency ~~for Enterprise~~ Information Technology shall establish and coordinate a statewide e-mail project team. The agency shall also consult with and, as necessary, form workgroups consisting of agency e-mail management staff, agency chief information officers, agency budget directors, and other administrative staff. The statewide e-mail implementation plan must be submitted to the Governor,



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the President of the Senate, and the Speaker of the House of Representatives by July 1, 2011.

(7) Exceptions to paragraphs (6)(a), (b), and (c) may be granted by the Department of ~~Agency for Enterprise~~ Information Technology only if the Southwood Shared Resource Center is unable to meet agency business requirements for the e-mail service, and if such requirements are essential to maintain agency operations. Requests for exceptions must be submitted in writing to the Agency for Enterprise Information Technology and include documented confirmation by the Southwood Shared Resource Center board of trustees that it cannot meet the requesting agency's e-mail service requirements.

(9) The Department of ~~Agency for Enterprise~~ Information Technology shall adopt rules to standardize the format for state agency e-mail addresses.

(10) State agencies must fully cooperate with the Department of ~~Agency for Enterprise~~ Information Technology in the performance of its responsibilities established in this section.

(11) The Department of ~~Agency for Enterprise~~ Information Technology shall recommend changes to an agency's scheduled date for migration to the statewide e-mail service pursuant to this section, annually by December 31, until migration to the statewide service is complete.

Section 18. Subsection (22) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(22) The department, in consultation with the Department of



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~~Agency for Enterprise~~ Information Technology and the
Comptroller, shall develop a program for online procurement of
commodities and contractual services. To enable the state to
promote open competition and to leverage its buying power,
agencies shall participate in the online procurement program,
and eligible users may participate in the program. Only vendors
prequalified as meeting mandatory requirements and
qualifications criteria may participate in online procurement.

(a) The department, in consultation with the Department of
Information Technology ~~agency~~, may contract for equipment and
services necessary to develop and implement online procurement.

(b) The department, in consultation with the Department of
Information Technology ~~agency~~, shall adopt rules, pursuant to
ss. 120.536(1) and 120.54, to administer the program for online
procurement. The rules shall include, but not be limited to:

1. Determining the requirements and qualification criteria
for prequalifying vendors.

2. Establishing the procedures for conducting online
procurement.

3. Establishing the criteria for eligible commodities and
contractual services.

4. Establishing the procedures for providing access to
online procurement.

5. Determining the criteria warranting any exceptions to
participation in the online procurement program.

(c) The department may impose and shall collect all fees
for the use of the online procurement systems.

1. The fees may be imposed on an individual transaction
basis or as a fixed percentage of the cost savings generated. At



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a minimum, the fees must be set in an amount sufficient to cover the projected costs of the services, including administrative and project service costs in accordance with the policies of the department.

2. If the department contracts with a provider for online procurement, the department, pursuant to appropriation, shall compensate the provider from the fees after the department has satisfied all ongoing costs. The provider shall report transaction data to the department each month so that the department may determine the amount due and payable to the department from each vendor.

3. All fees that are due and payable to the state on a transactional basis or as a fixed percentage of the cost savings generated are subject to s. 215.31 and must be remitted within 40 days after receipt of payment for which the fees are due. For fees that are not remitted within 40 days, the vendor shall pay interest at the rate established under s. 55.03(1) on the unpaid balance from the expiration of the 40-day period until the fees are remitted.

4. All fees and surcharges collected under this paragraph shall be deposited in the Operating Trust Fund as provided by law.

Section 19. Subsection (4) of section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(4) Workforce Florida, Inc., shall coordinate development and implementation of workforce information systems with the executive director of the Department of ~~Agency for Enterprise~~ Information Technology to ensure compatibility with the state's



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information system strategy and enterprise architecture.

Section 20. Subsections (2) and (4) of section 445.045, Florida Statutes, are amended to read:

445.045 Development of an Internet-based system for information technology industry promotion and workforce recruitment.—

(2) Workforce Florida, Inc., shall coordinate with the Department of ~~Agency for Enterprise~~ Information Technology and the Agency for Workforce Innovation to ensure links, where feasible and appropriate, to existing job information websites maintained by the state and state agencies and to ensure that information technology positions offered by the state and state agencies are posted on the information technology website.

(4)~~(a)~~ Workforce Florida, Inc., shall coordinate development and maintenance of the website under this section with the executive director of the Department of ~~Agency for Enterprise~~ Information Technology to ensure compatibility with the state's information system strategy and enterprise architecture.

(a)~~(b)~~ Workforce Florida, Inc., may enter into an agreement with the Department of ~~Agency for Enterprise~~ Information Technology, the Agency for Workforce Innovation, or any other public agency with the requisite information technology expertise for the provision of design, operating, or other technological services necessary to develop and maintain the website.

(b)~~(c)~~ Workforce Florida, Inc., may procure services necessary to implement the provisions of this section, if it employs competitive processes, including requests for proposals,



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competitive negotiation, and other competitive processes to ensure that the procurement results in the most cost-effective investment of state funds.

Section 21. Paragraph (b) of subsection (18) of section 668.50, Florida Statutes, is amended to read:

668.50 Uniform Electronic Transaction Act.—

(18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.—

(b) To the extent that a governmental agency uses electronic records and electronic signatures under paragraph (a), the Department of Agency for Enterprise Information Technology, in consultation with the governmental agency, giving due consideration to security, may specify:

1. The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes.

2. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

3. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

4. Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

Section 22. During the 2011-2012 fiscal year, the



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Department of Information Technology shall coordinate with all state agencies to identify each state agency's total number of positions and resources related to information technology. Agencies must submit the information to the department by August 1, 2011. By September 1, 2011, the department shall submit a plan to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives for transferring to the department all information technology operations. Such information shall be included in each agency's legislative budget request for the 2012-2013 fiscal year as a transfer to the Department of Information Technology. This section expires July 1, 2012.

Section 23. The Department of Information Technology is established effective July 1, 2012. On that date, the Agency for Enterprise Information Technology is transferred from the Executive Office of the Governor to the Department of Information Technology by a type two transfer, as defined in s. 20.06(1), Florida Statutes.

Section 24. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the Agency for Enterprise
Information Technology; transferring, renumbering, and
amending s. 14.204, F.S.; renaming the agency the
Department of Information Technology; establishing



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1173 divisions within the department; amending ss. 17.0315,
1174 110.205, 215.322, and 216.235, F.S.; conforming
1175 provisions to changes made by the act; repealing s.
1176 282.0041, F.S., to delete reference to the agency;
1177 amending s. 282.0055, F.S.; conforming provisions to
1178 changes made by the act; amending s. 282.0056, F.S.;
1179 specifying proposals that must be included in the
1180 department's annual work plan; amending ss. 282.201,
1181 282.203, 282.204, 282.205, 282.3055, 282.315, 282.318,
1182 282.33, 282.34, 287.057, 445.011, 445.045, and 668.50,
1183 F.S.; conforming provisions to changes made by the
1184 act; requiring the department and state agencies to
1185 identify all positions and resources related to
1186 information technology by a certain date; requiring
1187 the department to submit a plan to the Governor and
1188 Legislature transferring all information technology
1189 operations to the department; transferring the agency
1190 from the Executive Office of the Governor to the
1191 department by a type two transfer; providing an
1192 effective date.



688164

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

**Senate Amendment to Amendment (262522) (with title
amendment)**

Delete lines 12 - 107

and insert:

~~(1) The head of the agency shall be the Governor and
Cabinet.~~

~~(2) The agency is a separate budget entity and is not
subject to control, supervision, or direction by the Executive
Office of the Governor, including, but not limited to,
purchasing, transactions involving real or personal property,
personnel, or budgetary matters.~~



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13 (1)~~(3)~~ The department ~~agency~~ shall have an executive
14 director who is the state's Chief Technology Information Officer
15 and who must, at a minimum:

16 (a) Have a degree from an accredited postsecondary
17 institution in engineering, computer science, information
18 science, or information systems;

19 (b) Have at least 7 years of executive-level experience in
20 managing information technology organizations; and

21 (c) Be appointed by the Governor ~~and confirmed by the~~
22 ~~Cabinet~~, subject to confirmation by the Senate, and serve at the
23 pleasure of the Governor ~~and Cabinet~~.

24 (2) The department shall consist of the following
25 divisions:

26 (a) The Division of Strategic Procurement, which includes
27 the development of all enterprise information technology
28 procurement and acquisition-management systems across state
29 agencies, whether owned or contracted, and has the objective of
30 achieving unified accountability.

31 (b) The Division of Policy Formation, Development, and
32 Standards, which, by rule, sets the technical and architectural
33 expectations for current and emerging technologies and
34 establishes new human capital skill sets, competency
35 expectations, and total compensation for all information
36 technology professions within state agencies.

37 (c) The Division of Implementation, which is responsible
38 for the execution, timing, and integration of specific
39 technology components and business domain management and the
40 retention of agency expertise in key legacy applications in
41 nonstrategic management systems.



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42 ~~(3)-(4)~~ The department ~~agency~~ shall have the following
43 duties and responsibilities:

44 (a) Develop strategies for the design, delivery, and
45 management of the enterprise information technology services
46 established in law.

47 (b) Monitor the delivery and management of the enterprise
48 information technology services as established in law.

49 (c) Make recommendations to the agency head and the
50 Legislature concerning other information technology services
51 that should be designed, delivered, and managed as enterprise
52 information technology services as defined in s. 282.0041.

53 (d) Plan and establish policies for managing proposed
54 statutorily authorized enterprise information technology
55 services, which includes:

56 1. Developing business cases that, when applicable, include
57 the components identified in s. 287.0571;

58 2. Establishing and coordinating project-management teams;

59 3. Establishing formal risk-assessment and mitigation
60 processes; and

61 4. Providing for independent monitoring of projects for
62 recommended corrective actions.

63 (e) Beginning October 1, 2010, develop, publish, and
64 biennially update a long-term strategic enterprise information
65 technology plan that identifies and recommends strategies and
66 opportunities to improve the delivery of cost-effective and
67 efficient enterprise information technology services to be
68 proposed for establishment pursuant to s. 282.0056.

69 (f) Perform duties related to the state data center system
70 as provided in s. 282.201.



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71 (g) Coordinate acquisition planning and procurement
72 negotiations for hardware and software products and services in
73 order to improve the efficiency and reduce the cost of
74 enterprise information technology services.

75 (h) Conduct procurements ~~In consultation with the Division~~
76 ~~of Purchasing in the Department of Management Services,~~
77 ~~coordinate procurement negotiations for information technology~~
78 ~~products as defined in s. 282.0041 which will be used by~~
79 ~~multiple agencies.~~

80 (i) In coordination with, and through the services of, the
81 Division of Purchasing in the Department of Management Services,
82 establish best practices for the procurement of information
83 technology products as defined in s. 282.0041 in order to
84 achieve savings for the state.

85 (j) Develop information technology standards for enterprise
86 information technology services.

87 (k) Provide annually, by December 31, recommendations to
88 the Legislature relating to techniques for consolidating the
89 purchase of information technology commodities and services,
90 which result in savings for the state, and for establishing a
91 process to achieve savings through consolidated purchases.

92 ~~(4)(5)~~ The Office of Information Security shall be created
93 within the department ~~agency~~. The department ~~agency~~ shall
94 designate a state Chief Information Security Officer who shall
95 oversee the office and report directly to the executive
96 director.

97 ~~(5)(6)~~ The department ~~agency~~ shall operate in a manner that
98 ensures the participation and representation of state agencies
99 and the Agency Chief Information Officers Council established in



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s. 282.315.

~~(6)-(7)~~ The department ~~agency~~ may adopt rules to carry out its statutory duties.

Between lines 233 and 234
insert:

(d) Moving the provision of all state data needs to a cloud computing infrastructure by January 1, 2016.

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

And the title is amended as follows:

Delete line 1172
and insert:

Department of Information Technology; requiring that the department director have a degree from an accredited postsecondary institution in certain fields, be appointed by the Governor, and serve at the pleasure of the Governor; establishing

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 Governmental Oversight and Accountability Committee

BILL: SB 102

INTRODUCER: Senator Ring

SUBJECT: Office of the Chief Technology Officer

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill creates an Office of the Chief Technology Officer (“Office”) in the Department of Financial Services. The Office is comprised of three principal operating units, and charged with creating a multi-year operating plan on the transformation of state agency information technology procurement, policy, and execution practices. The bill specifies that the Chief Technology Officer, appointed by the Governor and the Cabinet, leads the Office.

The bill takes effect July 1, 2011.

This bill creates undesignated sections of the Florida Statutes.

II. Present Situation:

The operations and organizational configuration of information technology itself reflects the state’s traditional avoidance of concentration of authority in any one constitutional or statutory office. This dispersion complemented the separation of powers among the three governmental branches in its early history but as the reach of state government became greater over the years it also permitted the development of separately funded enclaves of technology operations within departments and their subordinate units.

Following the adjournment of the 2006 Regular Session of the Florida Legislature the then Senate Ways and Means Committee was commissioned to undertake a comprehensive review of information technology in state government. That commission resulted in the publication of a wide-ranging study that catalogued all of the state’s historical and structural efforts at

identifying, operating, and funding information technology.¹ The report discussed the statutory attempts at making programmatic sense of such an evolving technology and the contractual difficulties associated with failed attempts. The complex decision-making environments characteristic of the Florida state government federated executive system of management also played a role in attempting to achieve focus and accountability in this area.

Common themes soon presented themselves in both successful and unsuccessful ventures. Many projects were found to be off-task and off-budget, there was a poor understanding of operational expectations, or personnel and operational practices were insufficient for the proper and timely execution of responsibilities. In its 2007 report, the Senate Governmental Oversight and Productivity Committee identified several common attributes of state agency contractual procurements in which actual performance demonstrated a significant departure from expectations. All of those procurement underperformances reviewed had significant technology components and were found to be beset of one or more of the following conditions:

- A management-directed imperative to execute faster than the agency had capacity;
- Loss of knowledge capital through a strategic disinvestment in agency capacity or over reliance upon contract vendors;
- Decision-making based upon price rather than product or service effectiveness;
- Decision-making motivated by minimizing state investment and maximizing shared federal revenues;
- Claimed tangible savings that were speculative;
- Unwritten understandings accompanied by longer term financial liabilities;
- A rush to the procurement market with a poor understanding of expectations; and,
- Vendor systems that could not deliver the service or product on time, on-task, or on budget.

Limitations on the ability to execute system-wide changes are not confined to information technology. The Department of Management Services' human resources outsourcing initiative fell more than one year behind schedule as its contract vendor, Convergys Customer Management Group, had to contend with a difficult technology migration from the predecessor state personnel system to its successor one.² As a consequence there were missed or delayed employee payrolls, benefit coverage interruptions, incorrect benefit premium calculations, and ineffective implementation of electronic time and attendance reports. All of these resulted in increased management attention to these. Shortly after the department renegotiated the contract in late 2009, Convergys announced it was selling this line of business entirely to the English firm NorthgateArinso.

In a March 11, 2005, presentation to the National Association of State Comptrollers, the Department of Financial Services reported to the Nation's other state chief financial officers on Florida's experience to date with Convergys. The report³ described the history of the procurement and the many performance expectations that the service provider had not executed well into the early implementation of its nine-year contract with the Department of Management Services.

¹ *Enterprise Information Technology: Senate Review and Study*, Report No. 2007-140. Tallahassee, FL: January 2007.

² The proprietary state legacy system was **COPES** (**CO**operative **P**ersonnel and **E**mployment System).

³ Florida Department of Financial Services, *Outsourcing Human Resource Management*, undated.

The 2006 Legislature terminated funding for the State Technology Office in partial response to these cumulative difficulties. It funded an interim Enterprise Information Technology Services unit in the DMS pending a more significant restructuring of state agency relationships.

The Agency for Enterprise Information Technology

The 2007 Legislature enacted CS/CS/SB 1974 to bring particular focus on information technology as an enterprise responsibility that links all of the state's separate business and jurisdictional entities. The head of the Agency for Enterprise Information Technology (agency or AEIT) is the Governor and Cabinet, and the agency is a separate budget entity and is not subject to control, supervision, or direction by the Executive Office of the Governor. The agency has an executive director who is the state's Chief Information Officer, who must have a degree from an accredited postsecondary institution, and at least 7 years of executive-level experience in managing information technology organizations. The Chief Information officer is appointed by the Governor and confirmed by the Cabinet, subject to confirmation by the Senate, and serves at the pleasure of the Governor and Cabinet.⁴

The agency has the following duties and responsibilities:⁵

- Develop strategies for the design, delivery, and management of the enterprise information technology services established in law.
- Monitor the delivery and management of the enterprise information technology services as established in law.
- Make recommendations to the agency head and the Legislature concerning other information technology services that should be designed, delivered, and managed as enterprise information technology services.
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services, which includes:
- Developing business cases that, when applicable, include the components required in business cases to outsource;⁶
- Establishing and coordinating project-management teams;
- Establishing formal risk-assessment and mitigation processes; and
- Providing for independent monitoring of projects for recommended corrective actions.
- Develop, publish, and biennially update a long-term strategic enterprise information technology plan that identifies and recommends strategies and opportunities to improve the delivery of cost-effective and efficient enterprise information technology services to be proposed for establishment.
- Perform duties related to the state data center system as provided in s. 282.201, F.S.
- Coordinate acquisition planning and procurement negotiations for hardware and software products and services.
- In consultation with the Division of Purchasing in the Department of Management Services (DMS), coordinate procurement negotiations for information technology products as which will be used by multiple agencies.
- In coordination with DMS, establish best practices for the procurement of information technology products.

⁴ Section 14.204(1), (2), and (3), F.S.

⁵ Section 14.204(4), F.S.

⁶ The requirements for business cases to outsource are specified in s. 287.0571, F.S.

- Develop information technology standards for enterprise information technology services.
- Provide yearly recommendations to the Legislature relating to techniques for consolidating the purchase of information technology commodities and services, and for establishing a process to achieve savings through consolidated purchases.

The Office of Information Security is created within the agency, which designates a state Chief Information Security Officer to oversee the office and report directly to the executive director. The agency must operate in a manner that ensures the participation and representation of state agencies and the Agency Chief Information Officers Council, and the agency may adopt rules to carry out its statutory duties.⁷

Pursuant to legislative direction, AEIT organizes the required consolidation of agency data centers, and is working on a solicitation, business case analysis, and implementation plan for the provision of an enterprise-wide email system.

III. Effect of Proposed Changes:

The bill creates within the Department of Financial Services the Office of the Chief Technology Officer. It is comprised of three divisions: Strategic Procurement; Policy Formulation, Development and Standards; and Implementation.

The Office is charged with developing a multi-year execution plan for state agency information technology with specific tasks and benchmarks, as follows:

- Consolidation of state agency data centers by the year 2014;
- By the end of Calendar Year 2011, initiating a revised financial management infrastructure encompassing the legislative appropriations system; cash management; accounting; purchasing; and human resources subsystems;
- By the start of the year 2012, a reconfiguration of the roles and responsibilities associated with strategic information technology practices affecting the Department of Financial Services, the Agency for Enterprise Information Technology, and the Department of Management Services; and,
- By a date to be determined, the creating of state agency-wide customer relationship management systems embracing all licensure, certification, and regulatory inspections systems now managed by separate state agencies.

The effective date of the bill is July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ Section 14.204(5),(6), and (7), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The 2007 Legislature created the Agency for Enterprise Information Technology and gave it a systemic mission in state information technology. The Office embraces this mission implicitly but also extends the expectations into more tactical and operational responsibilities not now assigned to the AEIT. Attempting to gauge the appropriations impact of this bill is imprecise at present as it both supplements and supplants the role of AEIT. The funding considerations associated with this bill will also be affected by the 2011 Legislature's decisions on addressing management of state financial management systems, as in SB 1738.

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.



245102

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (1) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.—

(1) AGENCY ADMINISTRATION.—

(b)1. For purposes of this paragraph, the term "competitive
solicitation" means the process of requesting and receiving
sealed bids, proposals, or replies submitted by responsive



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13 vendors in accordance with the terms of a competitive process,
14 regardless of the method of procurement.

15 2.a. Sealed bids, ~~or~~ proposals, or replies received by an
16 agency pursuant to a competitive solicitation ~~invitations to bid~~
17 ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
18 24(a), Art. I of the State Constitution until such time as the
19 agency provides notice of an a decision ~~or~~ intended decision to
20 make a contract award ~~pursuant to s. 120.57(3)(a) or until 30~~
21 ~~within 10 days after opening the bids, proposals, or replies bid~~
22 ~~or proposal opening, whichever is earlier.~~

23 3.b. If an agency rejects all bids, ~~or~~ proposals, or
24 replies submitted in response to a competitive solicitation ~~an~~
25 ~~invitation to bid or request for proposals~~ and the agency
26 concurrently provides notice of its intent to reissue the
27 competitive solicitation ~~invitation to bid or request for~~
28 ~~proposals~~, the rejected bids, ~~or~~ proposals, or replies remain
29 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
30 Constitution until such time as the agency provides notice of an
31 ~~a decision ~~or~~ intended decision to make a contract award~~
32 ~~pursuant to s. 120.57(3)(a) concerning the reissued competitive~~
33 solicitation ~~invitation to bid or request for proposals~~ or until
34 the agency withdraws the reissued competitive solicitation
35 ~~invitation to bid or request for proposals. A bid, proposal, or~~
36 reply is not exempt for longer than 12 months after the initial
37 agency notice rejecting all bids, proposals, or replies. This
38 ~~sub-subparagraph is subject to the Open Government Sunset Review~~
39 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
40 ~~October 2, 2011, unless reviewed and saved from repeal through~~
41 ~~reenactment by the Legislature.~~



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~~2.a. A competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.~~

~~b. If an agency rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.~~

~~4.e.~~ This paragraph ~~subparagraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (2) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(2) (a) For purposes of this subsection, the term:

1. "Competitive solicitation" means the process of



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71 requesting and receiving sealed bids, proposals, or replies
72 submitted by responsive vendors in accordance with the terms of
73 a competitive process, regardless of the method of procurement.

74 2. "Team" means a group of members established by an agency
75 for the purpose of conducting negotiations as part of a
76 competitive solicitation.

77 (b)1. Any portion of a meeting at which a negotiation with
78 a vendor is conducted pursuant to a competitive solicitation, at
79 which a vendor makes an oral presentation as part of a
80 competitive solicitation, or at which a vendor answers questions
81 as part of a competitive solicitation s. 287.057(1) is exempt
82 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

83 2. Any portion of a team meeting at which negotiation
84 strategies are discussed is exempt from s. 286.011 and s. 24(b),
85 Art. I of the State Constitution.

86 (c)1.(b)1. A complete recording shall be made of any
87 portion of an exempt meeting made exempt in paragraph (a). No
88 portion of the exempt meeting may be held off the record.

89 2.2. The recording of and any records presented at the
90 exempt meeting are required under subparagraph 1. is exempt from
91 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
92 until such time as the agency provides notice of an a decision
93 or intended decision to make a contract award pursuant to s.
94 120.57(3)(a) or until 30 20 days after opening the bids,
95 proposals, or replies the final competitive sealed replies are
96 all opened, whichever occurs earlier.

97 3.3. If the agency rejects all bids, proposals, or sealed
98 replies and concurrently provides notice of its intent to
99 reissue a competitive solicitation, the recording and any



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records presented at the exempt meeting ~~remain~~ ~~remains~~ exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an ~~a decision~~ ~~or~~ intended decision to make a contract award pursuant to s. 120.57(3) (a) concerning the reissued competitive solicitation invitation to negotiate or until the agency withdraws the reissued competitive solicitation invitation to negotiate. A recording and any records presented at an exempt meeting are ~~is~~ not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(d) ~~(e)~~ This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. (1) The Legislature finds that it is a public necessity that bids, proposals, or replies submitted in response to a competitive solicitation be made temporarily exempt from public-records requirements. Such records shall be made available when the agency provides notice of an intended decision to make a contract award on the competitive solicitation, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Temporarily protecting such information ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn.

(2) The Legislature also finds that it is a public necessity that a meeting at which a negotiation with a vendor is



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conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, be made exempt from public-meetings requirements. In addition, it is a public necessity that any records presented at such meetings be made temporarily exempt from public-records requirements. The recording of the meeting and any such records shall be made available when the agency provides notice of an intended decision to make a contract award on the competitive solicitation, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Protecting such meetings and temporarily protecting the recording and any records presented by a vendor at such meetings ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn. It is unfair and inequitable to compel vendors to disclose to competitors the nature and details of their proposals during such meetings or through the minutes or records presented at such meetings. Such disclosure impedes full and frank discussion of the strengths, weaknesses, and value of a bid, proposal, or response, thereby limiting the ability of the agency to obtain the best value for the public. The public and private harm stemming from these practices outweighs the temporary delay in access to records related to the competitive solicitation.

(3) The Legislature further finds that it is a public necessity that any portion of a team meeting at which negotiation strategies are discussed be made exempt from public-



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meetings requirements. In addition, it is a public necessity
that the recording of such meeting be made temporarily exempt
from public-records requirements. The recording of the meeting
shall be made available when the agency provides notice of an
intended decision to make a contract award on the competitive
solicitation, or when the agency rejects all bids, proposals, or
replies and ultimately withdraws a reissued competitive
solicitation. Team members often meet to strategize about
competitive solicitations and the approach to take as part of
the evaluation process. Without the public-meetings exemption
and the limited public-records exemption, the effective and
efficient administration of the competitive solicitation process
would be hindered.

Section 4. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.071, F.S., which
provides an exemption from public-records requirements
for bids, proposals, or replies submitted to an agency
in response to a competitive solicitation; expanding
the public-records exemption by extending the duration
of the exemption; providing a definition; reorganizing
provisions; providing for future repeal and
legislative review of the exemption under the Open



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Government Sunset Review Act; amending s. 286.0113, F.S., which provides an exemption from public-meetings requirements for meetings at which a negotiation with a vendor is conducted and which provides an exemption from public-records requirements for recordings of exempt meetings; providing definitions; expanding the exemption to include meetings at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, at which a vendor answers questions as part of a competitive solicitation, and at which team members discuss negotiation strategies; expanding the public-records exemption to include any records presented at an exempt meeting; reorganizing provisions; providing for future repeal and legislative review under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: PCB 7228

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Open Government Sunset Review/Competitive procurement solicitations

DATE: September 27, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill is the result of Open Government Sunset Reviews by the Governmental Oversight and Accountability Committee of public-records and -meetings exemptions pertaining to competitive procurement solicitations.

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public-records and –meetings exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN are exempt from public-records requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is conducted pursuant to an ITN is exempt from public-meetings requirements. A complete recording must be made of the exempt meeting. The recording is exempt from public-records requirements until a time certain.

This bill reenacts the exemptions, which will repeal on October 2, 2011, if this bill does not become law.

This bill expands the public-records exemption by extending the exemption for sealed bids and replies from 10 days to 30 days. This change also makes the timeframes consistent.

The bill expands the public-meetings exemption to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive

solicitation. It is further expanded to include any portion of a team meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

The bill extends the repeal date for the exemptions to October 2, 2016, and provides a public necessity statement as required by the State Constitution.

Because this bill expands existing exemptions, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends the following sections of the Florida Statutes: 119.071(1)(b)1.b.; 119.071(1)(b)2.; and 286.0113(2).

II. Present Situation:

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

¹ Section 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public-records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

⁵ Section 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁸ Florida Attorney General Opinion 85-62.

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.¹⁰

Article I, section 24 of the Florida Constitution, chapter 119, F.S., and chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under article I, Section 24(a) of the Florida Constitution, “any public body, officer, or employee of the state, or persons acting on their behalf” is subject to the public records law. Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, is subject to the open meetings law. Under chapter 119, F.S., any agency¹¹ is subject to the public records laws. Under s. 286.011, F.S., all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws.

Only the Legislature is authorized to create exemptions to open government requirements.¹² Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹³ A bill enacting an exemption¹⁴ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁶ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁷ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

¹⁰ Section 286.011, F.S.

¹¹ “Agency” is defined as “any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” Section 119.011(2), F.S.

¹² *Supra* fn. 1.

¹³ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹⁴ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁵ *Supra* fn. 1.

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(6)(b), F.S.

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁸

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁹ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

¹⁸ *Id.*

¹⁹ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Agency Procurement

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law:²⁰

1. Invitation to bid (ITB): An agency must use an ITB when it is capable of specifically defining the scope of work for which a contractual service is required or capable of establishing the precise specifications defining the commodities sought.²¹ The contract must be awarded to the responsible²² and responsive vendor²³ that submits the lowest responsive bid.^{24 25}
2. Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to specifically define the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.²⁶ Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award shall be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.²⁷
3. Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.^{28 29} After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or more vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.³⁰

Legislative intent expressed in Chapter 287, Florida Statutes, establishes several findings related to the competitive procurement process, including:³¹

- Fair and open competition is a basic tenet of public procurement.
- Open competition reduces the appearance and opportunity for favoritism.

²⁰ Section 287.057, F.S.

²¹ Section 287.012(16), F.S.

²² The term "responsible vendor" means, "... a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.

²³ "Responsive vendor" means, "... a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

²⁴ Section 287.057(1), F.S.

²⁵ "Responsive bid," "responsive proposal," or "responsive reply" means, "... a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.

²⁶ Sections 287.012(22) and 287.057(2), F.S.

²⁷ Section 287.057(2), F.S.

²⁸ Sections 287.012(17) and 287.057(3), F.S.

²⁹ "Best value" means, "... the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.

³⁰ Section 287.057(3), F.S.

³¹ Section 287.001, F.S.

- It is essential that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained.

Exemptions Under Review

Current law provides a general public-records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bids or proposals are exempt from public-records requirements until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.³²

In 2006, the Legislature expanded the public-records exemption to provide that, if an agency rejects all bids or proposals submitted in response to an ITB or RFP, and concurrently provides notice of its intent to reissue the ITB or RFP, then the rejected bids or proposals remain exempt from public-records requirements until the agency:

- Provides notice of a decision of intended decision concerning the reissued ITB or RFP; or
- Withdraws the reissued ITB or RFP.³³

The Legislature further expanded the public-records exemption to provide that a competitive sealed reply in response to an ITN is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier.³⁴ The rejected sealed replies remain exempt from public-records requirements if the agency:

- Rejects all competitive sealed replies;
- Concurrently provides notice of its intent to reissue the ITN; and,
- Reissues the ITN within 90 days after the notice of intent to reissue.

The exemption expires when the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.³⁵

Pursuant to the Open Government Sunset Review Act, the public-records exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.³⁶

Current law also provides a general public-meetings exemption for those meetings at which a negotiation with a vendor is conducted pursuant to an ITN.³⁷ A complete recording must be made of the exempt meeting. In addition, the recording is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier. If the agency rejects all sealed replies, the recording remains exempt until the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A

³² Section 119.071(1)(b)1.a., F.S.

³³ Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)1.b., F.S.

³⁴ Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)2.a., F.S.

³⁵ Section 119.071(1)(b)2.b., F.S.

³⁶ Sections 119.071(1)(b)1.b. and 2.c., F.S.

³⁷ Chapter 2006-284, L.O.F., codified as s. 286.0113(2)(a), F.S.

recording is not exempt from public-records requirements for longer than 12 months after the initial agency notice rejecting all replies.³⁸

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.³⁹

Governmental Oversight and Accountability Committee's Open Government Sunset Reviews

As part of the Open Government Sunset Review process, the professional staff of the Governmental Oversight and Accountability Committee held meetings with affected persons tasked with applying the public-records and public-meetings exemption.

Based upon its review of these public-records and –meetings exemptions under the Open Government Sunset Review Act, the professional staff of the Governmental Oversight and Accountability Committee recommend that the Legislature retain the exemptions established in ss. 119.071(1)(b)1.b., 119.071(1)(b)2., and 286.0113(2), F.S., that relate to competitive solicitations. Senate professional staff conclude that the exemptions are necessary to protect the confidential business information of proprietors responding to competitive solicitations from governmental entities.

III. Effect of Proposed Changes:

The bill reenacts, expands, and reorganizes the public-records exemptions for competitive solicitations.

First, the bill removes references to ITBs, RFPs, and ITNs, by creating a definition for “competitive solicitation.” “Competitive solicitation” is defined to mean “the process of requesting and receiving sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” By creating a definition for “competitive solicitation” and removing references to chapter 287, F.S., local governments are able to use the public-records exemption associated with ITNs.

Current law protects sealed bids or proposals until a decision or intended decision is made or within 10 days after bid- or proposal-opening. In addition, sealed replies are protected until a decision or intended decision is made or until 20 days after the final competitive sealed reply is opened. Based upon discussions with impacted parties, the bill creates consistency by providing that all sealed bids, proposals, or replies are exempt until notice of an intended decision or until 30 days after opening the bids, proposals, or replies. Also, the bill provides that all bids, proposals, or replies may not remain exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Current law only applies to responses to an ITN.

The bill also reenacts, expands, and reorganizes the public-meetings exemption for competitive solicitations.

³⁸ Section 286.0113(2)(b), F.S.

³⁹ Section 286.0113(2)(c), F.S.

The bill creates a definition for “competitive solicitation” identical to the one provided for the public-records exemptions. Creating a definition of “competitive solicitation” and removing references to chapter 287, F.S., allows local governments to use the public-meetings exemption associated with ITNs.

The public-meetings exemption is expanded to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team⁴⁰ meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

Because the bill expands the current public-records and –meetings exemptions, it extends the repeal date for those exemptions to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.⁴¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill retains and expands existing public-records and –meetings exemptions. This bill complies with the requirement of s. 24(c), Art. I of the State Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill expands exemptions, it contains statement of public necessity for the expansion and is subject to a two-thirds vote of each house of the Legislature for enactment as required by 24(c), Art. I of the State Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁰ The bill defines “team” to mean a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

⁴¹ Section 24(c), Art. I of the State Constitution.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The exemptions could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create an insignificant fiscal impact on state and local governments due to costs associated with the requirement to make a complete recording of an exempt meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Interested persons have expressed concern that use of the term “agency” in the public-meetings exemption could exclude local governments from using the public-meetings exemption. However, s. 286.011, F.S., which provides public-meetings requirements, uses the term agency as follows:

... any state agency or authority or ... any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution ...

As such, it appears that use of the term “agency” as part of the public-meetings exemption would indicate application to state and local entities.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Kurt S. Browning

Secretary of State

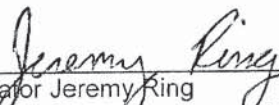
NOTICE OF HEARING

TO: Secretary Kurt S. Browning

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, March 30, 2011, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 3:45 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 28th day of March, 2011

Committee on Governmental Oversight and
Accountability



Senator Jeremy Ring
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability
Donald Severance, Sergeant at Arms

2260

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

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

Kurt S. Browning

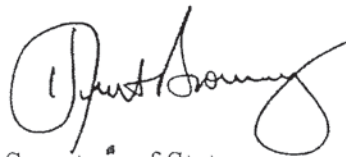
is duly appointed

**Secretary,
Department of State**

for a term beginning on the
Tenth day of January, A.D., 2011,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



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


Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
2011 JAN 11 PM 4:32
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

January 11, 2011

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

Dear Secretary of State:

Please be advised I have made the following appointment under the provisions of Section 20.10, Florida Statutes :

Mr. Kurt S. Browning
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

as Secretary of the Department of State, succeeding Jennifer Kennedy, subject to confirmation by the Senate. This appointment is effective January 10, 2011 for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rick Scott", written over a horizontal line.

Rick Scott

RS/jlw

HAND DELIVERED

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

1. Name: MR. BROWNING KURT Date Completed S.
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: _____
STREET OFFICE # CITY

3. Residence Address: 15735 JESSAMINE Rd Dade City Pasco
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER
FL 33523 352 588 4436
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

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

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

ADDRESS	CITY & STATE	FROM	TO
2344 BARCELONA CT.	TALLAHASSEE FL	1/07	7/10
15735 JESSAMINE Rd	DADE City FL	9/98	12/06

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

ADDRESS	CITY & STATE	FROM	TO
NONE			

5. Date of Birth: 8/22/1958 Place of Birth: DADE City FLORIDA

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: FLORIDA

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

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

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1958

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

A. County of registration: PASCO B. Current party affiliation: REPUBLICAN

12. Education

A. High School: Pasco High School DADE City, FL Year Graduated: 1976
(NAME AND LOCATION)

- B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
USF/TAMPA FL	1989-94	MASTERS in Public Administration
USF/TAMPA FL	1978-82	BA Political Science
PASCO-HERNANDO CC	1976-78	AA

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

A. Dates of service: _____

B. Branch or component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
<u>NO</u>			

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

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>SECRETARY OF STATE</u> <u>500 S. BRUNNEN ST., TLH 32399</u>		<u>SECRETARY OF STATE</u>	<u>1/07 - 4/10</u>
<u>PASCO CO. SUPERVISOR OF ELECTIONS</u> <u>P.O. BOX 300 DADE CITY 33526</u>		<u>SUPERVISOR OF ELECTIONS</u>	<u>1/80 - 12/06</u>

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

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
<u>SAME AS ABOVE</u>		

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

- Prior Experience As Florida Secretary of State
- 26 years experience in Election Administration

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

CERTIFIED SUPERVISOR OF ELECTIONS

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

- Several Awards from the Florida Library Community
- Awards from the FL STATE ASSOCIATION of Supervisors of Elections
- Awards from the Cultural Community

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

- FL STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS
- President 1991-92
- Legislative Committee Chair

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

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

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
Supervisor of Elections	1/80-12/06	4 yr	County
Secretary of State	1/07-4/10	Pleasure of the Governor	STATE

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

- (1) How frequently were meetings scheduled: _____
- (2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED

MEETINGS MISSED

REASON FOR ABSENCE

None

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

DATE

NATURE OF VIOLATION

DISPOSITION

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

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

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

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

A. Title of Office: FLORIDA SECRETARY OF STATE

B. Term of Appointment: PLEASURE OF THE GOVERNOR

C. Confirmation results: CONFIRMED

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

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

LICENSE/CERTIFICATE

ORIGINAL

TITLE & NUMBER

ISSUE DATE

ISSUING AUTHORITY

DISCIPLINARY ACTION/DATE

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

NAME OF BUSINESS

YOUR RELATIONSHIP TO BUSINESS

BUSINESS' RELATIONSHIP TO AGENCY

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

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

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

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

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

AGENCY LOBBIED	PRINCIPAL REPRESENTED
FL DEPARTMENT OF STATE	
FL LEGISLATURE	FL DEPARTMENT OF STATE

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

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Allen Altman			
DAN HERNDON			
Jim SARTAIN			

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

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
Premier Community Health Plan	37944 PASCO AVE., DADE CO FL 33525	Vice President 1yr	11/10 - current

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

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

CERTIFICATION

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2011 JAN 11 PM 4:32
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

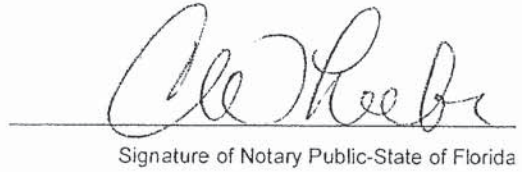
STATE OF FLORIDA, COUNTY OF

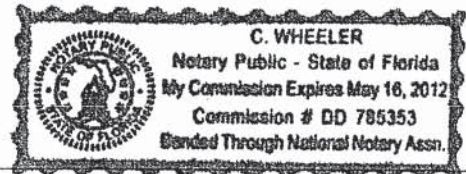
Before me, the undersigned Notary Public of Florida, personally appeared KURT S. BROWN, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and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


Signature of Applicant-Affiant

Sworn to and subscribed before me

this 11 day of January, 20 11


Signature of Notary Public-State of Florida



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

My commission expires: May 16, 2012

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

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DEPARTMENT OF STATE
DIVISION OF ELECTIONS

MEMORANDUM

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

☐

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

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

The office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0158

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of LEON

RECEIVED
2011 JAN 11 PM 4:32
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

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

SECRETARY OF STATE

(Title of Office)

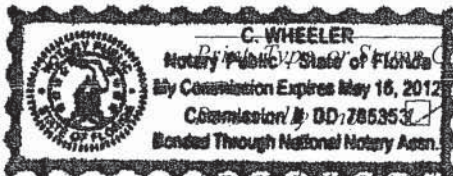
on which I am now about to enter, so help me God.

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

[Signature]
Signature

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

[Signature]
Signature of Officer Administering Oath or of Notary Public



Commissioned Name of Notary Public

My Commission Expires May 16, 2012

Commission # DD-785353

Bonded Through National Notary Assn.

OR

Produced Identification ☐

Type of Identification Produced

ACCEPTANCE

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

Mailing Address: Home Office

15735 JESSAMINE RD

Street or Post Office Box

DADE CITY, FL 33523

City, State, Zip Code

KURT S. BROWN

Print name as you desire commission issued

[Signature]
Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
John P. Miles
Secretary of Management Services

NOTICE OF HEARING

TO: Mr. John P. Miles

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, March 30, 2011, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 3:45 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 28th day of March, 2011

Committee on Governmental Oversight and
Accountability



Senator Jeremy Ring
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability
Donald Severance, Sergeant at Arms

1425

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

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

John P. Miles

is duly appointed

**Secretary,
Department of Management Services**

for a term beginning on the
Twenty-Fourth day of January, A.D., 2011,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



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

A handwritten signature in black ink, appearing to read "Kurt Browning".

Secretary of State



RICK SCOTT
GOVERNOR

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2011 FEB -9 PM 3:08

FLORIDA STATE
DIVISION OF ELECTIONS

February 4, 2011

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

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 20.22, Florida Statutes:

Mr. John P. Miles
687 Penn Place
Winter Park, Florida 32789

as Secretary of the Department of Management Services, succeeding Linda H. South, subject to confirmation by the Senate. This appointment is effective January 24, 2011, for a term ending at the pleasure of the Governor.

Sincerely,

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

Rick Scott
Governor

RS/jlw

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MAR 17 2011

COMMITTEE ON
ETHICS AND ELECTIONS

QUESTIONNAIRE

for

GUBERNATORIAL APPOINTMENTS



GOVERNOR RICK SCOTT

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

3/15/2011

Date Completed

1. Name: Mr. Miles John P.
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: _____
STREET OFFICE # CITY

3. Residence Address: 687 Penn Place Winter Park FL 32789
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER
STREET CITY COUNTY

POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

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

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

ADDRESS	CITY & STATE	FROM	TO
687 Penn Place	Winter Park FL	2000	Present

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

ADDRESS	CITY & STATE	FROM	TO
2423 Carrington Place	DAKOTA ON	1995	2000
50 Sullivan Road	Salem CT	1986	1995

5. Date of Birth: Jersey City 7/13/52 Place of Birth: Jersey City NJ

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: FL

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

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

ALSO CANADIAN

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 2000

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

A. County of registration: Orange B. Current party affiliation: N/A

12. Education

A. High School: Roxbury High School NJ Year Graduated: 1970
(NAME AND LOCATION)

- B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
<u>Ramapo College of NJ</u> <u>Mahwah NJ</u>	<u>1976-79</u>	<u>BS Business & Psych</u>

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

A. Dates of service: 1970-1976

B. Branch or component: US NAVY

C. Date & type of discharge: Honorable

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
<u>NO</u>			

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

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>Cigna</u>	<u>Healthcare</u>	<u>Sr Director</u>	<u>2008-2010</u>
<u>Wellpoint</u>	<u>Health/Wellness</u>	<u>EUP</u>	<u>2007-2008</u>
<u>Good Health Network</u>	<u>Medical Records</u>	<u>SVP</u>	<u>2007-2008</u>
<u>CA</u>	<u>Technology</u>	<u>VP</u>	<u>2005-2007</u>

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

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

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

Supply shared services, facilities etc

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

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

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

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

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

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

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

- (1) How frequently were meetings scheduled: _____
- (2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reason(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

DATE	NATURE OF VIOLATION	DISPOSITION
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

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

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

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

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

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

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

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

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

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

AGENCY LOBBIED	PRINCIPAL REPRESENTED
----------------	-----------------------

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

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Jack Wagner			
Sandra Wagner			
Tish Stallard			
Carl Stallard			

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

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
------	-----------------	-----------------------	-----------------------

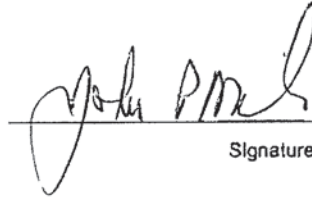
29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

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

CERTIFICATION

STATE OF FLORIDA, COUNTY OF

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



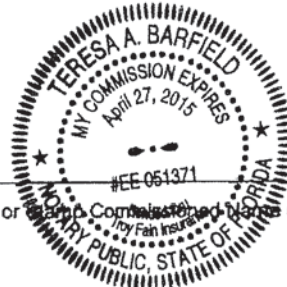
Signature of Applicant-Affiant

Sworn to and subscribed before me

this 16th day of MARCH, 2011.



Signature of Notary Public-State of Florida



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

My commission expires: _____

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

MEMORANDUM

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

☐

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

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

The office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0158

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Orange

2011 FEB -9 PM 3:08

FLORIDA STATE
DIVISION OF ELECTIONS

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

Secretary of the Department of Management Services

(Title of Office)

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

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


Signature

Sworn to and subscribed before me this 23 day of January, 2011.


Signature of Officer Administering Oath or of Notary Public

GREGORY A. PRESNELL, USDJ
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

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

Mailing Address: ☒ Home ☐ Office

687 Penn Place

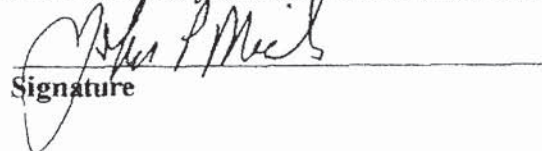
Street or Post Office Box

Winter Park, Florida 32789-2408

City, State, Zip Code

John Patrick Miles

Print name as you desire commission issued


Signature