The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BUDGET
Senator Alexander, Chair
Senator Negron, Vice Chair

MEETING DATE: Wednesday, April 13, 2011
TIME: 1:30 —4:45 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 830** Community Affairs / Thrasher (Similar CS/H 1021)	Labor and Employment; Prohibits a state agency from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity. Prohibits a county, municipality, or other local governmental entity from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity, etc. CA 03/07/2011 CA 03/14/2011 Fav/CS BC 04/13/2011 RC	
2	**CS/SB 1414** Banking and Insurance / Wise (Compare CS/H 97)	Health Insurance; Prohibits certain health insurance policies and health maintenance contracts from providing coverage for abortions. Provides that certain restrictions on coverage for abortions apply to certain group health insurance policies issued or delivered outside the state which provide coverage to residents of the state. Provides that certain restrictions on coverage for abortions apply to plans under the Employee Health Care Access Act, etc. HR 03/14/2011 Favorable BI 03/22/2011 Fav/CS BC 04/13/2011	
3	**SB 1620** Flores (Compare H 7197, CS/CS/S 1546)	K-12 Educational Instruction; Adds statewide virtual providers to the list of public school choices. Authorizes the creation of a virtual charter school. Requires the virtual charter school to contract with an approved statewide virtual provider. Provides for funding of the virtual charter school. Provides for a blended-learning charter school. Provides that home education students may enroll in certain virtual education courses or courses offered in the school district in which they reside, etc. ED 04/05/2011 Favorable BC 04/13/2011 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/CS/SB 1546** Higher Education / Education Pre-K - 12 / Thrasher (Compare H 7195, H 7197, S 1620)	Charter Schools; Requires that the Department of Education provide or arrange for training and technical assistance for charter schools. Provides for the designation of charter schools as high-performing if certain requirements are met. Requires that the Office of Program Policy Analysis and Government Accountability conduct a study comparing the funding of charter schools to the funding of public schools. Provides requirements for the study. Requires the office to submit its recommendations and findings to the Governor and Legislature by a specified date, etc. ED 03/23/2011 Temporarily Postponed ED 03/30/2011 Fav/CS HE 04/04/2011 Fav/CS BC 04/13/2011	
5	**CS/SB 2040** Judiciary / Judiciary (Compare H 691, S 518, S 1896)	Unauthorized Immigrants; Requires every employer to use the federal program for electronic verification of employment eligibility in order to verify the employment eligibility of each employee hired on or after a specified date. Provides an exception for employers who request and receive from the employee certain driver's licenses or identification cards. Requires the employers to check the documents using authentication technology, etc. JU 04/04/2011 Fav/CS BC 04/13/2011	
6	**CS/SB 886** Transportation / Oelrich (Compare H 643)	Motor Vehicles; Revises penalties for unlawful operation of a soundmaking device in a motor vehicle. Provides that a second or subsequent violation is a moving violation and includes the assessment of points against the driver's license. Provides increased penalties for repeat violations within a certain time period. TR 03/09/2011 Fav/CS BC 04/13/2011 RC	
7	**CS/SB 196** Community Affairs / Fasano (Similar H 501)	Choose Life License Plates; Provides for the annual use fees to be distributed to Choose Life, Inc., rather than the counties. Provides for Choose Life, Inc., to redistribute a portion of such funds to nongovernmental, not-for-profit agencies that assist certain pregnant women. Authorizes Choose Life, Inc., to use a portion of the funds to administer and promote the Choose Life license plate program. TR 03/16/2011 Fav/1 Amendment CA 04/04/2011 Fav/CS BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 740** Transportation / Negron (Similar CS/H 437)	Motor Vehicle Licenses; Redefines the term "line-make vehicles" to clarify circumstances under which vehicles sold or leased under multiple brand names or marks constitute a single line-make. Revises application of provisions relating to franchise agreements. TR 03/09/2011 Fav/CS BI 03/16/2011 Favorable BC 04/13/2011	
9	**CS/SB 512** Environmental Preservation and Conservation / Negron (Similar CS/CS/H 293)	Vessels; Revises penalty provisions for the violation of navigation rules. Provides that a violation resulting in serious bodily injury or death is a second-degree misdemeanor. Provides that a violation that does not constitute reckless operation of a vessel is a noncriminal violation. Provides for increased penalties for certain noncriminal violations of navigation rules, etc. EP 03/17/2011 Temporarily Postponed EP 03/30/2011 Fav/CS BC 04/13/2011 RC	
10	**CS/SB 1286** Banking and Insurance / Bennett (Compare CS/H 723)	State Reciprocity in Workers' Compensation Claims; Provides extraterritorial coverage for employees of this state who temporarily leave this state incidental to his or her employment. Exempts certain employees from another state working in this state and the employers of such employees from the workers' compensation law of this state under certain conditions. Provides that the benefits under the workers' compensation insurance or similar laws of the other state are the exclusive remedy against the employer for any injury received by an employee working temporarily in this state, etc. BI 03/22/2011 Fav/CS BC 04/13/2011 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 844** Benacquisto (Similar CS/H 575)	Violations/Probation/Community Control/Widman Act; Creates the "Officer Andrew Widman Act." Authorizes a circuit court judge, after making a certain finding, to issue a warrant for the arrest of a probationer or offender who has violated the terms of probation or community control. Authorizes the court to commit or release the probationer or offender under certain circumstances. Authorizing the court, in determining whether to require or set the amount of bail, to consider the likelihood that the person will be imprisoned for the violation of probation or community control, etc. CJ 03/22/2011 Fav/1 Amendment JU 04/04/2011 Favorable BC 04/13/2011	
12	**CS/CS/SB 1972** Budget Subcommittee on Health and Human Services Appropriations / Health Regulation / Negron (Compare CS/H 119, H 199, H 245, CS/CS/H 395, CS/CS/H 445, CS/CS/H 479, H 615, CS/H 661, H 795, CS/H 1289, CS/H 1393, CS/H 5311, CS/H 7107, CS/H 7109, CS/S 94, CS/S 406, S 626, S 656, S 966, S 1356, S 1396, CS/S 1522, S 1590, S 1676, CS/S 1736, S 1892, S 1924, S 2144)	Health and Human Services; Exempts hospital districts from the requirement to provide funding to a community redevelopment agency. Provides for medical assistance for children in out-of-home care and adopted children. Revises provisions relating to conditions for Medicaid eligibility. Establishes the Medicaid managed care program as the statewide, integrated managed care program for medical assistance and long-term care services. Requires all Medicaid recipients to be enrolled in Medicaid managed care. Establishes regions for separate procurement of plans, etc. HR 03/30/2011 Fav/CS BHA 04/06/2011 Fav/CS BC 04/13/2011	
13	**SB 1466** Simmons (Compare CS/H 5101, S 2120)	Class Size Requirements; Deletes a reference to the State Constitution regarding class size maximums. Requires that class size maximums be satisfied on or before the October student membership survey each year. Provides that a student who enrolls in a school after the October student membership survey may be assigned to classes that temporarily exceed class size maximums if the school board determines that not assigning the student would be impractical, educationally unsound, or disruptive to student learning, etc. ED 03/17/2011 Favorable BEA 03/24/2011 Favorable BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 1996** Education Pre-K - 12 (Compare CS/CS/H 1255, H 1341, CS/H 7087, CS/S 1696, S 2026)	Student Assessment Program for Public Schools; Deletes a provision requiring that certain middle school students who earned high school credit in Algebra I take the Algebra I end-of-course assessment during the 2010-2011 school year. ED 03/17/2011 Favorable BEA 03/24/2011 Favorable BC 04/13/2011	
15	**CS/SB 1618** Rules Subcommittee on Ethics and Elections / Diaz de la Portilla (Compare CS/H 1355) **(If Received)**	Elections; Allows a respondent who is alleged by the Elections Commission to have violated the election code or campaign financing laws to elect as a matter of right a formal hearing before the Division of Administrative Hearings. Authorizes an administrative law judge to assess civil penalties upon the finding of a violation. Authorizes an administrative law judge to assess civil penalties upon a finding of a violation of the election code or campaign financing laws, etc. EE 03/21/2011 Fav/CS RC 03/29/2011 Favorable JU 04/12/2011 BC 04/13/2011 If received	
16	**CS/SB 556** Criminal Justice / Oelrich (Similar CS/CS/CS/H 353) **(If Received)**	Temporary Assistance for Needy Families Program; Requires the Department of Children and Family Services to perform a drug test on individuals who apply for benefits funded by the Temporary Assistance for Needy Families Program. Makes individuals responsible for bearing the cost of drug testing. Requires certain notice. Provides procedures for testing and retesting. Provides for notice of local substance abuse programs. Provides that, if a parent is deemed ineligible due to failing a drug test, the eligibility of the children is not affected. CJ 03/22/2011 Fav/CS BHA 04/13/2011 BC 04/13/2011 If received	
17	**CS/SB 1128** Governmental Oversight and Accountability / Ring	Public Retirement Plans; Provides for the calculation of local government retirement benefits after a certain date. Provides that a plan is eligible for participation in the Florida Retirement System if it has no unfunded actuarial liabilities. Revises provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan. Creates the Task Force on Public Employee Disability Presumptions, etc. GO 02/22/2011 Workshop-Discussed GO 02/24/2011 Not Considered GO 03/17/2011 Fav/CS BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 1792** Diaz de la Portilla (Identical H 4001) **(If Received)**	Growth Policy; Repeals provisions relating to the Urban Infill and Redevelopment Assistance Grant Program, to terminate the program. Conforms cross-references to changes made by the act. CA 03/28/2011 Favorable BTA 04/13/2011 BC 04/13/2011 If received	
19	**CS/CS/SB 432** Health Regulation / Criminal Justice / Evers (Compare CS/CS/H 155) **(If Received)**	Privacy of Firearm Owners; Provides that a licensed medical care provider or health care facility may not record information regarding firearm ownership in a patient's medical record. Provides an exception for relevance of the information to the patient's medical care or safety. Provides that unless the information is relevant to the patient's medical care or safety, inquiries regarding firearm ownership or possession should not be made by licensed health care providers or health care facilities, etc. CJ 02/22/2011 Fav/CS HR 03/14/2011 Temporarily Postponed HR 03/22/2011 Temporarily Postponed HR 03/28/2011 Fav/CS JU 04/04/2011 Not Considered JU 04/12/2011 BC 04/13/2011 If received	
20	**CS/SB 1388** Education Pre-K - 12 / Flores (Similar CS/H 965)	Department of Revenue; Authorizes the department to release certain taxpayers' names and addresses to certain scholarship-funding organizations. Deletes a limitation on the amount of tax credit allowable for contributions made to certain scholarship-funding organizations. Extends the carry-forward period for the use of certain tax credits resulting from contributions to the Florida Tax Credit Scholarship Program. Deletes a restriction on a taxpayer's ability to rescind certain tax credits resulting from contributions to the program. ED 03/30/2011 Fav/CS BC 04/13/2011 RC	
21	**CS/SB 900** Transportation / Bennett (Compare CS/CS/H 1353, CS/CS/S 1150)	Specialty License Plates; Provides for the issuance of a Combat Infantry Badge license plate. Provides qualifications and requirements for the plate. Provides for the use of proceeds from the sale of the plate. TR 03/29/2011 Fav/CS BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**SB 1974** Hill (Compare H 1217)	Driver's License Examinations; Provides requirements for examination questions pertaining to traffic regulations relating to blind pedestrians. TR 03/29/2011 Favorable BC 04/13/2011	
23	**CS/SB 274** Transportation / Lynn (Compare H 489, H 953, CS/CS/H 1363, CS/H 7213, S 492, S 908, S 1172, S 1464)	Road and Bridge Designations; Designates Senator Javier D. Souto Way in Miami-Dade County. Designates Nona and Papa Road in St. Johns County. Designates Walter Francis Spence Parkway in Okaloosa County. Designates Corporal Michael J. Roberts Parkway in Hillsborough County. Designates the Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial in Highlands County, etc. TR 03/29/2011 Fav/CS BC 04/13/2011 RC	
24	**SB 550** Hays (Identical H 4097)	Repealing Budget Provisions; Deletes certain budget summary requirements. Repeals a provision relating to Mobility 2000 funding. Conforms cross-references. TR 02/22/2011 Favorable BC 04/13/2011 RC	
	Bills which do not have a final action may be carried over to the Thursday, April 14, 2011 meeting.		
	For expedited consideration:		
25	**CS/SB 998** Judiciary / Simmons (Compare CS/CS/H 701)	Property Rights; Redefines the terms "inordinate burden" and "inordinately burdened" as they relate to the Bert J. Harris, Jr., Private Property Rights Protection Act to specify that a moratorium on development in effect for longer than a specified period constitutes an inordinate burden. Revises the time within which a property owner who seeks compensation must present the claim in writing to the head of the governmental entity. Revises the time within which a governmental entity must make a written settlement offer to a claimant, etc. CA 03/07/2011 Favorable JU 03/28/2011 Fav/CS BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	**SB 1990** Health Regulation	Ratification of Rules; Ratifies a specified rule for the sole and exclusive purpose of satisfying any condition on effectiveness established by a provision, which requires ratification of any rule that meets any of the specified thresholds that may likely have an adverse impact or excessive regulatory cost. HR 03/22/2011 Favorable BC 04/13/2011	
27	**CS/CS/SB 1086** Health Regulation / Criminal Justice / Hill (Similar CS/H 779)	Restraint of Incarcerated Pregnant Women; Prohibits use of restraints on a prisoner known to be pregnant during labor, delivery, and postpartum recovery unless a corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance requiring restraints. Provides that a doctor, nurse, or other health care professional treating the prisoner may request that restraints not be used, in which case the corrections officer or other official accompanying the prisoner shall remove all restraints, etc. CJ 03/14/2011 Fav/CS HR 03/22/2011 Fav/CS CA 04/04/2011 Favorable BC 04/13/2011	
28	**CS/CS/SB 520** Governmental Oversight and Accountability / Military Affairs, Space, and Domestic Security / Bennett (Similar CS/H 465)	State Memorials; Establishes the Florida Veterans' Hall of Fame on the Plaza Level of the Capitol Building. Provides for the Department of Veterans' Affairs to administer the Florida Veterans' Hall of Fame. Authorizes the department to establish a nomination and selection process and an induction ceremony, etc. MS 03/17/2011 Fav/CS GO 04/05/2011 Fav/CS BC 04/13/2011	
29	**CS/SB 1140** Children, Families, and Elder Affairs / Sachs (Similar H 1131)	Child Care Facilities; Requires vehicles used by child care facilities and large family child care homes to be equipped with an alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle. Requires the Department of Children and Family Services to adopt rules and maintain a list of approved alarm systems. CF 03/14/2011 Fav/CS TR 03/29/2011 Favorable BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	**CS/SB 1226** Criminal Justice / Joyner	Health Care Fraud; Revises the grounds under which the Department of Health or corresponding board is required to refuse to admit a candidate to an examination and refuse to issue or renew a license, certificate, or registration of a health care practitioner. Provides an exception. Requires a delinquent licensee whose license becomes delinquent before the final resolution of a case regarding Medicaid fraud to affirmatively apply by submitting a complete application for active or inactive status during the licensure cycle in which the case achieves final resolution, etc. HR 03/14/2011 Favorable CJ 03/28/2011 Fav/CS BC 04/13/2011	
31	**CS/SB 1300** Criminal Justice / Storms (Similar CS/H 997, Compare H 839)	Juvenile Civil Citations; Requires the Department of Juvenile Justice to encourage and assist in the implementation and improvement of civil citation and similar diversionary programs. Requires that a juvenile civil citation and similar diversion program be established at the local level with the concurrence of the chief judge of the circuit and other designated persons. Authorizes a law enforcement agency, the Department of Juvenile Justice, a juvenile assessment center, the county or municipality, or an entity selected by the county or municipality to operate the civil citation or similar diversion program, etc. CJ 03/22/2011 Fav/CS JU 03/28/2011 Favorable BC 04/13/2011	
32	**CS/SB 1372** Children, Families, and Elder Affairs / Storms (Compare H 1083)	Agency for Persons with Disabilities; Requires the Department of Children and Family Services to submit its recommended order to the Agency for Persons with Disabilities at the conclusion of an administrative hearing. Requiring that the agency issue the final agency order. Requires a registered nurse or physician to assess and validate a direct service provider's competency in all routes of medication administration at an onsite setting with an actual client. Provides an exception. HR 03/22/2011 Fav/1 Amendment CF 03/28/2011 Fav/CS BC 04/13/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	**SB 1586** Hays (Similar H 1437, Compare CS/S 1428)	Authority/Certain Professionals/Practice in State; Deletes provisions that limit the practice privileges of out-of-state or foreign health professionals or veterinarians who are in this state for a specific sporting event. HR 03/22/2011 Favorable RI 04/05/2011 Favorable BC 04/13/2011	
34	**CS/CS/SB 1150** Governmental Oversight and Accountability / Transportation / Latvala (Similar CS/CS/H 1353, Compare H 11, H 177, CS/H 689, H 981, H 4007, H 5501, S 118, S 238, CS/CS/S 244, S 758, CS/S 900, S 1004, S 1644, S 1684, S 1840, S 2160)	Department of Highway Safety and Motor Vehicles; Specifies that the executive director of the department serves at the pleasure of the Governor and Cabinet. Creates a Division of Motorist Services within the department. Provides that certain traffic citations 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, etc. TR 03/09/2011 Fav/CS GO 03/30/2011 Fav/CS BC 04/13/2011	
35	**SB 1190** Detert (Identical H 1165)	Driver's Licenses and Identification Cards; Provides for a person's status as a veteran to be indicated on his or her driver's license or identification card upon payment of an additional fee and presentation of the person's Form DD 214. MS 03/30/2011 Favorable TR 04/05/2011 Favorable BC 04/13/2011	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 830
INTRODUCER:	Community Affairs Committee and Senator Thrasher
SUBJECT:	Labor and Employment
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.	Betta	Meyer, C.	BC	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill:

- Prohibits employee organizations from deducting dues, uniform assessments, fines, penalties, or special assessments from public employee wages.
- Prohibits a labor organization from deducting moneys from employees that go toward political contributions or expenditures without written authorization from the employee.
- Requires a pro rata refund for moneys paid by a public or private employee to a union for political contributions and expenditures when an employee revokes their authorization.
- Gives direction on how the labor organizations should account for their political expenditures and contributions.
- Prohibits labor organizations from requiring an authorization to spend funds for political contributions and expenditures as a condition of membership.
- Provides that the bill applies to all collective bargaining agreements entered into after the effective date.

This bill substantially amends the following sections of the Florida Statutes: 110.114, 112.171, 447.303, and 447.507.

The bill creates section 447.18, Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a "right to work" state. Article I, section 6 of the Florida Constitution reads:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.[1] Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.[2]

Certain restrictions may be placed on a union's ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.[3] In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions' judicially created duty of fair representation and nonunion members' First Amendment rights.[4] The U.S. Supreme Court has held that a local government's restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.[5] In a more recent case, the U.S. Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.[6] The Court held that the state was under no obligation to aid unions in their political activities, and the state's decision not to do so was not abridgement of unions' free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state's support.[7]

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935[8] and the Federal Labor Management Relations Act of 1947[9] constitute a comprehensive set of regulations guaranteeing to employees

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[1] *See Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff'd* 723 F.2d 918 (11th Cir. 1983).
[2] *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).
[3] *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff'd on other grounds*, 375 U.S. 96 (1963); AFSCME Local 3032 v. Delaney, 458 So. 2d 372 (Fla. 1st DCA 1984).
[4] *Commc'ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).
[5] *Charlotte v. Local 660, Int'l Assoc. of Firefighters*, 426 U.S. 283 (1976).
[6] *Ysursa v. Pocatello Education Assoc*, 129 S.Ct. 1093 (2009).
[7] *Id.*
[8] 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. When conduct falls within the scope of the NLRA, the preemption doctrine applies and the state statutes are usually inoperative, unless the National Labor Relations Board has declined jurisdiction or has ceded jurisdiction to a state labor-relations board, or unless the conduct involves an area that the states are permitted to regulate despite the existence of the NLRA.[10] However, when the subject matter of a labor relations dispute or regulatory issue touches overriding state or local interests, and in the absence of compelling congressional direction, state laws are not preempted by the NLRA.[11] Other federal labor-relations statutes that can preempt state action include the Labor-Management Reporting and Disclosure Act[12] and the Railway Labor Act.

Florida Statutes

Under the Florida Statutes, employees have the right to form, join, or assist labor unions or labor organizations or to refrain from such activity.[13] The rights given by these provisions belong to the individual employee and not to the union.[14] The regulation of labor unions is the responsibility of the Department of Business and Professional Regulation.[15]

Part II of ch. 447, F.S., governs labor organizations for public employees, and the Public Employees Relations Commission regulates collective bargaining in Florida. Part II of chapter 447, F.S., has two basic purposes:

- To encourage cooperation between government and its employees.
- To protect the public from the interruption of government services resulting from strikes by government employees.

Under current law, any employee organization which has been certified as a bargaining agent[16] has the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.[17] However, such authorization is revocable at the employee's request upon 30 days'

[9] 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).
[10] Am. Jur. 2d, Labor and Labor Relations § 516.
[11] 34 Fla. Jur 2d Labor and Labor Relations § 8.
[12] 29 U.S.C. §§ 401 to 531.
[13] Section 447.03, F.S.
[14] *Miami Laundry Co. v. Laundry, Linen, Dry Cleaning Drivers, Salesmen & Helpers, Local Union No. 935*, 41 So. 2d 305 (Fla. 1949).
[15] Section 447.02(3), F.S.
[16] Section 447.203, F.S. ("Bargaining agent" means the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.) For more information about this process and Florida Labor Law in general, *see* PUBLIC EMPLOYEES RELATIONS COMMISSION, A PRACTICAL HANDBOOK ON FLORIDA'S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW (2004) *available at* http://perc.myflorida.com/pubs/pubs.aspx (last visited March 03, 2011).
[17] Section 447.303, F.S.

written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.[18]

"Employee organization" or "organization" means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.[19] An employee organization is a type of labor organization.[20]

Counties, municipalities, and special districts as well as state departments, agencies, bureaus, commissions, and officers are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as is authorized and requested by such employee or employees and for such purpose as is authorized and requested by such persons and pay such sums so deducted as directed by such persons.[21]

Political Contributions

For purposes of campaign financing, a "contribution" is defined as:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combinations of these groups.
- The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.[22]

An "expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for

[18] Section 447.303, F.S.
[19] Section 447.203(11), F.S.
[20] Section 447.02, F.S.
[21] Section 110.114 and 112.171, F.S.
[22] Section 106.011, F.S.

the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 110.114, F.S., to prohibit state employee wage deductions for the dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence,[24] electioneering communications organization, or organization exempt from taxation under 501(c)(4)[25] or s. 527[26] of the Internal Revenue Code. The bill deletes the explicit authorization allowing "employee organizations" that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

Section 2 amends s. 112.171, F.S., to provide the same prohibitions in section 1 for county, municipal, and special district employees.

Section 3 creates s. 447.18, F.S., to prohibit labor organizations from using dues, assessments, fines, or penalties paid by an employee to make political contributions or expenditures, as defined in s. 106.011, F.S., unless the labor organization has the express written authorization of the employee. The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with a detailed account, provided by the labor organization, of all political contributions and expenditures made by the labor organization in the preceding 24 months. The bill requires the labor organizations to estimate their expected political contributions and expenditures for the fiscal year and reduce the amount collected during the fiscal year from each employee that has not executed a written authorization. If the actual contributions and expenditures of the labor organization exceed its estimated contributions and expenditures, the labor organization is required to provide a refund at the end of the fiscal year to each employee that has not executed a written authorization.

The employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund of the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. A labor organization may not require an employee to provide the authorization for political contributions and expenditures as a condition of membership in the labor organization.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for an employee organization.

The bill deletes language that:

[23] Section 106.011, F.S.
[24] Section 106.011, F.S. defines "committee of continuous existence" to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.
[25] 26 U.S.C. § 501(c)(4) (Relating to Civic Leagues, Social Welfare Organizations, and Local Associations of Employees).
[26] 26 U.S.C. § 527 (Relating to tax exempt political organizations).

- Authorizes a bargaining agent to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.
- Allows the employee to revoke authorization for employer deduction with 30 days written notice.
- Specifies that reasonable costs to the employer of deductions are a proper subject of collective bargaining.
- Specifies procedures regarding the deduction and revocation process.
- Prohibits the public employer from any involvement in the collection of fines, penalties, or special assessments.

Section 5 amends s. 447.507, F.S., deleting references to deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition.

Section 6 states that, if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 7 provides an effective date of July 1, 2011, and states that the bill shall apply to collective bargaining agreements entered into after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employee organizations may have more difficulty collecting dues, fees, assessments, and penalties from public employees and, thereby, collect less in dues. The amount of dues that will not be collected is indeterminate. Labor organizations are likely to have more difficulty collecting funds from employees for political purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Community Affairs Committee on March 14, 2011:
The CS prohibits labor organizations from spending employee funds on political expenditures or contributions without the employee's written authorization. The CS further proscribes how the political contributions and expenditures will be predicted and accounted for and provides for a refund in certain circumstances. The CS makes the bill apply prospectively to collective bargaining agreements entered into after the effective date of the CS.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1414
INTRODUCER:	Banking and Insurance Committee and Senator Wise
SUBJECT:	Health Insurance
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	**Favorable**
2.	Johnson	Burgess	BI	**Fav/CS**
3.	Betta	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, as amended by the Reconciliation Act, P.L. 111-152, was signed into law on March 23, 2010. The PPACA is a broad-based, national approach to reform various aspects of the health care system. It creates exchanges for obtaining public and private coverage and permits states to prohibit plans participating in an exchange from providing coverage for abortions.[1] Exchange plans that choose to offer coverage for abortions may not use federal funds to provide the coverage, except to save the life of the woman or in cases of rape or incest.

This bill prohibits any individual, group, or out-of-state group health insurance policy or health maintenance contract, purchased with state or federal funds through an exchange, from providing coverage for an abortion unless the pregnancy is the result of an act of rape or incest or a physician certifies in writing that an abortion is necessary to save the life of the mother.

The bill provides that such coverage is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the policy. The bill does not prohibit the purchase of

[1] 42 U.S.C. s. 18023.

separate coverage for abortion if that separate coverage is not purchased with any state or federal funds. The bill defines "state" to mean the State of Florida or any political subdivision of the state.

This bill substantially amends sections 627.6515 and 627.6699, Florida Statutes.

The bill creates the following sections of the Florida Statutes: 627.64995, 627.66995, and 641.31099.

II. Present Situation:

The Federal Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, as amended by the Reconciliation Act, P.L. 111-152, was signed into law on March 23, 2010. The PPACA is a broad-based, national approach to reform various aspects of the health care system. The PPACA requires most U.S. citizens and legal residents to obtain health insurance by January 1, 2014. Those without coverage pay a tax penalty of $695 per year, up to a maximum of three times that amount ($2,085) per family, or 2.5 percent of household income, whichever is greater.

The PPACA also establishes new requirements on employers and health plans; restructures the private health insurance market; and creates exchanges for individuals and employers to obtain coverage; sets minimum standards for health coverage offered in the exchanges; and provides premium tax credits and cost-sharing subsidies for eligible individuals that obtain coverage through exchanges. An exchange is not an insurer; however, it would provide eligible individuals and businesses with access to insurers' plans.

If a state decides to establish an exchange, such exchange must be a governmental agency or nonprofit entity. A state may establish a single exchange or multiple subsidiary exchanges if each serves a distinct geographic area. Exchanges may contract with entities in the individual and small group markets and in benefits coverage if the entity is not an insurer, or with the state Medicaid agency. By 2015, exchanges must be self-sufficient and may charge assessments or user fees. If the U.S. Health and Human Services (HHS) determines by January 1, 2013, that a state has opted out of operating an exchange or that it will not have an exchange operational by January 1, 2014, the HHS shall operate an exchange, either directly or through agreement with a non-profit entity.

Effective January 1, 2014, individual coverage will be available through an "American Health Benefit Exchange" and small businesses with 100 or fewer employees can purchase coverage through a "Small Business Health Options Program" (SHOP) exchange. However, a state may merge the individual and small business exchanges into a single exchange. Businesses with more than 100 employees can purchase coverage in an exchange beginning in 2017.

The PPACA contains a number of measures that attempt to make coverage more affordable and accessible. The PPACA provides premium tax credits and cost-sharing subsidies to make exchange coverage more affordable. Details include:

- Plans in exchanges will be required to offer specified essential benefits. Insurers will offer four levels of coverage that vary based on premiums, out-of-pocket costs, and benefits beyond the minimum required, plus a catastrophic coverage plan.
- Premium subsidies will be provided to families with incomes between 100-400 percent of the federal poverty level ($29,327 to $88,200 for a family of four in 2009) to help them purchase insurance through the exchanges. These subsidies will be offered on a sliding scale basis and will limit the cost of the premium to between 2 percent of income for those up to 133 percent of the poverty level and 9.5 percent of income for those between 300-400 percent of the poverty level.
- Cost-sharing subsidies will also be available to individuals with incomes between 100-400 percent of the federal poverty level to limit out-of-pocket spending. Additional cost-sharing subsidies (i.e., reductions in copayments and deductibles) if necessary, will be provided to ensure that a plan covers a specified percentage of allowed health care expenses.

Abortion Coverage under PPACA Exchanges

The PPACA contains specific provisions permitting states to prohibit plans participating in an exchange from providing coverage for abortions.[2] Exchange plans that choose to offer coverage for abortions beyond coverage for which federal funds are permitted (to save the life of the woman and in cases of rape or incest) are required to create funding accounts for segregating premium payments for coverage of abortion services from premium payments for coverage for all other services. This requirement is intended to ensure that no federal premium or cost-sharing subsidies are used to pay for the additional abortion coverage. Plans must also estimate the actuarial value of covering abortions by taking into account the cost of the abortion benefit (valued at no less than $1 per enrollee per month) and cannot take into account any savings that might be realized because of abortions. The PPACA prohibits exchange plans from discriminating against any provider because of unwillingness to provide, pay for, provide coverage of, or refer for abortions.

Abortion in Florida Law

Section 390.011, F.S., defines the term, "abortion," to mean the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus. "Viability" means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.[3] Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). Abortion can be performed by surgical or medical means (medicines that induce a miscarriage).[4] An abortion in Florida must be performed by a physician licensed to practice medicine or osteopathic medicine who is licensed under ch. 458, F.S., ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[5] No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized

[2] 42 U.S.C. s. 18023.
[3] Section 390.0111, F.S.
[4] Suzanne R. Trupin, M.D., *Elective Abortion*, December 21, 2010, available at: http://www.emedicine.com/med/TOPIC3312.HTM (Last visited on March 11, 2011).
[5] Section 390.0111(2), F.S.

or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.[6]

The Hyde Amendment

The Hyde Amendment is the common name for a provision in the annual federal appropriations act for the U.S. Departments of Labor, Health and Human Services (HHS), and Education, which prevents Medicaid and any other programs under these departments from funding abortions, except in the following limited situations:

- If the pregnancy is the result of an act of rape or incest; or
- In the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician place the woman in danger of death unless an abortion is performed.[7]

The Hyde Amendment is not perpetually effective. By the nature of appropriations acts, which expire with each federal fiscal year unless extended temporarily, the provisions of the Hyde language must be reenacted with each annual federal budget in order to remain in effect. The Hyde Amendment has been enacted into law in various forms since 1976, during both Democratic and Republican administrations.

In 1980, the U.S. Supreme Court affirmed the constitutionality of the Hyde Amendment in *Harris v. McRae*.[8] In *Harris*, the Court determined that funding restrictions created by the Hyde Amendment did not violate the U.S. Constitution's Fifth Amendment, and therefore, did not contravene the liberty or equal protection guarantees of the Due Process Clause of the Fifth Amendment. The court opined that although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those obstacles that are not created by the government (in this case indigence). The court further opined that although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.[9]

In Florida, based on the Hyde Amendment, Medicaid reimburses for abortions for one of the following reasons:

- The woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed;
- When the pregnancy is the result of rape (sexual battery) as defined in s. 794.011, F.S.; or

[6] Section 390.0111(8), F.S.
[7] Sections 507 and 508 of P.L. 111-8.
[8] 448 U.S. 297 (1980). *See also Rust v. Sullivani*, 500 U.S. 173 (1991) and *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), upholding *Harris v. McRae*.
[9] *Harris*, 448 U.S. at 316-317.

- When the pregnancy is the result of incest as defined in s. 826.04, F.S.[10]

In such cases, the state Medicaid program requires an Abortion Certification Form to be completed and signed by the physician who performed the abortion. The form must be submitted with the facility claim, the physician's claim, and the anesthesiologist's claim. The physician must record the reason for the abortion in the physician's medical records for the recipient.[11]

III. Effect of Proposed Changes:

Sections 1, 2, and 3 create ss. 627.64995, 627.66995, and 641.31099, F.S., respectively, relating to individual health insurance policies, large group health insurance policies, and health maintenance organization contracts, respectively, to prevent coverage issued under those sections that is purchased with any state or federal funds through an exchange created under the PPACA from providing coverage for an abortion unless the pregnancy is the result of an act of rape or incest or a physician certifies in writing that an abortion is necessary to save the life of the mother. The bill deems coverage to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the policy.

The bill provides that such policies are allowed to provide separate coverage for an abortion if that separate coverage is not purchased with any state or federal funds.

The bill defines "state" to mean the state of Florida or any political subdivision of the state.

Section 4 amends s. 627.6515, F.S., relating to out-of-state policies, to provide that part VII of ch. 627, F.S., relating to group, blanket, and franchise health insurance policies, does not apply to a group health insurance policy issued or delivered outside of Florida under which a Florida resident is provided coverage if the policy complies with the provisions of s. 627.66995, F.S. Therefore, if an out-of-state group policy provides separate coverage for abortion that is not purchased with any state or federal funds, then part VII of ch. 627, F.S., would not apply to that policy.

Section 5 amends s. 627.6699, F.S., relating to small group policies (employers with 50 or fewer employees), to prevent coverage purchased with any state or federal funds through an exchange created under the PPACA from providing coverage for an abortion, unless the pregnancy is the result of an act of rape or incest or a physician certifies in writing that an abortion is necessary to save the life of the mother. The bill deems coverage to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the policy.

The bill provides that such policies are allowed to provide separate coverage for an abortion if that separate coverage is not purchased with any state or federal funds.

The bill defines "state" to mean the state of Florida or any political subdivision of the state.

[10] Agency for Health Care Administration, *Florida Medicaid: Ambulatory Surgery Center Services Coverage and Limitations Handbook*, January 2005, available at: http://www.baccinc.org/medi/CD_April_2005/Provider_Handbooks/Medicaid_Coverage_and_Limitations_Handbooks/Ambulatory_Surgical_Center_Updated_January_2005.pdf (Last visited on March 11, 2011).
[11] *Id.*

Section 6 provides that the bill is effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If health plans offer coverage through a PPACA exchange and those plans operate a separate account for coverage paid for with any state or federal funds and coverage not paid for with any state or federal funds, the health plans could incur some indeterminate amount of additional administrative cost to set up the different accounts.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance Committee on March 22, 2011

The CS provides technical and conforming changes.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

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

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

I. Summary:

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

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

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

II. Present Situation:

Virtual Instruction

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

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

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

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

Charter Schools

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

III. Effect of Proposed Changes:

Virtual Education Framework

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

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

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

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

Blended-learning Charter Schools

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

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

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

Providers

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

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

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

Assessments

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

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

Funding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accountability

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

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

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

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

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

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

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

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

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

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

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

Instructional Personnel

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

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

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

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

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

High School Graduation

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

Student Eligibility and Access

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

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

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

Other

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Technical Deficiencies:

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

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

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

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Thrasher) recommended the following:

Senate Amendment

Delete line 62
and insert:
requirements of s. 1002.33(20) ~~s. 1002.33(18)~~; or the creation

Delete line 82
and insert:
complies with the requirements of s. 1002.33(20) ~~s. 1002.33(18)~~,

Delete line 967
and insert:
charter school, as described in paragraph (22)(c) ~~(20)(c)~~. Such


233782

Delete lines 1286 - 1302.

Delete line 1303
and insert:
(20) ~~(18)~~ FACILITIES.—

Delete line 1400
and insert:
(21) ~~(19)~~ CAPITAL OUTLAY FUNDING.—Charter schools are

Delete line 1406
and insert:
(22) ~~(20)~~ SERVICES.—

Delete line 1488
and insert:
(23) ~~(21)~~ PUBLIC INFORMATION ON CHARTER SCHOOLS.—

Delete line 1559
and insert:
(24) ~~(23)~~ ANALYSIS OF CHARTER SCHOOL PERFORMANCE.—Upon

Delete line 1571
and insert:
(25) ~~(24)~~ RESTRICTION ON EMPLOYMENT OF RELATIVES.—

Delete line 1611
and insert:


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(26)~~(25)~~ STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.—

Delete line 1619

and insert:

(27)~~(26)~~ RULEMAKING.—~~The Department of Education, after~~

Delete line 1634

and insert:

provisions in s. 1000.05 and the provisions in s. 1002.33(25) ~~s.~~

Delete line 1642

and insert:

The board of directors must comply with s. 1002.33(26) ~~s.~~

Delete line 1825

and insert:

provided in s. 1002.33(22) ~~s. 1002.33(20)~~, and capital outlay

Delete line 1856

and insert:

1002.33(22) ~~s. 1002.33(20)~~ for renovation, repair, and

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1192 - 1214

and insert:

(18) ~~(16)~~ EXEMPTION FROM STATUTES AND ORDINANCES.—

(a) A charter school shall operate in accordance with its charter and shall be exempt from all statutes in chapters 1000-1013. However, a charter school shall be in compliance with the following statutes in chapters 1000-1013:

1. Those statutes specifically applying to charter schools, including this section.

2. Those statutes pertaining to the student assessment program and school grading system.

873746

3. Those statutes pertaining to the provision of services to students with disabilities.

4. Those statutes pertaining to civil rights, including s. 1000.05, relating to discrimination.

5. Those statutes pertaining to student health, safety, and welfare.

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

(c) A charter school is exempt from any local government ordinance, resolution, or regulation that regulates, directly or indirectly, the operation, hours, programs, curriculum, location, enrollment capacity, grade levels, size, or facilities of the charter school except as expressly permitted under this section, and any such ordinance, resolution, or regulation is expressly preempted.

Delete lines 1393 - 1399

and insert:

(g) Each school district shall annually provide to the Department of Education as part of its 5-year work plan the number of existing vacant classrooms in each school that the district does not intend to use or does not project will be needed for educational purposes for the following school year.

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The department shall require ~~may recommend that~~ a district to make such space available to an appropriate charter school through a request-for-proposal process.

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

And the title is amended as follows:

Delete line 11

and insert:

to changes made by the act; providing an exemption for charter schools from certain local government ordinances, resolutions, or regulations; requiring that the Department of Education require a school district to make classroom space available to an appropriate charter school through a request-for-proposal process; amending ss. 1002.34,

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment

Between lines 956 and 957
insert:
6. Students who are the children of an active-duty member of any branch of the United States Armed Forces.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 1546
INTRODUCER:	Committee on Higher Education, Committee on Education Pre-K-12 and Senator Thrasher
SUBJECT:	Charter Schools
DATE:	April 8, 2011 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill revises statutory requirements pertaining to charter schools in Florida. The bill:

- Provides clarification that charter school training requirements apply to applicants who are approved, and that training must take place at least 30 days before the first day of school;
- Adds compliance with the ch. 120, F.S., administrative process, to the appeals process in nonrenewal and termination appeals cases;
- Assesses attorney's fees and costs against the district when an appellant prevails in situations where:
  - A sponsor immediately terminates a school and does not assume continuing operation pending appeal; or
  - A high-performing applicant, applying under the authority of a high-performing charter school system is denied approval;
- Establishes the designation of "high performing charter schools", provides qualifications and outlines benefits. High performing charter school systems are also designated if certain criteria are met;

- Authorizes sanctions against a district pursuant to s. 1008.32(4), F.S., where the State Board of Education finds a pattern of unlawfully denying high-performing applications;
- Provides greater flexibility for charter schools-in-the-workplace;
- Abolishes the Charter School Review Panel;
- Creates authority for blended-learning charter schools; and,
- Requires OPPAGA to compare charter school with traditional school funding, specifically regarding capital improvement millage distribution and the administrative fee.

This bill substantially amends section 1002.33, Florida Statutes, and makes conforming cross-reference changes to sections 163.3180, 1002.32, 1002.34, 1011.68, 1012.32, and 1013.62 of the Florida Statutes.

II. Present Situation:

Process for Appeal of Application Denials and Nonrenewal or Termination of a Charter
No later than 30 calendar days after receipt of a denial, the applicant may appeal the decision to the State Board of Education (Board), with notice to the sponsor. Upon receipt of notice of the appeal from the Board, the Commissioner of Education (COE) is required to convene a meeting of the Charter School Appeal Commission to make recommendations to the Board about the appeal. The Board must decide no more than 90 calendar days after the appeal is filed, and the sponsor is bound by the decision. The Board's decision is not subject to the ch. 120, F.S., administrative process, and represents, instead, final action, subject to judicial review in the appropriate district court of appeal.[1]

Besides issuing recommendations in applicant appeal cases, the Charter School Appeal Commission assists the COE and the Board in non-renewal and termination cases.[2] In addition to other grounds, a sponsor may non-renew, or terminate a charter for failure to meet generally accepted standards of fiscal management.[3] At least 90 days before renewing or terminating a charter, the sponsor must provide written notification and notice that the school may request an informal hearing, to be held by the sponsor within 30 days of request receipt. The applicant is authorized to then follow the appellate process established for denials of new applicants.

Charter School Training
The Department of Education (DOE) is required to offer or arrange for training and technical assistance to charter school applicants in business development, expenses and income. Charter school applicants are required to participate in training, either at the DOE or through a qualifying sponsor program.[4]

Term of Operation for Charter Schools

[1] s. 1002.33(6)(c), F.S.
[2] s. 1002.33(6)(e), F.S.
[3] s. 1002.33(8)(a)2., F.S.
[4] s. 1002.33(6)(f)2., F.S.

The initial term of a charter is 4 to 5 years. Charter schools operated by a municipality, charter lab schools, and charters operating under a private not-for-profit s. 501(c)(3) corporation are eligible for an initial term of up to 15 years.[5]

Charter School Review Panel
The DOE staffs and convenes a Charter School Review Panel to review charter school issues, practices and policies, for the purpose of making recommendations to the Legislature, the DOE, charter schools and school districts for improving operations and oversight.[6]

State Board of Education Oversight Authority
The State Board of Education (Board) has specific statutory oversight authority in the area of district school board performance. Upon determining that a district school board has failed to comply with law or rule, the Board has available the following sanctions:

- Report to the Legislature that the school district is unwilling or unable to comply with law or state board rule and recommend that the Legislature take action;
- Reduce the discretionary lottery appropriation until the school district is in compliance;
- Withhold the transfer of state funds, discretionary grant funds, or other funds specified as eligible for this purpose by the Legislature until in compliance;
- Declare the school district ineligible to receive competitive grants; and
- Require monthly or periodic reporting on progress related to noncompliance until corrected.[7]

III. Effect of Proposed Changes:

Appeals Process for Non-renewals and Terminations of Charter Schools
The 90-day requirement for written notice of renewal or termination of a charter is deleted and sponsors would just be required to provide written notice at any time before the event. This bill replaces the current informal hearing process before the sponsor with an option by the charter school to select a hearing before an administrative law judge in accordance with chapter 120, F.S., to resolve disputed issues of fact. Appeals follow the same procedure as that for appeals in applicant denial cases, so that the case is appealed to the State Board of Education (Board), which then convenes the Charter School Appeals Commission for a recommendation to be made to the Board. The Board's final decision is not subject to review under ch. 120, F.S.

Regarding appeals of immediate termination cases, this bill creates an option for the charter school to request a hearing through the sponsor, as agency, pursuant to s. 120.569, F.S., at which an administrative law judge would preside in instances where material facts are in dispute. The hearing is expedited and the final order must be issued within 45 days after the date of hearing is requested. The sponsor issues the final order. Appeals of that decision follow current law and the same process as for initial denial of charter school application cases and regular termination cases. This bill requires the sponsor to assume and continue operation of the school pending appeal unless student health, safety, or welfare would be threatened. However, if a sponsor does

[5] s. 1002.33(7)(a)12., F.S.
[6] s. 1002.33(22), F.S.
[7] s. 1008.32(4), F.S.

not continue operation and a charter school prevails on appeal, the sponsor is liable for attorney's fees and costs.

High Performing Charter Schools and High Performing Charter School Systems
This bill establishes the designation of "high performing charter schools" provided that the following minimum standards exist and are maintained:

- For the last three years the school received an "A" or "B" school grade, received an unqualified opinion on each financial audit, and did not receive a financial audit that revealed a condition warranting a determination of financial emergency, except for charter schools-in-the-workplace, if the audit finds that money is available to cover the deficiency or it does not result in a deteriorating financial condition; and
- The school has operated for less than three years as part of a high performing charter school system. These schools are eligible for capital outlay funds in their first year without having to comply with statutory requirements operating and being governed by a board in-state at least three years, holding SACs accreditation, having financial stability, and other factors. Additionally, it appears that these schools would have immediate high-performing status.

Benefits available to high performing charter schools in compliance with class size include flexibility to annually increase student enrollment by up to 25 percent above the authorized cap (as determined by the governing board), add grade levels, and offer voluntary prekindergarten. These schools are also eligible for 15-year renewals. The initial term of other types of charters is fixed at five years.

Other benefits to high-performing schools are that they have to comply with training once and submit quarterly financial statements rather than the current monthly filing requirements for charter schools.

This bill establishes "high-performing charter school system" with the following attributes:

- Operates at least three high-performing charter schools in the state;
- Has received, among schools, a minimum average "B" grade during the last three years for all schools started by the system;
- Has not had a school with financial emergency status; and
- Has not had a school with an "F" grade for the last two years for any school that the system started, and has not had a school grade of "F" for 3 out of 5 years for a school that the system took over.

A system can be organized as a municipality or other public entity authorized to operate charter schools, a private, not-for-profit s. 501(c)(3) corporation, or a private for-profit corporation.

While under the designation of a high-performing charter school system, the system is authorized to create new charter schools in any district in the state which substantially replicates one or more of the provider's existing high-performing schools. A local school district is limited in its ability to deny these applications only if good cause is shown that the operator failed to meet charter school statutory requirements, which include financial requirements. A sponsor is liable

for attorney's fees and costs if an applicant prevails upon appeal. District school boards may also be subject to s. 1008.32(4), F.S., sanctions to be determined by the State Board of Education if the Board finds that a pattern exists of unlawful denials to a system to replicate schools.

Initial charters run for a term of 15 years, with the first three years constituting the status of high-performing. This status makes the school immediately eligible for capital outlay funding.

It may be challenging for local school boards, the Department of Education and the Auditor General to keep pace with the changing status of a school or system that becomes high-performing and loses that status, regarding the accompanying change in requirements. For example, it is unclear what would happen to projects partially started with capital outlay funding for a new school that loses high-performing status in its first three years of operation. This is also the case for schools that don't start as high-performing but accrue that status.

Blended-Learning Charter Schools
This bill introduces the concept of a "blended-learning charter school" as a school that combines traditional classroom instruction with online offerings. The schools bypass the approved provider process in place for the school district virtual instruction program. Classroom courses are funded through the FEFP.

Other Charter Provisions
In requiring training participation at least 30 days before school starts, this bill clarifies that the training provisions only apply to applicants who are approved, and are not, therefore, a condition of approval.

This bill provides greater flexibility for qualifying enrollment for charter-schools-in-a-municipality or for charter schools-in-the-workplace.

This bill expands the current prohibition on requiring resignations from teachers desiring to teach in charter schools, to instructional personnel, school administrators and educational support employees.

Sponsors are prohibited from requiring charter school governing board members to reside in the district, and must allow management to represent the charter school on the governing board if approved pursuant to the school's governing documents.

The Charter School Review Panel is abolished.

Office of Program Policy Analysis and Government Accountability (OPPAGA)
OPPAGA is required to conduct a study that compares charter school, with traditional public school, funding, with special focus on capital improvement millage and the actual cost of services provided through the five percent administrative fee. This bill requires OPPAGA to assess the amount of funds available to charter schools if districts equitably distribute capital improvement millage to all schools, including charter schools. It is unclear what is meant by equitable distribution.

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:

High-performing charter schools that may increase their enrollment by 25 percent and high-performing charter school systems that may replicate charter schools in other school districts may encourage non-public school students to enter the public system by enrolling at the expanded or new charter schools. Typically, roughly 10 percent of additional charter school students are drawn from private sector schools. Any such effect would not take place until the 2012-2013 school year because of statutory notification timelines.

C. Government Sector Impact:

High-performing charter schools that maintain compliance with the maximum class size requirement may increase the school's student enrollment once a year up to 25 percent, if they notify their sponsor of the increase by March 1 of the preceding school year. This provision may result in an increase in the number of students eligible to be funded in the Florida Education Finance Program beginning in the 2012-2013 fiscal year and thereafter. The number of schools that would take advantage of the enrollment growth opportunity is not known; however, based on previous charter school enrollment trends, it is likely that 10 percent of the growth in enrollment will be students who are not currently funded in the FEFP.

High-performing charter school systems may apply to establish and operate a new charter school, in any district of the state, which would replicate one or more of the systems' existing schools. Such schools will be eligible to receive charter school capital outlay funds for the first year and are exempt from the eligibility requirements for charter school capital outlay. Depending on the number of new schools established, this provision could result in a reallocation of the amount of capital outlay funds available for existing charter schools. In addition, the opening of new charter schools may also result

in an increase in the number of students eligible to be funded in the Florida Education Finance Program beginning in the 2012-2013 fiscal year and thereafter. Again, roughly 10 percent of the enrollment in the new schools will be students who are not currently funded in the FEFP.

This bill introduces the concept of a "blended-learning charter school" as a school that combines traditional classroom instruction with online offerings. The blended-learning charter school would bypass the approved provider process in place for the school district virtual instruction program. In addition, these schools would not be subject to the prior enrollment in public school student eligibility requirement. If the instruction is primarily virtual and is delivered to students in their homes or other off- site school locations, enrollment of students who are not currently eligible for funding through the Florida Education Finance Program could increase significantly with a corresponding fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Committee on Higher Education on April 4, 2011:
This bill restores current law regarding the authority provided to state universities and community colleges to develop charter schools.

The College Preparatory Boarding Academy Pilot Program is removed from the bill.

CS by the Committee on Pre-K – 12 on March 30, 2011:
The committee substitute provides charter schools applicants with an opportunity to correct technical errors that the sponsor indicates will otherwise represent the basis for denial of the application, provided that the application is corrected in a week.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Budget (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 156 - 194

and insert:

all new hires, both United States citizens and noncitizens;

(b) Upon acceptance on or after that date of an offer of employment by the new employee, verify the employment eligibility of the employee through, and in accordance with the time periods and other requirements of, the E-Verify Program; and

(c) Maintain a record of the verification for 3 years after the date of hire or 1 year after the date employment ends, whichever is longer.

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(2)(a) The requirements of subsection (1) do not apply if the new employee presents to the employer one of the following documents as part of the I-9 process for verifying employment eligibility under federal law:

1. An unexpired United States passport or United States passport card;

2. An unexpired driver's license that is issued by a state or outlying possession of the United States:

a. After verifying the individual's lawful status in the United States using the USCIS Systematic Alien Verification for Entitlements program as provided by s. 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; or

b. Which driver's license complies with s. 202 of the REAL ID Act and contains a photograph of the employee;

3. A valid, unexpired foreign passport that contains a United States visa with a photograph of the employee and evidences applicable work authorization and a corresponding unexpired Form I-94; or

4. A secure national identification card or similar document issued pursuant to federal law.

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

And the title is amended as follows:

Delete lines 11 - 15

and insert:

after a specified date and maintain a record of the verification for a specified time; providing an exception to the verification process if the employee provides to the employer specified documents that are

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part of the federal I-9 process for verifying employment eligibility; directing the Department of

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 2040
INTRODUCER:	Judiciary Committee and Judiciary Committee
SUBJECT:	Unauthorized Immigrants
DATE:	April 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	**Fav/CS**
2.	Sneed	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill prescribes multiple requirements and other provisions relating to unauthorized immigrants. The principal provisions include:

- Requiring employers, effective July 1, 2012, to verify the employment eligibility of new employees using the federal E-Verify Program;
- Providing an exemption from the requirement to register with the E-Verify Program if the employer requests and receives from each new employee a driver's license or identification card that complies with the federal REAL ID Act of 2005 and if the employer checks the document using authentication equipment and software;
- Specifying that the exemption procedures are designed to combat fraud and may not be used for a discriminatory purpose;
- Providing that an employer is not liable for wrongful termination of an employee stemming from compliance with the employment-verification procedures;
- Authorizing the suspension of an employer's license during the period of noncompliance with the bill's verification requirements;
- Authorizing the Department of Corrections to pursue an agreement with the U.S. Department of Homeland Security for the training of department employees as jail enforcement officers

to help enforce federal immigration law, pursuant to section 287(g) of the federal Immigration and Nationality Act ("287(g) agreement");
- Directing the Department of Law Enforcement to perform all actions reasonably necessary to meet the obligations of its 287(g) agreement with the U.S. Department of Homeland Security, under which department employees are trained as task force officers;
- Encouraging sheriffs to pursue 287(g) agreements;
- Directing a prison, jail, or other detention facility that has custody of a person after his or her conviction of a dangerous crime to make reasonable efforts to determine the person's nationality and whether he or she is present in the United States lawfully;
- Providing for the Department of Corrections to release certain criminal aliens convicted of nonviolent offenses to the custody of the federal government as part of the Rapid REPAT Program; and
- Requiring the Agency for Workforce Innovation to quantify the costs to the state related to unauthorized immigration and to seek financial remuneration from the federal government.

This bill creates the following sections of the Florida Statutes: 448.30, 448.31, and 945.80. The bill also creates an undesignated section of the Florida Statutes.

II. Present Situation:

Background on Unauthorized Immigration[1]

Immigration into the United States is largely governed by the Immigration and Nationality Act ("INA").[2] The INA utilizes several federal agencies, including the Department of Justice, Department of Homeland Security (DHS), and Department of State to administer and enforce federal immigration policies.[3] An alien is a person present in the United States who is not a citizen of the United States.[4] The INA provides for the conditions whereby an alien may be admitted to and remain in the United States[5] and provides a registration system to monitor the entry and movement of aliens in the United States.[6] An alien may be subject to removal for certain actions, including entering the United States without inspection, presenting fraudulent documents at a port of entry, health reasons, violating the conditions of admission, or engaging in certain other proscribed conduct.[7]

Various categories of legal immigration status exist that include students, workers, tourists, research professors, diplomats, and others.[8] These categories are based on the type and duration of permission granted to be present in the United States, and expire based on those conditions. All lawfully present aliens must have appropriate documentation based on status.[9]

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[1] Significant portions of the "Present Situation" section of this bill analysis are from the staff analysis of PCB JDC 11-01, prepared by the House Committee on Judiciary (Mar. 3, 2011; used with permission).
[2] 8 U.S.C. s. 1101, et seq.
[3] *See*, *e.g.*, *id* ss. 1103-1104.
[4] *Id*. s. 1101(a)(3).
[5] *Id*. ss. 1181-1182, 1184.
[6] *Id*. ss. 1201(b), 1301-1306.
[7] *Id*. ss. 1225, 1227, 1228, 1229, 1229c, 1231.
[8] *Id*. ss. 201- 210.
[9] *Id*. s. 221.

It has been reported that an estimated 825,000 unauthorized immigrants were present in Florida in 2010, representing 4.5 percent of Florida's population of 18,492,000 – a decline from 1.05 million unauthorized immigrants in 2007.[10] Nevertheless, Florida continued to rank third among states in the size of its unauthorized immigrant population.[11] Of Florida's 9,064,000 total work force, 600,000 are unauthorized immigrants, which represents 6.6 percent of the work force (above the national average of 5.2 percent).[12]

Enforcement of Immigration Laws

State and local law enforcement officers do not inherently have the authority to enforce federal immigration laws. The INA authorizes areas of cooperation in enforcement between federal, state, and local government authorities.[13]

The Secretary of DHS, acting through the Assistant Secretary of Immigration and Customs Enforcement ("ICE"), may enter into written agreements with a state or any political subdivision of a state so that qualified personnel can perform certain functions of an immigration officer.[14] ICE trains and cross-designates state and local officers to enforce immigration laws as authorized through section 287(g) of the Immigration and Nationality Act. An officer who is trained and cross-designated through the 287(g) program can interview and initiate removal proceedings of aliens processed through the officer's detention facility. Local law enforcement agencies without a 287(g) officer must notify ICE of a foreign-born detainee, and an ICE officer must conduct an interview to determine the alienage of the suspect and initiate removal proceedings, if appropriate. Since January 2006, the 287(g) program has been credited with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally.[15]

Florida currently has four law enforcement agencies that participate in the 287(g) program: the Florida Department of Law Enforcement (FDLE), and the sheriff's offices of Bay, Collier, and Duval counties.

Within the Department of Homeland Security is the Law Enforcement Support Center ("LESC"), administered by ICE, answering queries from state and local officials regarding immigration status. A law enforcement agency can check the immigration status of an arrestee or prisoner through LESC twenty-four hours a day, seven days a week. Significant statistics from LESC for FY 2008:

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[10] Jeffrey S. Passel and D'Vera Cohn. "Unauthorized Immigrant Population: National and State Trends, 2010." Washington, DC: Pew Hispanic Center (February 1, 2011).
[11] *Id.*
[12] *Id.*
[13] *See id.* s. 1357(g)(1)-(9) (permitting the Department of Homeland Security to enter into agreements whereby appropriately trained and supervised state and local officials can perform certain immigration responsibilities); *id.* s. 1373 (establishing parameters for information-sharing between state and local officials and federal immigration officials); *id.* s. 1252c (authorizing state and local law enforcement officials to arrest aliens unlawfully present in the United States who have previously been convicted of a felony and deported).
[14] Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296.
[15] Details taken from information provided on the website of ICE, http://www.ice.gov/news/library/factsheets/287g.htm (last visited March 8, 2011).

- The number of requests for information sent to LESC increased from 4,000 in FY 1996 to 807,106 in FY 2008.
- During FY 2008, special agents at LESC placed 16,423 detainers on foreign nationals wanted by ICE for criminal and immigration violations.
- The records of more than 250,000 previously deported aggravated felons, immigration fugitives and wanted criminals are now in the NCIC system.
- Special agents at LESC confirmed 8,440 NCIC hits during FY 2008.[16]

Employment & E-Verify

The federal Immigration Reform and Control Act of 1986 (IRCA)[17] made it illegal for any U.S. employer to knowingly:

- Hire, recruit or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the Act.[18]

The law established a procedure that employers must follow to verify that employees are authorized to work in the United States.[19] The procedure requires employees to present documents that establish both the worker's identity and eligibility to work, and requires employers to complete an "I-9" form for each new employee hired.[20] The IRCA provides sanctions to be implemented against employers who knowingly employ aliens who are not authorized to work.[21] Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.[22] The United States Citizenship and Immigration Services (USCIS – formerly the INS and now part of the Department of Homeland Security) enforces these provisions.[23]

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),[24] which, among other things, created various employment eligibility verification programs, including the Basic Pilot program. Originally, the Basic Pilot program (now referred to as E-Verify) was available in five of the seven States that had the highest populations of unauthorized aliens and initially authorized for only four years. However, Congress has consistently extended the program's life. It expanded the program in 2003, making it available in all fifty States. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.[25]

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[16] Details taken from information provided on the website of ICE, http://www.ice.gov/news/library/factsheets/lesc.htm (last visited March 8, 2011).
[17] Public Law 99-603, 100 Stat. 3359.
[18] 8 U.S.C. s. 1324a.
[19] *Id.*
[20] *Id.*
[21] *Id.* s. 1324a(a)(1)-(2).
[22] *Id.* s. 1324c.
[23] *Id.* s. 1324a.
[24] Public Law 104-208.
[25] History taken from information provided on the website of the Department of Homeland Security, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210Vgn

E-Verify allows employers to ensure that they are hiring authorized workers by electronically comparing the identification and authorization information that employees provide with information contained in federal Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. To participate in E-Verify, the employer must sign a memorandum of understanding that governs the system's operation. After enrolling in E-Verify, employers must still complete the I-9 verification process.

If the information that the employer submits matches the records in the federal databases, E-Verify immediately notifies the employer that the individual is employment authorized. If the information the employee has provided does not match the information in the federal databases, E-Verify issues a tentative nonconfirmation. Before issuing a tentative nonconfirmation, however, E-Verify will ask the employer to confirm that the information submitted is accurate to avoid inaccurate results based on typographical errors.

If a tentative nonconfirmation is issued, the employee is notified and given an opportunity to contact SSA or DHS to resolve any potential problem. Until there is a final determination, the employer may not terminate the employee for being unauthorized. Upon receipt of a final nonconfirmation, an employer must terminate the employee per the E-Verify memorandum of understanding. Other information regarding E-Verify:

- Free to employers; must register and agree to an MOU.
- Used by more than 243,000 employers.
- On average, 1,000 new employers enroll each week with the program.
- In FY 2010, the E-verify Program ran more than 16 million queries.[26]

E-Verify was the subject of an independent evaluation in 2009. This study concluded that E-Verify was 95.9 percent accurate in its initial determination regarding employment authorization.[27] E-Verify participants reported minimal costs to participate and were generally satisfied with the program.[28]

However, the study also found that:

> approximately 3.3 percent of all E-Verify findings are for unauthorized workers incorrectly found employment authorized and 2.9 percent of all findings are for unauthorized workers correctly not found employment authorized. Thus, almost half of all unauthorized workers are correctly not found to be employment authorized (2.9/6.2) and just over half are found to be employment authorized

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VCM100000b92ca60aRCRD&vgnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD (last visited March 8, 2011).

[26] Program description taken from information provided on the website of the Department of Homeland Security, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a16988e60a405110VgnVCM1000004718190aRCRD&vgnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD (last visited March 8, 2011).

[27] United States Citizenship and Immigration Services; 2009 Westat Report at 116, http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf (last visited March 8, 2011).

[28] 2009 Westat Report at 169.

> (3.3/6.2). Consequently, the *inaccuracy rate for unauthorized workers* is estimated to be approximately 54 percent with a plausible range of 37 percent to 64 percent. This finding is not surprising, given that since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify.[29]

Law Enforcement and Corrections

Unauthorized Aliens in Prisons

Information is not available to determine the total number of criminal aliens who are in jails and prisons in the United States. However, ICE estimates that 300,000 to 450,000 criminal aliens who are potentially removable are detained each year nationwide at federal, state, and local prisons and jails. These include illegal aliens in the United States who are convicted of any crime and lawful permanent residents who are convicted of a removable offense.

Unauthorized Aliens in Florida Prisons

Florida Model Jail Standard 4.01 provides in part "[w]hen a foreign citizen is received/admitted to a detention facility for any reason, the detention facility shall make notification using the guidelines as set forth by the U.S. Department of State."[30] Generally, when a person is booked into a local jail, jail officials use the information given by the detainee to help determine the person's citizenship status. If a detainee admits he or she is not a U.S. citizen, or if there is reason to believe a detainee is not a U.S. citizen, jail officials attempt to determine the detainee's citizenship status by submitting the detainee's identification information through LESC.

Immigration and Customs Enforcement (ICE) agents working in Florida prison reception centers investigate newly admitted inmates to identify those who may be aliens. If ICE notifies the Department of Corrections that they want to take an alien inmate into custody, the inmate is released into ICE custody when his or her sentence is completed. Immigration and Customs Enforcement (ICE) may refuse to take custody of an alien inmate in some cases, such as when the alien is from a country to which he or she cannot be deported. Most alien inmates who complete their sentences in Florida prisons are released to ICE for further immigration processing, including possible deportation. These inmates are deported promptly after release from prison if they have been ordered out of the country and have no further appeals of their final deportation order.

The chart below shows the number of alien inmates released from Florida custody to ICE from 2000 through 2007:

[29] *Id*. at xxx-xxxi (Executive Summary) (emphasis in original).
[30] http://www.flsheriffs.org/our_program/florida-model-jail-standards/?index.cfm/referer/content.contentList/ID/408/ (last visited March 8, 2011).

YEAR OF RELEASE	EXPIRATION OF SENTENCE	COMMUNITY SUPERVISION	TOTAL
2000	433	169	602
2001	730	326	1,056
2002	793	323	1,116
2003	798	383	1,181
2004	752	348	1,100
2005	746	326	1,072
2006	754	354	1,108
2007	799	321	1,120
2008	885	337	1,222
TOTAL	**6,690**	**2,887**	**9,577**

Confirmed Aliens in Florida Prisons as of November 30, 2010[31]

PRIMARY OFFENSE	NUMBER OF CONFIRMED ALIENS	Percent
MURDER/MANSLAUGHTER	1,278	22.66
SEXUAL/LEWD BEHAVIOR	1,000	17.73
ROBBERY	433	7.68
VIOLENT, OTHER	765	13.56
BURGLARY	733	12.99
PROPERTY THEFT/FRAUD/DAMAGE	220	3.90
DRUGS	976	17.30
WEAPONS	86	1.52
OTHER	150	2.66
TOTAL	**5,641**	**100.00**

ICE Cooperative Programs

Immigration and Customs Enforcement (ICE), which is the investigative arm of the Department of Homeland Security,[32] administers a number of programs that involve cooperation between federal immigration officers and state and local law enforcement. Florida currently participates in some of these programs aimed at identifying unauthorized immigrants in the state who have committed crimes.

The umbrella program that encompasses all other cooperative law enforcement programs is called ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS). ACCESS was developed to promote the various programs or tools that ICE offers to assist state, local, and tribal law enforcement agencies. Under this initiative, ICE works closely

[31] Supplied by the Florida Department of Corrections.
[32] U.S. Immigration and Customs Enforcement, *ICE Overview*, *available at* http://www.ice.gov/about/overview/ (last visited Mar. 11, 2011).

with other law enforcement agencies to identify an agency's specific needs or the local community's unique concerns. In developing an ACCESS partnership agreement, ICE representatives will meet with the requesting agency to assess local needs and draft appropriate plans of action. Based upon these assessments, ICE and the requesting agency will determine which type of partnership is most beneficial and sustainable before entering into an official agreement.[33]

The section 287(g) program, the Secure Communities Program,[34] the Criminal Alien Program,[35] and the Law Enforcement Support Center are all ACCESS initiatives currently operating in Florida.

Section 287(g)

For a discussion of s. 287(g) agreements, see the discussion of **Enforcement of Immigration Laws** above.

Secure Communities

The Secure Communities program assists in the identification and removal of criminal aliens held in local and state correctional facilities by using technology to share national, state, and local law enforcement data, such as fingerprint-based biometric information sharing, among agencies. Fingerprinting technology is used during the booking process to quickly and accurately determine the immigration status of individuals arrested. Fingerprints for all arrested individuals are submitted during the booking process and are checked against FBI criminal history records and DHS records.[36] As of June 22, 2010, ICE was using this information sharing capability in all Florida jurisdictions.[37] "ICE prioritizes the removal of criminal aliens by focusing efforts on the most dangerous and violent offenders. This includes criminal aliens determined to be removable and charged with or convicted of crimes such as homicide, rape, robbery, kidnapping, major drug offenses, or those involving threats to national security."[38]

Criminal Alien Program

The Criminal Alien Program (CAP) identifies, processes and removes criminal aliens incarcerated in federal, state, and local prisons and jails throughout the U.S. and in Florida. It was created to prevent criminal aliens from being released into the general public. The program

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[33] U.S. Immigration and Customs Enforcement, *ICE ACCESS, available at* http://www.ice.gov/access/ (last visited Mar. 10, 2011).
[34] U.S. Immigration and Customs Enforcement, *Secure Communities Activated Jurisdictions, available at* http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf (last visited Mar. 10, 2011).
[35] Department of Homeland Security Office of Inspector General, *U.S. Immigration and Customs Enforcement Identification of Criminal Aliens in Federal and State Custody Eligible for Removal from the United States*, (Jan. 2009), *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_11-26_Jan11.pdf (last visited Mar. 10, 2011).
[36] U.S. Immigration and Customs Enforcement, *Secure Communities, available at* http://www.ice.gov/secure_communities/ (last visited Mar. 10, 2011).
[37] U.S. Immigration and Customs Enforcement, *Secure Communities Activated Jurisdictions, available at* http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf (last visited Mar. 10, 2011).
[38] U.S. Immigration and Customs Enforcement, *Secure Communities* brochure, *available at* http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf (last visited April 5, 2011).

secures a final removal order, prior to the termination of criminal aliens' sentences whenever possible. CAP deports criminals after their sentence is served and applies to aliens who have been convicted of any crime.[39] The Criminal Alien Program (CAP) agents work in state field offices and screen removable criminals through an electronic records check and interview process. Correctional facilities are requested to contact ICE prior to release of a criminal alien to allow ICE time to assume custody.[40]

Law Enforcement Support Center

Also within the Department of Homeland Security is the Law Enforcement Support Center (LESC), administered by ICE, answering queries from state and local officials regarding immigration status. A law enforcement agency can check the immigration status of an arrestee or prisoner through LESC twenty-four hours a day, seven days a week. Significant statistics from LESC for FY 2008:

- The number of requests for information sent to LESC increased from 4,000 in FY 1996 to 807,106 in FY 2008.
- During FY 2008, special agents at LESC placed 16,423 detainers on foreign nationals wanted by ICE for criminal and immigration violations.
- The records of more than 250,000 previously deported aggravated felons, immigration fugitives and wanted criminals are now in the NCIC system.
- Special agents at LESC confirmed 8,440 NCIC hits during FY 2008.[41]

Rapid REPAT

The ICE Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) program, in which Florida does not currently participate, is designed to expedite the deportation process of criminal aliens by allowing selected criminal aliens incarcerated in U.S. prisons and jails to accept early release in exchange for voluntarily returning to their country of origin.[42]

Rapid REPAT is a law enforcement tool that ensures that all criminal aliens serving a time in prison are identified and processed for removal prior to their release. The identification and processing of incarcerated criminal aliens prior to release reduces the burden on the taxpayer and ensures that criminal aliens are promptly removed from the U.S. upon completion of their criminal sentence. This program allows ICE to more effectively identify and quickly remove criminal aliens from the United States. ICE Rapid REPAT also allows ICE and participating states to reduce costs associated with detention space.[43]

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[39] U.S. Immigration and Customs Enforcement, *Criminal Alien Program, available at* http://www.ice.gov/criminal-alien-program/ (last visited Mar. 10, 2011).
[40] Department of Homeland Security Office of Inspector General, *U.S. Immigration and Customs Enforcement Identification of Criminal Aliens in Federal and State Custody Eligible for Removal from the United States*, 3 (Jan. 2009), *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_11-26_Jan11.pdf (last visited Mar. 10, 2011).
[41] Details taken from information provided on the website of ICE, http://www.ice.gov/news/library/factsheets/lesc.htm (last visited Mar. 8, 2011).
[42] U.S. Immigration and Customs Enforcement, *Rapid REPAT, available at* http://www.ice.gov/rapid-repat/ (last visited Mar. 11, 2011).
[43] *Id.*

Key Elements of Rapid REPAT include:

- In states where Rapid REPAT is implemented, certain aliens who are incarcerated in state prison and who have been convicted of non-violent offenses may receive conditional release if they have a final order of removal and agree not to return to the United States;
- Eligible aliens agree to waive appeal rights associated with their state conviction(s) and must have final removal orders; and
- If aliens re-enter the United States, state statutes must provide for revocation of parole and confinement for the remainder of the alien's original sentence. Additionally, aliens may be prosecuted under federal statutes that provide for up to 20 years in prison for illegally reentering the United States.[44]

REAL ID Act of 2005

On May 11, 2005, President Bush signed into law the "REAL ID Act of 2005," which was attached to the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005" (H.R. 1268, P.L. 109-13).[45] Under the Act, state-issued driver's licenses and identification cards must meet federal standards in order to be accepted for federal purposes, including, for example, boarding commercial aircraft and gaining access to federal facilities.[46]

With respect to immigration, the Act requires that:

> [b]efore issuing a DL/ID, a state shall require and verify valid documentary evidence that the person: (i) is a U.S. citizen, (ii) is an alien lawfully admitted for permanent or temporary residence, (iii) has a conditional permanent resident status, (iv)) is a refugee or has been granted asylum, (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status, (vi) has a pending application for asylum, (vii) has a pending or approved application for temporary protected status, (viii) has approved deferred status, or (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent resident status[.][47]

On March 4, 2011, the Secretary of the U.S. Department of Homeland Security extended by 20 months – from May 10, 2011, to January 15, 2013 – the deadline for states to be in full compliance with the Act.[48]

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[44] *Id.*
[45] National Conference of State Legislatures, *Real ID Act of 2005: Summary*, http://www.ncsl.org/default.aspx?tabid=13579 (last visited April 5, 2011).
[46] *Id.*; *see also* Fla. Dep't of Highway Safety and Motor Vehicles, *The REAL ID Act*, http://www.flhsmv.gov/realid/ (last visited April 5, 2011).
[47] National Conference of State Legislatures, *supra* note 45.
[48] National Conference of State Legislature, *Countdown to REAL ID*, http://www.ncsl.org/default.aspx?tabid=13577 (last visited April 5, 2011).

The Florida Department of Highway Safety and Motor Vehicles began issuing REAL ID licenses and ID cards on January 1, 2010. The new credentials have a single gold star in the upper right corner of the card. The department estimates that it has issued more than 3 million REAL ID licenses and ID cards thus far.[49] The conversion of existing, valid non-REAL ID documents will occur over time, as the documents are renewed (e.g., due to expiration) or replaced (e.g., due to loss). A current Florida license or ID card will continue to be valid as identification for federal purposes until December 1, 2014, for individuals born after December, 1964, and December 1, 2017, for everyone else.[50]

III. Effect of Proposed Changes:

This bill prescribes multiple requirements and other provisions relating to unauthorized immigrants.

Mandatory Participation by Employers in E-Verify; Exemption (Sections 1-3)

The bill requires every employer who hires a new employee on or after July 1, 2012, to register with the federal E-Verify Program and to verify the employment eligibility of each newly hired employee. An "employer" includes any person or agency employing one or more employees in this state.[51] The employer shall use the program for both U.S. citizens and noncitizens and shall not use the program selectively. Further, the employer must maintain a record of the verification for the longer of three years or one year after the employment ends.

However, the bill prescribes an alternative process, under which an employer is exempt from the requirement to register with the E-Verify Program if the employer does the following:

- Requests and receives from each new employee a valid driver's license or identification card that complies with the federal REAL ID Act of 2005 and the implementing rules from the U.S. Department of Homeland Security.
- Swipes the machine-readable zone on the document using "the highest standard of authentication equipment and software." The purpose of this procedure is to determine that the document is not fraudulent and to compare the physical description and other personal information of the person who presents the document against the data obtained through the swipe.
- Maintains a printed record of the results of the authentication.
- Complies with these requirements for every new employee (without employing the procedures selectively) unless and until the employer registers with the E-Verify Program.

The bill specifies that the alternative procedure to registering with E-Verify is designed to combat fraud and may not be used for any discriminatory purpose.

[49] *See* email from Steven Fielder, Office of Legislative Affairs, Fla. Dep't of Highway Safety and Motor Vehicles (April 4, 2011) (on file with the Senate Committee on Judiciary).
[50] Fla. Dep't of Highway Safety and Motor Vehicles, *supra* note 46.
[51] In the case of an independent contractor, the term "employer" means the independent contractor and not the person that uses the contract labor. An employee leasing company is excluded from the definition of "employer" if the leasing company has entered into an agreement under which its client company assumes responsibility for compliance with the bill's employment-verification requirements.

An employer who does not comply with the bill's requirements is subject to having the employer's licenses suspended during the period of noncompliance. The bill specifies that suspension of a license must comply with a provision of the Administrative Procedure Act (APA), s. 120.60(5), F.S., which requires notice to the licensee. If the agency issuing the license is not subject to the APA, then the suspension must include procedures substantially similar to those prescribed in s. 120.60(5), F.S.

Under the bill, if an employer terminates an employee upon a determination that the employee is not work-eligible, the employer is not liable for wrongful termination, provided the employer complies with the E-Verify regulations. An employer also is protected from liability if the employer terminates the employee after complying with the alternate procedure and reasonably concluding that the employee presented a fraudulent document or concluding that the employee's physical description or personal information does not match the data obtained through the authentication technology.

The bill directs the Department of Highway Safety and Motor Vehicles to maintain on the department's website of detailed list of states that comply with the REAL ID Act of 2005. Additionally, the department shall issue rules governing the standards and requirements for the authentication software and equipment.

These E-Verify requirements are proposed for codification in a new section of the Florida Statutes, s. 448.31, F.S. The bill also creates a corresponding definitions section, s. 448.30, F.S. In addition, the bill directs the Division of Statutory Revision to publish the two new sections as part III of ch. 448, F.S., titled "Unauthorized Immigrants." Chapter 448, F.S., relates to general labor regulations.

Law Enforcement and Criminal Justice Cooperation with Federal Government (Section 4)

The bill expresses the intent of the Legislature that law enforcement and criminal justice agencies in the state work cooperatively with the Federal Government to:

- Identify unauthorized immigrants and enforce immigration laws, and
- Maximize opportunities to transfer custody and detention of unauthorized immigrants who are accused or convicted of crimes from state and local governments to the federal government.

Delegated Enforcement Authority (287(g) Agreements)

The bill encourages state and local participation in delegated authority from the federal government to enforce immigration laws under s. 287(g) of the federal Immigration and Nationality Act. Specifically, the bill:

- Authorizes the Department of Corrections to pursue an agreement with the U.S. Department of Homeland Security to have departmental employees or contractors trained as jail enforcement officers. The department shall, by November 1, 2011, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of

implementation of this authority. If the department has not entered into an agreement by that date, it shall include in the report information on barriers to implementation. The bill requires the department to report annually on enforcement activities taken under the statute. Because the bill provides that the department "may" enter into an agreement with the U.S. Department of Homeland Security, the annual activity report would appear to be relevant solely if the department indeed executes an agreement.

- Provides statutory authority for the Department of Law Enforcement's existing 287(g) agreement with the federal government to have employees trained as task force officers. The department must report annually on activities under the agreement.
- Provides that county sheriffs may explore the feasibility of signing 287(g) agreements with the Department of Homeland Security to have employees trained as either jail enforcement officers or task force officers. The bill specifies that if a sheriff determines that an agreement is feasible, he or she may make an initial request to the department. The bill specifies that its provisions do not compel a sheriff to execute an agreement with the federal government.

Identification of Unauthorized Immigrants upon Conviction

The bill prescribes requirements designed to identify certain convicts who are detained in prisons, jails, or other detention facilities in this state and who are unauthorized immigrants. Specifically, the bill directs an agency that has custody of a person in a jail, prison, or other facility *after* his or her conviction of a dangerous crime[52] to make reasonable efforts to determine the person's nationality and whether he or she is present in the United States lawfully. The holding agency must submit the fingerprints of the individual to U.S. Immigration and Customs Enforcement (ICE) pursuant to an agreement between the "arresting agency"[53] and ICE. In addition, if the holding or custodial agency establishes, independent of the fingerprint submission, that the convict is not lawfully present in the United States, it shall notify the Department of Homeland Security.

The relationship is not immediately clear between the bill's provisions and the existing participation by all 67 county sheriffs in the Secure Communities Program operated by ICE. As noted in the "Present Situation" section of this bill analysis, the Secure Communities program assists in the identification and removal of criminal aliens held in local and state correctional facilities by using technology to share national, state, and local law enforcement data, such as fingerprint-based biometric information sharing, among agencies. The program focuses on aliens who are arrested for a crime and booked into local law enforcement custody. Fingerprinting technology is used during the booking process to determine the immigration status of individuals arrested. Fingerprints for all arrested individuals are submitted during the booking process and are checked against FBI criminal history records and DHS records.[54] As of June 22, 2010, ICE was using this information-sharing capability in all Florida jurisdictions.[55]

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[52] The bill cites s. 907.041(4)(a), F.S. That provision lists dangerous crimes for purposes of evaluating retrial detention and release.

[53] It is not clear if this reference to "arresting agency" should instead be to the "holding agency."

[54] U.S. Immigration and Customs Enforcement, *Secure Communities, available at* http://www.ice.gov/secure_communities/ (last visited Mar. 10, 2011).

[55] U.S. Immigration and Customs Enforcement, *Secure Communities Activated Jurisdictions, available at* http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf (last visited Mar. 10, 2011).

The bill arguably appears to contemplate an additional check of fingerprints for a person detained *after* he or she is convicted of a dangerous crime. It appears possible that the immigration status of this same individual may have been investigated already through the fingerprinting process that occurred at the time of arrest and booking – as a result of the sheriffs' existing participation in the Secure Communities Program.

The bill specifies that its provisions may not be construed to deny a person bond or to prevent release from confinement if a person is otherwise eligible. However, the determination that a person in custody is not present in the United States lawfully creates a presumption that he or she is a flight risk in the consideration of bail determinations. Because the bill seems to focus on persons who are confined *after* being convicted, the reference to bail – which addresses the appearance of criminal defendants – is not immediately clear.

Removal and Deportation of Criminal Aliens (Section 5)

The bill provides for the Department of Corrections to participate in the Rapid REPAT Program administered by U.S. Immigration and Customs Enforcement (ICE), under which nonviolent criminal aliens may be released from the state prison system to the custody and control of ICE. The bill authorizes the secretary of the department to enter into an agreement with ICE for the rapid repatriation of removable custodial aliens under this program.

In addition to the prisoner being convicted of a nonviolent offense, the department must have received from ICE a final order of removal, and the secretary of the department must determine that removal is appropriate. The bill specifies that a prisoner would not be eligible for release and repatriation if he or she would not meet the criteria for control release in Florida.[56] The bill does not require that the person have served a particular portion of his or her sentence.

Under the terms of the proposed statute, if the prisoner returns to the United States unlawfully, his or her release is revoked, and the department shall seek the prisoner's return to Florida to complete the remainder of his or her sentence. The department shall notify each prisoner who is eligible for removal of this condition.

The department shall identify, during the inmate reception process and from the existing population, prisoners who are eligible for removal under this program.

Study on Costs of Unauthorized Immigration; Request for Federal Reimbursement (Section 6)

The bill directs the Agency for Workforce Innovation (AWI or agency) to conduct a study that quantifies the costs to the state attributable to unauthorized immigration. The agency shall prepare the report in consultation with the Legislature's Office of Economic and Demographic Research and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2011. Based on the quantified costs and within a

[56] Section 947.146, F.S., creates the Control Release Authority (CRA), which is composed of members of the Parole Commission. The CRA is required to implement a system for determining the number and type of inmates who must be released into the community under control release in order to maintain the state prison system between 99 and 100 percent of its total capacity. Section 947.146(3)(a)-(m), F.S., prescribes inmates who are not eligible for control release.

month after submitting the report, AWI shall request, before January 1, 2012, from the appropriate federal agency or official:

- Reimbursement to the state of the quantified costs; or
- A corresponding reduction or forgiveness of any moneys owed to the federal government by the state due to borrowing to fund unemployment compensation claims.

Due to the increasing unemployment rate in the state, the Unemployment Compensation Trust Fund has been paying out more funds than it has been collecting. The trust fund fell into deficit in August 2009, and since that time, the state has requested more than $2 billion in federal advances in order to continue to fund unemployment compensation claims.[57]

Effective Date (Section 7)

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Preemption

States are generally able to legislate in areas not controlled by federal law. "Congress has the power under the Supremacy Clause of Article VI of the [United States] Constitution to preempt state law."[58] Provisions comparable to those included in this proposed committee bill have been passed in other states and have faced legal challenges under the federal preemption doctrine. For instance, a challenge to the employment verification provision in Arizona's 2007 law is currently pending before the U.S. Supreme Court.[59]

[57] As of February 17, 2011. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct, *Title XII Advance Activities Schedule*, http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited Feb. 21, 2011).
[58] *Northwest Central Pipeline Corp. v. State Corp. Comm'n of Kansas*, 489 U.S. 493, 509 (1989).
[59] See *Chamber of Commerce of the United States, et. al. v. Whiting* (Case No. 09-115; argued before the U.S. Supreme Court on December 8, 2010).

In determining whether a state law is preempted, "the purpose of Congress is the ultimate touchstone."[60] In the Immigration Reform and Control Act of 1986, Congress provided, "[t]he provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."[61]

The provision in the bill requiring employers to register with E-Verify authorizes sanctions in the form of license suspension. The U.S. Court of Appeals for the Ninth Circuit upheld against a preemption challenge a similar portion of an Arizona law requiring employers to use the federal Internet verification and authorizing licensure sanctions.[62] The Ninth Circuit reasoned that Arizona's revocation of business licenses fits squarely within the exception under the Immigration Reform and Control Act. In addition, the court rejected the plaintiff's argument that the law was impliedly preempted because the federal statute created E-Verify as a voluntary pilot program and Arizona made it mandatory. The court explained that, although Congress did not mandate E-Verify, it plainly envisioned and endorsed its increased usage through expansion of the pilot program.[63] As noted, the U.S. Supreme Court granted certiorari to consider the question of preemption.

Access to Courts

Under the bill, if an employer terminates an employee upon a determination that the employee is not work-eligible, the employer is not liable for wrongful termination, provided the employer complies with the E-Verify regulations. An employer also is protected from liability if the employer terminates the employee after complying with the alternate (REAL ID Act) procedures and reasonably concluding that the employee presented a fraudulent document or concluding that the employee's physical description or personal information does not match the data obtained through the authentication software.

These protections from liability may raise questions related to the right of access to the courts under Article I, section 21 of the Florida Constitution by circumscribing an individual's right of action against an employer for wrongful termination. Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."[64]

[60] *Altria Group, Inc. v. Good*, 129 S.Ct. 538, 543 (2008).
[61] *See* 8 U.S.C. s. 1324a(h)(2) (unlawful employment of aliens).
[62] *Chicanos Por La Causa, Inc., v. Napolitano,* 558 F.3d 856 (9th Cir. 2009), *cert granted, Chamber of Commerce of U.S. v. Candelaria,* 130 S.Ct. 3498 (2010).
[63] *Chicanos Por La Causa*, 558 F.3d at 865-67.
[64] 10A FLA. JUR 2D *Constitutional Law* s. 360. When analyzing an access to courts issue, the Florida Supreme Court clarified that 1968 is the relevant year in deciding whether a common law cause of action existed. *Eller v. Shova,* 630 So. 2d 537, 542 n. 4 (Fla. 1993).

Constitutional limitations were placed on the Legislature's right to abolish a cause of action in the Florida Supreme Court case *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). The Court held:

> [W]here a right of access … has been provided …, the Legislature is without power to abolish such a right without providing a reasonable alternative … unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[65]

However, the bill does preclude a claimant from challenging the employer's compliance with the requirements prescribed in the bill; nor does it affect the employee's ability to assert a claim of wrongful termination on other grounds. To that extent, it may not be viewed as abolishing a right of access in a manner that violates *Kluger*.

Further, the Florida Supreme Court has repeatedly held that a statute that merely alters the standard of care owed by one party to another or increases the degree of negligence necessary to maintain a successful tort action does not abolish a preexisting right of access and does not, therefore, implicate Article I, section 21 of the State Constitution. In *Abdin v. Fischer*, the Court upheld a statute that exempted property owners from liability for injuries occurring on private property set aside for public recreation, unless the owner inflicted "deliberate, willful, or malicious injury to persons or property."[66] The Court explained that "[w]hat *Kluger* and *McMillan*[*v. Nelson*, 5 So. 2d 867 (1942)] make clear is that legislative action that alters standards of care need only be *reasonable* to be upheld."[67]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The mandatory use of E-Verify, effective July 1, 2012, by all employers may have an economic impact on private employers. However, there is no fee for the use of the Internet-based E-Verify Program, and employers are currently required to verify the work-eligibility status of new employees through the existing federal I-9 form process. In addition, the bill provides an exemption if the employer adopts an approach of requesting from each new employee a document that complies with the REAL ID Act of 2005 and checks the document using authentication technology. If the employer elects to follow the

[65] *Kluger*, 281 So. 2d at 4.
[66] *Abdin v. Fischer*, 374 So. 2d 1379, 1380-81 (Fla. 1979) (holding that to the extent the "statute alters the standard of care owed to plaintiff by defendants, this type of modification by the legislature is not prohibited by the constitution." The Florida Supreme Court noted in *Kluger* that there is a "distinction between abolishing a cause of action and merely changing a standard of care.").
[67] *Id.* at 1381 (emphasis added). *See also Eller v. Shova*, 630 So. 2d 537, 542 (Fla. 1993).

alternate procedure, the employer will incur costs related to purchase and maintenance of the authentication equipment and software.

Employers who fail to comply with the bill's requirement relating to verifying employment eligibility are subject to suspension of their licenses.

C. Government Sector Impact:

The bill encourages each county sheriff to explore the feasibility of entering into an agreement with the U.S. Department of Homeland Security to have law enforcement officers trained to help enforce federal immigration law. Costs related to evaluating the feasibility should not be significant. The bill does not require the sheriff to execute an agreement, and U.S. Immigration and Customs Enforcement (ICE) may decline to participate. A sheriff's office that chooses to enter into such an agreement may experience workload costs while any participating officers are not performing regular assignments during the period they are being trained by ICE.

The Department of Corrections may experience administrative costs in identifying new and existing inmates who are eligible for release and transfer to federal custody under the Rapid REPAT Program. However, these costs may be offset by savings to the state associated with reduced detention space and costs in the state prison system. The department estimates that it would need two additional FTE – a correctional services administrator and a correctional services analyst at a cost of approximately $122,046 per year.[68]

The Department of Corrections (DOC) and the Department of Law Enforcement (FDLE) may experience workload impacts from the requirement to report annually on activities undertaken as part of a 287(g) agreement with the U.S. Department of Homeland Security. The bill authorizes but does not require DOC to pursue such an agreement. If the DOC chose to enter into such an agreement, the department would experience workload costs while any participating personnel are not performing regular assignments during the period they are being trained by ICE. In addition, it would experience costs related to ongoing implementation of activities under the agreement. The DOC estimated that it "would need approximately twenty officers posted at various locations throughout the state in order to assume all of the functions currently performed by ICE agents related to the processing of criminal aliens into the state correctional system."[69]

The bill similarly authorizes FDLE to pursue an agreement; however, FDLE already has a 287(g) agreement.

The bill requires the Agency for Workforce Innovation (AWI or the agency) to conduct a study of the fiscal impacts of unauthorized immigration on the state. In addition, the bill requires AWI to request from the federal government reimbursement of those quantified cost or corresponding relief from moneys owed to the federal government from

[68] Fla. Dep't of Corrections, *2011 Bill Analysis: SB 2040 with amendments* (on file with the Senate Committee on Judiciary).
[69] *Id*.

borrowing related to the payment of unemployment compensation. The agency will incur costs related to preparation of the required study. To the extent the state is successful in securing federal reimbursement or other remuneration for costs related to unauthorized immigration, the state may benefit fiscally.

The Department of Highway Safety and Motor Vehicles may incur costs related to posting on its website information on states' compliance with the REAL ID Act of 2005 and related to adopting rules for the authentication technology to be used by employers who choose not to register with the E-Verify Program.

The bill has not been reviewed yet by the Criminal Justice Impact Conference. However, to the extent that this bill could potentially move inmates out of prison facilities, it could result in significant cost savings for the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on April 4, 2011:
The committee substitute differs principally from the original bill by:

- Narrowing the exemption from the requirement for employers to register with the E-Verify Program, to make the exemption apply if the employer receives a driver's license or identification card from the employee which complies with the REAL ID Act of 2005 and if the employer checks the document using authentication technology;
- Specifying that the exemption procedures are designed to combat fraud, may not be used for a discriminatory purpose, and may not be used selectively;
- Directing the Department of Highway Safety and Motor Vehicles (DHSMV) to list on its website detailed information on states' compliance with the REAL ID Act;
- Directing DHSMV to adopt rules relating to the authentication technology;
- Eliminating the requirement for the Attorney General to post on a website information on Florida employers that have registered with the E-Verify Program;
- Conforming the bill's protections for employers against liability for wrongful termination, to account for the revised exemption from the requirement to register with the E-Verify Program;
- Prescribing that the legislation does not compel a sheriff to execute a 287(g) agreement with the federal government relating to delegated authority to enforce immigration laws;

- Authorizing, rather than requiring, the Department of Corrections to pursue a 287(g) agreement with the federal government;
- Authorizing, rather than requiring, the Department of Law Enforcement to pursue a 287(g) agreement with the federal government;
- Replacing provisions that directed arresting agencies to determine the immigration status of detained persons with provisions directing a prison, jail, or other detention facility that has custody of a person *after* his or her conviction of a dangerous crime to make reasonable efforts to determine the person's nationality and whether he or she is present in the United States lawfully;
- Excluding leasing companies from the definition of "employer" for purposes of the employment verification requirements, if the leasing companies has an agreement for its client company to assume those responsibilities; and
- Including "whereas" clauses expressing legislative intent for the bill's provisions.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee			
BILL:	SB 886		
INTRODUCER:	Transportation Committee and Senator Oelrich		
SUBJECT:	Motor Vehicles		
DATE:	April 8, 2011	REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Fav/CS**
2.	Carey	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill revises the penalties associated with noise violations in vehicles established in s. 316.3045, F.S. The bill increases the level of a violation of s. 316.3045, F.S, from a non-moving violation to a moving violation for second and subsequent violations. This bill also sets minimum fines for second, third, and subsequent violations of s. 316.3045, F.S., within a 12 month period.

This bill amends ss. 316.3045 and 318.18, Florida Statutes.

II. Present Situation:

Section 316.3045, F.S., provides criteria related to the operation of radios or other mechanical sound-making devices in motor vehicles. Presently, it is unlawful for a person operating or occupying a motor vehicle on a street or highway to amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle where the sound is:

- plainly audible at a distance of 25 feet or more from the vehicle, or

- louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools or hospitals.

A violation of the conditions of this section is a noncriminal traffic infraction, punishable as a nonmoving violation.

Section 318.18, F.S. sets the penalty for a non moving violation at $30 plus applicable court costs and fees.

III. Effect of Proposed Changes:

Section 1: The bill amends s. 316.3045, F.S., to increase the level of the violation for second, third, and subsequent violations to a moving violation. Violators of s. 316.3045, F.S., will be assessed 3 points on the driver's license for second, third and subsequent violations as provided in s. 322.27(1)(d), F.S.

Section 2: The bill amends s. 318.18, F.S., by establishing increased minimum fines for second, third, and subsequent violations occurring within the same 12 month period. A fine of $120 will be assessed for a second violation and $180 for third and subsequent violations within a 12 month period.

Section 2: The bill will 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Violators of s. 316.3045, F.S. will be required to pay a higher fine for a second, third or subsequent violation within a 12 month period.

C. Government Sector Impact:

This bill may increase revenue for state and local governments due to higher fines and increased penalties for violators of s. 316.3045, F.S., relating to soundmaking devices in motor vehicles.

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 Committee on March 9, 2011:
The committee substitute limits the assessment of the increased penalties to second and subsequent violations.

B. Amendments:

None.

445760

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete line 29

and insert:

not-for-profit agencies within each Florida county which assist

~~within~~

705500

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Budget (Joyner) recommended the following:

Senate Amendment

Delete line 66

and insert:

qualified agencies within the State of Florida.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee			
BILL:	CS/SB 196		
INTRODUCER:	Community Affairs Committee and Senators Fasano and Evers		
SUBJECT:	Choose Life License Plates		
DATE:	April 8, 2011	REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Fav/1 amendment**
2.	Wolfgang	Yeatman	CA	**Fav/CS**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill revises the distribution of funds collected from the sale of "Choose Life" license plates. Instead of returning funds to counties where the plates were sold, the Department of Highway Safety and Motor Vehicles (DHSMV or department) will distribute funds collected to Choose Life, Inc., who will distribute these funds to agencies committed to pregnant women who are making an adoption plan for their children. Finally, this bill allows Choose Life, Inc., to use a maximum of 20 percent of the total funds received annually for administrative expenses.

This bill amends s. 320.08058, Florida Statutes.

II. Present Situation:

Section 320.08058(29), F.S., specifies that fees collected shall be distributed annually to counties in the ratio that county bears on the total fees collected. According to the DHSMV, in Fiscal Year 2009-10, $682,999 was distributed to participating counties; however, several counties did not participate and a total of $557,451.63 remains undistributed since the program's inception due to lack of existing programs within primarily rural counties. This statute also specifies that each participating county should distribute the fees to nongovernmental, not-for-profit agencies within the county whose services are limited to counseling and meeting the physical needs of

pregnant women who will place their children for adoption. Funds are not to be distributed to any agencies associated with abortion or abortion related procedures. Agencies that receive funds must use at least 70 percent of their funds for pregnant women who are placing their children for adoption including expenses related to transportation, clothing, housing, medical care, food, and utilities. Remaining funds must be used for counseling and advertising purposes which promote adoption. Unused funds that exceed 10 percent of the funds received annually by an agency must be returned to the county.

III. Effect of Proposed Changes:

This bill amends s. 320.08058, F.S., to provide the following proposed changes:

- This bill directs the distribution of funds from the sale of "Choose Life" license plates to Choose Life, Inc.
- Choose Life, Inc., will distribute funds to participating nongovernmental, not-for-profit agencies within the State of Florida that assist pregnant women who are making an adoption plan for their children. Funds will be distributed based on an annual DHSMV sales per county report.
- This bill removes the minimum amount of funds used by agencies to provide materials to pregnant women making an adoption plan, and it extends the use of funds to birth mothers for 60 days after delivery.
- The bill provides Choose Life, Inc., may use a maximum of 15 percent of funds collected annually for administration and promotion of "Choose Life" specialty license plates. Unused funds by agencies that exceed 10 percent of funds collected annually must be returned to Choose Life, Inc.
- If no qualified agency applies to receive funds in a county in any year, that county's Choose Life funds shall be distributed pro-rata to any qualified agencies that apply and maintain a place of business within a one hundred mile radius of the county seat of such county. If no qualified agencies apply, the funds shall be held by Choose Life, Inc., until a qualified agency applies for the funds.
- By October 1, 2011, all funds collected by DHSMV from the sale of "Choose Life" license plates shall be transferred to Choose Life, Inc. This change will allow the department to distribute the $557,451.63 in funds held due to lack of participating counties.

This bill 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Motor vehicle owners who choose this specialty license plate will continue to pay $20 in additional fees. Choose Life, Inc., will receive fees in lieu of multiple counties; as a result, local private agencies could be impacted by the decisions of Choose Life, Inc., regarding the disbursement of annual use fees.

C. Government Sector Impact:

Programming costs to affect this change will be absorbed within existing DHSMV funds. Since local governments would no longer have the responsibility of fund allocation, there may be a reduction in administrative costs associated with the distribution of "Choose Life" license plate sales funds.

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 the Community Affairs Committee on April 4, 2011:

- specifies that the list of assistance for pregnant women is not limited to the types of assistance expressly articulated in the bill;
- reduces the amount of funds that can be used on administrative assistance from 20 to 15 percent.
- specifies that situations where funds can be used within a 100 mile radius of the county seat; and
- specifies that Choose Life, Inc., can hold funds until a qualified agency applies.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee					
BILL:	CS/SB 740				
INTRODUCER:	Transportation Committee and Senator Negron				
SUBJECT:	Motor Vehicle Licenses				
DATE:	April 10, 2011	REVISED:			

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Fav/CS**
2.	Knudson/Arzillo	Burgess	BI	**Favorable**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles that they manufacture, distribute, or import. Existing law provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and regulates numerous aspects of the franchise contracts these businesses enter into to conduct business in the State of Florida.

The Department of Highway Safety and Motor Vehicles (DHSMV) held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act (ss. 320.60-320.701, F.S.) do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. DMV-09-0935 (Fla. DOAH 2009). The Petitioner appealed the final order to the First District Court of Appeal, but ultimately voluntarily dismissed the appeal. The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when: (1) they are included in single franchise agreement; and (2) every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

The bill amends s. 320.6992, F.S., to provide for the application of ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., to all existing or subsequently established systems of distribution of motor vehicles in the state unless such application would impair valid contractual agreements in violation of the State or Federal Constitution. All agreements amended subsequent to October 1, 1988, are governed by ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

This bill substantially amends the following sections of the Florida Statutes: 320.60 and 320.6992.

II. Present Situation:

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or line-make) that they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

Current law defines "agreement" or "franchise agreement" to mean a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.

A "franchised motor vehicle dealer" is defined as "any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1), F.S."

Section 320.60(14), F.S., defines "line-make vehicles" as those motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same.

The requirements regulating the business relationship between franchised motor vehicle dealers and licensees by the DHSMV are primarily in ss. 320.60-320.070, F.S., (the Florida Automobile Dealers Act). These sections of law specify, in part:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a license;
- The process, timing, and notice requirements for licensees wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a licensee must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a licensee in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Section 320.6992, F.S., provides this act [Florida Automobile Dealers Act] shall apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. The provisions of this act shall not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed or entered into subsequent to October 1, 1988, shall be governed hereby.

The DHSMV recently held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. DMV-09-0935 (Fla. DOAH 2009). The Petitioner appealed the final order to the First District Court of Appeal, but ultimately voluntarily dismissed the appeal.

In this holding, the DHSMV ruled the 2006 amendment to the Florida Automobile Dealers Act which requires that if a dealer's franchise agreement is terminated the manufacturer must buyback from the dealer its unsold vehicles, parts, signs, special tools, and other items, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment.

The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

III. Effect of Proposed Changes:

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when: (1) they are included in single franchise agreement; and (2) every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

The bill amends s. 320.6992, F.S., to provide for the application of ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., to all existing or subsequently established

systems of distribution of motor vehicles in the state unless such application would impair valid contractual agreements in violation of the State or Federal Constitution. All agreements amended subsequent to October 1, 1988, are governed by ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

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:

Currently section 320.6992, F.S., states that the "act" applies Article 1, section 10 of the Florida Constitution states, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." Consequently courts generally disfavor retroactivity in the law.[1] Therefore, in the absence of a clear legislative intent to the contrary, a law is presumed to act prospectively.[2] However, if clear evidence of legislative intent to apply a statute retroactively exists, the court must perform a constitutional inquiry into whether the retroactivity is permissible.[3]

The determination of legislative intent to apply a statute retroactively was examined in *State Farm Mutual Auto. Insurance, Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995). The amendment in *Laforet* specifically stated that it "shall apply to all causes of action accruing after the effective date of section 624.155, Florida Statutes."[4] Therefore, the intent of the Legislature was clear, that the amendment was intended to apply retroactively to the effective date of the statute that the amendment clarified. If the intent of the legislature is clear, as it was here, the analyses moves to the constitutionality of the retroactive statute.

The assessment of constitutionality of the retroactive statute comes down to whether the statute is substantive or procedural. The courts have emphasized that "even where the

[1] *See* Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).
[2] *See* Bates v. State, 750 So. 2d 6 (Fla. 1999).
[3] *See* Menendez v. Progressive Express Insurance Co., 35 So. 3d 873 (Fla. 2010). *See also* Smiley v. State, 966 So. 2d 330 (Fla. 2007).
[4] Laws of Fla. ch. 92-318, 80.

Legislature has expressly stated that a statute will have retroactive application, [the] Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[5] In other words, if a statute affects substantive rights, courts will not apply the statute retroactively. However, if the statute is procedural, meaning it does not create new rights or obligations, courts will allow for retroactive application upon clear legislative intent.[6]

A statute affecting substantive rights may be applied retroactively if it serves to clarify a recently enacted statute and does not attach "new legal consequences to events completed before its enactment."[7] For example, in *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985), the court held that "[w]hen . . . . an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof." In *Lowry*, the amendment clarified the parole release date calculations for prisoners serving consecutive sentences. The court found that the statute was an interpretation by the Legislature of a previous statute; therefore, it was not a substantive amendment.

However, this is limited by the court in *Laforet*. As explained above, in *Laforet*, the amendment clearly stated its retroactive application. Nevertheless, the amendment came more than ten years after the date the original statute was enacted.[8] Therefore, the court held that the Legislature had waited too long before clarifying the statute, and that "it would be absurd . . . . to consider legislation enacted more than ten years after the original act as a clarification of original intent."[9] Consequently, courts view the passage of time, between the enactment of the original statute and the amendment, negatively.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[5] *State Farm Mutual Auto. Insurance, Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).
[6] *See* Benyard v. Wainwright, 322 So. 2d 473, 475 (Fla. 1975). *See also City of Lakeland v. Catinella, 129 So. 2d 133 (Fla. 1961).*
[7] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494, 499 (Fla. 1999).
[8] *See* note 5.
[9] *Id*. at 62.

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:

- Redefines the term "line-make vehicles" to clarify circumstances under which vehicles sold or leased under multiple brand names or marks constitute a single line-make; and specifies such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

Provides an exception to the application of ss. 320.60 – 320.70, F.S., on all amended agreements to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

B. Amendments:

None.

355216

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 41 and 42
insert:

Section 2. Subsection (6) of section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety identification cards.—

(6) A person is exempt from subsection (1) if he or she:

(a) Is licensed by the United States Coast Guard to serve as master of a vessel.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in


355216

compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements of subsection (1).

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is operating a vessel within 90 days after completing the requirements of paragraph (1)(a) or paragraph (1)(b) and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) ~~(f)~~ Is exempted by rule of the commission.

Section 3. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with s. 327.395, unless such person presents to the livery photographic identification and a valid boater safety identification card as required under s. 327.395(1), or meets the exemption provided under s.


355216

327.395(6)(f) ~~to the livery~~.

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

And the title is amended as follows:

Delete line 8

and insert:

noncriminal violation; amending s. 327.395, F.S.; providing an additional exemption from the requirement that certain persons possess a boating safety identification card while operating a motor vessel of a specified horsepower; amending s. 327.54, F.S.; prohibiting a livery from leasing, hiring, or renting a motor vessel of certain horsepower to a person unless the person presents photographic identification and a valid boater safety identification card or provides proof that the person has successfully completed the boater education course; amending s. 327.73, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 78

and insert:

a. For a first offense, up to a maximum of $250.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 512
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Negron
SUBJECT:	Vessels
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.	DeLoach	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation, from a misdemeanor of the second degree to a noncriminal infraction. The bill increases the civil penalties for navigation rule violations that result in an accident but do not cause serious bodily injury or death, depending on the judge's discretion, as follows.

- First offense: up to $500.
- Second offense: up to $750.
- Third offense: up to $1,000.

The penalty for a navigation violation that causes serious bodily injury or death is a second degree misdemeanor.

This bill substantially amends the following sections of the Florida Statutes: 327.33, 327.73, 327.72, and 327.731(1).

II. Present Situation:

Currently, under s. 327.33(3), F.S., all navigation rule violations are noncriminal infractions except those navigation rule violations that result in boating accidents. If a navigation rule violation results in a boating accident, the charge is increased from a noncriminal infraction to a misdemeanor of the second degree. When a reckless operation violation occurs, the penalties are more severe and include a first degree misdemeanor charge, a maximum $1,000 fine, and up to one year in jail.

In accordance with s. 327.73, F.S., individuals charged with noncriminal infractions sign and accept a citation indicating a promise to appear in court or pay the civil penalty, by mail or in person, within 30 days. If the person elects to pay the civil penalty, he or she is deemed to have admitted the noncriminal infraction and waived the right to a hearing. Such admittance shall not be used as evidence in any other hearing. The amount of the civil penalty assessed for the noncriminal navigation rule violation is $50, plus court specific additions if the violator elects to pay the fine without a court appearance. If the person elects to appear in court to plead the case, he or she has waived the limitations of the civil penalty. If the court determines the infraction has been committed, it may impose a civil penalty of up to $500.[1]

Section 327.731 F.S., requires any person who is convicted of two noncriminal infractions in a 12-month period to enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the Florida Fish and Wildlife Conservation Commission (commission).

Anyone charged with a navigation rule violation that results in an accident is charged with a second degree misdemeanor. Upon the finding of guilt for a second degree misdemeanor, in accordance with ss. 775.082 and 775.083, F.S., a person may be fined up to $500 and subjected to imprisonment not to exceed 60 days, at the discretion of the judge. In addition to the punishment, a judge, in accordance with s. 775.089, F.S., can order restitution to a victim for damage or loss related to the defendant's criminal act. There is not a civil penalty provision that an individual may pay in person or by mail for second degree misdemeanors in lieu of sentencing as described above for noncriminal infractions.

Per s. 327.731, F.S., mandatory education is required for anyone convicted under ch. 327, F.S., of a criminal violation, a non-criminal infraction that resulted in a reportable boating accident, as defined in s. 327.30(2), F.S., or two noncriminal infractions in a 12- month period. Additionally, commission rule 68D-36.106, F.A.C. (created pursuant to s. 327.04, F.S.), requires anyone convicted of a noncriminal boating infraction that resulted in a reportable boating accident and anyone convicted of any criminal boating violation to complete an additional online boating course. Reportable boating accidents include those that must be reported to law enforcement under s. 327.30(2), F.S. They include:

- Accidents involving any kind of vessel if the accident involves a vessel capsizing.
- A vessel colliding with another vessel or object.

[1] Florida Fish and Wildlife Conservation Commission, *Senate Bill 512 Fiscal Analysis* (February 10, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation)

- A vessel sinking.
- Serious personal injury (requiring more than basic first aid).
- Death.
- Disappearance of any person onboard under circumstances suggestive of a likelihood of death or injury.
- Damage to the vessel or any property in an aggregate amount greater than $2,000.

According to the commission, from 2007 through 2010 there were 452 individuals cited for second degree misdemeanor violations of navigation rules that resulted in a boating accident. During the same time frame, there were 303 individuals cited for noncriminal infractions for navigation rule violations that did not result in a boating accident.

All civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund within the commission, to be used for boating safety education purposes (s. 327.73(8), F.S.). Also, the court assesses the costs payable to the clerk for each noncriminal violation (s. 327.73(11), F.S.).

Under s. 775.083(1), F.S., all fines collected for convictions of second degree misdemeanors are deposited into the county's Fine and Forfeiture Fund (established in section 142.01, F.S.) for use by the clerk of the circuit court in performing court-related functions.

III. Effect of Proposed Changes:

Section 1 amends s. 327.33(3), F.S., to remove the criminal charge, for those individuals who violate a navigation rule that results in an accident but does not cause serious bodily injury or death or rise to the level of reckless operation, from a second degree misdemeanor to a noncriminal infraction.

Section 2 amends s. 327.73(1) and (5), F.S., to increase the civil penalty for individuals who violate a navigation rule that result in a boating accident and to provide for increased penalties for repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to $500 for a first offense, up to $750 for a second offense, and up to $1000 for a third or subsequent offense.

Section 3 reenacts and amends s. 327.72, F.S., to incorporate changes to s. 327.73, F.S., by reference.

Section 4 reenacts s. 327.731(1), F.S., for the purpose of incorporating the amendment to s. 327.73, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes may increase the penalties on boaters who violate navigation rules resulting in boating accidents, especially repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to $500 for a first offense, up to $750 for a second offense, and up to $1000 for a third or subsequent offense.

C. Government Sector Impact:

According to the commission, there will be an indeterminate positive fiscal impact to the Marine Resources Conservation Trust Fund, due to increased civil penalties collected for noncriminal infractions related to boating. Revenues from these penalties are used for boating safety education purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Additional Information:

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

CS by Environmental Preservation and Conservation on March 31, 2010:
The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases

the fines for navigational violations that result in an accident but do not cause bodily injury or death up to $500 for the first offense, up to $750 for the second offense, and up to $1,000 for a third or subsequent offense.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1286
INTRODUCER:	Banking and Insurance Committee and Senator Bennett
SUBJECT:	State Reciprocity in Worker's Compensation Claims
DATE:	April 8, 2011 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill creates a process designed to ensure that if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, provided that state has a reciprocal provision similar to Florida's. The bill provides that, if authorized by the employee, a worker's compensation carrier can make the weekly payment to the employee by means of a prepaid card, under certain conditions. The provisions of section 440.094, Florida Statutes, apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

This bill substantially amends section 440.20, Florida Statutes.

This bill creates section 440.094, Florida Statutes.

II. Present Situation:

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for

giving up the right to sue the employer for negligence. Workers' compensation insurance was established to address cost of lawsuits filed by employees against employers for work-related injuries. Through the Florida workers' compensation law, employers must provide medical benefits and indemnity (wage replacement) benefits to their employees who are injured in the course of their employment.

Florida Workers' Compensation Law

In Florida, the worker's compensation process is governed by ch. 440, F.S., titled the "Workers' Compensation Law." Section 440.015, F.S., expresses the legislative intent that the Workers' Compensation Law "be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Further, the Legislature expressed the intent that:

> It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department (Department of Financial Services), agency (Agency for Health Care Administration), the Office of Insurance Regulation, the Department of Education, and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.[1]

Chapter 440, F.S., provides a detailed framework for coverage and benefit issues,[2] as well as the process for resolving disputes,[3] all of which are specific to Florida and may have substantially different provisions than in other states.

The Florida laws provide predictability for employees, employers, and workers' compensation insurance carriers. A greater degree of predictability helps the National Council of Compensation Insurance (NCCI), the rating organization that files annual worker's compensation rates in Florida, to more accurately evaluate the risks being covered and to seek the appropriate premium levels. Further, a greater degree of predictability helps the Office of Insurance Regulation (OIR) to evaluate the annual rate filing and establish the most appropriate premium levels for Florida businesses.

Recently, however, a number of Florida employees, most notably former professional athletes, have begun to file for benefits under the workers' compensation laws of other states, particularly

[1] Section 440.015, F.S.

[2] *See*, e.g., s. 440.09, F.S. (coverage requirements), s. 440.102, F.S. (drug free workplace provisions), s. 440.106, F.S. (civil remedies), s. 440.15 F.S. (permanent total disability, temporary total disability, permanent impairment benefits, temporary partial disability, and subsequent injury), s. 440.151, F.S. (occupational diseases), and s. 440.16, F.S. (compensation for death).

[3] S*ee*, e.g., s. 440.021, F.S. (exemption from Administrative Procedure Act), s. 440.011, F.S. (exclusiveness of liability), s. 440.192, F.S. (dispute resolution procedures), s. 440.1926, F.S. (alternate dispute resolution procedures), s. 440.25, F.S. (procedures for mediation and hearings), s. 440.271, F.S. (appeal rights), and s. 440.29, F.S. (procedures before a judge of compensation claims).

California. The claims are based on the premise that, although the employer and primary employment is in Florida, the injury was sustained in the other state.

Currently, s. 440.09(1)(d), F.S., provides that, if a Florida employee is injured while employed outside of Florida, and the injury would entitle the employee or dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation. If, however, the employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in ch. 440, F.S.

III. Effect of Proposed Changes:

The bill creates a process designed to ensure that, if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, if that state has a reciprocal provision similar to Florida's. To accomplish this purpose, the bill creates s. 440.094, F.S., to provide the following.

- If a Florida employee temporarily leaves the state incidental to his or her employment and is injured in the course of employment, that employee, or beneficiaries if the injury results in death, is entitled to the benefits as if the employee were injured in Florida.
- If an employee from another state is injured incidental to employment while temporarily in Florida, that employee and his or her employer are exempt from Florida law if: (1) the employer has workers' compensation insurance coverage under its own state laws; (2) the extraterritorial provisions of Florida law are recognized in the employer's state and; (3) employers and employees covered in Florida are exempted from the workers' compensation laws of the other state.
- If an employee from another state is injured incidental to employment while temporarily in Florida, the exclusive remedy against the employer are the workers' compensation laws of the other state.
- A certificate from the appropriate office of another state is prima facie evidence that an employer carries workers' compensation coverage in the other state.
- For any litigation in Florida that involves a question of construction of laws in another state, the Florida court shall take judicial notice of the laws of the other state.
- When an employee has a claim under workers' compensation in another jurisdiction for the same injury or occupational disease as a claim filed in Florida, the total amount of compensation derived from the other jurisdiction shall be credited against the compensation due under Florida Workers' Compensation Law.
- An employee is considered to be temporarily working in another state if the duration of that work does not exceed 10 consecutive days or 25 days during a calendar year.
- The provisions of s. 440.094, F.S., apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

The bill provides that, if authorized by the employee, a worker's compensation carrier can make its weekly payment to the employee by means of a prepaid card if the employee is:

- provided with at least one means of accessing the entire compensation payment each week without incurring fees;

- provided with the terms and conditions of the program, including a description of any fees; and
- given the option of receiving compensation payments by direct deposit into a personal account at a financial institution.

The bill further requires a carrier to keep a record of all payments and the time and manner of the payments, and to furnish the records if requested by the Bureau of Workers' Compensation Fraud.

The bill provides an effective date of July 11, 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:

By establishing a process to ensure that a single jurisdiction will apply in cases involving employees injured in a state other than where they are employed, the legislation should reduce the ability of an injured employee to choose the jurisdiction with the more generous benefits. As a result, workers' compensation premiums and potential litigation costs ultimately should be lower for those businesses that employ significant numbers of employees who temporarily travel to other states as part of their employment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 22, 2011

The Committee Substitute:

- Creates a separate section for the extraterritorial reciprocity provisions, rather than incorporating those provisions in s. 440.09, F.S., as the original bill had.
- Removes a provision that would have authorized the Division of Workers' Compensation of the Department of Financial Services to enter into agreements with similar agencies of other states concerning boundry or jurisdiction disputes.
- Removes redundant language from two subparts of the extraterritorial reciprocity language.
- Provides that, if authorized by the employee, a worker's compensation carrier can make its weekly payment to the employee by means of a prepaid card, if it meets conditions specified in the bill.
- Requires a carrier to keep a record of all payments and the time and manner of the payments, and to furnish the records if requested by the Bureau of Workers' Compensation Fraud.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 844
INTRODUCER:	Senator Benacquisto and others
SUBJECT:	Violations/Probation/Community Control/Widman Act
DATE:	April 9, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/1 amendment**
2.	Boland	Maclure	JU	**Favorable**
3.	Hendon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill provides that when a person who is before a circuit court for First Appearance on a new law violation is under community supervision, the court may issue an arrest warrant for the violation if the court finds reasonable grounds to believe that a community supervision violation has occurred.

At a First Appearance hearing on a violation of community supervision, if the offender admits the violation, the court may order that the offender be taken before the court that granted the probation or community control.

If the offender does not admit the violation, the First Appearance court may commit the offender or may release the offender with or without bail to await further hearing. In deciding whether or not to set bail, the court may consider the likelihood of a prison sanction on the violation of community supervision based on the new law violation arrest. The bill also provides that the court may order the return of the person under community supervision to the court that originally granted the community supervision for further proceedings.

The bill does not apply in cases where the offender is subject to the special requirements for hearings as to his or her dangerousness to the community.

The bill is named in honor of Officer Andrew Widman, a Fort Myers police officer who was killed during the exchange of gunfire with an offender who had not yet been arrested on a violation of community supervision warrant issued after his First Appearance on a new law violation in Lee County. The bill is not expected to have a significant fiscal impact on the state, but it may have a fiscal impact on local governments.

This bill substantially amends section 948.06, Florida Statutes.

II. Present Situation:

Violation of Probation or Community Control

Section 948.01, F.S., provides the circumstances under which the trial court can place a person on probation[1] or community control[2] (community supervision). Any person who is found guilty by a jury, or by the court sitting without a jury, or enters a plea of guilty or nolo contendere may be placed on probation or community control regardless of whether adjudication is withheld.[3]

The Department of Corrections supervises all probationers sentenced in circuit court.[4] Section 948.03, F.S., provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions to the probation that it deems proper.[5] The condition requiring the probationer to not commit any new criminal offenses is a standard condition.[6]

If a person who has been sentenced to probation commits a new criminal offense, that person thereby commits a violation of the terms of probation. In such instances, upon being informed of the new law violation, generally the probation officer files an affidavit with the sentencing court alleging a violation of probation based upon the existence of the new law violation.[7] The court evaluates the facts as alleged in the affidavit to determine if sufficient probable cause of a violation exists and may then issue a warrant for the probationer's arrest.[8]

It is not uncommon for the sentencing court to set a condition of "no bond" in the case until the probationer has appeared before that particular judge who has jurisdiction over the probationer's

[1] "Probation" is defined as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Section 948.001(5), F.S.
[2] "Community control" is defined as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced. Section 948.001(3), F.S.
[3] Section 948.01(1), F.S.
[4] *Id*.
[5] Section 948.03(2), F.S.
[6] Fl. R. Crim. Pro. 3.790 (2010).
[7] Section 948.06(1)(b), F.S.
[8] *Id*.

case. If a different judge sees the probationer at First Appearance on the violation case, he or she generally honors the trial court judge's "no bond" requirement. This is the common course of local practice.

Under limited circumstances listed in s. 903.0351, F.S., the First Appearance judge *must* order pretrial detention without bail until the resolution of the probation violation or community control violation hearing. These violators fall into certain categories:

- Violent felony offenders of special concern as defined in s. 948.06, F.S.
- A violator arrested for committing a qualifying offense set forth in s. 948.06(8)(c), F.S.
- A violator who has previously been found to be a habitual violent felony offender, a three-time violent felony offender, or a sexual predator, and who has been arrested for committing one of the qualifying offenses set forth in s. 948.06(8)(c), F.S.

In addition to the "normal" channels through which an alleged violation progresses, s. 948.06(1)(b), F.S., provides for the warrantless arrest of an offender reasonably believed by a law enforcement officer to have violated his or her community supervision in a material respect. It states:

> Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or her probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control or any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and return him or her to the court granting such probation or community control.[9]

Section 903.046, F.S., provides that the court may consider the defendant's past or present conduct and record of convictions in determining the bail amount for a new criminal offense. A defendant before the court for First Appearance on a new criminal law violation whose criminal history reflects his or her community supervision status should have that current status weighed as a bond-related factor by the First Appearance judge according to s. 903.046, F.S., and Rule 3.131(3)(b), Florida Rules of Criminal Procedure, even though a violation may not yet have been filed, warrant issued, or warrantless arrest made.

The Case of Abel Arango and the Death of Officer Andrew Widman[10]

In 1999, Abel Arango (A/K/A Abel Arrango) was sentenced on a split-sentence to five years in prison with 15 years of probation following his release for convictions of grand theft, burglary of

[9] Section 948.06(1)(a), F.S.

[10] The facts relayed in this bill analysis have been gathered from a memo prepared by FDLE Commissioner Gerald Bailey at the request of the Governor's office, telephone conversations with FDLE personnel, Arango's Department of Corrections Release Information posted on the Department's website, a telephone conversation with a gentleman with the South Florida Detention and Removal Office of U.S. Immigration and Customs Enforcement, as well as newspaper accounts of the death of Officer Widman. The referenced information is on file with the Senate Committee on Criminal Justice.

an unoccupied structure or conveyance, carrying a concealed firearm, and armed robbery. The offenses occurred in Collier County, he was sentenced by the Circuit Court in and for Collier County, therefore the Collier court had continuing jurisdiction over the case (the successful completion of 15 years probation) upon Arango's release from prison in 2004.[11]

Arango reported to the probation office as required by the sentencing court until his arrest on Friday, May 16, 2008, in Lee County. On that day he was arrested on five felony cocaine-related charges: two possession charges, two sale charges, and one trafficking of more than 28 grams but less than 150 kilograms.

By the time Arango appeared at First Appearance in Lee County the next day, his criminal history, probationary status, and wants and warrants (of which there were none) were made available to the court by court services personnel. The First Appearance judge set a total of $100,000 bond in the Lee County (new law violation) cases. Arango was able to make this bond and, as a result, was released from the Lee County jail.

It should be noted that in setting the bond at $100,000, the First Appearance judge set the bond at more than double the amount on the standard bond schedule; therefore, although there was no active warrant for a violation of probation, it appears that Arango's probation status was taken into account by the judge.[12]

In the meantime, Arango's probation officer received a message on Monday, May 19, sent by FDLE on Friday night. This "Florida Administrative Message" informed the probation officer that law enforcement had arrested Arango on Friday. She attempted to contact Arango by telephone, and when he did not answer the probation officer left a message for him to call her immediately. The call was not returned.

On Friday, May 23, the probation officer delivered a sworn affidavit to the Collier County Circuit Court (the sentencing court in the probation cases) alleging the violation of probation in the Collier County cases, based upon the new arrest, and requesting a warrant be issued for Arango's arrest. The warrant was issued with a "no bond" provision and was entered into the Florida Crime Information Center (FCIC) on Monday, June 2, 2008.

Arango appeared at the Lee County Circuit Court for arraignment on the cocaine charges on Monday, June 16. Although the violation of probation warrant was active and in the FCIC system, no system queries were made on Arango prior to or during the time of his arraignment.

It is unknown whether court personnel or the bailiffs had knowledge of the warrant at that time. Presumably they did not as it is unlikely that an updated criminal history would be run on a defendant between First Appearance and the arraignment a month later. Arango attended and left arraignments without being arrested on the active violation of probation warrant.

[11] Although there was a federal detainer for Arango and he spent several months after his prison release at the Krome's Detention Center, ICE was unable to deport him to Cuba because the U.S. has no formal diplomatic ties or agreement for repatriation with Cuba, so Arango was released in July, 2008.

[12] See the Presentment by the Fall Term 2008 Lee County Grand Jury, In re: Death of Fort Myers Police Officer Andrew Widman on July 18, 2008, filed with the Circuit Court of the Twentieth Judicial Circuit on September 11, 2008.

On June 23, Arango's probation officer again attempted to contact him by going to his house but was unable to locate anyone at the residence. The Collier County Sheriff's Office ran warrant queries in the FCIC system twice in July, both of which showed the active warrant. It is unknown why this was done.

On Friday, July 18, 2008, Fort Myers Police officers responded to a reported domestic dispute between Arango and his girlfriend. Gunshots were exchanged between Arango and the officers. Officer Andrew Widman and Arango were killed during the gunfire.

Section 1 of the bill names the bill "The Officer Andrew Widman Act" in his honor.

III. Effect of Proposed Changes:

The bill provides that a First Appearance court may reach beyond the matter of pretrial release or detention on a new law violation arrest under certain circumstances.

If the court has reasonable grounds to believe that the offender appearing before the court at First Appearance on the new law violation is under community supervision and has violated the terms of supervision in a material respect by committing the new law violation, the court may order the arrest of the offender for the violation at that time. Previously, the two actions, one for the new law violation and one for the violation of community supervision, were dealt with as separate offenses.

To the extent that the bill consolidates two previously separate actions, the bill may allow the court to expedite the arrest of an offender whose terms of community supervision have been violated due to the alleged new law violation, if he or she has not already been arrested on the violation by law enforcement under the provisions of s. 948.06(1)(a), F.S.

The court must inform the offender of the violation of community supervision. If he or she admits the violation, the court may order that the offender be brought before the court that granted the community supervision.

If the offender does not admit the violation of community supervision, the court may either commit the offender or release him or her with or without bail to await further hearing on the matter, or simply order that the offender be brought before the court that granted the community supervision.

Should the court reach the question of releasing the offender on the violation of community supervision, the court may consider, specifically, whether it is more likely than not that a prison sanction would be handed down by the original sentencing court for a violation of community supervision based upon the new arrest.

The bill does not apply to those offenders who are subject to the "danger to the community" hearings required by s. 948.06(4), F.S., or the "violent felony offender of special concern" hearings required by s. 948.06(8)(e), F.S.

The bill is named in honor of Officer Andrew Widman.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In the early 1980's, ss. 949.10 and 949.11, F.S., contained language similar to that of the current bill. One clear difference between the bill and those sections of law, however, is that the 1980's statutes applied to offenders who were the subject of an active violation warrant and subsequent arrest for which they could not be released until after a violation hearing.

These sections provided that the arrest of any person who was on probation (for committing a new crime) was prima facie evidence of a violation of the terms and conditions of such probation. Upon such arrest, probation was immediately temporarily revoked, and such *person had to remain in custody until a hearing* by the Parole and Probation Commission or the court. The statutes required the hearing to be held within 10 days from the date of the arrest and provided that the failure of the commission or the court to hold the hearing within 10 days from the date of arrest resulted in the immediate release of such person from incarceration on the temporary revocation.

Although these sections of statute were repealed in 1982, they were analyzed by various courts. In *Miller v. Toles*, 442 So. 2d 177 (Fla. 1983), an offender alleged that his due process rights were violated because he was not given a hearing until the eleventh day after being placed in custody. The Florida Supreme Court agreed and stated that without provision for expedited final hearings for a parolee or a probationer arrested for alleged commission of a felony, statutes governing subsequent felony arrest of felony parolee or probationer which deny the parolee or probationer arrested a preliminary probable cause hearing "would be subject to constitutional attack as imposing an automatic forfeit of liberty interests upon *arrest*, not *conviction*, for a felony."[13]

[13] *Miller*, 442 So. 2d at 180.

The Court acknowledged that probationers could be afforded lesser due process rights but stated that the quid pro quo for doing so was the expedited final hearing. The Court stated that without that provision, the statute would be subject to constitutional attack as imposing an automatic forfeit of liberty interests upon arrest, rather than conviction, for a felony.

The bill requires an arrest on a violation of community supervision before the offender's liberty is subject to being taken, and it provides a prompt mechanism by which the offender can be released from custody or from any conditions of release.

There may be an issue of separation of powers to the extent that it could be said that the court is assuming the role of the executive branch (Department of Corrections) by initiating the violation of probation process. However, Florida Statutes provide that the community supervision process may be initiated by other means; specifically the warrantless arrest authorized in s. 948.06(1)(a), F.S. Also, the issue of separation of powers may arise to the extent that the provisions of the bill may be viewed as procedural (the Supreme Court's power) rather than substantive (within the prerogative of the Legislature).

It should be noted that in the case of Abel Arango, this was not a person who met the statutory criteria for special scrutiny at First Appearance in existence at the time. He did not qualify as a "violent felony offender of special concern" nor as an offender who required a special hearing as to his potential danger to the community. (See s. 948.06(4) and (8)(e), F.S.)

However, Arango was not a typical community supervision offender either, due to the fact that *he was on probation following a prison sentence* and therefore was *more likely* than a typical offender *to be sentenced to prison on a violation* of his probation. The likelihood of a prison sentence on the violation is easily discernable by a prosecutor at First Appearance, by the court, or by pretrial services personnel, any of whom have the ability to review an offender's prior criminal history and sentencing scoresheet.

Although human behavior cannot always be predicted, it could be argued that an offender such as Arango who is surely facing a return to prison if found to be in material violation of his probation, could pose an increased danger to society if he is released from custody at First Appearance on a new crime, regardless of whether the violation affidavit had been filed or a warrant secured under the "normal" procedure. Just as in the Arango case, an offender who is facing a return to prison may feel he or she has "nothing to lose" as it relates to future unlawful behavior pending resolution of the violation he or she must know is coming.

Perhaps due process and separation of powers concerns will be eliminated, or at least diminished, if a reviewing court gives great weight to the public safety issue brought to the attention of the Legislature by the Arango case and addressed by this bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The state would see a minimal fiscal impact under the bill. The Office of the State Courts Administrator states that the bill would have a minimal impact on court workload, stating that any extra workload on the judge who issues the warrant is negligible because judges already do so upon affidavit from the probation officer.[14]

Local governments, could see a fiscal impact under the bill. At first appearance, the bill would allow judges to refer the defendant to the judge who had the original case. This would mean a delay for some defendants and a longer jail stay. This would increase the local jail population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In the Arango case, subsequent to his arrest on the new law violation (drug charges in Lee County), the Lee County Sheriff's Office ran a warrants check for Arango. Later that night the Lee County Jail ran a second warrants check. Neither query provided probation information on Arango due to inaccurate identifiers having been entered during the queries, such as incorrect spelling of the last name, incorrect race, and the incorrect date of birth.[15]

Had the correct information been entered into the database, it is possible that the Lee County Sheriff's Office could have arrested Arango at that time, prior to First Appearance, for a violation of probation based upon the new law violation. Statutory authority for such an action is found in s. 948.06(1)(a), F.S. (set forth above in the *Present Situation* section).

The correct probation status report was supplied to the First Appearance court the next morning by the Lee County Pretrial Service in Arango's case. Therefore, it appears that an arrest on the violation could have been made by Lee County law enforcement just prior to or soon after the First Appearance proceedings on the drug arrest.

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[14] Office of the State Courts Administrator, Judicial Impact Statement for SB 844, February 9, 2011 (on file with the Committee on the Judiciary).

[15] Commissioner Bailey, FDLE, August 11, 2008, Memo to the Governor's Office regarding the events leading up to Officer Widman's death. Memo on file with Senate Criminal Justice Committee.

It is equally possible that, if Department of Corrections or law enforcement personnel were assigned specifically to arrest defendants with active warrants at arraignments or other court appearances, Arango may have been arrested on the active violation warrant (at arraignments in Lee County on the drug cases) a full month before Officer Widman's death.

Technology is now available through FDLE to provide rapid identification of persons who come into contact with the criminal justice system. The devices connect through a personal computer to the Florida Criminal Justice Network. The individual places two fingers on a platen and within 35-45 seconds critical information about the individual is transmitted. If the Network indicates a "hit," the database can be queried regarding identification, active warrants, criminal history and whether the individual has previously provided a DNA sample for the DNA database.

The rapid identification devices were in limited use at the time of the Arango case. Currently, however, all probation offices throughout the state utilize this technology to confirm the identity and current status of reporting probationers, some Sheriff's offices use the device, the Pinellas County jail uses it at intake, there are approximately 150 mobile units in patrol cars, and the Collier County Courthouse has a device available in an anteroom should identification become an issue in one of the courtrooms. Lee County has been routinely checking local, state and federal databases for active warrants on every person who has a court appearance since November 2008.[16]

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 722356 by Criminal Justice on March 22, 2011:
Technical amendment removing redundant language.

[16] Warrants Checks Get Results in Lee County, story published February 8, 2010, http//www.news-press.com.

722356

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/22/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 70 - 71
and insert:
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================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 9
and insert:
probationer or offender of the violation; authorizing the court to

397808

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete line 2963

and insert:

agency or formal agreements among several agencies. The agency shall work with the specialty plan to develop clinically effective, evidence-based alternatives as a downward substitution for the residential care and institutional services that the plan is responsible for, including intensive in-home supports. The

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

And the title is amended as follows:

Delete line 105

and insert:

F.S.; providing for alternatives to residential care and institutional services; requiring Medicaid-eligible children who have

554138

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment to Amendment (397808) (with title amendment)

Delete lines 8 - 10
and insert:
substitution for the statewide inpatient psychiatric program and similar residential care and institutional services. The

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 16 - 17
and insert:
F.S.; providing for alternatives to the statewide

554138

inpatient psychiatric program; requiring Medicaid-

851150

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron and Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 3771 - 3813
and insert:
(2) The agency shall implement the following thresholds and consequences of various spending patterns for qualified plans under the managed medical assistance component of the Medicaid managed care program:
(a) The minimum medical loss ratio shall be 90 percent.
(b) A plan and its subcontractors that spend less than 90 percent of the plan's Medicaid capitation revenue on medical services and direct care management, as determined by the


851150

agency, must pay back to the agency a share of the dollar difference between the plan's actual medical loss ratio and the minimum medical loss ratio, as follows:

1. If the plan's actual medical loss ratio is not lower than 87 percent, the plan must pay back 50 percent of the dollar difference between the actual medical loss ratio and the minimum medical loss ratio of 90 percent.

2. If the plan's actual medical loss ratio is lower than 87 percent, the plan must pay back 50 percent of the dollar difference between a medical loss ratio of 87 percent and the minimum medical loss ratio of 90 percent, plus 100 percent of the dollar difference between the actual medical loss ratio and a medical loss ratio of 87 percent.

(c) To administer this subsection, the agency shall adopt rules that specify a methodology for calculating medical loss ratios and the requirements for plans to annually report information related to medical loss ratios. Repayments required by this subsection must be made annually.

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

And the title is amended as follows:

Delete line 183

and insert:

establishing a medical loss ratio; requiring that a plan pay back to the agency a specified amount in specified circumstances; authorizing

461302

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment

Delete line 3792
and insert:
percent of revenue. For recipients with serious mental illnesses, such quality measures must include the incidence of serious side effects attributable to antipsychotic prescription drugs, such as substantial weight gain, adherence to prescribed antipsychotic prescription drugs, and access to generic and name brand atypical class antipsychotic prescription drugs.


863052

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Sobel) recommended the following:

Senate Amendment

Delete lines 3845 - 3861
and insert:
1. Faculty plans of state medical schools; and
2. Hospitals licensed as a children's specialty hospital as defined in s. 395.002.

Qualified plans that have not contracted with all statewide essential providers as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating state medical schools must be made at the applicable Medicaid rate. Payments to a

863052

nonparticipating specialty children's hospital must equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

166438

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Sobel) recommended the following:

Senate Amendment

Delete lines 3845 - 3861
and insert:
1. Faculty plans of state medical schools, unless the medical school and an affiliated teaching hospital owns or collaboratively operates a provider service network in the region;
2. Regional perinatal intensive care centers as defined in s. 383.16; and
3. Hospitals licensed as a children's specialty hospital as defined in s. 395.002.

166438

Qualified plans that have not contracted with all statewide essential providers as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to a nonparticipating essential provider must be equal to the highest rate established by contract between that provider and any other Medicaid managed care plan.

282222

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Sobel) recommended the following:

Senate Amendment to Amendment (166438)

Delete lines 8 - 11
and insert:
region; and
2. Hospitals licensed as a children's specialty hospital as

712302

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Altman) recommended the following:

Senate Amendment

Delete line 3963
and insert:
409.972 and 409.978, and must encourage plans to use the most cost-effective modalities for the treatment of chronic disease, such as peritoneal dialysis over hemodialysis if the patient and physician choose this form of treatment. Payment rates for managed long-term care

197280

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Altman) recommended the following:

Senate Amendment

Delete lines 3966 - 3979
and insert:
(1) The agency shall develop a methodology and request a waiver that ensures the availability of intergovernmental transfers in the Medicaid managed care program to support providers that have historically served Medicaid recipients. Such providers include, but are not limited to, safety net providers, trauma hospitals, children's hospitals, and statutory teaching hospitals. The agency may develop a supplemental capitation rate, risk pool, or incentive payment for plans that contract with these providers. A plan is eligible for a

197280

supplemental payment only if there are sufficient intergovernmental transfers available from allowable sources.

166228

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment

Delete line 4053

and insert:

services from an entity qualified under 42 C.F.R. part 422 as a Medicare Advantage health maintenance organization, Medicare Advantage coordinated care plan,

481926

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 4186
and insert:
(h) Family planning services. Pursuant to 42 C.F.R. s. 438.102, plans may elect to not provide this service due to an objection on moral or religious grounds, and must notify the agency of that election when submitting a reply to the invitation to negotiate pursuant to s. 409.963.

162964

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Between lines 4337 and 4338
insert:
(c) Provider service networks formed by community care for the elderly lead agencies. Participation by such networks must be pursuant to a contract with the agency and is not subject to the procurement requirements of this section.

488692

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Budget (Sobel) recommended the following:

Senate Amendment (with title amendment)

Between lines 4451 and 4452
insert:

Section 52. Section 409.980, Florida Statutes, is created to read:

409.980 Prescribed drug services for qualified plans.—The agency shall ensure that a qualified plan has transparency and patient protections in its prescription drug benefit. The qualified plan must, at a minimum:

(1) Include at least two products, when available, in each therapeutic class.

(2) Make available those drugs and dosage forms listed in

488692

its preferred drug list.

(3) Make the prior-authorization process readily available to health care providers, including posting such process on its website.

(4) Not arbitrarily deny or reduce the amount, duration, or scope of prescriptions based solely on the enrollee's diagnosis, type of illness, or condition. The qualified plan may place appropriate limits on prescriptions based on criteria such as medical necessity, or for the purpose of utilization control, if the plan reasonably expects such limits to achieve the purpose of the prescribed drug services set forth in the Medicaid state plan.

(5) Make available those drugs not on its preferred drug list, when requested and approved, if drugs on the list have been used in a step therapy sequence or if other medical documentation is provided.

(6) Cover the cost of a brand name drug if the prescriber writes in his or her own handwriting on the prescription that the brand name drug is medically necessary and submits a completed multisource drug and miscellaneous prior authorization form to the qualified plan indicating that the enrollee has had an adverse reaction to a generic drug or has had, in the prescriber's medical opinion, better results when taking the brand name drug.

(7) Ensure that antiretroviral agents are not subject to the preferred drug list.

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

And the title is amended as follows:


488692

Delete line 255

and insert:

evaluation of dually eligible nursing home residents; creating s. 409.980, F.S.; providing minimum requirements for prescription drug benefits provided by a qualified plan;

423532

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment to Amendment (488692)

Delete lines 15 - 17

and insert:

(3) Ensure that the prior-authorization process is readily available to health care providers, including posting appropriate contact information on its website and providing timely responses to providers.

255806

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Between lines 5228 and 5229
insert:

Section 63. Paragraph (d) of subsection (2) of section 395.4025, Florida Statutes, is amended to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(2)

(d)1. Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all the requirements under ~~as provided in~~ paragraph (c) at the time of application if the

255806

number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department.

a. An applicant that is granted additional time ~~pursuant to this paragraph~~ shall submit a plan for departmental approval which includes timelines and activities that the applicant proposes to complete in order to meet application requirements. An ~~Any~~ applicant that demonstrates an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of trauma centers when ~~at such time that~~ the department conducts ~~has conducted~~ a provisional review of the application and determines ~~has determined~~ that the application is complete and that the hospital has the critical elements required for a trauma center.

b. If construction related to a critical element is delayed due to governmental action or inaction with respect to regulations or permitting and a hospital applicant has demonstrated that it has made a good faith effort to comply with the applicable regulations or obtain the required permits, the department shall grant an applicant that has received an additional 18 months up to two additional 6-month extensions to meet all the requirements under paragraph (c).

2. Timeframes provided in subsections (1)-(8) shall be stayed until the department determines that the application is complete and that the hospital has the critical elements required for a trauma center.

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

And the title is amended as follows:


255806

Delete line 301

and insert:

components; amending s. 395.4025, F.S.; providing additional time extensions to hospital applicants seeking to become trauma centers under certain circumstances; amending s. 400.023, F.S.; requiring the

595556

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 5228 and 5229
insert:

Section 63. Paragraph (d) of subsection (2) of section 395.4025, Florida Statutes, is amended to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(2)

(d)1. Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all the requirements under ~~as provided in~~ paragraph (c) at the time of application if the

595556

number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department.

a. An applicant that is granted additional time ~~pursuant to this paragraph~~ shall submit a plan for departmental approval which includes timelines and activities that the applicant proposes to complete in order to meet application requirements. An ~~Any~~ applicant that demonstrates an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of trauma centers when ~~at such time that~~ the department conducts ~~has conducted~~ a provisional review of the application and determines ~~has determined~~ that the application is complete and that the hospital has the critical elements required for a trauma center.

b. If construction related to a critical element is delayed due to governmental action or inaction with respect to regulations or permitting and a hospital applicant has demonstrated that it has made a good faith effort to comply with the applicable regulations or to obtain the required permits, the department shall grant an applicant that has received an additional 18 months up to two additional 6-month extensions to meet all the requirements under paragraph (c).

2. Timeframes provided in subsections (1)-(8) shall be stayed until the department determines that the application is complete and that the hospital has the critical elements required for a trauma center.

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

And the title is amended as follows:

595556

Delete line 301

and insert:

components; amending s. 395.4025, F.S.; requiring the Department of Health to grant additional time extensions to hospital applicants seeking to become trauma centers under certain circumstances; amending s. 400.023, F.S.; requiring the

188682

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Joyner) recommended the following:

Senate Amendment (with title amendment)

Between lines 5427 and 5428
insert:

Section 66. Section 456.0635, Florida Statutes, is amended to read:

456.0635 Health care ~~Medicaid~~ fraud; disqualification for license, certificate, or registration.—

(1) ~~Medicaid~~ Fraud in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue ~~or renew~~ a

188682

license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant~~, has been~~:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction ~~21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396~~, unless the sentence and any subsequent period of probation for such conviction or plea ~~pleas~~ ended: ~~more than 15 years prior to the date of the application;~~

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

Notwithstanding s. 120.60, for felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the board, or the department if there is no board, may not approve or deny the application for a license, certificate, or registration until final resolution of the case;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such


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conviction or plea ended more than 15 years before the date of the application;

(c) ~~(b)~~ Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) ~~(c)~~ Has been terminated for cause, pursuant to the appeals procedures established by the state ~~or Federal Government~~, from any other state Medicaid program ~~or the federal Medicare program~~, unless the applicant has been in good standing with a state Medicaid program ~~or the federal Medicare program~~ for the most recent 5 years and the termination occurred at least 20 years before ~~prior to~~ the date of the application; or~~.~~

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2010, which was recognized by a board or, if there is no board, recognized by the department, and who applied for licensure after July 1, 2010.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under:


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chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction since July 1, 2010;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2010;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

For felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the department may not approve or deny the application for a renewal of a license, certificate, or registration until the final resolution of the case.

(4) ~~(3)~~ Licensed health care practitioners shall report allegations of health care ~~Medicaid~~ fraud to the department,


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regardless of the practice setting in which the alleged Medicaid fraud occurred.

(5) ~~(4)~~ The acceptance by a licensing authority of a candidate's relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging health care ~~Medicaid~~ fraud or similar charges constitutes the permanent revocation of the license.

Section 67. Subsection (6) of section 456.036, Florida Statutes, is amended to read:

456.036 Licenses; active and inactive status; delinquency.—

(6)(a) Except as provided in paragraph (b), a delinquent licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(b) A delinquent licensee whose license becomes delinquent before the final resolution of a case under s. 456.0635(3) must affirmatively apply by submitting a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which the case achieves final resolution by order of the court. Failure by a delinquent licensee to become active or inactive before the expiration of that licensure cycle renders

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the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

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

And the title is amended as follows:

Delete line 326

and insert:

Statutory Revision; amending s. 456.0635, F.S.; revising the grounds under which the Department of Health or corresponding board is required to refuse to admit a candidate to an examination and to refuse to issue or renew a license, certificate, or registration of a health care practitioner; providing an exception; amending s. 456.036, F.S.; requiring a delinquent licensee whose license becomes delinquent before the final resolution of a case regarding Medicaid fraud to affirmatively apply by submitting a complete application for active or inactive status during the licensure cycle in which the case achieves final resolution by order of the court; providing that failure by a delinquent licensee to become active or inactive before the expiration of that licensure cycle renders the license null; requiring that any subsequent licensure be as a result of applying for and meeting all requirements imposed on an applicant for new licensure; creating ss. 458.3167 and

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 5720 and 5721
insert:

Section 75. Present subsections (15) through (21) of section 641.19, Florida Statutes, are renumbered as subsections (16) through (22), respectively, and a new subsection (15) is added to that section, to read:

641.19 Definitions.—As used in this part, the term:

(15) "Provider service network" means a network established or organized and operated by a health care provider or group of affiliated health care providers, including minority physician networks and emergency room diversion programs that meet the


364932

requirements of s. 409.91211, which directly provides a substantial proportion of the health care items and services under a contract and may make arrangements with physicians, other health care practitioners, health care institutions, or any combination of such practitioners or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by such physicians, practitioners, or institutions. The health care providers operating the provider service network must have a controlling interest in the governing body of the network.

Section 76. Section 641.2019, Florida Statutes, is created to read:

641.2019 Provider service network certificate of authority.—Notwithstanding any other provisions of this chapter, a provider service network, including a prepaid provider service network described under s. 409.912(4)(d), which meets all of the applicable requirements of this part may apply for and obtain a health care provider certificate pursuant to part III of this chapter and a certificate of authority pursuant to this part which states that the network is authorized to operate a certified provider service network under this chapter. A certified provider service network has the same rights and responsibilities as a health maintenance organization certified under this part.

Section 77. Subsection (13) of section 641.47, Florida Statutes, is amended to read:

641.47 Definitions.—As used in this part, the term:

(13) "Organization" means a ~~any~~ health maintenance organization as defined in s. 641.19, a ~~and any~~ prepaid health

clinic as defined in s. 641.402, and a provider service network as defined in s. 641.19.

Section 78. Section 641.49, Florida Statutes, is amended to read:

641.49 Health care provider certificate ~~certification of health maintenance organization and prepaid health clinic as health care providers; application procedure~~.—

(1) No person or governmental unit shall establish, conduct, or maintain a health maintenance organization, ~~or a~~ prepaid health clinic, or provider service network in this state without first obtaining a health care provider certificate under this part.

(2) The office may ~~shall~~ not issue a certificate of authority under part I or part II of this chapter to any applicant which does not possess a valid health care provider certificate issued by the agency under this part.

(3) Each application for a health care provider certificate shall be on a form prescribed by the agency. The following information and documents shall be submitted by an applicant and maintained, after certification under this part, by each organization and shall be available for inspection or examination by the agency at the offices of an organization at any time during regular business hours. The agency shall give reasonable notice to an organization before ~~prior to~~ any onsite inspection or examination of its records or premises conducted under this section. The agency may require that the following information or documents be submitted with the application:

(a) A copy of the articles of incorporation and all amendments to the articles.

(b) A copy of the bylaws, rules and regulations, or similar form of document, if any, regulating the conduct of the affairs of the applicant or organization.

(c) A list of the names, addresses, and official capacities with the applicant or organization of the persons who are to be responsible for the conduct of the affairs of the applicant or organization, including all officers and directors of the corporation. Such persons must ~~shall~~ fully disclose to the agency and the directors of the applicant or organization the extent and nature of any contracts or arrangements between them and the applicant or organization, including any possible conflicts of interest.

(d) The name and address of the applicant and the name by which the applicant or organization is to be known.

(e) A statement generally describing the applicant or organization and its operations.

(f) A copy of the form for each group and individual contract, certificate, subscriber handbook, and any other similar documents issued to subscribers.

(g) A statement describing the manner in which health care services shall be regularly available.

(h) A statement that the applicant has an established network of health care providers which is capable of providing the health care services that are to be offered by the organization.

(i) The locations at which health care services shall be regularly available to subscribers.

(j) The type of health care personnel engaged to provide the health care services and the quantity of the personnel of


364932

each type.

(k) A statement giving the present and projected number of subscribers to be enrolled annually ~~yearly~~ for the next 3 years.

(l) A statement indicating the source of emergency services and care on a 24-hour basis.

(m) A statement that the physicians employed by the applicant have been formally organized as a medical staff and that the applicant's governing body has designated a chief of medical staff.

(n) A statement describing the manner in which the applicant or organization assures the maintenance of a medical records system in accordance with accepted medical records' standards and practices.

(o) If general anesthesia is to be administered in a facility not licensed by the agency, a copy of architectural plans that meet the requirements for institutional occupancy (NFPA 101 Life Safety Code, current edition as adopted by the State Fire Marshal).

(p) A description of the applicant's or organization's internal quality assurance program, including committee structure, as required under s. 641.51.

(q) A description and supporting documentation concerning how the applicant or health maintenance organization will comply with internal risk management program requirements under s. 641.55.

(r) An explanation of how coverage for emergency services and care is to be effected outside the applicant's or health maintenance organization's stated geographic area.

(s) A statement and map describing with reasonable accuracy


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the specific geographic area to be served.

(t) A nonrefundable application fee of $1,000.

(u) Such additional information as the agency may reasonably require.

Section 79. Paragraph (b) of subsection (2) of section 430.705, Florida Statutes, is amended to read:

430.705 Implementation of the long-term care community diversion pilot projects.—

(2)

(b) The department shall select providers that meet all of the following criteria. Providers shall:

1. Have a plan administrator who is dedicated to the diversion pilot project and project staff who perform the necessary project administrative functions, including data collection, reporting, and analysis.

2. Demonstrate the ability to provide program enrollees with a choice of care provider by contracting with multiple providers that provide the same type of service.

3. Demonstrate through performance or other documented means the capacity for prompt payment of claims as specified under s. 641.3155.

4. Maintain an insolvency protection account in a bank or savings and loan association located in the state with a balance of at least $100,000 into which monthly deposits equal to at least 5 percent of premiums received under the project are made until the balance equals 2 percent of the total contract amount. The account shall be established with such terms as to ensure that funds are ~~may only be~~ withdrawn only with the signature approval of designated department representatives.

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5. Maintain a surplus of at least $1.5 million as determined by the department. Each applicant and each provider shall furnish to the department initial and annual unqualified audited financial statements prepared by a certified public accountant that expressly confirm that the applicant or provider satisfies this surplus requirement. The department may approve a waiver of compliance with the surplus requirement for an existing diversion provider. The department's approval of the ~~this~~ waiver is ~~must be~~ contingent on the provider demonstrating proof to the department that the entity has posted and maintains a $1.5 million performance bond, which is written by an insurer licensed to transact insurance in this state, in lieu of meeting the surplus requirement. The department may not approve a waiver of compliance with the surplus requirement that extends beyond June 30, 2006. As used in this subparagraph, the term:

a. "Existing diversion provider" means an entity that is approved by the department on or before June 30, 2005, to provide services to consumers through any long-term care community diversion pilot project authorized under ss. 430.701-430.709.

b. "Surplus" has the same meaning as in s. 641.19~~(19)~~.

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

And the title is amended as follows:

Delete line 374

and insert:

without the insured's permission; amending s. 641.19, F.S.; defining the term "provider service network"; creating s. 641.2019, F.S.; providing that a provider


364932

service network that meets the requirements of ch. 641, F.S., may obtain a certificate of authority under that chapter; amending s. 641.47, F.S.; redefining the term "organization" to include a provider service network; amending s. 641.49, F.S.; providing that a provider service network may apply for a health care provider certificate; amending s. 430.705, F.S.; conforming a cross-reference; amending s. 766.102,

689746

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 5933 and 5934
insert:

Section 81. Subsection (4) of section 766.202, Florida Statutes, is amended to read:

766.202 Definitions; ss. 766.201-766.212.—As used in ss. 766.201-766.212, the term:

(4) "Health care provider" means any hospital, ambulatory surgical center, or mobile surgical facility as defined and licensed under chapter 395; a birth center licensed under chapter 383; any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, part I of

689746

chapter 464, chapter 466, chapter 467, part XIV of chapter 468, or chapter 486; a clinical lab licensed under chapter 483; a health maintenance organization certificated under part I of chapter 641; a blood bank; a plasma center; an industrial clinic; a renal dialysis facility; or a professional association partnership, corporation, joint venture, or other association for professional activity by health care providers.

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

And the title is amended as follows:

Delete line 399

and insert:

requiring notice to low-income pool recipients; amending s. 766.202, F.S.; redefining the term "health care provider" to include persons licensed to provide orthotics, prosthetics, and pedorthics;

431012

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 3609
and insert:
monitoring. Each plan must maintain written provider credentialing policies and procedures that are compliant with federal and agency guidelines. Each plan must verify at least annually that all

398300

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 3656
and insert:
prescribers and pharmacists submitting the request. Plans shall require any vendor or subcontractor providing fiscal intermediary services to the plan pursuant to s. 641.316, which involve the acceptance of provider claims, to accept electronic claims in compliance with federal standards.


771444

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 3753 and 3754

insert:

(n) *Fiscal intermediary services.*—If a qualified plan contracts for fiscal intermediary services as defined in s. 641.316(1), the plan shall contract only with a fiscal intermediary services organization registered with the Office of Insurance Regulation as required under s. 641.316(6). All noncapitated payments to a health care provider by a fiscal intermediary services organization under contract with a qualified plan must include an explanation of benefits for which payment is being made and include, at a minimum, the enrollee's


771444

name, the date of service, the procedure code, the amount of reimbursement, and the identification of the qualified plan on whose behalf the payment is being made.

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

And the title is amended as follows:

Delete line 180

and insert:

list; requiring plans that contract for fiscal intermediary services to contract only with registered fiscal intermediary services organizations; creating s. 409.967, F.S.; providing for managed

889344

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 4927 and 4928
insert:

Section 59. Paragraph (b) of subsection (2) of section 641.316, Florida Statutes, is amended to read:

641.316 Fiscal intermediary services.—

(2)

(b) The term "fiscal intermediary services organization" means a person or entity that performs fiduciary or fiscal intermediary services to health care professionals who contract with health maintenance organizations other than a hospital licensed under chapter 395, an insurer licensed under chapter

889344

624, a third-party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under this chapter, a qualified plan authorized under part IV of chapter 409, or a physician group practice as defined in s. 456.053(3)~~(h)~~ which provides services under the scope of licenses of the members of the group practice.

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

And the title is amended as follows:

Delete line 272

and insert:

eliminating provisions requiring reports; amending s. 641.316, F.S.; redefining the term "fiscal intermediary services organization" to include certain qualified plans that contract with health care professionals for fiscal intermediary services; amending s.

754288

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 5530 and 5531
insert:

Section 70. Subsection (1) of section 483.245, Florida Statutes, is amended to read:

483.245 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any dialysis facility, physician, surgeon, organization, agency, or person, ~~either~~ directly or indirectly, for patients referred to a clinical laboratory licensed under this part. However, it is not

754288

unlawful for a clinical laboratory to provide assistance to any physician, organization, agency, or person solely for the purpose of performing duties associated with the collection or processing of specimens to be sent to a clinical laboratory.

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

And the title is amended as follows:

Delete line 342

and insert:

incorporation by reference; amending s. 483.245, F.S.; clarifying that a clinical laboratory may provide assistance with the collection or processing of specimens; amending s. 499.003, F.S.;

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 1972
INTRODUCER:	Budget Subcommittee on Health and Human Services Appropriations; Committee on Health Regulations; Senators Negron, Gaetz, and others
SUBJECT:	Health and Human Services
DATE:	April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown, et al.	Stovall	HR	**Fav/CS**
2.	Kynoch	Hansen	BHA	**Fav/CS**
3.	Kynoch	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill makes numerous changes to Florida law regarding health and human services, including those relating to services provided or regulated by the Agency for Health Care Administration (AHCA), the Agency for Persons with Disabilities (APD), the Department of Health (DOH), the Department of Children and Family Services (DCF), the Department of Elderly Affairs (DOEA), and the Florida Healthy Kids Corporation (FHKC). The bill provides that:

- Certain hospital districts, county hospitals with taxing authority, and public health trusts are exempted from the requirement to annually appropriate dollars into community redevelopment trust funds;
- Ad valorem revenues raised by certain hospital districts, county hospitals, and public health trusts may be used only to pay for "health care services;"
- The Division of Statutory Revision is requested to parse ch. 409, F.S., into four parts:
  - Part I, SOCIAL AND ECONOMIC ASSISTANCE, comprises ss. 409.016 through 409.803, F.S.
  - Part II, KIDCARE, comprises ss. 409.810 through 409.821, F.S.
  - Part III, MEDICAID, comprises ss. 409.901 through, 409.9205, F.S.; and
  - Part IV, MEDICAID MANAGED CARE, comprises ss. 409.961 through 409.978, F.S.

- The minimum medical loss ratio (MLR) for a FHKC contract for health care services is set at 90 percent (instead of 85 percent under current law);
- Each school district is required to collaborate with the FHKC to provide application information about Florida Kidcare or an application for Kidcare to students at the beginning of each school year, and modify the school district's application form for school breakfast and lunch programs to incorporate a provision that permits the school district to share data from the application form with the state agencies and the FHKC and its agents that administer Kidcare, unless the child's parent or guardian opts out of the provision;
- Medicaid eligibility is restricted to U.S. citizens and lawfully admitted non-citizens. Citizenship or immigration status must be verified. State funds may not be used for individuals who do not qualify under these standards unless the services are necessary for treating an emergency medical condition or for pregnant women;
- The DCF, when adopting rules relating to eligibility for institutional care services, hospice services, and home and community-based services (HCBS) waiver programs, must evaluate payment of fair compensation by a Medicaid applicant for a personal care services contract entered into on or after October 1, 2011, based on specific criteria created by the bill;
- Medicaid applicants must agree to certain conditions for Medicaid eligibility, including the payment of a $10 monthly premium, unless exempted, and participation in one or more health improvement programs under certain conditions;
- A person who is eligible for Medicaid services and has access to health care coverage through an employer-sponsored health plan may not receive Medicaid services under the state's Medicaid program but may use Medicaid financial assistance to help pay the cost of premiums for the employer-sponsored health plan for the eligible person and his or her Medicaid-eligible family members;
- A Medicaid recipient who has access to other insurance or coverage created by state or federal law may opt out of services under the state's Medicaid program and use Medicaid financial assistance to help pay the cost of premiums for the recipient and the recipient's Medicaid-eligible family members;
- Any state agency that administers a Medicaid program or waiver is prohibited from expending funds during any fiscal year in excess of the amount appropriated in the General Appropriations Act (GAA). The agency is required to take action during the fiscal year to remedy the deficit, including submitting a budget amendment to the Legislative Budget Commission to reduce Medicaid program spending in that fiscal year;
- The medically needy program is replaced by the Medicaid Non-poverty Medical Subsidy program, and benefits for non-pregnant adults under the program are limited to physician services only effective April 1, 2012;
- The AHCA must assess a sliding-scale parental fee on all parents of children under age 18 being served by a HCBS waiver when the family has an adjusted household income over 100 percent of the federal poverty level;
- The AHCA is prohibited from paying for psychotropic medications prescribed for a child younger than the age approved by the federal Food and Drug Administration;
- The Medicaid program's fee-for-services payments to primary care physicians for primary care services must be at least 100 percent of the Medicare payment rate for such services, effective January 1, 2013;
- The requirement in existing law that the AHCA must purchase non-emergency transportation services through the community transportation system under the umbrella of the Commission

for the Transportation Disadvantaged, is removed from statute, and the AHCA is required to either competitively procure nonemergency transportation services or secure federal waiver authority necessary to draw down the highest federal match available for such services;

- Medicaid managed care plans are not required to purchase nonemergency transportation services through the community coordinated transportation system under the umbrella of the Commission for the Transportation Disadvantaged;
- Medicaid recipients must pay copayments at the time of service. A $3 copayment is required for visiting a specialty physician. The AHCA is required to seek a waiver of the federal requirement that cost sharing amounts for nonemergency services and care furnished in a hospital emergency department must be nominal, and upon waiver approval, each Medicaid recipient must pay a $100 copayment for nonemergency services and care provided in a hospital emergency department (instead of $15 under current law);
- The Legislature intends that if any conflicts exists between part IV and other parts or sections of ch. 409 F.S., the provisions of part IV control;
- The Medicaid managed care program (MMCP) is established as a statewide, integrated managed care program for all covered services in the medical assistance component (MAC) and in the managed long-term care (managed LTC) component under part IV of ch. 409, F.S;
- The AHCA is required to submit waiver and state plan amendment requests by August 1, 2011, as needed to implement the MMCP. The requests must include waiver authority to permit HCBS to be preferred over nursing home services, require dual-eligibles to participate in the program, and allow Florida to limit enrollment in the managed LTC component;
- The AHCA is required to initiate a procurement processes for the MMCP as soon as practicable and no later than July 1, 2011, in anticipation of federal waiver authority. The AHCA is required to seek waiver approval by December 1, 2011, in order to begin implementation on December 31, 2011;
- The AHCA is required to begin implementing on December 31, 2011. If the necessary waivers are not timely received, the AHCA is required to notify the federal Centers for Medicare and Medicaid Services (federal CMS) of the state's implementation of the MMCP and to request the federal agency to continue providing federal funds, as provided under the current Medicaid program, to be used for the MMCP. If the federal CMS refuses to continue providing federal funds, the MMCP will be implemented to the extent state funds are available, under specified parameters;
- All Medicaid recipients are required to receive covered services through the MMCP unless specifically excluded. Specified individuals are exempt from mandatory enrollment in the MMCP but may voluntarily enroll. Medicaid recipients who are excluded or exempt from mandatory participation and who do not choose to enroll in the MMCP will be served though the Medicaid fee-for-service program under part III of ch. 409, F.S.;
- The AHCA is required to implement a competitive-bid procurement process for "qualified plans" that are managed care plans determined eligible to participate in the MMCP in 19 different regions. Selection criteria are established;
- The AHCA is prohibited from selecting more than one plan per 20,000 Medicaid recipients residing in each region who are subject to mandatory enrollment, with a minimum of 3 and a maximum of 10 plans per region;
- Standards for qualified plan contracts must include five-year durations, non-renewal of contracts, a primary care physician for each member, prompt pay, required rates of pay for non-contracted providers of emergency services, plan network adequacy, encounter data

reporting, quality and performance standards, fraud prevention, grievance resolution, penalties, performance bonds, solvency standards, and guaranteed savings;

- Payments for qualified plans in both the medical assistance component and managed LTC component will be made in accordance with a capitated managed care model;
- The AHCA is required to establish a uniform method for annual reporting of specified financial information for all Medicaid prepaid plans across all lines of business in all regions. Qualified plans are required to use the uniform method. The AHCA is required to determine achieved savings rebates owed to the state by the plans according to specified calculations. Qualified plans are required to refund dollars to the state if profit margins are greater than specified thresholds, according to parameters set by statute.
- Qualified plans are required to include three types of essential providers in their networks, including faculty plans of state medical schools, regional perinatal intensive care centers (RPICCs), and children's specialty hospitals. Qualified plans are required to pay essential providers at specified rates in the absence of contracted rates with those providers.
- Qualified plans and providers are required to negotiate in good faith. A procedure is established for dealing with provider contracting impasses in areas containing no capitated plans prior to July 1, 2011;
- Qualified plans are required to monitor the quality and performance of network providers based on metrics established by the AHCA;
- Qualified plans are required to compensate primary care physicians with payments equivalent to or greater than the Medicare rate for primary care services no later than January 1, 2013;
- Unresolved disputes between a qualified plan and a provider will proceed in accordance with s. 408.7057, F.S., which is the existing statewide provider and health plan claim dispute resolution program;
- Qualified plans will be paid per-member, per-month capitation payments based on an assessment of each member's acuity level. Payment for managed LTC capitations will be combined with rates for medical assistance capitations;
- The AHCA is required to develop a methodology and request authority from the federal CMS that ensures the availability of certified public expenditures in the MMCP to support non-institutional teaching faculty providers that have historically served Medicaid recipients. Such funding is commonly known as "physician UPL." The AHCA is required to make direct supplemental payments to such providers or to a statewide entity on behalf of such providers that contract with qualified plans;
- MMCP recipients may choose from plans available in their region of residence. Recipients who have not chosen within 30 days of becoming eligible will be automatically assigned to a plan, based on specified criteria;
- MMCP recipients diagnosed with HIV/AIDS residing in region 11, 15, or 16 will be assigned to an HIV/AIDS specialty plan if those recipients do not choose a plan within 30 days;
- The AHCA is required to maintain and operate the Medicaid Encounter Data System. The AHCA and qualified plans are required to adhere to guidelines for data reporting, validation, and analysis. Qualified plans are required to submit encounter data according to deadlines established by the AHCA;
- The AHCA is required to begin implementing the medical assistance component by December 31, 2011, and finish implementing the component in all regions no later than December 31, 2012;

- Qualified plans must provide a specified set of services in the medical assistance component. Plans may provide for additional services as specified in the GAA. Plans may customize benefit packages for non-pregnant adults, vary cost-sharing provisions, and provide coverage for additional services, subject to standards of sufficiency and actuarial equivalence. Services provided must be medically necessary;
- The AHCA is required to begin implementing the managed LTC component by March 31, 2012, with full implementation in all regions by March 31, 2013;
- The DOEA is required to assist the AHCA with the LTC component by helping to develop specifications for procurement and a model contract, determine clinical eligibility for enrollment in managed LTC plans, monitor plan performance and measure the quality of service delivery, assist clients and families to address complaints with the plans, facilitate working relationships between plans and providers serving elders and disabled adults, and perform other functions specified in a memorandum of agreement with the AHCA;
- MMCP recipients are required to receive covered LTC services through the managed LTC component unless excluded. Specifically excluded from both the medical assistance component and the managed LTC component are persons residing in a nursing home facility or are considered residents under the nursing home's bed-hold policy on or before July 1, 2011. To participate in the managed LTC component, a recipient must be 65 years of age or older or eligible for Medicaid by reason of a disability and determined by the Comprehensive Assessment and Review for Long-Term Care Services (CARES) program to meet the requirements for nursing facility care;
- Qualified plans participating in the managed LTC component are required to provide all medical assistance component services, nursing facility services, and HCBS, including, but not limited to, assisted living facility (ALF) services;
- The AHCA is required to operate the CARES preadmission screening program to ensure that only recipients whose conditions require LTC services are enrolled in managed LTC plans. The AHCA is required to operate the CARES program through an interagency agreement with the DOEA;
- For a child 10 years of age or younger who is in an out-of-home placement and in the DCF's legal custody, the DCF must file a motion seeking a court's authorization to initially provide or continue to provide psychotropic medication to the child, and motion must be supported by the prescribing physician's signed medical report providing the results of a review of the administration of the medication by a child psychiatrist who is licensed under ch. 458 or 459, F.S. The review must meet certain criteria and be provided to the child and the parent or legal guardian before final express and informed consent is given. If a child who is in out-of-home placement is 10 years of age or younger, psychotropic medication may not be authorized by a court absent a finding of a compelling governmental interest;
- The definition of "blood establishment" is clarified that a person, entity, or organization that uses a mobile unit and performs any of the activities under the definition of "blood establishment" is also a blood establishment. The requirements and parameters for operating a blood establishment are amended;
- The definition of "developmental disability" specifically includes Down syndrome;
- The standards for civil actions against nursing homes and parties related to nursing homes are amended in various ways. Requirements are revised for suing an officer or director of a nursing home or its management company for alleged negligence or a violation of rights. In wrongful death actions brought against a nursing home, the noneconomic damages may not

exceed $250,000, regardless of the number of claimants. A hearing is required for the evaluation of evidence proffered by all parties for a judge's consideration of a punitive damages claim against a nursing home. The requirements for the recovery of punitive damages from a nursing home are revised;

- The existing statewide provider and health plan claim dispute resolution program is amended to establish that the program creates a procedure for dispute resolution and not an independent right of recovery;
- A medical physician licensed in another state or Canada is required to obtain a certificate from the Board of Medicine to provide expert medical opinions in Florida in a medical malpractice action. Grounds for physician disciplinary action for the act of providing misleading, deceptive, or fraudulent expert witness testimony relating to the practice of medicine are created;
- An osteopath licensed in another state or Canada is required to obtain a certificate from the Board of Osteopathic Medicine to provide expert medical opinions in Florida in a medical malpractice action. Grounds for physician disciplinary action for the act of providing misleading, deceptive, or fraudulent expert witness testimony relating to the practice of osteopathic medicine are created;
- Insurers issuing group or individual health benefit plans are allowed to offer a voluntary wellness or health improvement program and to encourage or reward participation in the program by authorizing rewards or incentives, including, but not limited to, merchandise, gift cards, debit cards, premium discounts or rebates, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts;
- The requirement that a medical malpractice insurance contract must authorize the insurer to admit liability and make a settlement offer or offer of judgment on behalf of the insured physician, without the insured physician's permission, if the offer is within the policy limits, is stricken from statute;
- The standard of care for Medicaid providers is altered relating to the recovery of civil damages. The liability of health care providers who provide covered medical services to Medicaid recipients is limited to $200,000 per claimant or $300,000 per occurrence for any cause of action arising out of the rendering of, or the failure to render, medical services to a Medicaid recipient, unless the claimant proves that the provider acted in a wrongful manner;
- The limited waiver of sovereign immunity is extended to a state not-for-profit college or university that owns or operates an accredited medical school and its employees and agents when the employees or agents of the medical school are providing patient services at a teaching hospital that has an affiliation agreement with the medical school. The medical school and its employees when providing patient services to patients at the public teaching hospital would be considered an agent of the public teaching hospital for purposes of sovereign immunity, under certain parameters;
- The limited waiver of sovereign immunity is extended to certain providers or vendors, 75 percent of whose client population consists of individuals with developmental disabilities, individuals who are blind or severely handicapped, or individuals with mental illness, which have contractually agreed to act on behalf of certain state agencies to provide services to such individuals. Those providers or vendors and their employees or agents are considered agents of the state under certain parameters;
- The limited waiver of sovereign immunity is extended to specified entities related to the Univ. of Florida and Shands Teaching Hospital and Clinics, Inc., Shands Jacksonville

Medical Center, Inc., and Shands Jacksonville Healthcare, Inc. Those entities and certain not-for-profit subsidiaries are considered instrumentalities of the state for purposes of sovereign immunity;

- The AHCA is required to submit a reorganizational plan to the Governor, the Speaker of the House of Representative, and the President of the Senate by January 1, 2012, which converts the AHCA from a check-writing and fraud-chasing agency into a contract compliance and monitoring agency;
- The AHCA is required to seek federal waiver authority for many of the bill's provisions;
- If the Legislature has not received a letter from the Governor stating that the federal CMS has approved waivers necessary to implement the Medicaid managed care reforms contained in the bill by December 1, 2011, the State of Florida will withdraw from the Medicaid program effective December 31, 2011;
- If the federal government does not provide Florida with funds to support its Medicaid program, medical services would be provided to children in the child welfare system through the state-funded-only program, which would allow the state to remain eligible for federal funds under Title IV-E for foster care and adoption assistance and for the Temporary Assistance for Needy Families (TANF) block grant. Medical services would be procured by community-based care lead agencies with funds appropriated for that purpose; and
- If any provision in the bill is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision, and to this end the provisions of the bill are severable.

The bill will take effect upon becoming a law.

This bill substantially amends the following sections of the Florida Statutes: 163.387, 200.186, 393.0661, 409.016, 409.813, 409.8132, 409.815, 409.818, 154.503, 408.915, 1006.06, 409.901, 409.902, 409.9021, 409.903, 409.904, 409.905, 409.906, 409.9062, 409.907, 409.908, 409.9081, 409.912, 409.915, 409.9126, 430.04, . 430.2053, 39.407, 216.262, 381.06014, 393.063, 400.023, 400.0237, 408.7057, 458.331, 459.015, 499.003, 499.005, 499.01, 626.9541, 627.4147, 766.102, 766.104, 766.106, 766.1115, 766.203, 768.28, 1004.41, and 443.111.

The bill creates the following sections of the Florida Statutes: 409.16713, 409.9022, 409.961, 409.962, 409.963, 409.964, 409.965, 409.966, 409.967, 409.968, 409.969, 409.970, 409.971, 409.972, 409.973, 409.974, 409.975, 409.976, 409.977, 409.978, 458.3167, 459.0078, 766.1183, and 766.1184.

The bill transfers, renumbers, and amends the following sections of the Florida Statutes: 624.91 to 409.8115; 409.9301 to 409.9067; and 409.9122 to 409.987.

The bill transfers and renumbers the following sections of the Florida Statutes: 409.91207 to 409.985; 409.91211 to 409.986; 409.9123 to 409.988; 409.9124 to 409.989; 409.942 to 414.29; 409.944 to 163.464; 409.945 to 163.465; and 409.946 to 163.466.

The bill repeals the following sections of the Florida Statutes: 409.9121, 409.919, and 624.915.

II. Present Situation:

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the AHCA and financed by federal and state funds. The AHCA delegates certain functions to other state agencies, including the DCF, the APD, and the DOEA. Key characteristics[1] of Florida's Medicaid program are as follows:

- Over 2.9 million enrolled recipients.
- $19.8 billion estimated spending in Fiscal Year 2010-2011;
- $6,759 estimated per recipient spending in Fiscal Year 2010-2011;
- Over half the childbirths in Florida are paid for by the Medicaid program;
- 27 percent of Florida's children are covered by Medicaid;
- Over 1.9 million of the 2.9 million recipients are enrolled in some form of managed care;
- 936,000 of the 2.9 million recipients are enrolled in fee-for-service Medicaid;
- 24 managed care organizations, including 19 HMOs and 6 PSNs; and
- 100,000 fee-for-service providers.

The structure of each state's Medicaid program varies and what states must pay for is largely determined by the federal government, as a condition of receiving federal funds. Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states: Some populations are entitled to enroll in the program; and enrollees are entitled to certain benefits.

The federal government sets the minimum mandatory populations to be included in every state Medicaid program and the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include physician services, hospital services, home health services, and family planning.[2] States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, adult dental services, and dialysis.[3]

States do have some flexibility. States can ask the federal government to waive federal requirements to expand populations or services, or to try new ways of service delivery. Florida has 20 separate waiver programs for distinct populations, services and service delivery models.

Florida Medicaid is the second largest single program in the state, behind public education, representing 28 percent of the total FY 2010-11 budget. Medicaid General Revenue expenditures represent 17 percent of the total General Revenue funds appropriated in FY 2010-11. Florida's program is the 4th largest in the nation, and the 5th largest in terms of expenditures.

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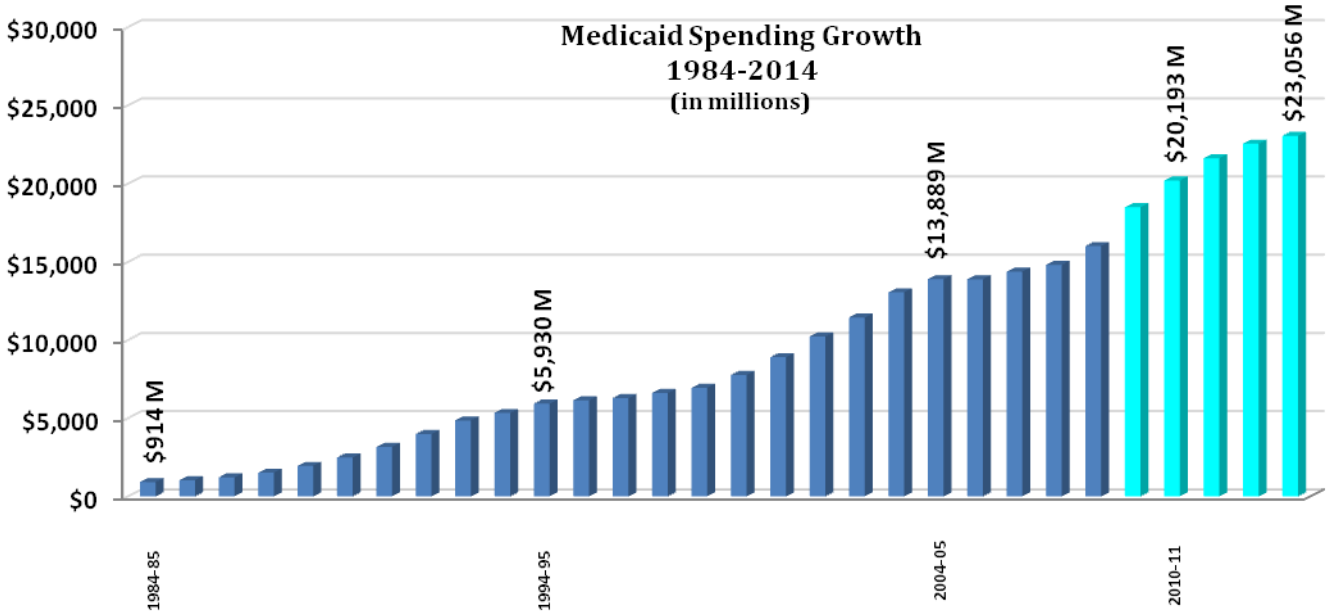
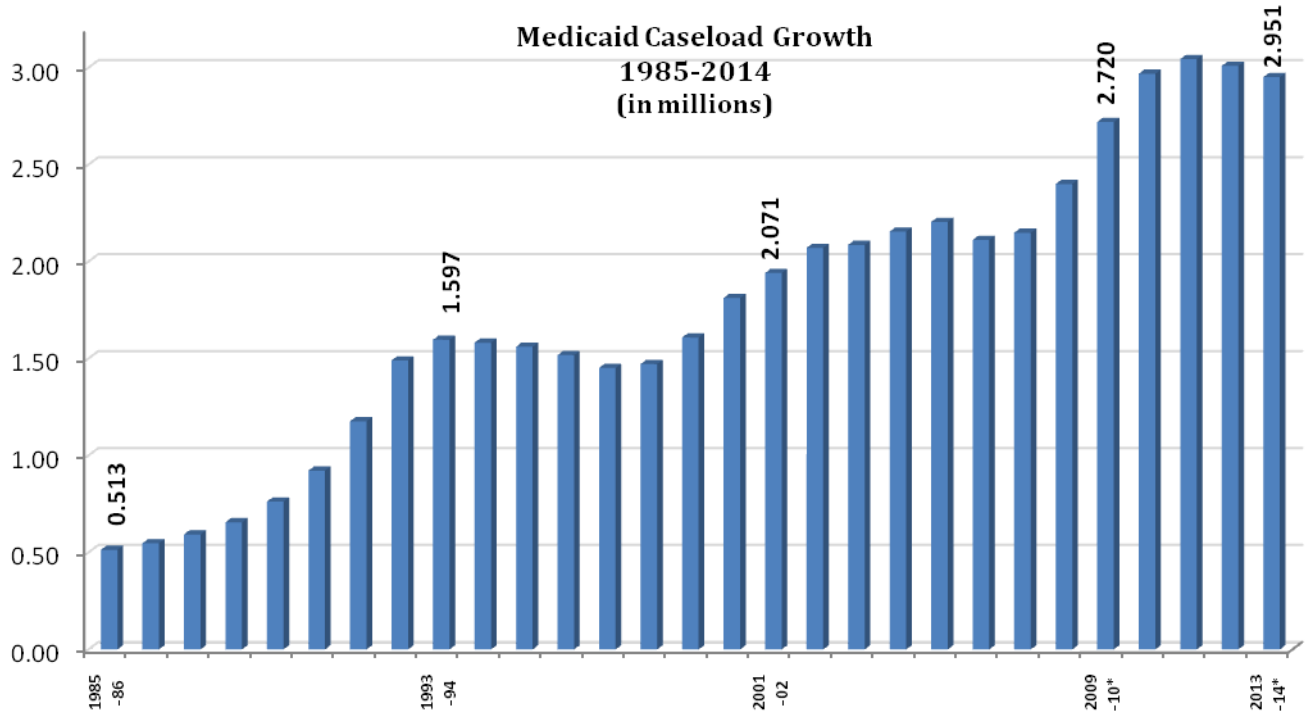
[1] Social Services Estimating Conference (SSEC) February 2011 Medicaid Expenditures; Florida Medicaid: Program Overview, Agency for Health Care Administration Presentation to the Senate Subcommittee on Health and Human Services Appropriations, February 2011; Comprehensive Medicaid Managed Care and Medicaid Pilot Enrollment Report, February 2011, Agency for Health Care Administration.

[2] s. 409.905, F.S.

[3] s. 409.906, F.S.

Florida's Medicaid costs have increased significantly since its inception, due to substantial eligibility expansion as well as the broad range of services and programs funded by Medicaid expenditures. The growth in Florida's Medicaid population and expenditures is shown in the figures below.[4]





[4] *Supra*, note 1.

Current estimates indicate the Medicaid program will cost $21.4 billion in FY 2011-2012. By FY 2013-2014, the estimated program cost is $23.6 billion. Florida has made many efforts to control costs in the program. Since 1996, the Legislature has reduced $5.2 billion from the program through rate reductions, utilization limits, fraud and abuse efforts, and other cost control initiatives. For example, approximately 40 percent of the Medicaid prescription drug budget is funded by manufacturer rebates.

Medicaid Mandatory Benefits

Federal law requires that each participating state must provide a core package of mandatory benefits in its Medicaid program. Section 409.905, F.S., requires the AHCA to provide the following mandatory services to recipients when such services are deemed medically necessary:

- Advanced registered nurse practitioner services;
- Early periodic screening diagnosis and treatment services for children;
- Family planning services and supplies;
- Home health agency services;
- Hospital inpatient services;
- Hospital outpatient services;
- Laboratory and X-ray services;
- Nursing facility services;
- Physician services;
- Rural health clinic services; and
- Transportation to access covered services.

Medicaid Optional Benefits

The mandatory benefits may be supplemented by many optional benefits. Under s. 409.906, F.S., the AHCA may provide specified optional services, subject to an appropriation, including:

- Adult dental services;
- Adult health screening;
- Ambulatory patient services;
- Anesthesiologist assistant services;
- Assistive services;
- Birth center services;
- Case management;
- Chiropractic services;
- Community mental health services;
- Dental services;
- Dialysis services;
- Durable medical equipment;
- Healthy start services;
- Hearing services;
- Home and community-based services;
- Hospice services;
- Intermediate care facilities for the developmentally disabled;

- Intermediate care services;
- Lung transplants;
- Optometric services;
- Physician assistant services;
- Podiatric services;
- Prescription drugs;
- Registered nurse first assistant services;
- State mental hospital services; and
- Vision services.

Medicaid Benefits Compared to Private Small-Group Health Insurance

Private employers with 50 or fewer employees may obtain coverage in the small group market in Florida. Section 627.6699, F.S., mandates the coverage of certain specified benefits. However, insurers and health maintenance organizations (HMOs) may offer additional coverage and varied copayments, coinsurance, and deductibles to meet the needs of employers and their covered employees. Three insurers and HMOs that represent approximately 60 percent of the market share by premiums were surveyed in 2011 by staff of the Senate Committee on Banking and Insurance regarding their coverage.

Medicaid Mandatory Benefits Compared to Small-Group

Generally, subject to prior authorization, deductibles, copayments, and limits on the number of days or visits, small group plans provides coverage for many of the mandatory Medicaid services, such as, inpatient and outpatient hospital services, nursing facility services, home health care services, family planning, laboratory services and X-ray services. However, some plans exclude or limit coverage for private duty nursing care. Childhood screenings and health evaluations are covered under group plans until a child reaches age 16. These exams typically include routine physical examinations, immunizations, hearing tests, and vision screenings. Plans do not cover ambulance services provided for routine transportation for the provision of inpatient and outpatient services. However, transportation for newborns needing specialized care is covered.

Medicaid Optional Benefits Compared to Small-Group

Generally, small group plans do not provide coverage for diagnostic or corrective dental, hearing, or vision services. However, hearing and vision screenings for children age 16 or under are covered, as discussed above. Except in certain circumstances, hearing aids are not covered. The plans provide care for the treatment of an accidental dental injury or coverage for necessary dental treatment that, if left untreated, is likely to result in a medical condition. Plans are mandated to provide specified cleft lip and cleft palate services and coverage for procedures involving bones or joints of the mandible and procedures medically necessary to treat a condition caused by congenital or developmental deformity, disorder, or injury. For vision services, many plans limit coverage to physician services needed to treat injury, disease, or covered conditions of the eyes.

Small group plans generally provide coverage for adult health screening, ambulatory surgical center services, birth center services, hospice services, transplant services, prescription drugs, dialysis facility services, and durable medical equipment are covered. Substance abuse and

mental health services can be subject to maximum number of days or visits for inpatient and outpatient care, deductibles, or coinsurance. Occupational, physical, respiratory, and speech therapy can be subject to maximum number of visits and copayments. For chiropractic services, services are limited by an annual dollar benefit or number of visits. For podiatric services, foot care including any health care service, is excluded in the absence of a disease.

Medicaid and Federal Health Insurance Reform

The U.S. Congress passed the Patient Protection and Affordable Care Act (PPACA)[5] and President Barack Obama signed the bill into law on March 23, 2010.[6] Key policy areas include: mandated individual coverage; mandated employer offers of coverage; expansion of Medicaid; individual cost-sharing subsidies and taxes or penalties for non-compliance; employer taxes or penalties for non-compliance; health insurance exchanges; expanded regulation of the private insurance market; and revision of the Medicare and Medicaid programs. If implemented, several of these changes will affect the Florida Medicaid program.

Medicaid currently focuses on covering low-income children, pregnant women, and adults who are elderly or have a disability. The PPACA increases the mandatory population to all adults, regardless of whether they are disabled or elderly, up to 133 percent of the poverty level. The PPACA would finance the expansion by raising the federal match rate for the new groups. States would still have to pay a share for the new groups, but it would be smaller than for existing groups. However, the additional federal match is time-limited.

In addition, the PPACA imposes a mandate on individuals to buy insurance, or pay a penalty. Currently, many uninsured individuals are eligible for Medicaid coverage, but are not enrolled. The existence of the federal mandate to purchase insurance will result in many eligibles coming forward and enrolling in Medicaid who had not previously chosen to do so. While these eligibles are currently entitled to Medicaid coverage, their participation will result in increased costs and would not likely have occurred without the catalyst of the federal mandate.

The costs of PPACA to Florida Medicaid will be significant. Florida is expected to have over 379,000 new enrollees from the expanded PPACA Medicaid population in 2014, at a cost of $1.5 billion (of which $142 million will be paid by the state), bringing the total cost of Medicaid that year to $25 billion. By 2019, Florida Medicaid will have 1.9 million additional enrollees, at an additional cost of over $7.7 billion (of which $1 billion will be paid by the state).[7] In subsequent years, the state share may increase.

The PPACA will create additional costs unrelated to caseload expansion. For example, the law increases the minimum federal rebate for brand drugs from 15.1 percent to 23.1 percent and requires that 100 percent of this portion of rebates be withheld by the federal government rather

[5] Pub.L. No. 111-148, 124 Stat. 119 (2010)

[6] The act is currently being challenged as unconstitutional by Florida and 25 other states. The law was declared unconstitutional by the court in State of Florida, et al. v. United States Department of Health and Human Services, et al., --- F.Supp.2d ----, 2011 WL 285683 (N.D.Fla.) However, the ruling was stayed and the matter is on appeal to the United States Court of Appeals for the Eleventh Circuit, Case No. 11-11021-HH.

[7] Agency for Health Care Administration, Overview of Federal Affordable Care Act, August 13, 2010; State of Florida Long-Range Financial Outlook Fiscal Year 2011-12 through 2013-14, Fall 2010 Report.

than the current procedure of sharing rebate revenue with the states. This provision will cost Florida approximately $37 million annually at current levels.[8] The FY 2010-2011 impact is estimated to be a loss in rebate general revenue of $39.8 million. This will be a recurring loss. Additionally, when the federal enhanced payments to primary care providers expire in 2014, it is estimated that continuing the payments will cost the state $247.9 million in 2015.

Medicaid Managed Care

Florida, like other states, has turned to managed care for improving access to care, containing costs, and enhancing quality. As of March 1, 2011, 67 percent of Medicaid participants were enrolled in some form of managed care for primary and acute care services. Florida has authorized at least 15 different managed care models, including primary care case management (PCCM), provider service networks (PSNs), health maintenance organizations (HMOs), minority physician networks (MPNs), prepaid mental health plans (PMHPs), prepaid dental plans (PDHPs), and the nursing home diversion (NHD) waiver. Some managed care models are designed to deliver comprehensive care while others are limited to specialty care. Florida operates several of its Medicaid managed care programs through a section 1915(b) waiver obtained from the federal Centers for Medicare and Medicaid Services in 1991. The Medicaid Reform demonstration project operates under a federal section 1115 waiver.

Managed Care Payment Methods

Florida Medicaid uses two main methods of payment within managed care. When services are delivered to beneficiaries and billed to the state on an individual or itemized basis, payment is made via "fee-for-service" (FFS), i.e. payment is made for each service after the service has been rendered and the state has been billed. Conversely, the state also contracts to make payments on a prepaid basis, which results in a fixed, lump-sum payment per beneficiary, typically made on a monthly basis, designed to cover services needed in the aggregate for any given month in a 12-month period. Such a fixed, prepayment is known as a "capitation."

Managed care plans that provide for services on a prepaid, capitated basis agree to accept the capitation payment and assume financial risk for delivering all covered services, regardless of whether the capitation fully covers the cost for all services that need to be provided. Capitated entities sometimes assume full risk, i.e. the coverage is comprehensive with no mitigation factors for the risk assumed, and others assume partial risk, i.e. the coverage is limited as opposed to comprehensive and/or the risk may be mitigated by loss prevention or shared-savings arrangements. Capitation is designed to provide the state with less risk and more predictability for Medicaid spending and to incent the capitated entities to manage the provision of services in a cost-effective manner.

The AHCA is charged by statute with developing capitation rates for managed care plans by administrative rule.[9] The rule is designed to represent a discount from what the state would otherwise pay for the same services provided to comparable populations on a FFS basis. Capitation rates must be certified as actuarially sound by a third-party actuary in compliance with federal guidelines.

[8] Agency for Health Care Administration, Patient Protection and Affordable Care Act Overview of Medicaid Prescribed Drug Changes, October 21, 2010.
[9] *See* s. 409.9124, F.S.

MediPass

The Medicaid Provider Access System (MediPass)[10] is a managed care program consisting of a PCCM system established in 1991. MediPass is available statewide to all beneficiaries who are eligible for managed care except for most beneficiaries in "Medicaid Reform" counties.[11] MediPass was designed to provide Medicaid beneficiaries with coordinated primary care while decreasing the inappropriate utilization of medical services. The state contracts with a health care provider – usually the beneficiary's primary care physician (PCP) – to provide basic care and to coordinate any needed specialty care or other services furnished by other physicians or providers. The MediPass PCP is paid a case management fee per person per month, and the PCP's services, as well as services from other providers, are paid for by the state on a fee-for-service basis. The PCPs are expected to monitor the appropriateness of health care provided to their patients. MediPass is managed care but is administered at the individual provider level, not by a managed care organization or managed care plan.

The AHCA has contracted with disease management organizations to provide disease management services to MediPass-enrolled beneficiaries living with certain diseases.[12]

Provider Service Networks

A provider service network (PSN) in the Medicaid program is a managed care plan that is majority-owned and operated by Florida health care providers, such as hospitals, physician groups, and/or federally qualified health centers. The PSN program began in 1997 when the Legislature authorized the AHCA to establish a Medicaid PSN demonstration project to capitalize on high-volume Medicaid providers and their ability to manage the medical care of Medicaid beneficiaries they serve. The first Medicaid PSN became operational by 2000.

The initial PSN contract was awarded by competitive bid. The AHCA currently awards PSN contracts based on an open application process, meaning the AHCA will offer a PSN contract to every applicant that applies for and meets the state's standards for a Medicaid PSN contract. There are currently six Medicaid PSNs statewide,[13] operating in 12 counties. The AHCA is authorized to pay PSNs a capitation if the PSN chooses to assume financial risk, or services rendered to PSN members may be paid on a fee-for-service basis. Fee-for-service PSNs are paid monthly primary care case management fees, as well as administrative allocations per member. Florida Statutes direct the AHCA to conduct periodic financial reconciliations to determine cost-savings. PSNs in the Medicaid program are required to demonstrate cost effectiveness.[14] If cost savings do not occur, the PSN may be required to refund a portion of the payment it receives through its monthly administrative allocations.

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[10] *See* s. 409.9121, F.S.

[11] The Medicaid Reform pilot project, authorized under s. 409.91211, F.S., is currently in operation in Broward, Duval, Nassau, Baker, and Clay counties. See later in this analysis for more information on Medicaid Reform.

[12] *See* <http://ahca.myflorida.com/Medicaid/MediPass/dm.shtml>, (Last visited on March 27, 2011).

[13] List of Florida Medicaid Provider Services Networks, as of July 12, 2010, published by the AHCA, available at: <http://ahca.myflorida.com/MCHQ/Managed_Health_Care/MHMO/docs/MCAID/LIST_MEDICAID_PSNs.pdf>, (Last visited on March 27, 2011).

[14] *See* s. 409.912(44), F.S.

Health Maintenance Organizations

The AHCA is authorized to contract with health maintenance organizations (HMOs) for the provision of services to Medicaid beneficiaries. Medicaid HMOs are required to be licensed by the Office of Insurance Regulation (OIR) under ch. 641, F.S.[15] The AHCA typically contracts with HMOs in an open application process for the provision of comprehensive health coverage to Medicaid beneficiaries who become HMO members. HMOs are paid a fixed capitation to assume full financial risk for delivering a set of comprehensive primary and acute care services. HMOs are expected to employ managed care principles in order to achieve cost effectiveness and to eliminate overutilization, fraud, and abuse, while providing for all covered, medically necessary services. Like commercial HMOs, Medicaid HMOs are subject to regulations and solvency standards required by OIR for HMO licensure.

Minority Physician Networks

In 2003, the AHCA established agreements with two physician-owned minority physician networks (MPNs)[16] composed mostly of physicians representing racial minorities. MPNs provide primary care case management services. In addition, the MPNs are responsible for supporting the primary care case managers by providing administrative and utilization management services as a means of containing cost and enhancing the quality of care. The MPN financial structure is fee-for-service, based upon a shared-savings arrangement with an advanced monthly case management fee of $12. MPNs are eligible to receive a portion of savings that are achieved, but a percentage of the administrative fee is required to be returned to the AHCA if no savings are achieved.

By October 2010, both minority physician networks had been acquired or had entered into acquisition agreements with two Medicaid HMOs, and Florida's minority physician network enrollees transitioned into Medicaid HMO membership during 2009 and 2010.[17]

Children's Medical Services Networks

The Florida Children's Medical Services (CMS)[18] program provides a family-centered, PCCM system of care for children with special health care needs. Children with special health care needs are those children younger than 21 years of age whose chronic physical or developmental conditions require extensive preventive and maintenance care beyond that required by typically healthy children. Roughly 60 percent of children covered by CMS networks are Medicaid eligible.

CMS networks offer a full range of care that includes prevention and early intervention services, primary and specialty care, as well as long-term care for medically-complex, fragile children. Most services are provided at or coordinated through CMS offices in local communities throughout the state. When necessary, children are referred to CMS-affiliated medical centers. These centers provide many specialty programs with follow-up care provided at local CMS offices. Families may enroll their Medicaid children with special health care needs in CMS

[15] *See* s. 409.912(3), F.S.
[16] *See* s. 409.912(49), F.S.
[17] Issue Brief 2011-221, *Overview of Medicaid Managed Care Programs in Florida,* Senate Committee on Health Regulation, November 2010, p. 4.
[18] Not to be confused with the federal Centers for Medicare and Medicaid Services, also known as CMS.

networks. The CMS program is administered by the Florida Department of Health and partly funded with Medicaid dollars on a fee-for-service basis.

Exclusive Provider Organizations
The AHCA is authorized to contract for Medicaid services with exclusive provider organizations (EPOs), which are individual providers or groups of providers who have entered into written agreements with a licensed health insurer to provide health care services to EPO members.[19] There are currently no EPOs operating within Florida Medicaid.

Prepaid Limited Health Service Organizations
The AHCA employs prepaid limited health service organizations, commonly known as prepaid limited health plans or prepaid limited plans, to provide a number of limited or specialized services to certain Medicaid beneficiaries. Prepaid limited plans are partial risk-bearing entities regulated by OIR under ch. 636, F.S., and, in return for a fixed capitation, provide for limited types of health services to enrollees through an exclusive panel of providers. Prepaid limited plans are typically engaged by the AHCA as prepaid mental health plans or prepaid dental health plans.

Prepaid Mental Health Plans
In 1996, Florida began contracting with prepaid mental health plans (PMHPs) to provide behavioral health services in a cost-effective manner to eligible beneficiaries. The PMHPs are selected through competitive procurement[20] to provide, on a limited, prepaid basis, the following mental health services:

- Community mental health;
- Behavioral health targeted case management;
- Inpatient psychiatric hospitalization (emergency and non-emergency); and
- Outpatient psychiatric hospitalization (behavioral health and physician services).

PMHPs assume risk for the limited set of services they provide. Medicaid beneficiaries who receive services via PMHPs are typically in MediPass or unmanaged fee-for-service for primary and acute care, except that most Medicaid-eligible children statewide who are receiving child welfare services from the DCF, including those enrolled in managed care plans, are provided enhanced PMHP services via a specialty PMHP operated by community-based lead agencies.[21]

Prepaid Dental Health Plans
In July 2004, the AHCA contracted with a prepaid dental health plan (PDHP) to provide dental services on a limited, prepaid basis to Medicaid-eligible children under the age of 21 in Miami-Dade County who are not enrolled in a managed care plan that provides its own dental services.[22] Currently there are two PDHPs in Miami-Dade County. PDHPs are paid a capitated rate for providing all covered dental services.

[19] *See* s. 409.912(8), F.S.
[20] *See* s. 409.912(4)(b), F.S.
[21] *See* s. 409.912(4)(b)8., F.S.
[22] *See* s. 409.912(43), F.S.

Nursing Home Diversion

The nursing home diversion (NHD) waiver program was originally implemented in December 1998 in the Orlando and Palm Beach areas and currently offers services in 37 counties.[23] The DOEA operates the program in conjunction with the AHCA. The primary objective of the program is to provide frail elders who meet eligibility criteria with an alternative to nursing home placement. Under this voluntary managed care program, enrollees can choose to continue living in their own homes or a community setting such as an ALF. The program makes this option possible by offering coordinated acute care, long-term care, and case management services to frail elders in a community setting. All participants select a case manager and a NHD provider. NHD service providers are NHD managed care organizations that are approved for each county and are reimbursed at a monthly capitated rate for each plan member.

The case manager develops an individualized care plan used in coordinating medically necessary acute and long-term care services. Long-term care services include adult companion, adult day health, assisted living, case management, chore services, consumable medical supplies, environmental accessibility and adaptation, escort services, family training, financial assessment and risk reduction, home delivered meals, homemaker, nutritional assessment and risk reduction, personal care, personal emergency response systems, respite care, occupational, physical and speech therapies, home health, and nursing facility services. Acute care services include community mental health services, dental, hearing and visual services, independent laboratory and X-ray, hospice, inpatient hospital and outpatient hospital/ emergency, physicians, prescribed drugs, and transportation (optional) services.

Florida Medicaid Reform

In 2005, Florida was approved to implement a 5-year Medicaid experimental demonstration pilot project (Medicaid Reform) under a section 1115 waiver.[24] Medicaid Reform was initially implemented in 2006 in Broward and Duval counties and then expanded to Nassau, Baker, and Clay counties in 2007. The demonstration pilot project requires mandatory participation in managed care plans for specified Medicaid populations, offering customized benefit packages that may vary in amount, duration, and scope. Beneficiaries who are employed and who have access to employer-sponsored insurance, have the ability to opt-out of Medicaid services and use Medicaid funding to pay their share of their employers' private health insurance premium.

Key managed care components of the Medicaid Reform pilot include:

- Comprehensive choice counseling;
- Customized benefit packages;
- Enhanced benefits resulting from participation in healthy behaviors;
- Risk-adjusted capitations for prepaid managed care plans, based on enrollee health status;
- An optional "catastrophic component" of the capitation, i.e. state reinsurance to encourage development of managed care plans in rural and underserved areas of the state; and

[23] Agency for Health Care Administration, *2010-2011 Florida Medicaid Summary of Services*, p. 108. NHD is approved for all 67 counties. NHD providers have been engaged to provide services in 37 counties. *See* <http://ahca.myflorida.com/Medicaid/pdffiles/SS_10_100501_SOS_ver2.4_1164_1011_FINAL2.pdf>, (Last visited on March 27, 2011).

[24] Florida Medicaid Reform Extension Request, submitted to CMS on June 30, 2010 by the Agency, available at: <http://ahca.myflorida.com/Medicaid/medicaid_reform/pdf/fl_1115_research_and_demonstration_waiver_extension_request_06-30-2010.pdf>, (Last visited on March 27, 2011).

- Managed care plans participating in the Reform pilot may include health insurers, EPOs, PSNs, HMOs, and CMS networks. MPNs that formerly participated in Reform were classified as PSNs, and CMS networks in Reform are classified as specialty PSNs for children with chronic conditions.

Each managed care plan participating in Medicaid Reform must cover all mandatory services as outlined in federal law. Unique to Reform is that plans may vary the coverage level and offer more or less coverage to adults than is typically covered by Medicaid for the following services: prescribed drugs, hospital outpatient services (excluding emergency care), durable medical equipment (DME) and supplies, home health services, chiropractic, podiatric, physical and respiratory therapy, vision, dental, and hearing. Any limits imposed by Reform managed care plans that are more restrictive than non-Reform coverage do not apply to pregnant women or children. The state must pre-approve all benefit packages to ensure they are sufficient to meet the needs of the enrolled population.

The state pays HMOs participating in Reform a capitation that is subject to a risk-adjustment methodology, designed specifically for the Reform pilot, to help ensure that capitations reflect the health status of each managed care plan's membership as much as possible. PSNs participating in Reform have the option to be paid via risk-adjusted capitation or to be paid case management fees and administrative allocations while health care services for their members are paid on a fee-for-service basis.[25] No PSNs in the Reform pilot have opted to be paid via capitation. Under current law, all Reform PSNs must be paid via capitation no later than the beginning of the Reform pilot's final year of operation under a waiver extension, if an extension is granted.

Medicaid Reform Waiver Extension

On April 30, 2010, the Florida Legislature passed legislation directing the AHCA to seek federal approval of a 3-year waiver extension in order to maintain and continue operation of the section 1115 waiver.[26] The AHCA submitted the extension request on June 30, 2010.[27] On August 17, 2010, the federal CMS advised the AHCA that it would review and process the state's request to renew the Reform Demonstration under section 1115(a) authority, rather than under section 1115(e) authority as originally requested by the state. This authority would allow the federal CMS to request changes to the terms and conditions of the waiver. Under section 1115(a), there is no prescribed timeframe by which the federal CMS must process a waiver request. The AHCA has indicated that there is no formal processing timeframe.

Low Income Pool

The terms and conditions of the Medicaid Reform waiver created a Low Income Pool (LIP) to be used to provide supplemental payments to providers who provide services to Medicaid and uninsured patients. This pool constituted a new method for such supplemental payments, different from the prior program called Upper Payment Limit. Based on the waiver, Florida was able to increase these payments to hospitals and other providers by approximately $250 million. The federal waiver sets a capped annual allotment of $1 billion for each year of the 5-year

[25] *See* s. 409.91211(3)(e), F.S.
[26] *See* ch. 2010-144, LOF.
[27] *Supra* note 24.

demonstration period for the LIP.[28] The LIP program also authorized supplemental Medicaid payments to provider access systems, such as federally qualified health centers, county health departments, and hospital primary care programs, to cover the cost of providing services to Medicaid recipients, the uninsured and the underinsured.

Florida law[29] provides that distribution of the LIP funds should:

- Assure a broad and fair distribution of available funds based on the access provided by Medicaid participating hospitals, regardless of their ownership status, through their delivery of inpatient or outpatient care for Medicaid beneficiaries and uninsured and underinsured individuals;
- Assure accessible emergency inpatient and outpatient care for Medicaid beneficiaries and uninsured and underinsured individuals;
- Enhance primary, preventive, and other ambulatory care coverage for uninsured individuals;
- Promote teaching and specialty hospital programs;
- Promote the stability and viability of statutorily defined rural hospitals and hospitals that serve as sole community hospitals;
- Recognize the extent of hospital uncompensated care costs;
- Maintain and enhance essential community hospital care;
- Maintain incentives for local governmental entities to contribute to the cost of uncompensated care;
- Promote measures to avoid preventable hospitalizations;
- Account for hospital efficiency; and
  Contribute to a community's overall health system.

In 2010, $1 billion in LIP payments were made to hospitals and other providers. The LIP expires in 2011, unless renewed. Per the Legislature's directive in 2010, AHCA is currently negotiating the extension of the reform waiver, including the LIP funding.

Other States' Experiences with Medicaid Managed Care

Forty-eight states have some portion of their Medicaid population enrolled in managed care; 20 states have over 80 percent managed care enrollment.[30] Seventeen states have implemented statewide mandatory managed care programs for Medicaid recipients under an 1115 waiver.[31] There are many differences among states regarding payment structure and what specific populations are served through managed care. Generally, "states have chosen this model for the savings it can achieve and the added fiscal predictability."[32] In particular, Arizona, Texas and Georgia represent three distinct approaches to Medicaid managed care serving multiple eligible populations with great geographic variety.

[28] Centers For Medicare & Medicaid Services Special Terms and Conditions, Section 1115 Demonstration Waiver No. 11-W-00206/4, Florida Agency for Health Care Administration.
[29] s. 409.91211(c), F.S.
[30] Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, *Medicaid and Managed Care: key Data, Trends, and Issues* (February 2010).
[31] *Id*. The seventeen states are: Arkansas, Arizona, Delaware, Florida Hawaii, Indiana, Kentucky, Massachusetts, Maryland, Minnesota, New York, Oklahoma, Oregon, Rhode Island, Tennessee, Utah and Vermont.
[32] The Pacific Health Policy Group, *Medicaid Managed Care Study*, Prepared for the Florida House of Representatives (March 2010).

Arizona
Arizona has implemented statewide managed care providing comprehensive services for children and pregnant women as well as behavioral services for all eligible recipients. The state selects plans through a competitive procurement process and plans service specific geographic regions statewide. A total of 14 private health plans serve Medicaid recipients, with a minimum of two plans serving each geographic region. The plans are capitated and the rates are established through competitive bid.

Arizona also uses a managed care model to provide HCBS long-term care for elderly, blind and developmentally disabled Medicaid recipients. However, eligibility for long-term care is tightly controlled; it is estimated that 75 percent of applicants are denied.[33]

Managed care enrollment is at 93 percent of the Medicaid eligible recipients.[34] In the first 8 years of statewide managed care, Arizona cut the growth in Medicaid expenditures to 6.8 percent compared to a 9.9 percent growth in fee-for-service.[35] From 1983 to 1993, the state achieved cost savings of 11 percent for medical services (or seven percent in total cost savings with plans' administrative costs and operating margins factored in.[36]

Georgia
The Georgia Medicaid managed care program serves TANF and TANF-related population through fully capitated plans. The state selects plans through a competitive procurement process and the selected plans serve six geographic regions statewide. Only three health plans serve Medicaid recipients. Georgia provides for elderly, blind and developmentally disabled Medicaid recipients through a traditional fee-for-service system, rather than through managed care. Managed care enrollment is at 84 percent of Medicaid eligible recipients.[37]

To fund the managed care program, Georgia implemented an assessment on premiums for health plans serving the Medicaid population. It is estimated that the state saved between $132.6 and $194.9 million over the first three years of the program.[38]

Texas
The Texas Medicaid program serves children, low-income families, and pregnant women. Managed care also provides long-term care for SSI and SSI-related populations, but with a carve-out for inpatient hospital services which are provided on a fee-for-service basis. The state selects plans through a competitive procurement and the selected plans serve specific portions of the state. The plans are fully capitated. The state also utilizes a capitated arrangement to provide behavioral health services to eligible recipients.

Managed care enrollment is at 70 percent of the Medicaid eligible recipients. It is estimated that the Texas long-term care program saved $123 million over its first two years.[39]

[33] *Id*.
[34] Pacific, *supra* note 32.
[35] The Lewin Group, *Medicaid managed Care Cost Savings – A Synthesis of Fourteen Studies* (July 2004).
[36] *Id*.
[37] Pacific, *supra* note 32.
[38] Pacific, *supra* note 32.
[39] Pacific, *supra* note 32.

Medicaid Long-Term Care

Long-term care is currently provided to elderly and disabled Medicaid recipients though nursing home placement and through home and community-based services, which provide care in a community setting instead of a nursing home or other institution.

Regardless of whether persons are seeking services in the community or in a nursing home, the individual must meet nursing home level of care criteria.[40] The CARES program in the DOEA conducts medical eligibility determinations on all individuals seeking Medicaid coverage for nursing home care. CARES also certifies medical eligibility for potential clients in certain Medicaid Waivers that provide community services and conducts reviews of nursing home residents to ensure that they continue to meet the level of care criteria.[41]

In Calendar Year 2009 statewide, Medicaid clients had over 68,000 stays in a nursing home, ranging from a few days to the entire year.[42] The median resident age was 81, and two-thirds were female. The vast majority of residents needed the same or greater levels of support and assistance during that year, suggesting that a transition back to the community was unlikely, and almost 21,000 clients died while in nursing home care.

Disabled and elder adults may also be served through several Medicaid HCBS programs:[43] the Aged and Disabled Adult (ADA) Waiver; the Consumer-Directed Care Plus (CDC+) program; the Long-Term Care Community Diversion Pilot Project (the Nursing Home Diversion program); the Program of All-Inclusive Care for the Elderly (PACE); the Alzheimer's Disease Waiver; the Assisted Living for the Frail Elderly (ALE) Waiver; the Channeling Waiver; and the Adult Day Health Care (ADHC) Waiver.

ADA Waiver

The ADA program is dually administered by the DCF and the DOEA. DCF administers the program for disabled adults age 18 to 59, while DOEA administers the program for persons age 60 and older. This program serves Medicaid-eligible frail elders and persons with disabilities at risk of nursing home placement. ADA provides services and items in the client's home --- including chore, homemaker, personal care, respite, case management, adult day health care, counseling, case aide, physical therapy, caregiver training and support, emergency alert response, consumable medical supplies, home-delivered meals, environmental modifications, health risk management, and speech and occupational therapy.

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[40] Section 409.912(15), F.S.

[41] *See* generally *OPPAGA Government Program Summaries: Department of Elder Affairs Nursing Home Pre-Admission Screening (CARES)*, last updated 1/21/11. Available at http://www.oppaga.state.fl.us/profiles/5029/ (last visited March 23, 2011).

[42] This is not an unduplicated count, *i.e.*, one client could account for several stays throughout the year. The August 2010 Revenue Estimating Conference projects a total (unduplicated) nursing home caseload of almost 43,000 (exclusive of General Care use) for State Fiscal Year 2010-2011. *Social Services Estimating Conference - August 2010 Long Term Medicaid Forecast*. Available at http://edr.state.fl.us/Content/conferences/medicaid/medltexp.pdf (last visited November 1, 2010).

[43] The program descriptions derive generally from *2010 Summary of Programs and Services*, March 2010, Florida Department of Elder Affairs, available at http://elderaffairs.state.fl.us/english/pubs/pubs/sops2010/First_page_2010SOPS.html (last visited November 1, 2010).

CDC+ Program
The Consumer-Directed Care Plus (CDC+) Program is a self-directed option for seniors participating in the Aged and Disabled Adult Waiver. The CDC+ Program allows participants to hire workers and vendors of their own choosing – including family members or friends – to help with daily needs such as house cleaning, cooking and getting dressed. The program provides trained consultants to help consumers manage their budgets and make decisions. Participants may manage their own care or they may elect to have a friend or family member represent them in making decisions about their services. The Department also provides fiscal employer agent services for individuals served through the Department of Health's Traumatic Brain and Spinal Cord Injury Waiver, as well as for adults with disabilities under the age of 60 served through DCF.

Nursing Home Diversion
The Nursing Home Diversion program serves the most frail individuals age 65 and older, otherwise eligible for Medicaid nursing home placement, through a managed care provider. By receiving integrated acute and long-term services, such as home-delivered meals, coordination of health services and intensive case management, clients are better able to remain in the community.

Program of All Inclusive Care for the Elderly
The PACE model is a project within the Nursing Home Diversion Program that targets individuals 55 and older who would otherwise qualify for Medicaid nursing home placement and provides them with a comprehensive array of home- and community-based services at a cost less than nursing home care. PACE enrollees have both their medical and long-term care needs managed through a single provider. In addition to services covered under the Nursing Home Diversion program, the PACE project includes all services covered by Medicare. PACE providers receive both Medicare and Medicaid capitated payments and are responsible for providing the all necessary medical and long-term care services. In addition, PACE sites receive an enhanced capitation payment from Medicare, beyond that of a traditional Medicare health maintenance organization. PACE delivers many services being through adult day care centers and case management is provided by multi-disciplinary teams. The program is available in Miami-Dade, Martin and St. Lucie, and Lee counties.

Alzheimer's Disease Waiver
This program provides specialized services designed to maintain individuals aged 60 or older with Alzheimer's disease within the community. Each recipient's service package is tailored to meet his or her needs as indicated by the needs assessment and care planning process --- clients in the later stages of Alzheimer's disease are expected to require a more intense service package than those in the earlier stages. The waiver program provides case management, adult day health care, respite care, wanderer alarm system, wanderer identification and location program, caregiver training, behavioral assessment and intervention, incontinence supplies, personal care, environmental modification and pharmacy review. The Alzheimer's Disease Waiver is available in Broward, Miami-Dade, Palm Beach and Pinellas counties.

Assisted Living for the Frail Elderly Waiver
The ALE Waiver is for individuals age 60 and older who are at risk of nursing home placement and who meet additional specific criteria related to their ability to function. Because of their

frailty, recipients need additional support and services, which are made available in ALFs with extended congregate care or limited nursing services licenses.

Channeling Waiver

The Channeling waiver is operated through an annual contract with an organized health care delivery system in Miami-Dade and Broward counties. Eligible clients are age 65 and older who meet nursing home level of care criteria and who live in the service area. Through contracts with the Department, the organization receives a per-diem payment to provide, manage and coordinate enrollees' long-term care service needs. Services include adult day health care, case management, chore services, companion services, counseling, environmental accessibility adaptations, family training, financial education and protection services, home health aide services, occupational therapy, personal care services, personal emergency response systems, physical therapy, respite care, skilled nursing, special home-delivered meals, special drug and nutritional assessments, special medical supplies, and speech therapy.

Adult Day Health Care Waiver

The ADHC waiver provides a combination of integrated health and social services with the goal of delaying or preventing placement into a long-term care facility. The services are aimed at preserving the individual's physical and mental health while providing relief for the family/caregiver from 24-hour care responsibilities. To be eligible for ADHC, an individual must be a resident of Lee or Palm Beach counties age 75 or older, meet nursing home level of care, and live in the community with a caregiver. Services include case management, nursing, social services, personal care assistance, rehabilitative therapies, meals, counseling, transportation and caregiver assessments. An individualized plan of care is developed to meet the client's health and supportive needs, and all services are provided at the day health care facility.

In state fiscal year 2009-2010, the DOEA served over 37,000 persons in the HCBS Medicaid Waiver programs.[44] Over 36,000 persons are on the waiting list for the various DOEA programs as of October 28, 2010.[45]

Area Agencies on Aging

The DOEA is created in s. 20.41, F.S. This section directs the DOEA to plan and administer its programs and services through planning and service areas. The DOEA is designated as the state unit on aging as defined in the federal Older Americans Act (OAA).[46]

The statutorily stated purposes of DOEA include but are not limited to:

- Serving as the primary state agency responsible for administering human services programs for the elderly and for developing policy recommendations for long-term care;[47]
- Recommending state and local level organizational models for the planning, coordination, implementation, and evaluation of programs serving the elderly population;[48] and,

[44] Attachment 5, *HCBS Medicaid Waiver Programs 2005-2010*, provides program-specific enrollment information.
[45] *Department of Elder Affairs StateWide Analysis Assessed Prioritized Consumer List Totals by Assessed Rank Level and Program as of 10/28/2010*, Unduplicated Consumer Count by Programs. On file with the Senate Committee on Children, Families, and Elder Affairs.
[46] Section 20.41(5), F.S.
[47] Section 430.03(1), F.S.
[48] Section 430.03(6), F.S.

- Overseeing implementation of federally funded and state funded programs and services for the state's elderly population.[49]

Federal law directs the department to administer the OAA using Florida's 11 area agencies on aging (AAAs).[50] DOEA works closely with the 11 AAAs in Florida. The AAAs operate as 501(c)(3) public- and privately-funded non-profit corporations.[51] The agencies administer funds locally and contract with a variety of provider agencies to offer a wide array of services designed to address the needs of their senior constituencies.

Each of the 11 AAAs is a designated Aging Resource Center.[52] An Aging Resource Center (ARC) is a single, coordinated system of information and access for all persons seeking long-term care resources. An ARC allows the public to find information and services through multiple entry points, ensuring uniform information and referral and streamlined access to public and private long-term care services.[53]

Among other duties,[54] for persons residing in their respective geographic service areas, the ARCs:

- Provide an initial screening of persons requesting long-term care services to determine which programs – state, federal, local, or private – would most appropriately serve them;
- Determine eligibility for and priority placement of clients in certain long-term care programs;[55] and
- Manage the financial resources for those programs.

Medicaid Long-term Care Eligibility

In the last several years, reports have surfaced in the popular press of use of the Medicaid nursing home program by persons who would appear to be able to afford to pay for their own care.[56] This practice of Medicaid estate planning has been both lauded, as a necessary and legitimate part of long-term financial planning, and vilified, as an evasion of personal responsibility through use of loopholes in a government program intended to aid the needy.

The DCF administers the financial eligibility determination portion of the Medicaid program for the AHCA.[57] Those determinations require examination of an applicant's current assets, in addition to recent transfers of those assets.[58] The DCF has published policies on many of the

[49] Section 430.03(7), F.S.
[50] 42 U.S.C.S§3025. The department is required to designate and contract with AAAs to fulfill programmatic and funding requirements pursuant to s. 20.41(6), F.S.
[51] As required by federal and state law.
[52] Section 430.2053(7), F.S.
[53] Aging Resource Centers. Department of Elder Affairs. Available at http://elderaffairs.state.fl.us/english/arc.php (last visited March 23, 2011).
[54] See s. 430.2053(5), F.S.
[55] Community care for the elderly; home care for the elderly, contracted services, Alzheimer's disease initiative, aged and disabled adult Medicaid waiver, assisted living for the frail elderly Medicaid waiver, Older Americans Act.
[56] *See*, e.g., *Compensating a Family Caregiver*. Wall Street Journal, August 29, 2010. Available at http://online.wsj.com/article/SB10001424052748703669004575458151412654506.html (last visited March 23, 2011).
[57] Section 409.902, F.S.
[58] Assets transferred within the 60-month look-back period may cause an applicant to lose or delay eligibility for long-term care services.

instruments used to transfer assets[59] but has been unable to establish a policy on the use of personal care contracts.

Personal care contracts are agreements designed to compensate individuals, often relatives, for the provision of certain services to the institutionalized recipient. The contracts are frequently structured to pay a lump sum amount in advance to the caregiver for services to be rendered during the institutionalized recipients' remaining lifetime; when the recipient dies, the caregiver retains the remaining value of the contract with no obligation to return the "unearned" funds to the estate. In addition, the services to be performed frequently are services that would ordinarily be performed by a relative out of love and affection or are duplications of services paid for by Medicaid. Federal law does not prohibit the use of personal care contracts or provide guidelines to the states in determining their reasonableness.

Statewide Inpatient Psychiatric Program (SIPP) for Under Eighteen

The Medicaid Statewide Inpatient Psychiatric Program (SIPP) provides medically necessary, inpatient psychiatric residential treatment services to recipients under the age of 18 who meet the Medicaid eligibility requirements. The SIPP waiver is funded by the federal CMS and matching state dollars.[60]

Treatment planning and interventions must be oriented around discharge planning from the time of admission. Treatment services are required to be active, individualized, family centered, culturally sensitive, trauma informed and focused on problems necessitating the child's or adolescent's placement in an inpatient treatment setting.

There are currently 14 SIPP providers in the state[61] with a total of 414 beds. The daily rate for the treatment services, which are all-inclusive, is set by the Legislature at $406.00 per day.[62]

The Medically Needy Program

The Medically Needy program serves individuals, including pregnant women and children, who have income or assets that exceed the limits for regular Medicaid. Individuals enrolled in Medically Needy incur a monthly share of cost (which is like an insurance deductible) and the amount varies depending on the family's size and income. There is no income limit to qualify for the Medically Needy program; however, there is an asset limit, which varies based upon the family's size.

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[59] For example, life estates, promissory notes, and annuities. *See*, generally, *ACCESS Florida Program Policy Manual*. Section 1600 Assets. Available at http://www.dcf.state.fl.us/programs/access/docs/esspolicymanual/1630.pdf (last visited March 23, 2011).

[60] The Centers for Medicare and Medicaid Services (CMS) allows states the option of providing Medicaid coverage for children in Institutions for Mental Disease (IMD) under Psychiatric Inpatient Services for Individuals Under 21, 42 CFR 441, Subpart D. This waiver is operated by AHCA and expires on December 31, 2011.

[61] SIPP providers are licensed pursuant to Chapter 395, Part I, F.S., for hospitals, and Rule 65E-9, F.A.C. for residential treatment centers.

[62] SIPP services are governed by 42 C.F.R. Parts 435, 440, 441, and 456. The Florida SIPP program is authorized by proviso in the annual General Appropriation Act, under Section 3 Human Services AHCA, "Special Categories, Hospital Inpatient Services".

Once a person is determined eligible for the Medically Needy program and the amount of their share of cost has been set by the DCF, accumulated medical bills that meet allowable medical expenses criteria must be submitted to DCF. The beneficiary needs to continue to submit medical bills until the share of cost has been met. Once the share of cost is met, the individual can receive full Medicaid benefits for the remainder of the month in which their share of cost has been met.

Medically Needy Program Authorization and History

Under Federal regulations, states have the option of implementing a Medically Needy program under their state plan. If states choose to implement a Medically Needy program it is required to cover, at a minimum, some level of ambulatory service and must provide prenatal and delivery services to pregnant women. States can chose to provide one or more ambulatory service, although states must provide all medically necessary services to children. Currently Florida's Medically Needy program includes all Medicaid covered services with the exception of services in skilled nursing facilities and intermediate care facilities for the developmentally disabled.

In 1984 the Florida Legislature passed the Public Medical Assistance Trust Fund (PMATF) Act, which was originally used to fund Medically Needy, largely to compensate hospitals that provide services to the uninsured. The Legislature authorized the Medically Needy program to start in July 1986. Historical highlights include:

- April of 1992: Program was eliminated and then reinstated during the same month;
- December 2001: Medically Needy program for adults eliminated effective July 2002;
- May 2002: Medically Needy restored coverage to adults. Program continued with non-recurring funds;
- April 2004: Medically Needy was funded for FY 2004-05 with non-recurring funds;
- Required to cover prescribed drugs only, effective July 1, 2005;
- May 2005: Medically Needy changed to remove limitation to cover prescribed drugs only;
- May 2008: Medically Needy to cover pregnant women and children only effective July 1, 2009;
- May 2009: Medically Needy extended for all covered groups through December 31, 2010; January 1, 2011 coverage to be limited to pregnant women and children only; and
- May 2010: Medically Needy extended for all covered groups through June 30, 2011; July 1, 2011 coverage to be limited to pregnant women and children only.

Recent Enrollment and Expenditures for Medically Needy

	Total Program Costs		Average Monthly Caseload
SFY 2009-2010	Actual Expenditures	$763,151,149	33,447
SFY 2010-2011	Budgeted Expenditures	$1,040,352,327	40,621
SFY 2011-2012	Projected Expenditures	$1,429,238,766	46,096

Medicaid's Effect on the State Budget

The Medicaid program is an entitlement program, which means that participating states must pay for all covered services for all persons who are eligible for the program. Medicaid is growing more rapidly than any other major program in the Florida budget.

In state fiscal year 2010-11 budget, Medicaid costs exceeded $20 billion and accounted for 29 percent of the state budget. Just 10 years ago, Medicaid accounted for only 17 percent of the state budget and cost $8.9 billion.

Annual Medicaid expenditures are estimated by the Social Services Estimating Conference (SSEC) and each year the Legislature funds the estimated cost of the Medicaid program minus any reductions or additions the Legislature decides to make. Costs estimated for the Medicaid program by the SSEC are often incorrect. If program costs exceed appropriations, the legislature must fund these additional costs in a "back of the bill" appropriation (an appropriation which covers prior year shortfalls). For example, the Legislature was required to appropriate $256 million in general revenue in the fiscal year 2010-11 GAA to cover a budget shortfall in fiscal year 2009-10.

Medicaid is the only major program funded by state government which functions in this fashion. Like Medicaid, funding for Pre-K-12 education is calculated based on the projected growth in student enrollment. However, unlike Medicaid, if enrollment increases beyond projections, the state is not responsible for paying the additional costs. Instead, the dollar increase per student is automatically decreased to match the appropriation.

The rapid growth of Medicaid, linked with the often unanticipated cost overruns, is crowding out the state's ability to fund other critical programs like education and public safety. This is not only the case in Florida but in many other states as well. Many states are making efforts to limit the growth of Medicaid spending through reducing eligibility and services covered by the program. The federal government has recently signaled an interest in assisting states in managing their Medicaid costs.

Temporary Assistance for Needy Families and Children in Foster Care

Federal law includes several provisions that require states to meet certain requirements in order to qualify for federal funds. Title IV-E of the Social Security Act contains state plan requirements that must be met for a state to be eligible to receive federal matching funds for foster care and adoption assistance and Title IV-A of the Social Security Act contains state plan requirements for states to be eligible for the Temporary Assistance for Needy Families (TANF) block grant.[63]

Title IV-E requires a state to provide health insurance coverage for children in foster care and adopted children with special needs for whom there is an adoption assistance agreement between the state and the adoptive parents. The state has the option of meeting this requirement by providing that such children are eligible for Medicaid under Title XIX of the Social Security Act. If the state provides this coverage through a state medical assistance program other than

[63] TANF is a federal block grant program to help move recipients into work and turn welfare into a program of temporary assistance. Under the welfare reform legislation of 1996, TANF replaced the old welfare programs known as the Aid to Families with Dependent Children (AFDC) program, the Job Opportunities and Basic Skills Training (JOBS) program, and the Emergency Assistance (EA) program. The law ended Federal entitlement to assistance and instead created TANF as a block grant that provides States, Territories, and Tribes Federal funds each year. These funds cover benefits and services targeted to needy families. *See* "Temporary Assistance for Needy Families (TANF) Overview," http://www.hhs.gov/recovery/programs/tanf/tanf-overview.html (last visited March 27, 2011).

Medicaid, the services provided must be of the same type and kind as those that would be provided under Medicaid.

The provisions of the Temporary Assistance for Needy Families program requires that a state certify that the state will operate a foster care and adoption assistance program that meets the requirements of Title IV-E including taking actions to assure that children are eligible for medical assistance. Florida currently meets the requirements of Title IV-E through providing for Medicaid eligibility for children in foster care and for children with special needs under an adoption assistance agreement.

Psychotropic Medications for Children

Psychotropic medications are one of many treatment interventions that may be used to address mental health problems. Medication may be recommended and prescribed for children with mental, behavioral, or emotional symptoms when the potential benefits of treatment outweigh the risks. This is particularly true when the problems experienced by the child are so severe that there would be serious negative consequences for the child if the child is left untreated and when other treatment interventions have not been effective. However, public concern is growing over reports that very young children are being prescribed psychotropic medications, which is not generally the first option of treatment for a child, that some children are on multiple medications, and that these medications are sometimes used inappropriately to control a child's behavior.

Some of the concerns regarding the use of psychotropic medications by children stem from the limited information that is available regarding the efficacy and the potential side effects of these drugs with children. Most clinical trials for these drugs were conducted on an adult population.

The same results are not always obtained when these drugs are used with children, and the side effects for children are frequently different than those experienced by adults. The federal Food and Drug Administration has expressed concern regarding the use of antidepressants in children and established an advisory committee to further study and evaluate the use of such medications.

Many children in the United States receive psychotropic medications and this number has increased over time. The use of multiple psychotropic medications has also been reported to have increased among children. The efficacy and short- and long-term safety knowledge base for pediatric psychopharmacology has increased in recent years but remains limited.[64]

An issue that has increasingly received national attention over the past decade has been the concern for the overuse of psychotropic medications among our nation's youth in general, with a potentially disproportionate increase among children in foster care.[65] Among community-based populations, children in foster care tend to receive psychotropic medication as much as, or more than, disabled youth and three to four times the rate among children with Medicaid coverage

[64] Alfiee M. Breland-Nobel et al., *Use of Psychotropic Medications by Youths in Therapeutic Foster Care and Group Homes*, PSYCHIATRIC SERVICES, Vol. 55, No. 6., 706 (June 2004), *available at* http://ps.psychiatryonline.org/cgi/reprint/55/6/706 (last visited March 23, 2011).

[65] Laurel K. Leslie, MD MPH FAAP, Am. Acad. of Pediatrics, *Hearing on the Utilization of Psychotropic Medication for Children in Foster Care*, 6 (May 8, 2008), *available at* http://www.aap.org/advocacy/washing/Testimonies-Statements-Petitions/05-08-08-Leslie-Psychotropics-Meds-Testimony.pdf (last visited March 23, 2011).

based on family income.[66] Children in foster care and disabled youth have the greatest likelihood of receiving complex, poorly evidenced, high cost medication regimens.[67]

In Florida, information received from the AHCA revealed that more than 9,500 children in Florida on Medicaid had been treated with psychotropic drugs in the year 2000. [68] The Legislature directed the AHCA to improve the quality of behavioral health drug prescribing, and in 2005, the AHCA implemented the Florida Medicaid Drug Therapy Management Program for Behavioral Health.[69]

To assure that the use of atypical antipsychotic medications in very young children (those younger than six) within the Medicaid population is confined to specific circumstances, the AHCA put in place a prior authorization process in April 2008. Within the first six months of the program, the AHCA reported that the prior authorization process resulted in fewer prescriptions, and at lower dosages, for antipsychotic medications for these young children.[70]

- For the period May to December 2007, 3,167 prescriptions were written for children under age 6.
- For the period May to December 2008, only 844 prescriptions were written for this age group.[71]

The AHCA has also instituted the Florida Pediatric Psychiatry Consult Hotline. It is a call-in service available to health care providers who have questions about medications used to treat children and adolescents with psychiatric needs.[72]

Blood Establishments

A blood establishment is defined in s. 381.06014, F.S., to mean any person, entity, or organization, operating within Florida, which examines an individual for the purpose of blood donation or which collects, processes, stores, tests, or distributes blood or blood components collected from the human body for the purpose of transfusion, for any other medical purpose, or for the production of any biological product.

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[66] Julie M. Zito, PhD, Professor of Pharmacy and Psychiatry, U. of Maryland, *Prescription Psychotropic Drug Use Among Children in Foster Care*, 2-3 (May 8, 2008), *available at* http://www.hunter.cuny.edu/socwork/nrcfcpp/teleconferences/2-10-10/Zito%20Medication%20handout.doc (last visited March 23, 2011).
[67] *Id*. at 2.
[68] Florida Statewide Advocacy Council, *Accomplishments*, http://www.floridasac.org/state_accomplish.html (last visited Apr. 8, 2010).
[69] Section 409.912(39)(a)10, F.S.
[70] Medicaid Prescribed Drug Program. *Report of Policy Review: Oversight of Off-Label Prescribing of Atypical Antipsychotic Medications for Children Under Six Years of Age Covered by the Florida Medicaid Program*, March 27, 2009. Available at http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/Atypical_antipsychotics_in_children_policy_report.pdf (last visited March 23, 2011).
[71] *Approval process lowers the number of kids on atypical prescriptions.* St. Petersburg Times, in print Sunday, March 29, 2009. Available at http://www.tampabay.com/news/health/article987612.ece (last visited March 23, 2011).
[72] Florida Pediatric Psychiatry Hotline. Available at http://medicaidmentalhealth.org/NewsAndAnnouncements/news-detail.aspx?id=44 (last visited March 23, 2011).

The state of Florida does not issue a specific license as a blood establishment. Florida law[73] requires a blood establishment operating in Florida to operate in a manner consistent with the provisions of federal law in Title 21 Code of Federal Regulations (C.F.R.) parts 211 and 600-640, relating to the manufacture and regulation of blood and blood components. If the blood establishment does not operate accordingly and is operating in a manner that constitutes a danger to the health or well-being of blood donors or recipients, the AHCA or any state attorney may bring an action for an injunction to restrain such operations or enjoin the future operation of the establishment.

Federal law classifies blood establishments as follows:[74] community (non-hospital) blood bank (community blood center), hospital blood bank, plasmapheresis center, product testing laboratory, hospital transfusion service, component preparation facility, collection facility, distribution center, broker/warehouse, and other. Community blood centers are primarily engaged in collecting blood and blood components from voluntary donors to make a safe and adequate supply of these products available to hospitals and other health care providers in the community for transfusion. Blood establishments that focus on the collection of plasma that is not intended for transfusion, but is intended to be sold for the manufacture of blood derivatives[75] routinely pay donors.

Community blood centers in Florida are licensed as clinical laboratories by the AHCA, unless otherwise exempt.[76] As a part of the clinical laboratory license, the facility is inspected at least every 2 years.[77] The AHCA may accept surveys or inspections conducted by a private accrediting organization in lieu of conducting its own inspection.[78] The clinical laboratory personnel are required to maintain professional licensure by the DOH. Community blood centers must also have appropriate licenses issued by the DOH and must comply with laws related to biomedical waste[79] and radiation services.[80]

Florida Kidcare

The Florida Kidcare Program was created by the Florida Legislature in 1998 in response to the federal enactment of the state Children's Health Insurance Program (CHIP) in 1997. Initially authorized for 10 years and then recently re-authorized again through 2019 with federal funding through 2015, CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but meet other eligibility requirements.

[73] Section 381.06014, F.S.
[74] A description of these classifications may be found at: http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/ucm055484.htm (Last visited on January 6, 2011).
[75] Blood derivatives are classified as prescription drugs. *See* s. 499.003(43), F.S. and s. 503(b) of the Federal Food, Drug, and Cosmetic Act.
[76] *See* ch. 59A-7.019, F.A.C., and part I of ch. 483, F.S., related to Health Testing Services.
[77] Section 483.061(1), F.S.
[78] Section 483.061(4), F.S.
[79] *See* ch. 64E-16, F.A.C., Biomedical Waste, and s. 381.0098, F.S.
[80] *See* ch. 64E-5, F.A.C., Control of Radiation Hazards. If a blood center irradiates blood products using radioactive materials, the location in which this occurs must be licensed. If a blood center irradiates blood products using a machine, then the community blood center must register the machine.

The umbrella name of Florida Kidcare encompasses four subsidized programs: Medicaid for children, MediKids, CMS Network, and Healthy Kids. Florida's Healthy Kids program predates enactment of the CHIP program. Subsidized Kidcare coverage is funded through state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the Federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI components of the program based on their household size, income, and other eligibility factors. For families above the income limits for subsidy or who do not otherwise qualify for subsidy, Kidcare also offers a buy-in option under Healthy Kids and MediKids.

Eligibility for the four subsidized Kidcare components funded by Title XXI is determined in part by age and household income, as follows:[81]

- Medicaid for Children: Title XXI funding is available from birth until age 1 for income between 185 percent and 200 percent of the Federal Poverty Level (FPL);
- MediKids: Title XXI funding is available from age 1 until age 5 for income between 133 percent and 200 percent of FPL;
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for income between 133 percent and 200 percent of FPL. For age 6 until age 19, Title XXI funding is available for income between 100 percent and 200 percent of FPL; and
- CMS Network: Title XXI and Title XIX funds are available from birth until age 19 for income up to 200 percent of FPL for children with special health care needs. The DOH assesses whether children meet the program's clinical requirements.

Florida Kidcare is administered jointly by the AHCA, the DCF, the DOH, and the FHKC. Each entity has specific duties and responsibilities under Kidcare as detailed in the Florida Kidcare Act. The DCF determines eligibility for Medicaid, and the FHKC processes all Kidcare applications and determines eligibility for CHIP, which includes a Medicaid screening and referral process to DCF, as appropriate.

To enroll in Kidcare, families utilize a joint form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

School Food Service Programs

Florida's school food service programs are authorized under the K-20 Education Code in recognition of the demonstrated relationship between good nutrition and the capacity of students to develop and learn. The State Board of Education is required to adopt rules covering the administration and operation of the school food service programs. Each district school board is required to consider recommendations of the district school superintendent and adopt policies for an appropriate food and nutrition program for students consistent with federal law and rules of the State Board of Education.[82]

[81] Florida Kidcare Eligibility, Florida Kidcare website, http://www.floridakidcare.org/images/data/FKC-eligibilityflag-accessible.pdf

[82] *See* s. 1006.06(1)-(3), F.S.

Free and reduced-price school meal programs are funded jointly by states and the federal government. In Florida's 2010-11 General Appropriations Act, $823.8 million is appropriated for school lunch and breakfast programs, including $16.9 million from the General Revenue Fund.[83]

Currently in Florida, 82 charter schools, 50 private schools, and all 67 public school districts participate in the national free and reduced-price school meal programs. In the 2010-11 school year, 56 percent of the 2.6 million public school students, including charter schools, are eligible for free or reduced-price meals. The number of private school students eligible in 2010-11 is 13,191.

Children may be deemed eligible for free or reduced-price school meals based largely on household income and by filling out an application. Eligibility is capped at 185 percent of the federal poverty level. There is no uniform, statewide application form for families to use when applying for free or reduced-price meals. School districts may design their own forms based on the requirements of federal and state regulations. The Food and Nutrition Service within the United States Department of Agriculture provides a model application form that school districts may modify and use as needed for local circumstances and nomenclature.[84] A few school districts offer only an electronic form.

Kidcare Information Delivered by School Districts

Information about Kidcare is currently offered to all 67 Florida school districts in the summer for distribution at the beginning of the school year. For the past several years, this information has been a postcard that includes information on how to apply with English on one side, Spanish on the reverse, and instructions for how to receive information in Creole along the bottom. These postcards are provided free of charge to the districts and shipped to the location of their choice by the FHKC. Most, but not all, school districts accept this offer every year. In the 2009-10 school year, 54 of the 67 school districts participated in this back-to-school Kidcare outreach.[85]

Additionally, some school districts have also modified their application forms for school food service programs to include a check-off for families to indicate they would like more information about Kidcare. For those families indicating they would like more Kidcare information or which agree to release their information, the school districts vary in how those requests are handled, based on available resources. In some cases, the districts send the requests directly to Florida Kidcare for applications to be mailed to the requesting families. In other areas, the school districts utilize local community partners or designated staff to contact families to provide application assistance on a one-on-one basis.

Nursing Home Regulation

Nursing Homes and Related Health Care Facilities is the subject of ch. 400, F.S. Part I of ch. 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of ch. 400, F.S., provides for the regulation of nursing homes, and part III of ch. 400, F.S., provides for the

[83] *See* ch. 2010-152, L.O.F., line items 101-102.
[84] The model application can be found at the USDA web site at http://www.fns.usda.gov/cnd/frp/frp.process.htm.
[85] Office of Program Policy Analysis and Government Accountability, *Research Memorandum: Several Options Exist to Improve Florida Kidcare Outreach and Enrollment Efforts through Schools,* March 1, 2010, p. 4.

regulation of home health agencies. The AHCA is charged with the responsibility of developing rules related to the operation of nursing homes.

Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the rights of residents specified in s. 400.022, F.S. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of the rights of a resident or for negligence.[86] Prevailing plaintiffs may be entitled to recover reasonable attorney's fees, and costs of the action, along with actual and punitive damages.[87]

Sections 400.023-400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022, F.S. No claim for punitive damages may be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.[88] A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as specified in s. 400.0237(2), F.S.[89]

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only if the conduct meets the criteria specified in s. 400.0237(2), F.S., and the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.[90]

Statewide Provider and Health Plan Claim Dispute Resolution Program

Section 408.7057, F.S., requires the AHCA to establish a program to provide assistance to contracted and non-contracted providers and health care plans for resolution of claim disputes that are not resolved by the provider and the health plan. The AHCA must contract with a resolution organization to timely review and consider claim disputes submitted by providers and health plans and recommend to the AHCA an appropriate resolution of those disputes. The conclusions of law contained in the written recommendation of the resolutions organization are not currently required to identify the provisions of law or contract which, under the peculiar facts and circumstances of each case, entitle the provider or health plan to the amount awarded, if any.

Physician Expert Witness

Chapter 458, F.S., provides for the regulation of the practice of medicine by the Board of Medicine. Physicians are subject to discipline for failure to comply with the appropriate standards of practice, including: making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine;[91]

[86] Sections 400.023 and 400.0237, F.S.
[87] *Id.*
[88] Section 400.0237(1), F.S.
[89] Section 400.0237(2), F.S.
[90] Section 400.0237(3), F.S.
[91] Section 458.331(1)(k), F.S.

or being found by any court in Florida to have provided corroborating written medical expert opinion attached to any statutorily required response rejecting a claim, without reasonable investigation.[92]

The Board of Medicine may enter an order denying licensure or imposing one or more of the following penalties for a disciplinary violation of any applicable regulations: refusal to certify, or certify with restrictions, an application for a license; suspension or permanent revocation of a license; restriction of practice or license; imposition of an administrative fine not to exceed $10,000 for each count or separate offense; issuance of a reprimand or letter of concern; placement of the licensee on probation for a period of time and subject to such conditions as the board may specify; corrective action; imposition of an administrative fine in accordance with s. 381.0261, F.S., for violations regarding patient rights; refund of fees billed and collected from the patient or a third party on behalf of the patient; or a requirement that the practitioner undergo remedial education.[93] Osteopathic physicians are similarly regulated by the Board of Osteopathic Medicine under ch. 459, F.S.[94]

Legal issues surrounding physician expert witness testimony have raised issues regarding whether a state medical peer-review immunity statute shields a medical association, its peer-review committee, and physicians from a physician's claims and whether the federal Health Care Quality Improvement Act immunizes a medical association from liability. A physician who served as an expert witness in a medical malpractice action sued physicians and a medical association for defamation, tortuous interference with an advantageous business relationship, conspiracy, and witness intimidation after physicians initiated the medical association's peer-review of the physician's testimony.[95] The First District Court of Appeal held that the state medical peer-review immunity statute did not shield the medical association, its peer-review committee, and physicians from the physician's claims; and that the federal Health Care Quality Improvement Act did not immunize from liability professional-review of a physician's testimony given in a medical malpractice action.[96]

The Board of Medicine has had difficulty in enforcing the current disciplinary provision imposed on medical physicians that relates to "*being found* by any court in this state to have provided corroborating written medical expert opinion attached to any statutorily required notice of claim or intent or to any statutorily required response rejecting a claim, without reasonable investigation."[97] The physician asserted that (1) no "finding" was ever made by the court that issued an order because the order was the result of an ex parte hearing where no evidence was reviewed by the court; (2) the Board of Medicine erred in refusing to make a probable cause determination based upon the board's new reading of s. 458.331(1)(jj), F.S.; (3) the Board of Medicine's new reading of s. 458.331(1)(jj), F.S., is unreasonable because it "interjects material

[92] Section 458.331(1)(jj), F.S.
[93] Sections 458.331 and 456.072(2), F.S.
[94] See ss. 459.015 and 456.072(2), F.S.; and s. 459.015(1)(mm), F.S.
[95] *Fullerton v. Florida Medical Association, Inc.*, 938 So. 2d 587 (Fla. 1st DCA 2006).
[96] *Id.*
[97] Section 458.331(1)(jj), F.S. See *Department of Health v. Francisco Vazquez, M.D.*, DOAH Case No. 07-424PL, Respondent's Post-hearing Memorandum of Law, and *Board of Medicine v. Francisco Vazquez, M.D.*, 11 So .3d 994 (Fla. 1st DCA 2009) (affirming the findings of the administrative law judge that the challenged agency statement asserting a new reading of s. 458.331(1)(jj), F.S., constitutes a rule that has not been adopted pursuant to s. 120.54, F.S.).

terms found nowhere in the statute;" and (4) it is unconstitutional violation of his due process.[98] The respondent alleged that his procedural due process was violated because s. 458.331(1)(jj), F.S., does not provide the disciplined physician with any opportunity to defend himself or herself against the charge being brought by the Board of Medicine.[99] For purposes of the specific disciplinary violation, the respondent argued that the physician is a witness and not a party to the medical malpractice action where his opinion was proffered, so the physician has not had sufficient opportunity or notice to be heard in the court proceeding.[100] As a result, the physician has not had an opportunity to refute the entry of a previous circuit court order where the order, itself, forms the basis of the physician's discipline by the Board of Medicine.[101]

Section 766.102, F.S., outlines qualifications for medical expert witnesses to meet in order to proffer testimony in medical negligence actions, and s. 766.102, F.S., provides that it does not limit the power of the trial court to disqualify or qualify an expert witness on grounds other than the qualifications in that section. Relevant portions of the Florida Evidence Code provide requirements for expert opinion testimony.[102] The Florida Rules of Civil Procedure define "expert witness" as a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.[103]

Medical Malpractice Insurance Contracts

Section 627.4147, F.S., authorizes the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration made pursuant to s. 766.106, F.S., relating to medical malpractice, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, F.S., relating to medical malpractice, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer must be made in good faith and in the best interests of the insured.

Medical Malpractice

The failure of a health care provider to order, perform, or administer supplemental diagnostic tests is not actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care.[104] "Claim for medical negligence" or "claim for medical malpractice" means a claim, arising out of the rendering of, or failure to render, medical care or

[98] *Department of Health v. Francisco Vazquez, supra* note 12.
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] Sections 90.702 and 90.704, F.S.
[103] Fla. R. Civ. P. 1.390(a).
[104] Section 766.102(4), F.S.

services.[105] In order for a plaintiff to prevail in a medical malpractice action, the plaintiff must establish the standard of care in a claim for medical malpractice which must be determined by the consideration of expert testimony.[106]

No action may be filed for personal injury or wrongful death arising out of medical negligence, whether in tort or in contract, unless the attorney filing the action has made a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant.[107] The complaint or initial pleading shall contain a certificate of counsel that such reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named defendant.[108] For purposes of this section, good faith may be shown to exist if the claimant or his or her counsel has received a written opinion, which shall not be subject to discovery by an opposing party, of an expert as defined in s. 766.102, F.S., that there appears to be evidence of medical negligence. If the court determines that such certificate of counsel was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court shall award attorney's fees and taxable costs against claimant's counsel, and shall submit the matter to The Florida Bar for disciplinary review of the attorney.[109]

"Health care provider" means any Florida-licensed hospital, ambulatory surgical center, or mobile surgical facility; a Florida-licensed birth center; a Florida-licensed physician, physician assistant, anesthesiology assistant, medical resident, osteopathic physician, chiropractic physician, podiatric physician, naturopathic physician, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist or dental hygienist, midwife, physical therapist, physical therapy assistant; a Florida-licensed clinical lab; a Florida-licensed health maintenance organization; a blood bank; a plasma center; an industrial clinic; a renal dialysis facility; or a professional association partnership, joint venture, or other association for professional activity by health care providers.[110] An individual who is not a "health care provider" may be held vicariously liable for the acts of its agents and employees who are health care providers.[111]

Section 766.106, F.S., outlines presuit procedures for medical malpractice actions. Florida courts have stated that the presuit investigation procedures and requirements may not be interpreted to impose undue restrictions on a person's access to court.[112] Before issuing notification of intent to initiate medical negligence litigation, the claimant must conduct an investigation to ascertain that there are reasonable grounds to believe that any named defendant in the litigation was negligent in the care or treatment of the claimant and the negligence resulted in injury to the claimant.[113] No statement, discussion, written document, report, or other work product generated by the

[105] Section 766.106(1)(a), F.S.
[106] Section 766.102, F.S.; *Robbins v. Newhall*, 692 So. 2d 947 (Fla. 3rd DCA 1997); *Pate v. Threlkel*, 661 So. 2d 278, 281 (Fla. 1995).
[107] Section 766.104(1), F.S.
[108] *Id.*
[109] *Id.*
[110] Section 766.202, F.S.
[111] *Weinstock v. Groth*, 629 So. 2d 835, 837-838 (Fla. 1993).
[112] See *Ragoonanan by Ragoonanan v. Associates in Obstetrics & Gynecology*, 619 So. 2d 482 (Fla. 2d DCA 1993), and *Kukral v. Mekras*, 679 So. 2d 278 (Fla. 1996).
[113] Section 766.203(2), F.S.

presuit screening process is discoverable or admissible in any civil action for any purpose by the opposing party.[114] All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process.[115]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.[116]

Instead, the state steps in as the party litigant and defends against the claim. Subsection (5) limits the recovery of any one person to $100,000 for one incident and limits all recovery related to one incident to a total of $200,000.[117] Parties may pursue a claim bill with the Legislature for any excess judgment or equitable claim that is not recovered from a state agency or other entity covered by the waiver of sovereign immunity.[118]

Community-Based Care Lead Agencies and Providers

By the enactment of s. 409.1671, F.S., the Legislature required the DCF to outsource the provision of foster care and related services statewide to lead community-based care providers (CBCs). In doing so the Legislature found[119] that foster children have not traditionally had the right to recover for injuries beyond the limitations specified in s. 768.28, F.S.,[120] that the purpose for outsourcing is to increase the level of safety, security, and stability of children who are or become the responsibility of the state, and that one of the components necessary to secure a safe and stable environment for such children is that private providers maintain liability insurance.

[114] Section 766.106(5), F.S.
[115] *Id.*
[116] Section 768.28(9)(a), F.S.
[117] Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), F.S., effective October 1, 2011, to increase the limits to $200,000 for one person for one incident and $300,000 for all recovery related to one incident, to apply to claims arising on or after that effective date.
[118] Section 768.28(5), F.S. (provides that any portion of a judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature).
[119] Section 409.1671(1)(f)1, F.S.
[120] $100,000 ($200,000 effective October 1, 2011) per claim or judgment by any one person and $200,000 ($300,000 effective October 1, 2011) when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence.

Accordingly, the statute requires the lead community-based providers and their subcontractors to provide general liability insurance and put in place limitations on the tort liability of lead community-based providers and their subcontractors.

The CBCs and their subcontractors must provide general liability insurance coverage of $1 million per claim and $3 million per incident. Their tort liability for economic damages is limited to $1 million per liability claim and $100,000 per automobile claim, and tort liability for noneconomic damages is limited to $200,000 per claim.[121] The Legislature, being "cognizant of the increasing costs of goods and services each year and recognize[ing] that fixing a set amount of compensation actually has the effect of a reduction in compensation each year," provided for the limitations on damages to increase at the rate of 5 percent yearly.[122] There is no corresponding requirement that the CBCs increase their insurance coverage to match the increased limits.

Medicaid Services for Persons with Developmental Disabilities

The APD has the responsibility to provide optional Medicaid services to persons with developmental disabilities. A developmental disability is a disorder or syndrome attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, which is diagnosed before age 18 and constitutes a substantial handicap expected to continue indefinitely.[123]

An individual is eligible for services if he or she meets financial eligibility criteria *and* if he or she has a developmental disability and is three years of age or older. Children who are between three and five years of age and are at high risk of having a developmental disability are also eligible for services. Services provided by the APD include community services and supports as well as a limited institutional program. The APD determines eligibility, assesses service needs, and provides funding for purchasing the supports and services identified in assessments.

The range of services and supports available to an individual include employment and training services, environmental adaptive equipment, personal or family supports, residential habilitation, support coordination, and therapeutic supports. The APD provides services to eligible individuals in state-run developmental disability centers, private intermediate care facilities, or in home and community-based settings.

The APD served 53,731 clients with developmental disabilities statewide as of August 12, 2010.[124] Of those, approximately 30,000 are receiving services through the APD waivers, and almost 20,000 persons are on the waiting list for services. The majority of clients are adults, and the most frequent primary disability is mental retardation. Some clients live independently in the community, while others are served in more restrictive settings dependent upon their individual circumstances. Notably, more than 36,000 clients live in their family homes, and over 7,000 reside in group homes.

[121] Section 409.1671(1)(h) and (j), F.S.
[122] Prorated from the effective date of the statute to the date at which damages subject to such limitations are awarded by final judgment or settlement. Section 409.1671(1)(l), F.S.
[123] Section 393.063(9), F.S.
[124] Because the number of clients fluctuates as persons enter or exit the wait list or a specific program, a "snapshot" count of the client base on a given day was determined to be most useful for these purposes.

Persons younger than 18 with developmental disabilities may become financially eligible, even if supported by their parents. Federal law[125,126] gives states the option to waive or disregard parental income and resources for children under 18 years of age who are living at home but who would otherwise be eligible for Medicaid-funded institutional care. Not counting parental income enables these children to receive Medicaid services at home or in other community settings. Florida has chosen this option.

Insurance Rebates for Healthy Lifestyles

In 2004, the Legislature required health insurers offering group or individual policies and HMOs, when filing rates, rating schedules, or rating manuals with the OIR, to provide for premium rebates based on participation in health wellness, maintenance, or improvement programs, based on certain parameters.[127]

Insurers issuing individual health insurance policies may provide for a rebate on premiums when a covered individual enrolls in and maintains participation in a health wellness, maintenance or improvement program approved by the health plan. To qualify for a rebate, a covered individual must provide evidence of maintenance or improvement of the individual's health status. The measurement is accomplished by assessing health status indicators, agreed upon in advance by the individual and the insurer, such as weight loss, decrease in body mass index, and smoking cessation. The premium rebate is effective for the covered individual on an annual basis, unless the individual fails to maintain his or her health status while participating in the wellness program or evidence shows that the individual is not participating in the approved wellness program. The rebate may not exceed 10 percent of paid premiums.[128]

For group health plans, a rebate may be provided when the majority of members of the health plan are enrolled in and have maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan. Evidence of maintenance or improvement of the enrollees' health status is achieved through assessment of health status indicators similar to those included for individual health policies. The group or health insurer may contract with a third party administrator to gather the necessary information regarding enrollees' health status and provide the necessary report to the insurer. The premium rebate, which may not exceed 10 percent of paid premiums, is effective for an insured on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program.[129]

For HMO coverage, a rebate may be provided when the majority of members of a group health plan are enrolled in and have maintained participation in any health wellness, maintenance, or improvement program offered by the group contract holder. Evidence of maintenance or improvement of the enrollees' health status is achieved through assessment of health status indicators similar to those included for individual and group health policies. The premium rebate,

[125] 42 CFR 435.217
[126] 42 CFR 435.602
[127] *See* ss. 32 through 34, ch. 2004-297, Laws of Florida.
[128] *See* s. 627.6402, F.S.
[129] *See* s. 627.65626, F.S.

which may not exceed 10 percent of paid premiums, is effective for a subscriber on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program. In addition to group contracts, HMOs are also allowed to offer a premium rebate on individual contracts for a healthy lifestyle program, consistent with the parameters for group contracts.[130]

III. Effect of Proposed Changes:

Section 1 amends s. 163.387(2)(c), F.S., to provide that:

- Hospital districts that are special districts as defined in s. 189.403, F.S.;
- County hospitals that have taxing authority under ch. 155, F.S.; and
- Public health trusts established under s. 154.07, F.S.

are exempt from s. 163.387(2)(a), F.S., which requires that upon the adoption of an ordinance providing for funding of a community redevelopment trust fund,[131] each taxing authority listed above must make an annual appropriation to the redevelopment trust fund for a duration determined by statutory criteria. Under the bill, the taxing authorities listed above are exempt from annually appropriating funds to the redevelopment trust fund.

Section 2 creates s. 200.186, F.S., to provide that, notwithstanding any law governing the expenditures of ad valorem revenues, such revenues raised:

- Pursuant to a special act that establishes a hospital district;
- By a county hospital pursuant to ch. 155, F.S.; or
- By a public health trust established pursuant to s. 154.07, F.S.;

and disbursed by the district, county hospital, or trust to municipalities or other organizations, may be used only to pay for "health care services."

Section 3 amends s. 393.0661, F.S., to direct the APD to impose and collect a fee upon approval from the federal CMS. The fee is created in section 24 of the bill and is a sliding-scale parental fee to be assessed on all parents of children under age 18 being served by a HCB waiver with an adjusted household income over 100 percent of FPL.

Section 4 requests the Division of Statutory Revision to designate ss. 409.016 through 409.803, F.S., as part I of ch. 409, F.S., entitled "SOCIAL AND ECONOMIC ASSISTANCE."

Section 5 amends s. 409.016, F.S., to make some technical clarifications to definitions.

Section 6 creates s. 409.16713, F.S., to require that all children in foster care, all children who are covered by adoption assistance agreements, and youth and young adults eligible to receive services under the "Road to Independence" program[132] are eligible for the medical managed care program established in the bill if medical assistance under Medicaid is not available due to the refusal of the federal agency to provide federal funds under Title XIX.

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[130] *See* s. 641.31(40), F.S.

[131] Section 163.387, F.S., establishes a redevelopment trust fund for each community redevelopment agency after approval of a community redevelopment plan.

[132] *See* s. s. 409.14519(5), F.S.

The bill provides that such medical assistance shall be obtained by the community-based care lead agencies subject to the availability of funds appropriated for this purpose.
The bill further provides that it is the intent of the Legislature that provision of such medical assistance fully meet the requirements of the applicable sections of Title IV-E of the Social Security Act and thus permit the state to certify in the TANF state plan that the state will operate a foster care and adoption assistance program that meets the requirements of Title IV-E. This will enable the state to remain eligible for a block grant under the TANF program.

The effect of this section of the bill is to permit the state to continue to receive federal funds other than Medicaid funds if the federal agency refuses to grant requested waivers under Title XIX and refuses to provide the requested federal funds for Medicaid.

Section 7 requests the Division of Statutory Revision to designate ss. 409.810 through 409.821, F.S., as part II of ch. 409, F.S., and entitled "KIDCARE."

Section 8 transfers s. 624.91, F.S., to s. 409.8115, F.S.:
- Changes the minimum MLR for health plans in the Healthy Kids program from 85 percent to 90 percent; and
- Requires the Florida Healthy Kids Corporation, in the development and implementation of a plan for publicizing the Florida Kidcare program, to include the use of application forms for school lunch and breakfast programs.

Section 9 amends s. 409.813, F.S., to make some technical changes to Kidcare statutes.

Section 10 amends s. 409.8132, F.S., to make some technical changes to Kidcare statutes.

Section 11 amends s. 409.815, F.S., to make some technical changes to Kidcare statutes.

Section 12 amends s. 409.818, F.S., to make a technical change to Kidcare statutes.

Section 13 amends s. 154.503, F.S., to make a technical change for Kidcare.

Section 14 amends s. 408.915, F.S., to make a technical change for Kidcare.

Section 15 amends s. 1006.06, F.S., to requires that school districts must provide application information about Kidcare or an application for Kidcare to students at the beginning of each school year, and modify the school district's application form for school breakfast and lunch programs to incorporate a provision that permits the school district to share data from the application form with the Florida Healthy Kids Corporation state agencies that administer Kidcare, unless the child's parent or guardian opts out of the provision.

Section 16 requests the Division of Statutory Revision to designate ss 409.901 through 409.9205, F.S., as part III of ch. 409, F.S., and entitled "MEDICAID."

Section 17 amends s. 409.901, F.S., to make some technical and clarifying changes to Medicaid definitions.

Section 18 amends s. 409.902, F.S., regarding Medicaid eligibility and rules:

- Medicaid eligibility is restricted to U.S. citizens and lawfully admitted non-citizens. Citizenship or immigration status must be verified. State funds may not be used for individuals who do not qualify under these standards unless the services are necessary for treating an emergency medical condition or for pregnant women; and
- Includes new language to provide criteria for DCF to use when evaluating personal care contracts. Intended to address concerns about Medicaid estate planning techniques. Provides DCF rulemaking authority.

Section 19 amends s. 409.9021, F.S., relating to conditions for Medicaid eligibility. Additional conditions for Medicaid eligibility are created, subject to federal regulation and approval:

- An applicant must consent to the release of her or his medical records to the AHCA and the Medicaid Fraud Control Unit of the Department of Legal Affairs;
- An applicant must consent to forfeit all entitlement to Medicaid goods or services for 10 years if found to have committed Medicaid fraud;
- A recipient may be required to pay a $10 monthly premium for Medicaid coverage subject to the approval of a federal waiver, except for SSI recipients in institutional care. The language authorizes the AHCA to adopt rules providing for premium collection, advance notice of cancellation, and waiting periods for reinstatement of coverage upon cancellation for nonpayment of premiums. The AHCA is also directed to seek federal waiver authority to implement the provisions designed to assist recipients mitigate lifestyle choices and avoid behaviors associated with high-cost medical services; and
- An applicant must consent to participate, in good faith, in a medically-approved smoking cessation program if the applicant smokes, a medically-directed weight loss program if the applicant is or becomes morbidly obese, and a medically-approved alcohol or substance abuse recovery program if the applicant is or becomes diagnosed as a substance abuser.

Requires that a person eligible for Medicaid and who has access to coverage through an employer-sponsored health plan may not receive Medicaid services reimbursed under Medicaid but may use Medicaid financial assistance to pay the cost of premiums for the employer-sponsored coverage for himself/herself and his/her Medicaid-eligible family members. Also, a Medicaid recipient who has access to other insurance coverage created by state or federal law may opt-out of Medicaid-provided services and use Medicaid financial assistance to pay the cost of premiums for the recipient and his/her Medicaid-eligible family members.

The bill allows for Medicaid financial assistance to pay premiums in either of the above cases, not to exceed the capitation that would have been paid to a qualified Medicaid health plan for such coverage under the new managed care system created later in the bill.

Section 20 creates s. 409.9022, F.S., to prohibit any state agency that administers a Medicaid program or waiver from expending Medicaid funds in excess of the amount appropriated in the General Appropriations Act. If at any time a state agency determines that Medicaid expenditures may exceed the amount appropriated during a fiscal year, the agency is required to notify the Social Services Estimating Conference, which is required to meet and determine whether a deficit will occur. Any time the SSEC determines that Medicaid expenditures will exceed appropriations for the fiscal year, the state agency must develop and submit a plan for revising Medicaid expenditures in order to remain within the annual appropriation. The plan must include

cost-mitigating strategies to negate the projected deficit for the remainder of the fiscal year and must be submitted in the form of a budget amendment to the Legislative Budget Commission.

In preparing the budget amendment to revise Medicaid expenditures in order to remain within appropriations, a state agency shall include the following revisions to the Medicaid state plan, in the priority order listed below:

- Reduction in administrative costs;
- Elimination of optional benefits;
- Elimination of optional eligibility groups; and
- Reduction to institutional and provider reimbursement rates.

Section 21 amends s. 409.903, F.S., to make some technical and clarifying changes.

Section 22 amends s. 409.904, F.S., to rename the Medically Needy program as the Medicaid Non-poverty Medical Subsidy (MNMS). Effective April 1, 2012, benefits for the program are limited to physician services only, except for pregnant women and children, who will continue to receive the full range of Medicaid benefits with the exception of services in skilled nursing facilities and intermediate care facilities for the developmentally disabled.

Section 23 amends s. 409.905, F.S., to require the AHCA to prior-authorize home health services. Also requires an assessment of need for private-duty nursing services to specifically include medical necessity for such services instead of other more cost-effective services.

Section 24 amends s. 409.906, F.S., relating to optional Medicaid services and creates a sliding-scale parental fee to be assessed on all parents of children under age 18 being served by a HCB waiver with an adjusted household income over 100 percent of FPL. Prohibits the AHCA from paying for psychotropic medications prescribed for a child younger than the age for which the FDA has approved its use.

Section 25 amends s. 409.9062, F.S., relating to lung transplant services, to make some technical and clarifying changes.

Section 26 amends s. 409.907, F.S., relating to Medicaid provider agreements, to conform to provisions created in ss. 766.1183 and 766.1184 later in the bill.

Section 27 amends s. 409.908, F.S., relating to reimbursement of Medicaid providers:

- Specifies that the direct care subcomponent of long-term care reimbursement and cost-reporting includes medically necessary dental and podiatric care.
- Requires that Medicaid fee-for-services payments to primary care physicians for primary care services must be at least 100 percent of the Medicare payment rate for such services, effective January 1, 2013.
- Removes the requirement in existing law that the AHCA must purchase transportation services via the community coordinated transportation system under the umbrella of the Commission for the Transportation Disadvantaged. Further requires the AHCA to either competitively procure transportation services or secure federal waiver authority necessary to draw down the highest federal match available for transportation services.

- Requires Medicaid qualified plans to provide access to covered Medical services under Part IV and states that plans are not required to purchase transportation services via the community coordinated transportation system under the umbrella of the Commission for the Transportation Disadvantaged.

Section 28 amends s. 409.9081, F.S., relating to Medicaid copayments and requires that Medicaid recipients must pay copayments at the time of service, subject to federal waiver authority. Creates a $3 copayment for visiting a specialty physician. Directs the AHCA to seek a waiver of the federal requirement that cost sharing amounts for non-emergency services and care furnished in a hospital emergency department be nominal. Upon waiver approval, each Medicaid recipient must pay a $100 copayment for non-emergency services and care provided in a hospital emergency department (instead of $15 under current law).

Section 29 amends s. 409.912, F.S., relating to cost-effective purchasing of health care. Most notably:

- Paragraph (b) of subsection (4) relating to managed behavioral health care is amended to require that 90 percent (as opposed to 80 percent in current law) of the capitation paid to prepaid plans contracted to provide behavioral health services must be spent on behavioral health services and that if a plan spends less, it must return the difference to the AHCA; and
- Paragraph (b) of subsection (4) is also amended to enroll foster children who reside in Highlands, Hardee, and Polk counties into the statewide behavioral managed care system for such children. Foster kids in those counties are currently excluded, as are foster kids in Escambia, Okaloosa, Santa Rosa, Walton, and Manatee counties. Foster kids in the latter counties would remain excluded under the bill.

Section 30 amends s. 409.915, F.S., relating to county contributions to Medicaid, to make a technical change.

Section 31 transfers and renumbers s. 409.9301, F.S. as s. 409.9067, F.S., and amends subsections (1) and (2) to make some technical changes.

Section 32 amends s. 409.9126, F.S., relating to children with special health care needs, to make a technical change.

Section 33 requests the Division of Statutory Revision to create part IV of ch. 409, F.S., consisting of ss. 409.961 through 409.978, entitled "MEDICAID MANAGED CARE."

Section 34 creates s. 409.961, F.S., to expresses legislative intent that if any conflict exists between ss. 409.961-409.978 and other parts or sections of ch. 409, the provisions of ss. 409.961-409.978 control, and those sections apply only to the Medicaid managed care program.

Section 35 creates s. 409.962, F.S., relating to definitions for pt. IV of ch. 409, F.S.

Section 36 creates s. 409.963, F.S., and establishes the new Medicaid managed care program. Directs the AHCA to submit waiver and state plan amendment requests by August 1, 2011, as needed to implement the program. At a minimum, the requests must include a waiver to permit

home and community-based services to be preferred before nursing home services and a waiver to require dual-eligibles to participate in the program. Also, the waiver is supposed to allow Florida to limit enrollment in managed LTC.

The bill requires the AHCA to initiate procurement processes as soon as practicable and no later than July 1, 2011, in anticipation of federal waiver authority. The bill requires the AHCA to seek waiver approval by December 1, 2011, in order to begin implementation on December 31, 2011. Requires public notice and opportunity for public comment.

The bill requires the AHCA to begin implementing on December 31, 2011. If necessary waivers are not timely received, the bill directs the AHCA to notify the federal CMS of the state's implementation of the program and request the federal agency to continue providing federal funds, as provided under the current Medicaid program, to be used for Florida's new program. If the federal CMS refuses to continue providing federal funds, the managed care program will be implemented to the extent state funds are available.

- If implemented as a state-only-funded program, priority will be given to providing:
  - Nursing home services to persons eligible for nursing home care;
  - Medical services for persons served by APD;
  - Medical services to pregnant women;
  - Physician and hospital services to persons who are eligible for Medicaid;
  - Healthy Start waiver services;
  - Medical services provided to persons in nursing home diversion;
  - Medical services provided to persons in ICF/DDs; and
  - Medical care for children in the child welfare system, whose medical care shall beprovided in accordance with s. 409.16713 as authorized by the GAA.

- If implemented as a state-only-funded program, all provisions related to eligibility standards of the state and federal Medicaid program remain in effect except as specifically provided under the managed care program.

- If implemented as a state-only-funded program, provider agreements and contracts necessary to provide for the preferred services listed above will remain in effect.

Section 37 creates s. 409.964, F.S., to requires all Medicaid recipients to receive covered services through the Medicaid managed care program unless excluded. Exclusions include:
- Women eligible only for family planning services;
- Women eligible only for breast and cervical cancer services;
- Persons with a developmental disability;
- Persons eligible for the Medicaid Non-poverty Medical Subsidy program;
- Persons receiving emergency Medicaid services for aliens;
- Persons residing in a nursing home facility or are considered a resident under the nursing home's bed-hold policy on or before July 1, 2011;
- Persons who are eligible for and receiving prescribed pediatric extended care;
- Persons who are dependent on a respirator by medical necessity and who meet the definition of a medically dependent or technologically dependent child under s. 400.902;

- Persons who select the Medicaid hospice benefit and are receiving hospice services from a hospice licensed under part IV of chapter 400;
- Children residing in a statewide inpatient psychiatric program; and
- Persons eligible for Medicaid who have access to employer-sponsored health coverage. Medicaid financial assistance is available to pay premiums for such coverage for the eligible and his/her eligible family members. The amount of financial assistance may not exceed the capitations that would be paid to a qualified plan for the recipient and his/her eligible family members. A person is deemed to have access to employer-sponsored coverage only if the financial assistance available is sufficient to pay premiums. Also allows persons with access to other coverage created by state or federal law to opt-out of Medicaid coverage under the same premium-assistance conditions as for employer-sponsored coverage.

Provides for voluntary enrollment for those who are exempt from mandatory enrollment, including:
- Recipients residing in residential commitment facilities operated through DJJ, group care facilities operated by DCF, and treatment facilities funded through the Substance Abuse and Mental Health program of DCF
- Persons eligible for refugee assistance

Provides that Medicaid recipients who are exempt from mandatory participation under this section and who do not choose to enroll in the Medicaid managed care program will be served though Medicaid fee-for-service.

Section 38 creates s. 409.965, F.S.:
- Establishes 19 regions in which qualified plans will provide Medicaid services;
- Provides that AHCA will conduct a competitive bid process and that separate invitations to negotiate (ITNs) will be issued for the managed medical assistance program and the managed long-term care program. Establishes selection criteria and process;
- Specifies a preference for plans providing evidence that primary care physicians in the plan's network will be compensated for primary care services equivalent to or greater than 100 percent of Medicare rates;
- Specifies a preference for plans that are based in Florida and have specified operational functions performed in Florida by Florida-employed staff. This preference applies only to an entity whose principal office is in Florida and which is not a subsidiary of or a joint venture with any other entity not located in the state;
- Establishes the CMS network as a qualified plan under statewide contract that is not subject to the procurement requirements;
- Prohibits AHCA from selecting more than one plan per 20,000 Medicaid recipients residing in each region who are subject to mandatory enrollment, with a maximum of 10 plans per region;
- Allows AHCA to issue subsequent ITNs in regions that grow by more than 20,000 Medicaid recipients subject to mandatory enrollment, under certain circumstances, before the end of the contract cycle;
- Requires AHCA to assign FFS Medicaid provider agreements to PSNs in regions containing no PSN or HMO on July 1, 2011, for the first 12 months the PSN operates in the region;

- Requires AHCA to publish a data book containing information plans will need to formulate an ITN response; and
- Provides for negotiation with qualified plans based on the adequacy of GAA funding.

Section 39 creates s. 409.966, F.S., to establish standards for managed care contracts, including 5-year durations, non-renewal of contracts, a primary care physician for each member, prompt pay, required rate of pay for non-contracted providers of emergency services, plan network adequacy, electronic claims and prior authorization processing, adoption of a standard minimum preferred drug list consistent with the process used by the Medicaid Pharmaceutical and Therapeutics Committee, encounter data reporting, quality and performance standards, fraud prevention, grievance resolution, penalties, performance bonds, solvency standards, guaranteed savings, and penalties.

Section 40 creates s. 409.967, F.S., and:

- The AHCA is required to establish a uniform method for annual reporting of premium revenue, medical and administrative costs, and income or losses for all Medicaid prepaid plans across all lines of business in all regions. Qualified plans are required to use the uniform method. Reports are due to the AHCA within 270 days after the conclusion of the reporting period. The AHCA may audit the reports. "Achieved savings rebates" are due within 30 days after a plan's report is submitted. The AHCA is required to calculate achieved savings rebates owed to the state by the plans by determining pretax income as a percentage of revenues and by applying the following parameters:
  - 100 percent of income up to and including 5 percent of revenue will be retained by the plan;
  - 50 percent of income above 5 percent and up to 10 percent will be retained by the plan with the other 50 percent refunded to the state;
  - 100 percent of income above 10 percent of revenue will be refunded to the state;
  - A plan that meets or exceeds AHCA-defined qualify measures may retain an additional 1 percent of revenue;
  - Certain expenses are not to be included in calculating plan income, such as payment of the achieved savings rebate, financial incentive payments made to a plan outside of the capitation, financial disincentive payments levied by the state or federal government, expenses associated with lobbying, and administrative, reinsurance, and outstanding claims expenses in excess of actuarially sound maximums;
  - Qualified plans that incur a loss in the first contract year may apply the full amount of the loss as an offset to income in the second year; and
  - Upon failure of a plan to pay the rebate to the state within 30 days, the AHCA must withhold future payments to the plan until the entire rebate amount has been paid.
- Establishes requirements for plans to include providers in their networks. During first year after the initial procurement in a region, plans must offer contracts to FQHCs and (for LTC plans) nursing homes and certain aging network service providers in the region;
- Qualified plans must include the following essential providers in their networks:
  - Faculty plans of state medical schools;
  - Regional perinatal intensive care centers (RPICCs) as defined in s. 383.16, F.S.;
  - Hospitals licensed as a children's specialty hospital as defined in s. 395.002, F.S.

  Qualified plans that have failed to contract with all such essential providers on the first date of recipient enrollment must continue negotiating with those providers in good faith. Such

plans are required to pay physicians on the faculty of non-contracted state medical schools at the applicable Medicaid rate. Services rendered by RPICCs must be paid for at the applicable Medicaid rate as of the first day of the contract between the plan and the AHCA. Payments to non-contracted specialty children's hospitals must equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

- Requires plans and providers to negotiate in good faith. Establishes a procedure for dealing with provider contracting impasses in areas containing no capitated plans prior to July 1, 2011. Requires AHCA to examine the negotiation process to determine good faith, under certain parameters, and based on the findings, a provider may be deemed part of a plan's network for the purpose of network adequacy and the plan must pay the provider rates determined by AHCA to be the average of rates for corresponding services paid in the region and similar counties under similar circumstances;
- Allows AHCA to continue calculating fee-for-service rates for Medicaid hospital inpatient and outpatient services, but specifies that these rates may not be the basis for contract negotiations between plans and hospitals;
- Requires plans to monitor the quality and performance of network providers based on metrics established by AHCA;
- Provides that qualified plans are not required to conduct surveys of health care facilities that the AHCA surveys periodically for licensure or certification purposes. Requires qualified plans to accept the results of such AHCA surveys;
- Requires qualified plans to compensate primary care physicians with payments equivalent to or greater than the Medicare rate for primary care services no later than January 1, 2013;
- Requires non-LTC plans to establish specific programs and procedures to improve pregnancy outcomes and infant health;
- Requires non-LTC plans to achieve an 80-percent EPSDT rate for recipients continuously enrolled for at least 8 months; and
- Requires that unresolved disputes between a qualified plan and a provider shall proceed in accordance with s. 408.7057, which is the existing statewide provider and health plan claim dispute resolution program.

Section 41 creates s. 409.968, F.S., to provide that plans will be paid per-member, per-month payments based on an assessment of each member's acuity level and that payment for LTC plans will be combined with rates for medical assistance plans. The AHCA is required to develop a methodology and request federal approval that ensures the availability of intergovernmental transfers and certified public expenditures in the MMCP to support providers that have historically served Medicaid recipients, including safety net providers, trauma hospitals, children's hospitals, statutory teaching hospitals, and medical and osteopathic physicians employed or under contract with a state medical school. The AHCA is directed to develop supplemental payments to qualified plans under certain parameters in order to ensure the providers are paid the exact amounts of the enhanced provider rates, under specified conditions.

The bill separately directs the AHCA to develop a methodology and request federal approval that ensures the availability of certified public expenditures in the MMCP to support non-institutional teaching faculty providers that have historically served Medicaid recipients, including allopathic and osteopathic physicians employed or under contract with a state medical school. The AHCA is directed to make direct supplemental payments to teaching faculty providers or to a statewide

entity acting on behalf of state medical schools and teaching faculty providers that contract with qualified plans and provide care to Medicaid recipients in recognition of costs associated with graduate medical education, educating medical school students, and access to primary and specialty care provided to Medicaid recipients, under specified conditions.

Section 42 creates s. 409.969, F.S.

- Provides that recipients may choose from plans available in their region of residence. Recipients who have not chosen within 30 days of becoming eligible will be automatically assigned to a plan.
- Provides guidelines for auto-assignment based on certain criteria, including Medicare Advantage plan membership, family continuity, adherence to quality standards, network capacity, prior enrollment, and geographic accessibility of providers. Requires that recipients residing in region 11, 15, or 16 who are diagnosed with HIV/AIDS be auto-assigned to an HIV/AIDS specialty plan if those recipients do not choose a plan within 30 days.
- Requires enrollment for 12-month period, except for a 90-day window at the outset of enrollment and "good cause" as determined by the AHCA. Members of managed LTC plans are given an additional window in which to change plans, notwithstanding the 12-month requirement, that lasts for 30 days after being referred for nursing home or assisted living facility services.

Section 43 creates s. 409.970, F.S., to require the AHCA to maintain and operate the Medicaid Encounter Data System. Provides guidelines for data reporting, validation, and analysis. Requires qualified plans to submit encounter data according to deadlines established by the AHCA.

Section 44 creates s. 409.971, F.S., to require the AHCA to begin implementing the new managed care medical assistance component as of December 31, 2011, and finish implementing the component in all regions no later than December 31, 2012. Applies ss. 409.961-409.970 to the medical assistance component.

Section 45 creates s. 409.972, F.S., to establish minimum services that plans must provide in the medical assistance component. Allows for additional services as specified in the GAA. Allows plans to customize benefit packages for non-pregnant adults, vary cost-sharing provisions, and provide coverage for additional services, subject to standards of sufficiency and actuarial equivalence. Requires services provided to be medically necessary. Authorizes the AHCA to adjust fees, reimbursement rates, length of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the GAA or s. 409.9022, F.S.

Section 46 creates s. 409.973, F.S., to establish the managed long-term care program. Requires the AHCA to begin implementing the managed long-term care program by March 31, 2012, with full implementation in all regions by March 31, 2013. Applies the provisions of ss. 409.961-409.970 to the managed long-term care program. Requires the AHCA to make payments for long-term care, including home and community-based services, using a capitated managed care model. Requires DOEA to assist the AHCA develop specifications for ITNs and the model contract, determine clinical eligibility for enrollment in managed long-term care plans, monitor plan performance and measure quality of service delivery, assist clients and families to address

complaints with the plans, facilitate working relationships between plans and providers serving elders and disabled adults, and perform other functions specified in a memorandum of agreement.

Section 47 creates s. 409.974, F.S., to require Medicaid recipients to receive covered long-term care services through the managed long-term care program unless excluded pursuant to s. 409.964. Recipients who meet all of the following criteria may participate in the managed long-term care program. Recipients must be:

- Sixty-five years of age or older or eligible for Medicaid by reason of a disability
- Determined by the CARES Program to meet the requirements for nursing facility care

The bill allows recipients already residing in a nursing home or enrolled in certain LTC waiver programs to remain eligible for those programs. Specifies that this part does not create an entitlement for any home and community based services provided under the program.

Section 48 creates s. 409.975, F.S., to establish minimum benefits that managed LTC plans must provide, including all services provided by medical assistance plans, plus nursing facility services and home and community-based services, including but not limited to ALF services. Requires services provided to be medically necessary. Authorizes the AHCA to adjust fees, reimbursement rates, length of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the GAA, ch. 216, or s. 409.9022, F.S.

Section 49 creates s. 409.976, F.S., and adds the following plans to the list of qualified plans for managed LTC coverage: Medicare Advantage PPOs, Medicare Advantage PSOs, and Medicare Advantage special needs plans. Specifies that the PACE program is a qualified plan and is not subject to procurement requirements. Requires the AHCA to issue an ITN by November 14, 2011. Establishes selection criteria and process.

Section 50 creates s. 409.977, F.S., to establish requirements for managed LTC plans for including providers in their networks, in addition to the requirements for MAC plans.

Section 51 creates s. 409.978, F.S., to provide for an assessment of an enrollee's level of care by the CARES program.

Section 52 transfers and renumbers s. 409.91207, F.S., relating to medical home pilot program, as s. 409.985.

Section 53 transfers and renumbers s. 409.91211, F.S., relating to the existing Medicaid Reform pilot program, as s. 409.986, F.S.

Section 54 transfers and renumbers s. 409.9122, F.S., relating to managed care mandatory enrollment, to s. 409.987. Makes technical amendments within the statute.

Section 55 transfers and renumbers s. 409.9123, F.S., relating to quality of care reporting, to s. 409.988.

Section 56 transfers and renumbers s. 409.9124, F.S., relating to manage care reimbursement, to s. 409.989.

Section 57 amends s. 430.04, F.S., to require the DOEA to transition persons from existing waivers to qualified managed care plans as they become available.

Section 58 amends s. 430.2053, F.S., to delete obsolete language. Provides that additional duties of Aging Resource Centers (ARCs) are to:

- Assist clients who request long-term care services in being evaluated for eligibility for enrollment in the Medicaid managed long-term care component as qualified plans become available.
- Provide enrollment and coverage information for the Medicaid managed long-term care component as qualified plans become available.
- Assist Medicaid recipients enrolled in the Medicaid managed long-term care component with informally resolving grievances with a managed care network and in accessing the managed care network's formal grievance process as qualified plans become available.

Section 59 amends s. 39.407, F.S., to:

- Provide that for any child 10 years of age or younger in an out-of-home placement, any administration of a psychotropic medication must be reviewed by a child psychiatrist;
- Specify criteria to be included in the review and requires that the results of the review be provided to the child and a parent or legal guardian before consent is given; and
- Provide that absent a compelling governmental interest, psychotropic medication may not be court-authorized for any child 10 years of age or younger in an out-of-home placement.

Section 60 amends s. 216.262, F.S., to exempt FTEs in the DOH that are funded by the County Health Dept. Trust Fund from the requirement that the total number of authorized positions at a state agency may not exceed the total provided in the GAA and allows county health departments the flexibility to establish and delete positions without Legislative approval.

Section 61 amends s. 381.06014, F.S., to:

- Redefine "blood establishment" to clarify that a person, entity, or organization that uses a mobile unit and performs any of the activities under the definition of "blood establishment" is also a blood establishment.
- Define a "volunteer donor" for purposes of blood donations.
- Prohibit local governments from restricting access to public facilities or infrastructure for volunteer blood drives based on the tax status of a blood establishment conducting the blood drive.
- Prohibit a blood establishment from considering the tax status of certain customers when determining the price at which to sell blood or a blood component that was obtained from volunteer donors.
- Require a blood establishment that collects blood or blood components from volunteer donors, except a hospital that uses the blood or blood components that the hospital collects only within its own business entity, to disclose information on its Internet web site concerning: a description of the activities of the blood establishment related to collecting, processing, and distributing volunteer blood donations; the number of units that are

produced, obtained from other sources, and distributed; policies related to corporate conduct and executive compensation; and financial-related data. Hospitals are exempt from disclosing financial-related data. Failing to disclose this information subjects the blood establishment to a civil penalty.

Section 62 amends s. 393.063, F.S., to change the definition of "developmental disability" to specifically include "Down Syndrome." Provides a definition of "Down Syndrome."

Section 63 amends s. 400.023, F.S., to revise nursing home civil liability. Additional requirements are specified for suing an officer, director, or owner of a nursing home, including an owner designated as having a controlling interest, or an agent of a nursing home or the nursing home's management company unless at an evidentiary hearing the court determines that there is sufficient evidence in the record or proffered by the claimant. The evidence must establish that a reasonable basis exists for a finding that the person or entity (officer, director, owner, or agent) has breached, failed to perform, or acted outside the scope of duties as an officer, director, owner, or agent. Additionally the evidence must establish that a reasonable basis exists for finding that the breach, failure to perform, or action outside the scope of duties is the legal cause of the actual loss, injury, death, or damage to the nursing home resident.

In wrongful death actions brought against a nursing home, the noneconomic damages may not exceed $250,000, regardless of the number of claimants.

Section 64 amends s. 400.0237, F.S., to revise requirements for obtaining punitive damages from nursing homes.

The requirements and procedures for bringing a punitive damages claim against a nursing home are revised. In a pretrial evidentiary hearing, the claimant would have to demonstrate that a reasonable basis exists for the recovery of punitive damages based on criteria outlined in the section to ensure the sufficiency of punitive damage claims alleged against a nursing home or other liable legal entity. The defendant is allowed to actively refute the claimant's proffered evidence to recover punitive damages. The trial judge must weigh admissible evidence from both defendant and claimant to ensure that a reasonable basis exists to believe that the claimant, at trial, will be able to demonstrate by clear and convincing evidence that the recovery of such damages is warranted.

The bill requires the claimant to produce evidence so that the trier of fact may find, based on clear and convincing evidence, that a specific individual or corporate defendant actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant. "Intentional misconduct" is revised to mean that the defendant against whom a claim for punitive damages is sought had actual knowledge of the wrongful conduct and the high probability that injury or damage to the claimant would result and, despite the knowledge, intentionally pursued that conduct, resulting in injury or damage. Under subsection (2), the evidence in a punitive damages claim must show that the defendant (nursing home, including its management company, if applicable) *against whom the punitive damages claim is sought* had actual knowledge of the wrongfulness of the conduct and the probability that the claimant would get injured but intentionally pursued the conduct that resulted in injury or damage to the claimant.

The ability to seek a claim for punitive damages is limited in the context of the vicarious liability of an employer, principal, corporation, or other legal entity against whom the punitive damages claim is sought. In lieu of current requirements for asserting a claim on punitive damages based on the vicarious liability of an employer, principal, corporation, or other legal entity, the claimant may not impose punitive damages for the conduct of an identified employee or agent unless the conduct meets the criteria specified in subsection (2). The claimant must additionally demonstrate that the officers, directors, or managers of the actual employer corporation, or legal entity condoned, ratified, or consented to the specific conduct which resulted in the claimant's injury as alleged by the claimant under subsection (2) of the section. Currently, to impose a punitive damages claim against an employer, principal, corporation, or other legal entity, the claimant must show that employer, principal, corporation, or other legal entity actively and knowingly participated in the conduct, condoned, ratified or consented to the conduct, or that the employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that conduct contributed to the claimant's loss, damages, or injury.

Section 65 amends s. 408.7057, F.S., to alter provisions relating to the existing statewide provider and health plan claim dispute resolution program and establish that this section of statute creates a procedure for dispute resolution, not an independent right of recovery. The conclusions of law contained in the written recommendation of the resolution organization must identify the provisions of law or contract which, under the peculiar facts and circumstances of the case, entitle the provider or health plan to the amount awarded, if any.

Section 66 creates s. 458.3167, F.S., to specify requirements for a medical physician licensed in another state or Canada to obtain a certificate from the Board of Medicine to provide expert medical testimony concerning the prevailing professional standard of care for medical negligence litigation pending in Florida against a Florida-licensed medical physician or osteopathic physician in a medical malpractice action. An application for an expert witness certificate must be approved or denied within 5 business days after receipt of a completed application; if not, the application is deemed approved. An applicant seeking to claim certification by default must notify the Board of Medicine, in writing, of the intent to rely on the default certification provision of this section. In such case, the criminal penalties for violations of the medical practice act, ch. 458, F.S., do not apply, and the applicant may provide expert testimony. All licensure fees, other than the initial certificate application fee, are waived for those persons obtaining an expert witness certificate. The possession of an expert witness certificate alone does not entitle the physician to engage in the practice of medicine as defined in ch. 458, F.S.[133] The board is granted rulemaking authority to implement the requirements to issue the certificate, including rules setting the amount of the certificate application fee, which may not exceed $50. An expert witness certificate expires 2 years after the date of issuance.

Section 67 amends s. 458.331, F.S., to establish grounds for physician disciplinary action for the act of providing misleading, deceptive, or fraudulent expert witness testimony relating to the practice of medicine.

Section 68 creates s. 459.0078, F.S., to specify requirements for an osteopathic physician licensed in another state or Canada to obtain a certificate from the Board of Osteopathic

[133] *See Section 458.305, F.S.*

Medicine to provide expert medical testimony concerning the prevailing professional standard of care for medical negligence litigation pending in Florida against a Florida-licensed medical physician or osteopathic physician in a medical malpractice action. An application for an expert witness certificate must be approved or denied within 5 business days after receipt of a completed application; if not, the application is deemed approved. An applicant seeking to claim certification by default must notify the Board of Osteopathic Medicine, in writing, of the intent to rely on the default certification provision of this section. In such case, the criminal penalties for violations of the osteopathic medicine practice act, ch. 459, F.S., do not apply, and the applicant may provide expert testimony. All licensure fees, other than the initial certificate application fee, are waived for those persons obtaining an expert witness certificate. The possession of an expert witness certificate alone does not entitle the physician to engage in the practice of osteopathic medicine as defined in ch. 459, F.S.[134] The board is granted rulemaking authority to implement the requirements to issue the certificate, including rules setting the amount of the certificate application fee, which may not exceed $50. An expert witness certificate expires 2 years after the date of issuance.

Section 69 amends s. 459.015, F.S., to establish grounds for physician disciplinary action for the act of providing misleading, deceptive, or fraudulent expert witness testimony relating to the practice of osteopathic medicine.

Section 70 amends s. 499.003, F.S., to clarify that a blood establishment is a health care entity that may engage in the wholesale distribution of certain prescription drugs.

Section 71 amends s. 499.005, F.S., to exempt a blood establishment that manufactures blood and blood components from the requirement to be permitted as a prescription drug manufacturer and register products.

Section 72 to amends s. 499.01, F.S., and authorizes certain blood establishments to obtain a restricted prescription drug distributor permit to engage in the wholesale distribution of certain prescription drugs to health care entities, and authorizes DOH to adopt rules related to the distribution of prescription drugs by blood establishments.

Section 73 amends s. 626.9541, F.S., to allow insurers issuing group or individual health benefit plans to offer a voluntary wellness or health improvement program and to encourage or reward participation in the program by authorizing rewards or incentives, including, but not limited to, merchandise, gift cards, debit cards, premium discounts or rebates, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts. Allows insurers to require a health benefit plan member to provide verification, such as an affirming statement from the member's physician, that the member's medical condition makes it unreasonably difficult or inadvisable to participate in the wellness or health improvement program.

The bill declares that a reward or incentive described above is neither an insurance benefit nor a violation of the prohibition against unfair methods of competition and unfair or deceptive acts or practices, if it is disclosed in the policy or certificate.

[134] *See* s. 459.003, F.S.

Section 74 amends s. 627.4147, F.S., to delete a statutory requirement that a medical malpractice insurance contract include a clause authorizing an insurer to admit liability and make a settlement offer or offer of judgment on behalf of the insured physician if the offer is within the policy limits without the insured physician's permission.

Section 75 amends s. 766.102, F.S., to establish that if a medical or osteopathic physician is a party against whom, or on whose behalf, expert testimony about the prevailing professional standard of care is offered, the expert witness must otherwise meet the requirements of this section and be licensed as a medical or osteopathic physician, or must possess a valid expert witness certificate.

Section 76 amends s. 766.104, F.S., to provide that if the cause of action for medical malpractice requires the plaintiff to establish the breach of a standard of care other than negligence in order to impose liability or to secure specified damages, the presuit investigation and certification required by attorneys must demonstrate grounds for a good-faith belief that the requirement is met.

Section 77 amends s. 766.106, F.S., to specify that immunity from civil liability arising from participation in the presuit screening process does not prohibit a physician or osteopathic physician licensed under ch. 458 or ch. 459, F.S., respectively, or an expert witness licensed under ch. 458, F.S., or ch. 459, F.S., from being subject to disciplinary action by the Board of Medicine or the Board of Osteopathic Medicine.

Section 78 amends s. 766.1115, F.S., to conform this section of statute to sovereign immunity provisions for the nonprofit independent college or university located and chartered in Florida that owns or operates a medical school which appear in section 82 of the bill.

Section 79 creates s. 766.1183, F.S., relating to standard of care for Medicaid providers:

- Modified Recovery of Civil Damages – Specifies that the liability of health care providers who provide covered medical services to Medicaid recipients is limited to $200,000 per claimant or $300,000 per occurrence for any cause of action arising out of the rendering of, or the failure to render, medical services to a Medicaid recipient, unless the claimant proves that the provider acted in a wrongful manner. A claimant may still obtain a judgment in excess of $200,000/$300,000. The claimant may report the judgment to and seek the excess amount from the Legislature;
- However, a provider may still be liable for amounts in excess of $200,000 or $300,000 if a claimant proves that the provider acted in a wrongful manner;
- The existing limitations on damages in a medical malpractice action (limitation on damages passed during the 2003 Tort Reform) would apply if the claimant proved that the health care provider acted in a wrongful manner when rendering or failing to render medical services to a Medicaid recipient;
- Standard of care for imposing liability on provider greater than $200,000 ($300,000) is modified – Medical malpractice claimant who is a Medicaid recipient must prove that the provider acted in a wrongful manner. "Wrongful manner" is defined to mean an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of humans rights, safety, or property. The modified

standard of care conforms to the standard of care used when the limited waiver of sovereign immunity is not extended to state officers, employees, or agents under s. 768.28(9)(a), F.S.;

- Burden of Proof – Shifts from greater weight of the evidence to a more demanding standard of clear and convincing evidence for the claimant to prove that the provider acted in a wrongful manner in order to impose liability in excess of $200,000 per claimant ($300,000 per occurrence). Plaintiffs can still recover damages from the provider up to $200,000 ($300,000) if they can prove their case at the existing burden of proof (greater weight of evidence) which applies to all medical malpractice actions;
- Existing damage caps from 2003 Tort Reform will continue to apply to medical malpractice plaintiffs who are Medicaid recipients; and
- Provider – means a health care provider as defined in s. 766.202, F.S., an ambulance provider licensed under ch. 401, F.S., or an entity that qualifies for an exemption under the health care clinic act.[135] The term includes any person or entity for whom a provider is vicariously liable; and any person or entity whose liability is based solely on such person or entity being vicariously liable for the actions of the provider.

At the time an application for medical assistance is submitted, the Department of Children and Family Services must furnish the applicant with written notice of the provisions of this section. This section does not apply to any claim for damages to which s. 768.28, F.S., relating to the limited waiver of sovereign immunity, applies.

Section 80 creates s. 766.1184, F.S., to provide that:

- "Low income pool recipient" is defined as a low income individual who is uninsured or underinsured and who receives primary care services from a provider which are delivered exclusively using funding received by that provider under proviso language (appropriation 191 in 2010-2011 fiscal year General Appropriations Act) to establish new or expand existing primary care clinics for low income persons who are uninsured or underinsured;
- "Provider" is defined as a health care provider under the Medical Malpractice Act which received funding under proviso language (appropriation 191 in 2010-2011 fiscal year General Appropriations Act) to establish new or expand existing primary care clinics for low income persons who are uninsured or underinsured. The term includes persons or entities for whom the provider is vicariously liable, and persons or entities whose liability is based solely on such persons or entities being vicariously liable for the actions of the provider;
- Modified Recovery of Civil Damages – Specifies that the liability of health care providers who provide covered medical services to low income recipients is limited to $200,000 per claimant or $300,000 per occurrence for any cause of action arising out of the rendering of, or the failure to render, primary care services to a low income pool recipient, unless the claimant proves that the provider acted in a wrongful manner. A claimant may still obtain a judgment in excess of $200,000/$300,000. The claimant may report the judgment to and seek the excess amount from the Legislature;

[135] Section 400.9905(4)(e), F.S. (An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees not less than two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, any community college or university clinic, and any entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof).

- However, a provider may still be liable for amounts in excess of $200,000 or $300,000 if a claimant proves that the provider acted in a wrongful manner;
- The existing limitations on damages in a medical malpractice action (limitation on damages passed during the 2003 Tort Reform) would apply if the claimant proved that the health care provider acted in a wrongful manner when rendering or failing to render primary care services to a low income recipient;
- For the limitations on civil damages to apply, the provider must develop, implement, and maintain policies and procedures to: ensure that the appropriated funds (Specific appropriation 191) are used exclusively to serve low income persons who are uninsured or underinsured; determine whether funds (Specific appropriation 191) are being used to provide primary care services to a particular person; and identify whether an individual receiving primary care services is a low income recipient to whom the limitations apply. The provider also must provide notice of the statutory provisions prior to providing services to the recipient. Additionally, the provider must be in compliance with the agreement between the provider and the AHCA governing the receipt of the funds;
- Standard of care for imposing liability on provider greater than $200,000 ($300,000) is modified – Medical malpractice claimant who is a low income pool recipient must prove that the provider acted in a wrongful manner. "Wrongful manner" is defined to mean an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of humans rights, safety, or property. The modified standard of care conforms to the standard of care used when the limited waiver of sovereign immunity is not extended to state officers, employees, or agents under s. 768.28(9)(a), F.S.;
- Burden of Proof – Shifts from greater weight of the evidence to a more demanding standard of clear and convincing evidence for the claimant to prove that the provider acted in a wrongful manner in order to impose liability in excess of $200,000 per claimant ($300,000 per occurrence). Plaintiffs can still recover from the provider damages up to $200,000 ($300,000) if they can prove their case at the existing burden of proof (greater weight of evidence) which applies to all medical malpractice actions; and
- Existing damage caps from 2003 Tort Reform will continue to apply to medical malpractice plaintiffs who are low income pool recipients.

Section 81 amends s. 766.203, F.S., to provide that if the cause of action for medical malpractice requires the plaintiff to establish the breach of a standard of care other than negligence in order to impose liability or to secure specified damages, then the presuit investigation and certification required for the claimant and the defendant must ascertain that reasonable grounds exist to believe that the requirement is met.

Section 82 amends s. 768.28, F.S., to extend the limited waiver of sovereign immunity to a not-for-profit independent college or university located in Florida which owns or operates an accredited medical school and its employees and agents when the employees or agents of the medical school are providing patient services at a teaching hospital that has an affiliation agreement or other contract with the medical school. The not-for-profit independent college or university located in Florida which owns or operates a medical school and its employees or agents when providing patient services to patients at the teaching hospital would be considered an agent of the teaching hospital for purposes of sovereign immunity while acting within the scope and pursuant to guidelines in the contract.

"Employee or agent" means an officer, employee, agent, or servant of a nonprofit independent college or university located and chartered in Florida which owns or operates an accredited medical school, including, but not limited to, the faculty of the medical school, health care practitioners for which the college or university are vicariously liable, and the staff or administrator of the medical school.

"Patient services" mean comprehensive health care services as defined in s. 641.19, F.S., including related administrative services, provided to patients in a teaching hospital or in a health care facility that is a part of a nonprofit independent college or university located and chartered in Florida which owns or operates an accredited medical school pursuant to an affiliation agreement with a teaching hospital. The term also includes training and supervision of interns, residents, and fellows providing patient services in a teaching hospital or a health care facility that is a part of a nonprofit independent college or university located and chartered in Florida which owns or operates an accredited medical school pursuant to an affiliation agreement with a teaching hospital. "Patient services" also includes participation in medical research protocols or training and supervision of medical students.

"Teaching hospital" means a teaching hospital as defined in s. 408.07, F.S., which is owned and operated by the state, and other specified governmental entities as outlined in the section.

The teaching hospital or the medical school, or its employees or agents, must provide patients notice, which must be acknowledged in writing, that the college or university that owns or operates the medical schools and the employees or agents of the college or university are acting as agents of the teaching hospital and that the exclusive remedy for injury or damage suffered as a result of acts or omissions of the teaching hospital, the college or university, or employees or agents while acting within the scope of duties under the affiliation agreement with the teaching hospital is by action under the sovereign immunity provisions.

The bill extends the limited waiver of sovereign immunity to providers or vendors, 75 percent of whose client population consists of individuals with a developmental disability as defined in ss. 393.063 and 400.960, F.S., individuals who are blind or severely handicapped individuals as defined in s. 413.033, F.S., individuals who have a mental illness as defined under s. 394.455, F.S., or individuals who have any combination of these conditions, which have contractually agreed to act on behalf of the APD, the AHCA, the Division of Blind Services in the Department of Education, or the Mental Health Program Office of the DCF to provide services to these individuals. For purposes of extending the limited waiver of sovereign immunity, the employees or agents of these providers or vendors are considered agents of the state, solely with respect to the provision of services while acting within the scope of and pursuant to guidelines established by contract, a Medicaid waiver agreement, or rule. The contracts for the services must provide for the indemnification of the state by the agent for any liabilities incurred up to the $100,000 per person ($200,000 per occurrence) limits specified in s. 768.28, F.S.[136]

[136] $100,000 ($200,000 effective October 1, 2011) per claim or judgment by any one person and $200,000 ($300,000 effective October 1, 2011) when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence.

Section 83 creates a non-statutory provision of law providing legislative findings regarding role of and need for teaching hospitals and graduate medical education for Florida residents. Specifies that "employee or agent," patient services," and "teaching hospital" used in this section has the same meaning as the terms defined in s. 768.28, F.S., as amended by the bill. Establishes a legislative declaration that there is an overpowering public necessity for extending the state's sovereign immunity to a nonprofit independent college or university chartered and located in Florida that owns and operates a medical school when providing patient services in teaching hospitals and that there is no alternative method of meeting such public necessity.

Section 84 amends s. 1004.41, F.S., to extend the limited waiver of sovereign immunity to Shands Teaching Hospital and related entities. The bill provides that the University of Florida Board of Trustees shall lease the hospital facilities on the Gainesville campus of the University of Florida to Shands Teaching Hospital and Clinics, Inc., for the primary purpose of supporting the University of Florida Board of Trustees' health affairs mission of community service and patient care, education and training of health professionals, and clinical research. Shands Teaching Hospital and Clinics, Inc., may, in support of the health affairs mission of the University of Florida Board of Trustees and with its prior approval, create for-profit or not-for-profit corporate subsidiaries and affiliates, or both. The bill provides that Shands Teaching Hospital and Clinics, Inc., Shands Jacksonville Medical Center, Inc., Shands Jacksonville Healthcare, Inc., and not-for-profit subsidiaries of Shands Teaching Hospital and Clinics, Inc. and Shands Jacksonville Medical Center, Inc., are instrumentalities of the state for purposes of sovereign immunity. The University of Florida Board of Trustees has the right to control Shands Teaching Hospital and Clinics, Inc., Shands Jacksonville Medical Center, Inc., and Shands Jacksonville Healthcare, Inc.

Section 85 provides that, effective October 1, 2013, the following sections of Florida Statutes are repealed: 409.9121, 409.919, and 624.915.

Section 86 transfers and renumbers s. 409.942, F.S., relating to the electronic benefit transfer program, to s. 414.29, F.S.

Section 87 amends s. 443.111, F.S., to make a technical statutory reference change.

Section 88 provides that ss. 409.944, 409.945, and 409.946, F.S., are transferred and renumbered as ss. 163.464, 163.465, and 163.466, F.S., respectively.

Section 89 provides that ss. 409.953 and 409.9531, F.S., are transferred and renumbered as ss. 402.81 and 402.82, F.S., respectively.

Section 90 creates a non-statutory provision of law to require the AHCA to submit a reorganizational plan to the Governor, the Speaker of the House of Representative, and the President of the Senate by January 1, 2012, which converts the AHCA from a check-writing and fraud-chasing agency into a contract compliance and monitoring agency.

Section 91 creates a non-statutory provision of law providing that, effective December 1, 2011, if the Legislature has not received a letter from the Governor stating that the federal CMS has approved the waivers necessary to implement the Medicaid managed care reforms contained in

the bill, the State of Florida will withdraw from the Medicaid program effective December 31, 2011.

Section 92 creates a non-statutory provision of law providing that if any provision of this bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application, and to this end the provisions of this bill are severable.

Section 93 provides that the bill will take effect upon becoming a law.

Other Potential Implications:
The bill specifies requirements for a medical physician or an osteopathic physician licensed in another state or Canada to obtain a certificate from the Board of Medicine or the Board of Osteopathic Medicine to provide expert medical testimony concerning the prevailing professional standard of care for medical negligence litigation pending in Florida against a Florida-licensed medical physician or osteopathic physician. There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S., and other relevant provisions of law relating to medical negligence. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill for expert witnesses, to first obtain certification from a regulatory board as a condition precedent to offering testimony in a medical negligence action, as an infringement upon the Court's authority over practice and procedure, it may refuse to follow or adopt the changes in the bill as a rule.[137]

The bill extends the limited waiver of sovereign immunity to a provider or vendor if 75 percent of its client population consists of individuals with a developmental disability as defined in ss. 393.063 and 400.960, F.S., individuals who are blind or severely handicapped individuals as defined in s. 413.033, F.S., individuals who have a mental illness as defined under s. 394.455, F.S., or individuals who have any combination of these conditions, and the provider or vendor is contractually agreed to act on behalf of specified governmental agencies to provide services to such individuals, with respect to the provision of such services while acting within the scope of and pursuant to guidelines established by contract, a Medicaid waiver agreement, or rule. The provisions extending the limited waiver of sovereign immunity do not require that any notice be provided to individuals served by an affected provider or vendor regarding that provider's or vendor's status for purposes of sovereign immunity. And, it is unclear what rights to sue are afforded to a client in the other 25 percent of the client population who is not be covered by the guidelines established by contract, Medicaid waiver agreement, or rule, if injured by acts or omissions of the provider or vendor.

[137] *See, e.g., In re Florida Evidence Code*, 782 So. 2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court), and *compare with In re Florida Evidence Code*, 372 So.2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), *clarified, In re Florida Evidence Code*, 376 So. 2d 1161 (Fla. 1979).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

By designating certain not-for-profit entities and subsidiaries as instrumentalities of the state, the bill could render those entities subject to the provisions of Article I, Section 24, of the Florida Constitution relating to access to public records and meetings. Some of those entities and subsidiaries might qualify for the exemptions provided under s. 395.3036, F.S.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

D. Other Constitutional Issues:

The bill provides that Shands Teaching Hospital and Clinics, Inc. and certain Shands entities shall be conclusively deemed corporations primarily acting as instrumentalities of the state, pursuant to s. 768.28(2), F.S., for purposes of the state's limited waiver of sovereign immunity. The bill includes similar provisions for Shands Jacksonville Medical Center, Inc., and its parent Shands Jacksonville Healthcare, Inc., and any not-for-profit subsidiaries of Shands Teaching Hospital and Clinics, Inc. and Shands Jacksonville Medical Center, Inc. The bill extends the limited waiver of sovereign immunity to a nonprofit independent college or university located and chartered in Florida which owns or operates an accredited medical school and its employees and agents when the employees or agents of the medical school are providing patient services at a teaching hospital that has an affiliation agreement or other contract with the medical school.

Additionally, the bill extends the limited waiver of sovereign immunity to providers or vendors meeting certain criteria and their employees or agents solely with respect to the provision of services to individuals with a developmental disability as defined in ss. 393.063 and 400.960, F.S., individuals who are blind or severely handicapped individuals as defined in s. 413.033, F.S., individuals who have a mental illness as defined under s. 394.455, F.S., or individuals who have any combination of these conditions, while acting within the scope of and pursuant to guidelines established by contract, a Medicaid waiver agreement, or rule.

If sovereign immunity from liability is legislatively accorded to a private entity, a potential constitutional challenge would be that the law violates the right of access to the courts. Section 21, Article I of the State Constitution, provides that the courts shall be open to all for redress for an injury. To impose a barrier or limitation on a litigant's right to file certain actions, an extension of immunity from liability would have to meet the test

announced by the Florida Supreme Court in *Kluger v. White*.[138] Under the test, the Legislature would have to provide a reasonable alternative remedy or commensurate benefit, or make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity. A substitute remedy does not need to be supplied by legislation that reduces but does not destroy a cause of action. When the Legislature extends sovereign immunity to a private entity, the cause of action is not constitutionally suspect as a violation of the access to courts provision of the State Constitution because the cause of action is not completely destroyed, although recovery for negligence may be more difficult.[139]

The bill also provides modified recovery of civil damages and restructures the cause of action for Medicaid recipients and certain low income pool recipients seeking damages in a cause of action arising out of the rendering of, or the failure to render, medical services to Medicaid or low income pool recipients, as applicable, unless the claimant proves that the provider acted in a wrongful manner. Again, a potential constitutional challenge would be that the law violates the right of access to the courts. Under the *Kluger v. White* test, the cause of action is not destroyed. The Legislature has granted the potential litigants with a substitute remedy and has not totally abolished the cause of action, as the claimants may still obtain a judgment in excess of $200,000/$300,000, and the claimant has the option of reporting the judgment to and seeking the excess amount from the Legislature. Similarly, if the claimant seeks to recover damages in excess of $200,000/$300,000 by proving that the provider acted in a wrongful manner when rendering or failing to render medical services to a Medicaid or low income pool recipient, the cause of action has been restructured to require a higher burden of proof but not abolished.[140] The Florida Supreme Court in *Iglesia v. Floran*[141] held that although a 1978 amendment to a workers' compensation statute[142] precluded liability for simple negligence, the statute did not implicate the access to courts provision in the State Constitution.[143]

The Florida Supreme Court has repeatedly held that a statute that merely alters the standard of care owed by one party to another or increases the degree of negligence necessary to maintain a successful tort action does not abolish a preexisting right of access and does not, therefore, implicate Article I, Section 21 of the State Constitution. In

[138] See *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).
[139] *Id.* at 4.
[140] See *Amorin v. Gordon*, 996 So. 2d 913, 917-18 (Fla. 4th DCA 2008) ("'[t]he Constitution does not require a substitute remedy unless legislative action has abolished or totally eliminated a previously recognized cause of action. As discussed in *Kluger* and borne out in later decisions, no substitute remedy need be supplied by legislation which reduces but does not destroy a cause of action.'" (quoting *Jetton v. Jacksonville Electric Auth.*, 399 So. 2d 396, 398 (Fla. 1st DCA 1981))).
[141] *Iglesia v. Floran*, 394 So. 2d 994 (Fla. 1981).
[142] Section 440.11(1), F.S., as amended by s. 2 of ch. 78-300, Laws of Florida, "grants immunity from tort liability to co-employees who, while in the course of their employment, negligently injure other employees of the same employer, unless the employees act with willful and wanton disregard or unprovoked physical aggression or with gross negligence." (cited in *Iglesia*, 394 So. 2d at 995).
[143] *Iglesia*, 394 So. 2d at 995-96 (citing *McMillan v. Nelson*, 5 So. 2d 867 (Fla. 1942)). The Court described its rationale that "[s]ection 440.11[(1), F.S., as amended] still provides a cause of action for gross negligence just as the court-sustained 'guest statute' did. The Florida Legislature has broad powers in enacting legislation. The acts that it passes are to be sustained unless they run afoul of a limitation placed upon them by the Florida Constitution or violate a provision of the U.S. Constitution."

Abdin v. Fischer, the Court upheld a statute that exempted property owners from liability for injuries occurring on private property set aside for public recreation, unless the owner inflicted "deliberate, willful, or malicious injury to persons or property."[144] The Court explained that "[w]hat *Kluger* and *McMillan* make clear is that legislative action that alters standards of care need only be *reasonable* to be upheld" (emphasis added).[145]

In *Sontay v. Avis Rent-A-Car Systems, Inc.*,[146] s. 324.021(9), F.S., was challenged on various grounds that it violated the appellant's rights under access to courts, equal protection, due process, and the right to jury trial under the Florida Constitution. The court found that the challenged provision limits the vicarious liability of motor vehicle owners and lessors but did not equate to a denial of access to court because the court reasoned that the operator of the vehicle was still available to be sued for excess liability.[147] In the *Smith v. Department of Insurance*, however, the Florida Supreme Court held that a $450,000 cap on noneconomic damages that tort victims could recover for noneconomic losses violated their constitutional right to access to courts in conjunction with right to trial by jury and rejected arguments that exceptions to *Kluger* were applicable where there was not any showing of reasonable alternative remedy or commensurate benefit or a legislative showing of overpowering necessity for the abolishment of the right and no alternative method of meeting such public necessity.[148] If potential challenges to access to courts for the bill's provisions are linked and read in conjunction with other constitutional rights, it is unclear how the Florida Supreme Court may rule on such challenges.

On lines 3445-3465, the bill specifies a mechanism for the award of contracts to qualified plans in the Medicaid Managed Care Program that may favor Florida-based companies. The Commerce clause states that "Congress shall have Power… To regulate Commerce…among the several States…"[149] Courts have used a two-tiered analysis to determine whether a statutory scheme violated the dormant Commerce clause: (1) "If a statute 'directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,' the court may declare it unconstitutional as applied, without further inquiry."[150] (2) "However, if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state's interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits."[151] However, actions of a state

[144] *Abdin v. Fischer*, 374 So. 2d 1379, 1380-81 (Fla. 1979) (holding that to the extent the "statute alters the standard of care owed to plaintiff by defendants, this type of modification by the legislature is not prohibited by the constitution." The Florida Supreme Court noted in *Kluger* that there is a "distinction between abolishing a cause of action and merely changing a standard of care.").
[145] *Id.* at 1381. See also, *Eller v. Shova*, 630 So. 2d 537, 542 (Fla. 1993).
[146] *Sontay v. Avis Rent-A-Car, Systems, Inc.*, 872 So. 2d 316, 318 (Fla. 4th DCA 2004).
[147] *Id.*
[148] *Smith v. Department of Insurance*, 507 So. 2d 1080, 1088 (Fla. 1987).
[149] *Bainbridge v. Turner*, 311 F.3d 1104, 1108 (citing U.S. CONST. art. I, s. 8, cl. 3.).
[150] *National Collegiate Athletic Ass'n v. Associated Press*, 18 So.3d 1201, 1211-1212 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).
[151] *Id.* (internal citations omitted). *See Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109.

as a market participant are not subject to the limitations of the Commerce clause when the state is acting like an economic actor such as a purchaser of goods and services.[152]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires the AHCA, upon being granted a federal waiver, to assess a fee against the parents of a child who is being served by a waiver program for home and community-based services if the adjusted household income is greater than 100 percent of the federal poverty level. The fee will be calculated using a sliding scale based on family size, the amount of the parent's adjusted gross income, and the federal poverty guidelines.

The bill requires that, upon being granted a federal waiver, the AHCA must implement a $10 monthly premium on Medicaid applicants to cover all Medicaid-eligible recipients in the applicant's family, effective December 31, 2011. However, an individual who is eligible for the Supplemental Security Income-related Medicaid and is receiving institutional care payments is exempt from this premium.

The bill increases the allowable Medicaid copayment for each visit with a specialty care physician from up to $2 (under current law) to up to $3.

The bill requires the AHCA to seek a federal waiver of the requirement that Medicaid cost-sharing amounts for non-emergency services and care furnished in a hospital emergency department be nominal. Upon waiver approval, a Medicaid recipient who requests such services and care must pay a $100 copayment to the hospital for the nonemergency services and care provided in the hospital emergency department. (Under current law, such a copayment may not exceed $15.)

Medical and osteopathic physicians who otherwise qualify to testify as medical witnesses who are licensed in another state or Canada will be liable for an expert witness certification application fee which may not exceed $50. The fee may recur because the expert witness certificate expires two years after its issuance.

B. Private Sector Impact:

There are various private-sector fiscal impacts, including:

- The fees and copayments for Medicaid recipients described above;
- The reduction of funds available to participants in the MNMS program. Total expenditures in that program are expected to be reduced by $230.2 million in state fiscal year 2011-12, which annualizes to $865.3 million;
- Medicaid providers that currently participate under the program's fee-for-service payment system will face a new financial system of negotiating payments with qualified plans under the Medicaid Managed Care Program, which is likely to change the reimbursements those providers are paid by an indeterminate amount;

[152] See *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204 (1983) (providing that a state may grant and enforce a preference to local residents); s. 287.0874, F.S. (providing a preference to Florida businesses).

- The bill's provisions regarding payments and fiscal accountability for qualified plans participating in the Medicaid Managed Care Program (guaranteed savings, penalties, surety bond, etc.) and Healthy Kids health plans, are likely to present some indeterminate amount of fiscal challenges for the health plans;
- Primary care physicians participating in Medicaid are likely to experience a substantial increase in Medicaid reimbursement on January 1, 2013, when Medicaid payments to those physicians for primary care services will be required to equal or exceed the payments for comparable services under the Medicare program; and
- The DOEA advises that Florida's elders, including approximately 32,000 currently served by Medicaid long-term care waivers as well as those served in Medicaid-funded nursing facility beds, will be impacted by this proposal. The impact to the population is indeterminate. However, the specified population will be required to participate in a managed care system for their health care needs and depending on the number of plans available in their region, their choice may be increased or limited. Both elders and the nursing facility industry would be impacted if level of care criteria is narrowed or remove existing levels of care as individuals who currently qualify for nursing facility care may no longer be eligible. Although the bill provides specific contracting requirements aimed at supporting the state's Aging Resource Centers, there will be impacts on ARCs and aging network providers as a result of this legislation. ARCs will be impacted as choice counselors under the new system, and based on the regions proposed, the state's network of ARCs and aging service providers will no longer correspond to the Medicaid regional structure for long-term care. This may create administrative challenges and may allow for existing aging network providers or ARCs to be awarded contracts for areas of the state that do not correspond to their federally approved planning and service areas.

C. Government Sector Impact:

Section 1 of the bill will have a negative fiscal impact on community redevelopment trust funds because hospital districts and other specified taxing authorities will no longer be required to appropriate dollars into such community redevelopment trust funds. Hospital districts and other taxing authorities will experience a corresponding positive fiscal impact.

Sections 8 and 15 of the bill relating to the Kidcare program and school breakfast and lunch programs would impact government expenditures in both Kidcare and Medicaid. See the charts below for fiscal estimates provided by the AHCA and the FHKC:

Additional Children in Medicaid: 17,984	First 12 Months	Next 12 Months
Federal Funds	$32,568,650	$32,568,650
General Revenue Fund	$25,652,033	$25,652,033
Total Medicaid Funds	$58,220,682	$58,220,682

Additional Children in Kidcare: 20,280	First 12 Months	Next 12 Months
Federal Funds	$25,359,212	$25,359,212
General Revenue Fund	$11,435,930	$11,435,930
Grants & Donations Trust Fund	$2,501,066	$2,501,066
FHKC Technology Upgrade, federal	$172,050	$0
FHKC Technology Upgrade, GR	$77,950	$0
Total Kidcare Funds	$39,546,208	$39,296,208

Total General Revenue Required	**$37,165,913**	**$37,087,963**

The AHCA further advises as follows on the bill's fiscal impact:

Managed Care Medical Assistance Component
Based on January 2011 Medicaid enrollment data, an additional 794,618 Medicaid eligibles could be transitioned into managed care plans. This population is assumed to shift into managed care over a period of 12 months, beginning March 1, 2012, and ending March 31, 2013. A statewide managed care discount factor of 6.12 percent (93.88 percent of Fee for Service) is assumed in the analysis, and all expenditures utilized were based on the February 2011 Social Services Estimating Conference.

This estimate does not adjust for the level of future intergovernmental transfers (IGTs) that are currently provided today for inpatient and outpatient hospital utilization. If future IGT contributions are reduced and there are additional funding needs for general revenue, then savings may be reduced. The savings reflected in this analysis assume $12,124,969 in IGT for Fiscal Year 2011-2012 and $140,648,714 in IGT for Fiscal Year 2012-2013.

Managed Long-Term Care Component
Current caseload is 80,660; it is assumed that new eligibles seeking nursing home or HCBS will be 3,436 per month. New eligibles will be transitioning to the waiver starting in June 2012. By the end of June 2013, it is estimated that 44,668 will be enrolled in the managed LTC program. There is an assumed savings of 7 percent as specified in the bill resulting in a reduction of $886,992 for State Fiscal Year 2011-12, and for State Fiscal Year 2012-13 of $83,207,269. Federal regulations require that capitation rates must be actuarially sound and as such the savings amount may be adjusted to reflect this requirement.

Increase to Primary Care Physician Reimbursement
Based on the February 2011 SSEC, if the physician fees are increased to the Medicare rates, for State Fiscal Year 2011-12, there is no fiscal impact since the effective date provided in the bill is January 1, 2013. For State Fiscal Year 2012-13, the total fiscal impact is $441,842,581. This fiscal is assuming the PPACA is still law and the increase will be 100% federally funded until the end of CY 2015. If the PPACA is invalidated by court order, then the state would need to fund the state share of the costs. In this latter case, the general revenue need would be $192,068,970 with the federal funds being $249,773,611.

Reductions to the Medically Needy/MNMS Program
This bill revises the Medically Needy/MNMS program to provide physician services only for non-pregnant adults effective April 1, 2012. The Senate Budget reflects a total reduction of $230,193,780 of which $96,157,486 is general revenue funds and $134,036,294 is from trust funds. The remaining annualization realized in Fiscal Year 2012-2013 is an additional reduction of $635,153,319 of which $264,706,814 is general revenue funds and $370,446,505 from trust funds. These amounts are based on February 2011 Social Services Estimating Conference data.

$3.00 Copayment for Specialty Care
Physician services for adults billed by specialists will be charged a $3 copayment instead of the current $2.00 copayment. The copayment is deducted from the amount paid to the provider. The net result is a decrease to SFY 2011-12 expenditures by $14,911,169.

$100.00 Copayment for Non-Emergency Services in the ER
All non-emergency room services in an outpatient hospital setting that have revenue code 510 and will be charged a $100.00 co-pay. The copayment exceeds the maximum co-payment permitted under federal regulations and as a result the state will need to seek a waiver from the federal CMS. The Agency is unaware of CMS authorizing a co-payment this large that applies to all populations for the waiver including children, pregnant women and disabled adults. As a result, it is anticipated that the negotiations will take over a year. If approved by CMS, the net result is a decrease to Fiscal Year 2012-2013 expenditures by $9,612,700, but no impact for Fiscal Year 2011-2012. Furthermore, this amount may be adjusted as it is anticipated that CMS will continue apply current cost sharing protections for children, pregnant women and low-income families, which either exempt individuals from cost sharing or limit cost sharing amounts.

$10.00 Monthly Family Premium Payment
Federal regulations preclude premiums at this level for groups earning less that 150 percent of the federal poverty level and would require a waiver. It is anticipated that it would be one year or greater to negotiate a waiver. Therefore, no impact is included.

AHCA Resource Needs
Additional resources will be needed to accomplish the tasks in the time periods allotted:

- Requesting 27 FTE at 20 percent above minimum of pay grade and 13 OPS positions in order to implement the language in the proposed bill;

- Requesting $375,000 in total non-recurring contract funds for development of procurement documents, scope of services, plan requirements and contracts for acute care managed care program. ITN for 19 regions must be posted by August 15, 2011;
- Requesting $375,000 in total non-recurring contract funds for development procurement documents, scope of services, plan requirements and contracts for long term care managed care program. ITN for 19 regions must be posted by November 14, 2011;
- Requesting $30,000 in total non-recurring contract funds for development and submission of waiver to achieve bill components relating to acute care managed care, long term care managed care, and other requirements. The waiver must be submitted by August 1, 2011;
- Requesting $120,000 in total non-recurring contract funds to contract for specialized professional review of ITN response component relating to network requirements. Review of ITN responses due by October 12, 2011 and January 13, 2011 respectively for acute care and long term care managed care procurements;
- Requesting $1,066,816 in total additional contract funds for Medicaid Options Enrollment Broker services for the first year and $3,764,870 for year 2; and
- Requesting $1,028,958 in total additional Actuary contract funds for additional rate setting duties due to regional nature of program and addition of long term care.

AHCA FISCAL IMPACT	Year 1 FY 2011-12 Costs (Savings)	Year 2 FY 2012-13 Costs (Savings)
Program Impacts		
Medically Needy/MNMS	($230,193,780)	($635,153,319)
Title XXI (sections 8 and 15 of the bill)	$39,546,208	$39,296,207
Title XIX (sections 8 and 15 of the bill)	$58,220,682	$58,220,682
Physician Fee Increase	$0	$441,842,581
Addition of Dental, Vision, Hearing and Podiatric Services to Nursing Home Direct Care Subcomponent	$279,966	$0
Managed Care Transition	($10,551,255)	($122,393,755)
$3 Co-Pay for Specialty Care	($14,911,169)	($14,911,169)
Managed Long-term Care	($886,992)	($83,207,269)
$100 Co-Pay for Non-Emergency ER (OP)	$0	($9,612,700)
Total Recurring Expenditures (Savings)	**($158,776,306)**	**($325,918,742)**
General Revenue Fund	($70,436,981)	($327,865,334)
Medical Care Trust Fund (federal)	($72,842,873)	$50,640,523
Grants and Donations Trust Fund	($15,123,903)	($48,127,155)
Refugee Assistance Trust Fund	($92,583)	($566,776)
Total	**($158,496,340)**	**($325,918,742)**

Administrative Expenditure Impacts		
Total Nonrecurring Expenditures	$1,055,920	
Total Recurring Expenditures (27 FTE)	$4,973,061	$7,671,115
Total Expenditures	**$6,028,981**	**$7,671,115**
General Revenue Fund	$2,993,268	$3,816,948
Medical Care Trust Fund (federal)	$2,578,870	$3,421,375
Health Care Trust Fund	$456,843	$432,792
Total Expenditures	**$6,028,981**	**$7,671,115**

Total Impact Break-out		
General Revenue Fund	($67,443,713)	($324,048,386)
Medical Care Trust Fund (federal)	($70,264,003)	$54,061,898
Grants and Donations Trust Fund	($15,123,903)	($48,127,155)
Refugee Assistance Trust Fund	($92,583)	($566,776)
Health Care Trust Fund	$456,843	$432,792
TOTAL AHCA IMPACT (Savings)	**($152,467,359)**	**($318,247,627)**

The DOEA advises that there will be a direct fiscal impact related to enrollment and choice counseling functions for the proposed managed long term care system. In terms of enrollment broker transactions and choice counseling materials, addition of the currently exempt dually-eligible population as well as all Medicaid Institutional Care Program recipients into a managed care system will result in increased costs for enrollment broker services. In terms of choice counseling, ARCs have a limited amount of funding to complete Medicaid administrative activities at a 50 percent federal financial participation. To provide for effective choice counseling of elders, additional ARC Medicaid funded staff will be needed. When Florida Senior Care was originally proposed (2005), an ARC that covers a four-county area in an urban setting estimated that a contract for them to provide choice counseling services would cost approximately $200,000 a year. ARCs are determining whether a similar cost structure will apply to implementation of the choice counseling provisions of this legislation.

The DOH advises that it will need additional resources to implement the two new regulatory programs relating to expert witness certifications. The DOH estimates a recurring fiscal impact of $113,988 per fiscal year.

The APD advises that if Down Syndrome is added to the definition of developmental disability, an increase in the number of consumers requesting services is anticipated, particularly through general revenue funds. The fiscal impact is indeterminate.

VI. Technical Deficiencies:

The language in section 2 of the bill relating to hospital districts that currently reads:

> Notwithstanding any special act or other law governing the expenditure of ad valorem revenues, ad valorem revenues raised pursuant to a special act establishing a hospital district, by a county hospital pursuant to chapter 155, or a public health trust established pursuant to s. 154.07, and disbursed by the district, county hospital, or trust to municipalities or other organizations, may be used only to pay for health care services.

would be clearer by reading as follows (note verbiage in italics):

> Notwithstanding any special act or other law governing the expenditure of ad valorem revenues, ad valorem revenues raised pursuant to a special act establishing a hospital district, by a county hospital pursuant to chapter 155, or *by* a public health trust established pursuant to s. 154.07, and disbursed by the district, county hospital, or trust to municipalities or other organizations, may be used only to pay for health care services.

The language in lines 3990-3993 that currently reads:

> The amount paid to the plans to make supplemental payments or to enhance provider rates pursuant to this subsection must be reconciled to the exact amounts the plans are required to pay providers.

should instead read as follows (note verbiage in italics):

> The amount paid to the plans to make supplemental payments *pursuant to subsection (1)* or to enhance provider rates *pursuant to subsection (2)* must be reconciled to the exact amounts the plans are required to pay providers.

The language on lines 6038-6053 that currently reads:

> Providers or vendors, 75 percent of whose client population consists of individuals with a developmental disability as defined in ss. 393.063 and 400.960, individuals who are blind or severely handicapped individuals as defined in s. 413.033, individuals who have a mental illness as defined under s. 394.455, or individuals who have any combination of these conditions, which have contractually agreed. . .

indicates the percentage must be 75 percent, with no allowance for having a percentage greater than 75 percent. The language could be clearer by reading as follows (note verbiage in italics):

> Providers or vendors, 75 percent *or more* of whose client population consists of individuals with a developmental disability as defined in ss. 393.063 and 400.960, individuals who are blind or severely handicapped individuals as defined in s. 413.033, individuals who have a mental illness as defined under s. 394.455, or individuals who have any combination of these conditions, which have contractually agreed. . .

The effect of lines 3622-3626 is unclear, since the language providing that:

> . . . this section does not preclude a plan from contracting with a provider that is approved via a final order, has commenced construction, and will be licensed and operational within 18 months after the effective date of this act;

could be interpreted to require a qualified plan to *know*, in advance, that the provider will be licensed and operational within 18 months after the effective date of this act before the plan can contract with such a provider under this provision in the bill. The language could be clearer by reading as follows (note verbiage in italics):

> . . . this section does not preclude a plan from contracting with a provider that is approved via a final order, has commenced construction, and *is scheduled to be* licensed and operational within 18 months after the effective date of this act;

VII. Related Issues:

In section 2 of the bill, ch. 200, F.S., contains no definition of "health care services," leaving the intent and effect of the bill's new language in s. 200.186, F.S., unclear as to what might or might not constitute allowable expenditures for the ad valorem revenues raised by hospital districts, county hospitals, and public health trusts. In light of the fact that these types of revenues are often used to draw down federal Medicaid matching dollars, the AHCA advises it is not possible to tell how this new language in section 2 of the bill might potentially impact the collection of such revenue.

Also in section 2 of the bill, the Department of Revenue advises that ch. 200, F.S., relates to millage rate compliance by local government taxing authorities and that it is unclear why the language in section 2 of the bill is placed in ch. 200, F.S., because the Truth in Millage[153] (TRIM) process neither monitors revenue spending nor audits the budgets of taxing districts. The effectiveness of the language as placed in this chapter is indeterminate.

The FHKC advises that contracts the FHKC holds with its health and dental plans cycle on October 1st (health) or July 1st (dental) each year. It would be difficult to implement the changes in the medical loss ratio requirements mid-contract cycle, especially for the health plans which have a different medical loss ratio standard than the dental plans. The health plans are also under a rate freeze for the current contract year (October 1, 2010 through September 30, 2011) and another rate freeze is proposed for the following rate cycle (October 1, 2011 through September 30, 2012). Increasing the minimum medical loss ratio while rates are frozen may result in issues of actuarial soundness and could force plans to exit the Healthy Kids program.

The FHKC also advises that if Florida were to exit the Medicaid program, it is unclear whether or not Florida could maintain its Title XXI Children's Health Insurance Program (CHIP) without having the underlying entitlement program under Title XIX. If the state *can* have a Title XXI program without Title XIX, then the CHIP program could see a surge in enrollment since one of the enrollment qualifiers for CHIP is that a child not be eligible for Medicaid.

The OIR notes that section 39 of the bill requires qualified plans to secure a surety bond, a letter or credit, or a trust account and advises that if this requirement is in addition to s. 409.912(18), F.S., which authorizes the AHCA to require a deposit, one or the other should be removed. The OIR advises that a deposit is preferred to a letter of credit or surety bond because a letter of credit expires and a surety bond would likely require litigation before the state would collect.

The OIR also notes that section 39 of the bill requires a qualified plan that reduces enrollment or leaves a region before the end of the contract term to pay penalties. The OIR advises if the departing plan provides commercial or Medicare coverage, the bill's penalties could be significant enough to cause the plan to become impaired or insolvent.

The AHCA advises that, in regard to the language in section 40 of the bill providing that qualified plans are required to accept the results of the periodic licensing and certification surveys of health care facilities and are not required to conduct their own surveys, some health care facilities do not have regular surveys for licensure. The AHCA advises that the language should permit more frequent visits if needed for qualified plans to fulfill the bill's purpose of monitoring provider performance.

In section 40 of the bill, qualified plans are required to submit certain financial reports to the AHCA within 270 days after the conclusion of "the reporting period." It is unclear which

[153] The Truth in Millage (TRIM) process sets forth the legal requirements all local governments must follow in setting tax rates and adopting budgets. While each local government taxing authority uses a slightly different process and timetable, all must follow the basic rules and schedules set forth in TRIM. The timetable, hearing requirements, and advertising specifications must be adhered to precisely. Any local government found in violation faces the loss of state funds. See "TRIM and Property Taxes: A Primer," Florida TaxWatch, available at http://www.floridataxwatch.org/resources/pdf/1006TRIMandPropertyTaxesPrimer.pdf

"reporting period" is being referenced and why reports may be submitted up to 270 days after the conclusion of the reporting period.

In section 40 of the bill, for the purpose of establishing a qualified plan's achieved savings rebate, a list of five "expenses" is specified that may not be included in calculating income to the plan. Four of the five items in the list seem to represent potential payments plans might make while one represents potential income a plan might receive.

Section 40 of the bill requires a qualified plan to include certain essential providers in its network. The bill requires that, in the absence of a contract with a specialty children's hospital, the plan must pay the hospital an amount that equals the highest rate established by contract between that provider and any other Medicaid managed care plan. The bill does not address cases in which the hospital might not have a contract with any other Medicaid managed care plan.

The DOH advises that, through county health departments (CHDs), it provides communicable disease services to all persons regardless of citizenship status. CHDs currently do not verify citizenship or immigration status. CHDs therefore may provide treatment to individuals who do not meet the citizenship or legal status as defined in the bill. The DOH would not be able to bill Medicaid for communicable disease prevention services provided to non-citizens who have no proper documentation. If an alternate funding source is not provided, this could have a negative impact on public health. Preventing the spread of disease is a fundamental public health need. Withholding treatment of communicable diseases would likely spread those diseases in Florida.

The DOH also advises that there are approximately 1,000 HIV patients enrolled in the Medically Needy program. If Medicaid services for HIV/AIDS infected persons are limited to physician services only, these HIV/AIDS infected persons would most likely seek pharmaceutical and laboratory services from the AIDS Drug Assistance Program (ADAP).

The DOH also advises that the Children's Medical Services Network would become a statewide managed care option in the bill. CMS is a state agency and not eligible for the type of accreditation required by the bill. The choice counseling process that is currently in place includes screening questions to identify and refer children with special health care needs to CMS for eligibility determination. Since the bill eliminates choice counseling, it would also eliminate the ability to identify children with special health care needs and for those children to be referred to CMS.

The DOH also advises that the bill would require the Board of Medicine and the Board of Osteopathic Medicine and the DOH to regulate new programs and issue expert witness certificates within five days of receipt of a completed application. It would task the DOH's complaint, investigative, and prosecution resources with handling a new class of medical complaints. Also, s. 120.60, F.S., gives the boards 90 days after receiving a completed application to approve or deny. Under the Sunshine Law, the boards may not make decisions regarding applications except at duly noticed public meetings. Even if the criteria to approve an expert witness certification were clear enough to delegate approvals to DOH staff, the decision to deny an application can only be made by majority vote of the board members at a noticed public meeting. Given the requirements for public meetings under the Sunshine Law, the bill appears to

not give enough time to process applications under the bill's requirements and abide by existing state law at the same time.

The DOH also advises that under the bill, Medicaid applicants must consent to having their medical records released to the Medicaid Fraud Control Unit of the Department of Legal Affairs. This potentially conflicts with federal HIPAA laws that restrict a provider's ability to refuse treatment based on a patient's refusal to consent to various releases of personal health information.[154]

The DOEA advises that Medicaid recipients cannot be automatically assigned to PACE plans because federal Medicare regulations prohibit automatic assignment.

The DOEA also advises that section 51 of the bill outlines three levels of care for CARES to assign recipients into that do not correspond to the existing criteria for the state's three levels of care (Skilled, Intermediate I, and Intermediate II). As a result, the proposed language would significantly change medical eligibility determination for long-term care services in Florida, and may impact existing nursing home and Medicaid waiver recipients' on-going eligibility for enrollment in the proposed system. The intent and impact of new level-of-care criteria is not clear. The proposed "Level of care 2" includes language related to current recipients in home and community-based waiver programs indicating that those who remain financially eligible for Medicaid are not required to meet new level-of-care criteria except for immediate placement in a nursing home. Federal regulations require regular and periodic evaluation of individual eligibility, which conflicts with the bill language, according to the DOEA.

The DOEA also advises that the proposed "Level of care 3" criteria uses the Department's priority score measure as a factor in determining eligibility for nursing facility care. This is not part of the approved eligibility criteria for nursing facility care in Florida. The Department's priority ranking scores are currently only used for wait list prioritization purposes to determine need for community services. The proposed "Level of care 3" specifies that priority ranking scores shall be used to determine level of care. This is an inappropriate use of priority ranking score that will not produce the desired outcome, according to the DOEA.

The DOEA also advises that Level of Care criteria specified in the proposed bill conflicts with current level of care criteria in Rule at 59G-4.290, F.A.C. and 59G-4.180, F.A.C. and authorized under the federally approved Medicaid State Plan. Section 26 of the bill does not appear to include the skilled level of care which would conflict with federal law at 42 U.S.C. 1396d (a)(4)(A) that defines medical assistance required under the Medicaid State Plan to include nursing facility services for individuals 21 years or age or older. See also existing federal regulations at 42 CFR 440.40 and 42 CFR 440.155.

Two private-sector trade associations have raised concerns about the 19 regions contained in section 38 of the bill. The Florida Hospital Association and the Florida Association of Health Plans have each submitted alternative proposals for breaking the state into either 13 or 11 regions based on patterns of referral designed to track where the residents of the various counties actually receive Medicaid services.

[154] *See* Title 45 C.F.R. s. 164.508.

VIII. Additional Information:

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

CS by the Budget Subcommittee on Health and Human Services Appropriations on April 6, 2011:
The CS includes the following changes:

- The AHCA is required to select no fewer than 3 qualified plans per region as a result of the procurement process;
- The AHCA is required to establish a system for limiting the profits of qualified plans through a system of financial reporting and achieved savings rebate payments to the state if profits exceed specified ratios. This replaces provisions in the previous CS for the AHCA to subject qualified plans to a minimum medical loss ratio of 90 percent;
- Qualified plans are required to contract with specified essential providers and, if attempts to contract are unsuccessful, qualified plans are required to continue negotiating in good faith and to pay such providers certain specified payment rates;
- The AHCA is required to develop a methodology and request authority from the federal CMS that ensures the availability of certified public expenditures in the MMCP to support non-institutional teaching faculty providers that have historically served Medicaid recipients. The AHCA is required to make direct supplemental payments to such providers or to a statewide entity on behalf of such providers that contract with qualified plans, under certain parameters;
- Provisions to limit the legal liability of eligible lead community-based providers and their subcontractors relating to foster care services were removed from the bill; and
- Ambulance providers licensed under ch. 401, F.S., were added to the definition of "provider" in section 79 of the CS.

CS by the Committee on Health Regulation on March 30, 2011:
The CS includes the following provisions that were not included in the bill as filed:

- Section 163.387(2)(c), F.S., is amended to provide that hospital districts that are special districts as defined in s. 189.403, F.S., county hospitals that have taxing authority under ch. 155, F.S., and public health trusts established under s. 154.07, F.S., are exempt from s. 163.387(2)(a), F.S., which requires that upon the adoption of an ordinance providing for funding of a community redevelopment trust fund, each taxing authority listed above must make an annual appropriation to the redevelopment trust fund for a duration determined by statutory criteria. Under the bill, the taxing authorities listed above are exempt from annually appropriating funds to the redevelopment trust fund;
- Section 200.186, F.S., is created to provide that, notwithstanding any law governing the expenditures of ad valorem revenues, such revenues raised pursuant to a special act that establishes a hospital district, by a county hospital pursuant to ch. 155, F.S., or by a public health trust established pursuant to s. 154.07, F.S., and disbursed by the district, county hospital, or trust to municipalities or other organizations, may be used only to pay for "health care services;"

- Medically necessary vision and hearing care are added to the direct care subcomponent of the long-term care reimbursement cost reporting system. The bill as filed added dental and podiatric care to the subcomponent;
- The definition of "provider service network" includes entities whose governing bodies are controlled by a health care provider, a group of health care providers, or a public agency or entity that delivers health care services;
- Children residing in a statewide inpatient psychiatric program are excluded from the Medicaid Managed Care Program;
- Qualified plans that are based in Florida and have operational functions performed in Florida are eligible to receive preference during the procurement process;
- Qualified plans are authorized to contract with a provider that is approved via final order, has commenced construction, and will be licensed and operational within 18 months after the effective date of the bill;
- Qualified plans are required to accept prior authorization requests from prescribers and pharmacists for medication exceptions to the plan's preferred drug list or formulary. The criteria for the approval and the reasons for denial of prior authorization must be made "readily available" to the prescribers and pharmacists submitting requests;
- Qualified plans are required to pay non-contracted providers for emergency services at the same fee-for-service rate the AHCA would pay the non-contracted provider for such services, unless the agency has developed an average rate for the non-contracted provider and those services under s. 409.967(3)(c), F.S.;
- Qualified plans must adopt a standard minimum preferred drug list as described in s. 409.912(39), F.S., and must publish an up-do-date listing of its formulary on a publicly available website;
- A qualified plan *and its subcontractors* must spend at least 90 percent of the plan's capitation on medical services and direct care management according to AHCA rules;
- Qualified plans are not required to conduct surveys of health care facilities that are periodically surveyed by the AHCA and are required to accept the results of such AHCA surveys;
- The AHCA is required to develop a methodology and request a federal waiver that ensures the availability of intergovernmental transfers *and certified public expenditures* in the Medicaid Managed Care Program;
- Requires the AHCA to automatically assign a Medicaid Managed Care Program recipient who is a member of a Medicare Advantage managed care plan that is under contract with the AHCA for Medicaid services, into that Medicare Advantage managed care plan for the provision of applicable Medicaid services if the recipient has not made a choice of plans within his or her 30-day choice period;
- Allows recipients in the managed LTC component to change plans within 30 days after being referred for nursing home or ALF services; and
- The limited waiver of sovereign immunity is extended to certain providers or vendors, 75 percent of whose client population consists of individuals with developmental disabilities, individuals who are blind or severely handicapped, or individuals with mental illness, which have contractually agreed to act on behalf of certain state agencies to provide services to such individuals. Those providers or

vendors and their employees or agents are considered agents of the state under certain parameters.

B. Amendments:

None.


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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 36 - 119
and insert:
(a) Courses in language arts/reading, mathematics, social studies, and science in prekindergarten through grade 3;
(b) Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level and courses required for middle school promotion;
(c) Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level and courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state

assessment, excluding any extracurricular courses pursuant to subsection (15);

(d) Exceptional student education courses; and

(e) English for Speakers of Other Languages courses.

~~courses defined by the Department of Education as mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms.~~

The term is limited in meaning and used for the sole purpose of designating classes that are subject to the maximum class size requirements established in s. 1, Art. IX of the State Constitution. This term does not include courses offered under ss. 1002.37, 1002.415, and 1002.45.

(15) "Extracurricular courses" means all courses that are not defined as "core-curricula courses," which may include, but are not limited to, physical education, fine arts, performing fine arts, ~~and~~ career education, and courses that may result in college credit. The term is limited in meaning and used for the sole purpose of designating classes that are not subject to the maximum class size requirements established in s. 1, Art. IX of the State Constitution.

Section 2. Subsections (1) and (2) of section 1003.03, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

1003.03 Maximum class size.—

(1) ~~CONSTITUTIONAL~~ CLASS SIZE MAXIMUMS.—Each year, on or before the October student membership survey, the following


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class size maximums shall be satisfied ~~Pursuant to s. 1, Art. IX of the State Constitution, beginning in the 2010-2011 school year~~:

(a) The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for prekindergarten through grade 3 may not exceed 18 students.

(b) The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 4 through 8 may not exceed 22 students. The maximum number of students assigned to a core-curricula high school course in which a student in grades 4 through 8 is enrolled shall be governed by the requirements in paragraph (c).

(c) The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 9 through 12 may not exceed 25 students.

These maximums shall be maintained after the October student membership survey, except as provided in paragraph (2)(b) or due to an extreme emergency beyond the control of the district school board.

(2) IMPLEMENTATION.—

(a) The Department of Education shall annually calculate class size measures described in subsection (1) based upon the October student membership survey.

(b) A student who enrolls in a school after the October student membership survey may be assigned to an existing class that temporarily exceeds the maximum number of students in subsection (1) if the district school board determines it to be

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impractical, educationally unsound, or disruptive to student learning to not assign the student to the class. If the district school board makes this determination:

1. Up to three students may be assigned to a teacher in kindergarten through grade 3 above the maximum as provided in paragraph (1)(a);

2. Up to five students may be assigned to a teacher in grades 4 through 12 above the maximum as provided in paragraphs (1)(b) and (1)(c), respectively; and

3. The district school board shall develop a plan that provides that the school will be in full compliance with the maximum class size in subsection (1) by the next October student membership survey.

~~(b) Prior to the adoption of the district school budget for 2010-2011, each district school board shall hold public hearings and provide information to parents on the district's website, and through any other means by which the district provides information to parents and the public, on the district's strategies to meet the requirements in subsection (1).~~

(6) COURSES FOR COMPLIANCE.—Consistent with the provisions in ss. 1003.01(14) and 1003.428, the Department of Education shall identify from the Course Code Directory the core-curricula courses for the purpose of satisfying the maximum class size requirement in this section. The department may adopt rules to implement this subsection, if necessary.

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

And the title is amended as follows:

Delete line 23

and insert:

the next October student membership survey; requiring that the Department of Education identify from the Course Code Directory the core-curricula courses for the purpose of satisfying the maximum class size requirement; authorizing the department to adopt rules; amending

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 1466
INTRODUCER:	Senator Simmons
SUBJECT:	Class Size
DATE:	March 24, 2011
REVISED:	

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

I. Summary:

The bill redefines the terms "core-curricula courses" as follows:

- Language arts/reading, mathematics, and science courses in prekindergarten through grade 3;
- Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level;
- Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level;
- Courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessments, excluding any extracurricular courses;
- Exceptional student education courses; and
- English for Speakers of Other Languages courses.

The bill also:

- Specifies the maximum number of students for a core-curricula high school course in which a student in grades 4 through 8 is enrolled for high school graduation credit;
- Redefines the term "extracurricular courses" to include courses that may result in college credit;

- Specifies a timeframe for satisfying and maintaining class size maximums, with specific exceptions for an extreme emergency beyond the district's control and when a student enrolls after the October survey period;
- Provides requirements and limitations on the maximum number of students who can be assigned to a teacher when an existing class temporarily exceeds the class size maximums; and
- Provides that only a school district that meets the maximum class size requirements may use the class size reduction operational categorical funds for any lawful operating expenditure.

This bill substantially amends sections 1003.01, 1003.03, and 1011.685, Florida Statutes.

II. Present Situation:

Constitutional Amendment
In November 2002, s. 1, Art. IX of the State Constitution was amended to provide that by the beginning of the 2010 school year the maximum number of students assigned to a teacher who teaches core-curricula courses in public school classrooms shall be as follows:

- Prekindergarten through grade 3, the number of students may not exceed 18;
- Grades 4 through 8, the number of students may not exceed 22; and
- Grades 9 through 12, the number of students may not exceed 25.

The amendment required that beginning with the 2003-2004 fiscal year, the Legislature must provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the number of students per classroom does not exceed the maximum required by the beginning of the 2010 school year.

Implementation
Section 1003.03(2)(b), F.S., establishes an implementation schedule for reducing the average number of students per classroom by at least two students per year as follows:

- 2003-2004 through 2005-2006 at the district level;
- 2006-2007 through 2009-2010[1] at the school level; and
- 2010-2011 and thereafter, at the classroom level.

To implement the class size reduction provisions of the constitutional amendment, the Legislature created an operating categorical fund for the following purposes:[2]

- If the district has not met the constitutional maximums specified, or has not reduced its class size by the required average two students per year toward the constitutional maximums, the categorical funds must be used to reduce class size; and
- If the district has met the constitutional maximums or has successfully made the average two student reduction towards meeting those maximums, the funds may be used for any

[1] ch. 2009-59, L.O.F.
[2] s. 3, ch. 2003-391, L.O.F., codified in s. 1011.685, F.S.

lawful operating expenditure. Priority, however, shall be given to increase salaries of classroom teachers and to implement the differentiated pay provisions in s. 1012.22, Florida Statutes.

In addition, in order to provide capital outlay funds to school districts for school construction for class size reduction, the Legislature created the Classrooms for Kids program to allocate funds appropriated for this purpose.[3] A district is required to spend these funds only on the construction, renovation, remodeling, or repair of educational facilities, or the purchase or lease-purchase of relocatables that are in excess of the projects and relocatables identified in the district's five-year work program adopted before March 15, 2003.[4]

The Legislature has appropriated over $16 billion in the Class Size Reduction categorical for operations and $2.5 billion for facilities funding for the Classrooms for Kids program.[5] The following provides historical funding amounts appropriated by the Legislature for operations and school construction to meet the constitutional class size requirements:

Year	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Operating Funds	$ 468,198,634	$ 972,191,216	$1,507,199,696	$2,108,529,344	$2,640,719,730	$2,729,491,033	$2,845,578,849
Facilities Funds	$ 600,000,000	$ 100,000,000	$ 83,400,000	$1,100,000,000	$ 650,000,000	$0	$0
Total	$1,068,198,634	$1,072,191,216	$1,590,599,696	$3,208,529,344	$3,290,719,730	$2,729,491,033	$2,845,578,849

The appropriation for operations in 2010-2011 was $2,927,921,474.

A district must consider specific options to implement the class size requirements, including: adopting policies to encourage students to take dual enrollment courses and courses from the Florida Virtual School; repealing district school board policies that require students to have more than 24 credits to graduate from high school; maximizing the use of instructional staff; using innovative methods to reduce the cost of school construction; adopting alternative methods of class scheduling, such as block scheduling; and redrawing school attendance zones to better utilize under-capacity schools.[6]

Charter schools are not exempt from the constitutional class size requirement. However, on March 14, 2008, two charter schools challenged the authority of the DOE to apply the maximum class size statute to charter schools in the absence of a rule. On December 17, 2008, a final order was issued determining that the class size statute did not to apply to charter schools pursuant to the provisions in s. 1002.33(16), F.S., which exempts charter schools from all provisions of the School Code with certain exceptions.[7] Because of this ruling, no funding transfers were

[3] s. 4, ch. 2003-391, L.O.F., codified in s. 1013.735, F.S.
[4] *Id.*
[5] DOE presentation to the Senate Pre-K–12 Education Appropriations Committee, January 21, 2010, on file with the committee.
[6] s. 1003.03(3), F.S.
[7] *The Renaissance Charter School, Inc., and the Lee Charter Foundation, Inc., v. Department of Education,* DOAH Case No. 08-1309RU.

calculated for non-compliant charter schools for 2008-2009 and 2009-10, even though charter schools receive full funding from the state for the class size reduction categorical.

The 2010 Legislature provided that charter schools shall be in compliance with Section 1003.03, Florida Statutes, relating to maximum class size, except that the calculation shall be the average at the school level.[8]

Accountability and Compliance
The 2010 Legislature revised the accountability provisions by providing for the following:[9]

- Compliance determination based on the October student enrollment survey;
- A reduction calculation to class size funding for noncompliant districts which may be adjusted for good cause;
- A reallocation bonus of up to five percent of the base student allocation for compliant districts, not to exceed 25 percent of the reduced funds;
- An add-back of the remaining 75 percent of the reduced funds if districts submit a plan to meet the requirements by October of the subsequent year;
- A requirement, for the 2010-2011 school year, that school boards hold public hearings on strategies to meet class size requirements before the district budget is adopted; and
- Authorization of virtual instruction programs as an option to meet class size requirements.

Considerations[10]
Compliance for fiscal year 2010-2011 is calculated at the classroom level for traditional public schools and at the school level for charter schools. The adjustment to the districts class size allocation is calculated by the DOE and verified by the Florida Education Finance Program Allocation Conference. The amount of funds adjusted is to be the lesser of the amount calculated or the undistributed balance of the district's class size reduction operating categorical. The Commissioner of Education may make a recommendation to the Legislative Budget Commission for an alternate amount of funds for the compliance calculation, if the Commissioner has evidence that a district was unable to meet the class size requirement despite appropriate efforts to do so or because of an extreme emergency.[11]

For the initial calculation completed on December 29, 2010, there were 44,556 traditional public school classrooms in 35 school districts and 3 lab schools that were not in compliance with class size requirements, for a potential total compliance calculation amount from the class size compliance calculation operating categorical of $40,795,637. There were 44 charter schools that were not in compliance with school level class size requirements, for a potential total compliance calculation amount from the class size compliance calculation operating categorical of $2,292,191.

[8] ch. 2010-154, L.O.F.
[9] *Id.*
[10] Legislative Budget Commission Meeting materials for March 16, 2011, on file with the committee.
[11] s. 1003.03(4)(c), F.S.

Following the review of evidence, the Commissioner determined that data reporting errors were factors to be considered in the appeal process. After reviewing appeals related to data reporting errors, the potential compliance calculation amount for traditional public schools was decreased by $1,757,302, for an adjusted potential compliance calculation amount of $39,038,335. The potential compliance calculation amount for charter schools was decreased by $1,935,249, for an adjusted potential compliance calculation amount of $356,942.

Following the appeal process, the Commissioner recommended an adjustment for unexpected student growth that resulted in an additional decrease in the potential class size operating categorical compliance calculation amount of $7,733,211 for traditional public schools and $1,403 for charter schools. After the appeal process and adjustments for unexpected growth, the adjusted total potential compliance calculation amount was $31,305,124 for traditional public schools and $355,539 for charter schools.

The Commissioner has recommended that the Legislative Budget Commission approve the alternate compliance calculation amounts of $31,305,124 for traditional public schools and $355,539 for charter schools.

If the Legislative Budget Commission approves the alternate compliance calculation amounts, the Commissioner will reallocate a portion of the compliance calculation amounts to districts and charter schools that have fully met class size requirements.[12] This reallocation may be up to five percent of the base student allocation multiplied by the total district FTE students, but cannot exceed 25 percent of the total funds reduced, resulting in a reallocation of $7,826,281 for traditional schools and $88,885 for charter schools. The funds remaining after the reallocation will be returned to districts and charter schools that were not in compliance with class size requirements and submitted a plan by February 15, 2011 describing the specific actions that will be taken to fully comply with class size requirements by October of the 2011-2012 school year.[13] For the current year, all districts and charter schools not in compliance submitted a plan by the deadline, so that, if the Legislative Budget Commission provides approval, the remaining funds, or 75 percent, will be returned.

III. Effect of Proposed Changes:

Core-curricula and Extracurricular Courses

The bill redefines the terms "core-curricula courses". Under current law, the courses are defined by the Department of Education as mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and course taught in traditional, self-contained elementary school classrooms.[14] Under the bill, the courses are specified by grade levels, subjects measured by state assessments, high school graduation requirements, and subgroups of students:

- Language arts/reading, mathematics, and science courses in prekindergarten through grade 3;

[12] s.1003.03(4)(d)
[13] s. 1003.03(4)(e), F.S.
[14] Courses offered under ss. 1002.37 (the Florida Virtual School), 1002.415 (the K-8 Virtual School Program), and 1002.45 (the school district virtual instruction (VIP) programs), F.S., are excluded.

- Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level;
- Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level;
- Courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessments, excluding any extracurricular courses;
- Exceptional student education courses; and
- English for Speakers of Other Languages courses.

For a core-curricula high school course in which a student in grades 4 through 8 is enrolled for high school graduation credit, the maximum number of students would be 25. Finally, the term "extracurricular courses" would also be redefined to include courses that may result in college credit. Current law specifies that these courses include physical education, fine arts, performing fine arts, and career education.

Florida high school students are currently required to complete 24 credits in order to earn a high school diploma. Students must also earn passing scores on the Florida Comprehensive Assessment Test (FCAT) or attain a passing score on the SAT or ACT. Beginning in the 2010-2011 school year, high school graduation requirements increase to include more rigorous courses. Students will be required to pass statewide, standardized end-of-course (EOC) assessments in specific courses beginning with the 2011-2012 school year. Beginning with students entering grade 9 in the following school years, courses include Geometry (2010-2011), Biology I (2011-2012), Algebra II (2012-2013), Chemistry or physics (2013-2014), and an additional equally rigorous science course (2013-2014).[15]

The DOE notes that in 2010-2011, there were 849 core courses. Under the current bill, there would be 288 core courses.[16] The decrease would primarily be due to foreign languages, honors and advanced courses at the middle and secondary grade levels, courses without state assessments, and courses that are not required for graduation at the middle and high school level.

Compliance

Under the bill, a timeframe is specified for satisfying and maintaining class size maximums, with specific exceptions for an extreme emergency beyond the district's control and when a student enrolls after the October survey period. Based on a school district's determination that not assigning the student would be impractical, educationally unsound, or disruptive to student learning, a student could be assigned to an existing class that temporarily exceeds the class size maximums. However, the additional number of students who can be assigned to a teacher above the maximum may not exceed the following:

- Prekindergarten through 3rd grade, up to three students above the maximum;
- 4th grade through 8th grade, up to five students above the maximum: and
- 9^{th} grade through 12^{th} grade, up to five students above the maximum.

[15] *See* ch. 2010-22, L.O.F., codified in ss. 1003.428 and 1003.429, F.S.
[16] DOE, March 15, 2010, on file with the committee.

This temporary exception is also contingent upon a district school board developing a plan that provides that a school will be in full compliance with the maximum class size requirements by the following year's October student membership survey.

Finally, the bill provides that only a school district that meets the maximum class size requirements may use the class size reduction operational categorical funds for any lawful operating expenditure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill may be subject to constitutional challenge, based on the class size provision contained in s. 1, Art. IX, state constitution. Specifically, a potential argument exists that this proposed language authorizes maximums in excess of the caps provided in the Florida constitution. In an advisory opinion to the Attorney General on the validity of the class size constitutional amendment, the Florida Supreme Court referred to the Legislature's role as intended by the initiative as follows:

Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal articulated in the ballot initiative….[17]

The court also indicated that the primary purpose of the amendment is the legislative funding of reduced class size. This bill does not address the amount the Legislature appropriates for class size. Rather, it provides operational flexibility to school districts to meet the class size maximums, while assuring that children attending public schools obtain a high quality education.

[17] *Advisory Opinion to the Attorney General re: Florida's Amendment to Reduce Class Size*, 816 So.2d 580, 584-85 (S.Ct. 2002).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact is minimal; however, the bill would provide greater operational flexibility to school districts in meeting the class size requirements.

In addition, the bill provides that once a school district meets the maximum class size requirements, the district may use the class size reduction operating categorical funds for any lawful operating expenditure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 445.049, Florida Statutes, is repealed.

Section 2. Section 817.567, Florida Statutes, is repealed.

Section 3. Section 1001.291, Florida Statutes, is repealed.

Section 4. Section 1004.50, Florida Statutes, is repealed.

Section 5. Section 1004.51, Florida Statutes, is repealed.

Section 6. Section 1004.52, Florida Statutes, is repealed.

Section 7. Section 1004.95, Florida Statutes, is repealed.

Section 8. Section 1004.97, Florida Statutes, is repealed.

Section 9. Subsections (11) and (12) of section 1004.04,

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Florida Statutes, are repealed.

Section 10. Sections 1009.54, 1009.57, 1009.58, and 1009.59, Florida Statutes, are repealed.

Section 11. Sections 1012.225 and 1012.2251, Florida Statutes, are repealed.

Section 12. Paragraph (c) of subsection (2) of section 447.403, Florida Statutes, is repealed.

Section 13. Paragraph (a) of subsection (20) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school, that any funds due to the charter school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student

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information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district.

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

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

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

b. Has all schools located in the same county;

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

d. Has the same governing board; and

e. Does not contract with a for-profit service provider for

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management of school operations.

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

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

Section 14. Subsection (10) of section 1003.52, Florida Statutes, is amended to read:

1003.52 Educational services in Department of Juvenile Justice programs.—

(10) The district school board shall recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs. Students in juvenile justice programs shall be provided a wide range of educational programs and opportunities including textbooks, technology, instructional support, and other resources available to students in public schools. Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program shall be selected by the district school board in consultation with the director of the juvenile justice facility. Educational programs in juvenile justice facilities shall have access to the substitute teacher pool utilized by the district school board. ~~Full-time~~

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~~teachers working in juvenile justice schools, whether employed by a district school board or a provider, shall be eligible for the critical teacher shortage tuition reimbursement program as defined by s. 1009.58 and other teacher recruitment and retention programs.~~

Section 15. Paragraph (a) of subsection (1) of section 1009.40, Florida Statutes, is amended to read:

1009.40 General requirements for student eligibility for state financial aid awards and tuition assistance grants.—

(1)(a) The general requirements for eligibility of students for state financial aid awards and tuition assistance grants consist of the following:

1. Achievement of the academic requirements of and acceptance at a state university or community college; a nursing diploma school approved by the Florida Board of Nursing; a Florida college, university, or community college that ~~which~~ is accredited by an accrediting agency recognized by the State Board of Education; any Florida institution the credits of which are acceptable for transfer to state universities; any career center; or any private career institution accredited by an accrediting agency recognized by the State Board of Education.

2. Residency in this state for no less than 1 year preceding the award of aid or a tuition assistance grant for a program established pursuant to s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, ~~s. 1009.54,~~ s. 1009.56, ~~s. 1009.57,~~ s. 1009.60, s. 1009.62, s. 1009.68, s. 1009.72, s. 1009.73, s. 1009.77, s. 1009.89, or s. 1009.891. Residency in this state must be for purposes other than to obtain an education. Resident status for purposes of receiving state

financial aid awards shall be determined in the same manner as resident status for tuition purposes pursuant to s. 1009.21.

3. Submission of certification attesting to the accuracy, completeness, and correctness of information provided to demonstrate a student's eligibility to receive state financial aid awards or tuition assistance grants. Falsification of such information shall result in the denial of any pending application and revocation of any award or grant currently held to the extent that no further payments shall be made. Additionally, students who knowingly make false statements in order to receive state financial aid awards or tuition assistance grants commit a misdemeanor of the second degree subject to the provisions of s. 837.06 and shall be required to return all state financial aid awards or tuition assistance grants wrongfully obtained.

Section 16. Paragraph (c) of subsection (2) of section 1009.94, Florida Statutes, is amended to read:

1009.94 Student financial assistance database.—

(2) For purposes of this section, financial assistance includes:

(c) Any financial assistance provided under s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, ~~s. 1009.54,~~ s. 1009.55, s. 1009.56, ~~s. 1009.57,~~ s. 1009.60, s. 1009.62, s. 1009.68, s. 1009.70, s. 1009.701, s. 1009.72, s. 1009.73, s. 1009.74, s. 1009.77, s. 1009.89, or s. 1009.891.

Section 17. Paragraph (d) of subsection (7) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each

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district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(7) DETERMINATION OF SPARSITY SUPPLEMENT.—

(d) Each district's allocation of sparsity supplement funds shall be adjusted in the following manner:

1. A maximum discretionary levy per FTE value for each district shall be calculated by dividing the value of each district's maximum discretionary levy by its FTE student count.

2. A state average discretionary levy value per FTE shall be calculated by dividing the total maximum discretionary levy value for all districts by the state total FTE student count.

3. A total potential funds per FTE for each district shall be calculated by dividing the total potential funds, not including Florida School Recognition Program funds~~, Merit Award Program funds,~~ and the minimum guarantee funds, for each district by its FTE student count.

4. A state average total potential funds per FTE shall be calculated by dividing the total potential funds, not including Florida School Recognition Program funds~~, Merit Award Program funds,~~ and the minimum guarantee funds, for all districts by the state total FTE student count.

5. For districts that have a levy value per FTE as calculated in subparagraph 1. higher than the state average calculated in subparagraph 2., a sparsity wealth adjustment shall be calculated as the product of the difference between the state average levy value per FTE calculated in subparagraph 2. and the district's levy value per FTE calculated in subparagraph

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1. and the district's FTE student count and -1. However, no district shall have a sparsity wealth adjustment that, when applied to the total potential funds calculated in subparagraph 3., would cause the district's total potential funds per FTE to be less than the state average calculated in subparagraph 4.

6. Each district's sparsity supplement allocation shall be calculated by adding the amount calculated as specified in paragraphs (a) and (b) and the wealth adjustment amount calculated in this paragraph.

Section 18. Section 1012.07, Florida Statutes, is amended to read:

1012.07 Identification of critical teacher shortage areas.—

~~(1) As used in ss. 1009.57, 1009.58, and 1009.59,~~ The term "critical teacher shortage area" applies to mathematics, science, career education, and high priority location areas. The State Board of Education may identify career education programs having critical teacher shortages. The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to annually identify other critical teacher shortage areas and high priority location areas. The state board shall also consider teacher characteristics such as ethnic background, race, and sex in determining critical teacher shortage areas. School grade levels may also be designated critical teacher shortage areas. Individual district school boards may identify other critical teacher shortage areas. Such shortages must be certified to and approved by the State Board of Education. High priority location areas shall be in high-density, low-economic urban schools and low-density, low-economic rural schools and shall include schools that ~~which~~ meet criteria that ~~which~~

include, but are not limited to, the percentage of free lunches, the percentage of students under Chapter I of the Education Consolidation and Improvement Act of 1981, and the faculty attrition rate.

~~(2) This section shall be implemented only to the extent as specifically funded and authorized by law.~~

Section 19. Effective July 1, 2011, paragraphs (a), (b), and (c) of subsection (3) of section 1012.33, Florida Statutes, are repealed.

Section 20. Paragraph (c) of subsection (3) of section 1008.22, Florida Statutes, is amended to read:

1008.22 Student assessment program for public schools.—

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

(c) Develop and implement a student achievement testing program as follows:

1. The Florida Comprehensive Assessment Test (FCAT) measures a student's content knowledge and skills in reading, writing, science, and mathematics. The content knowledge and skills assessed by the FCAT must be aligned to the core curricular content established in the Next Generation Sunshine State Standards. Other content areas may be included as directed by the commissioner. Comprehensive assessments of reading and mathematics shall be administered annually in grades 3 through 10 except, beginning with the 2010-2011 school year, the administration of grade 9 FCAT Mathematics shall be discontinued, and beginning with the 2011-2012 school year, the administration of grade 10 FCAT Mathematics shall be discontinued, except as required for students who have not attained minimum performance expectations for graduation as provided in paragraph (9)(c). FCAT Writing and FCAT Science shall be administered at least once at the elementary, middle, and high school levels except, beginning with the 2011-2012 school year, the administration of FCAT Science at the high school level shall be discontinued.

2.a. End-of-course assessments for a subject shall be administered in addition to the comprehensive assessments required under subparagraph 1. End-of-course assessments must be rigorous, statewide, standardized, and developed or approved by the department. The content knowledge and skills assessed by end-of-course assessments must be aligned to the core curricular content established in the Next Generation Sunshine State Standards.

(I) Statewide, standardized end-of-course assessments in mathematics shall be administered according to this sub-sub-

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subparagraph. Beginning with the 2010-2011 school year, all students enrolled in Algebra I or an equivalent course must take the Algebra I end-of-course assessment. ~~Students who earned high school credit in Algebra I while in grades 6 through 8 during the 2007-2008 through 2009-2010 school years and who have not taken Grade 10 FCAT Mathematics must take the Algebra I end-of-course assessment during the 2010-2011 school year.~~ For students entering grade 9 during the 2010-2011 school year and who are enrolled in Algebra I or an equivalent, each student's performance on the end-of-course assessment in Algebra I shall constitute 30 percent of the student's final course grade. Beginning with students entering grade 9 in the 2011-2012 school year, a student who is enrolled in Algebra I or an equivalent must earn a passing score on the end-of-course assessment in Algebra I or attain an equivalent score as described in subsection (11) in order to earn course credit. Beginning with the 2011-2012 school year, all students enrolled in geometry or an equivalent course must take the geometry end-of-course assessment. For students entering grade 9 during the 2011-2012 school year, each student's performance on the end-of-course assessment in geometry shall constitute 30 percent of the student's final course grade. Beginning with students entering grade 9 during the 2012-2013 school year, a student must earn a passing score on the end-of-course assessment in geometry or attain an equivalent score as described in subsection (11) in order to earn course credit.

(II) Statewide, standardized end-of-course assessments in science shall be administered according to this sub-sub-subparagraph. Beginning with the 2011-2012 school year, all

students enrolled in Biology I or an equivalent course must take the Biology I end-of-course assessment. For the 2011-2012 school year, each student's performance on the end-of-course assessment in Biology I shall constitute 30 percent of the student's final course grade. Beginning with students entering grade 9 during the 2012-2013 school year, a student must earn a passing score on the end-of-course assessment in Biology I in order to earn course credit.

b. During the 2012-2013 school year, an end-of-course assessment in civics education shall be administered as a field test at the middle school level. During the 2013-2014 school year, each student's performance on the statewide, standardized end-of-course assessment in civics education shall constitute 30 percent of the student's final course grade. Beginning with the 2014-2015 school year, a student must earn a passing score on the end-of-course assessment in civics education in order to pass the course and receive course credit.

c. The commissioner may select one or more nationally developed comprehensive examinations, which may include, but need not be limited to, examinations for a College Board Advanced Placement course, International Baccalaureate course, or Advanced International Certificate of Education course, or industry-approved examinations to earn national industry certifications identified in the Industry Certification Funding List, pursuant to rules adopted by the State Board of Education, for use as end-of-course assessments under this paragraph, if the commissioner determines that the content knowledge and skills assessed by the examinations meet or exceed the grade level expectations for the core curricular content established

for the course in the Next Generation Sunshine State Standards. The commissioner may collaborate with the American Diploma Project in the adoption or development of rigorous end-of-course assessments that are aligned to the Next Generation Sunshine State Standards.

d. Contingent upon funding provided in the General Appropriations Act, including the appropriation of funds received through federal grants, the Commissioner of Education shall establish an implementation schedule for the development and administration of additional statewide, standardized end-of-course assessments in English/Language Arts II, Algebra II, chemistry, physics, earth/space science, United States history, and world history. Priority shall be given to the development of end-of-course assessments in English/Language Arts II. The Commissioner of Education shall evaluate the feasibility and effect of transitioning from the grade 9 and grade 10 FCAT Reading and high school level FCAT Writing to an end-of-course assessment in English/Language Arts II. The commissioner shall report the results of the evaluation to the President of the Senate and the Speaker of the House of Representatives no later than July 1, 2011.

3. The testing program shall measure student content knowledge and skills adopted by the State Board of Education as specified in paragraph (a) and measure and report student performance levels of all students assessed in reading, writing, mathematics, and science. The commissioner shall provide for the tests to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational

institutions, or school districts. The commissioner shall obtain input with respect to the design and implementation of the testing program from state educators, assistive technology experts, and the public.

4. The testing program shall be composed of criterion-referenced tests that shall, to the extent determined by the commissioner, include test items that require the student to produce information or perform tasks in such a way that the core content knowledge and skills he or she uses can be measured.

5. FCAT Reading, Mathematics, and Science and all statewide, standardized end-of-course assessments shall measure the content knowledge and skills a student has attained on the assessment by the use of scaled scores and achievement levels. Achievement levels shall range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment. For purposes of FCAT Writing, student achievement shall be scored using a scale of 1 through 6 and the score earned shall be used in calculating school grades. A score shall be designated for each subject area tested, below which score a student's performance is deemed inadequate. The school districts shall provide appropriate remedial instruction to students who score below these levels.

6. The State Board of Education shall, by rule, designate a passing score for each part of the grade 10 assessment test and end-of-course assessments. Any rule that has the effect of raising the required passing scores may apply only to students taking the assessment for the first time after the rule is adopted by the State Board of Education. Except as otherwise

provided in this subparagraph and as provided in s. 1003.428(8)(b) or s. 1003.43(11)(b), students must earn a passing score on grade 10 FCAT Reading and grade 10 FCAT Mathematics or attain concordant scores as described in subsection (10) in order to qualify for a standard high school diploma.

7. In addition to designating a passing score under subparagraph 6., the State Board of Education shall also designate, by rule, a score for each statewide, standardized end-of-course assessment which indicates that a student is high achieving and has the potential to meet college-readiness standards by the time the student graduates from high school.

8. Participation in the testing program is mandatory for all students attending public school, including students served in Department of Juvenile Justice programs, except as otherwise prescribed by the commissioner. A student who has not earned passing scores on the grade 10 FCAT as provided in subparagraph 6. must participate in each retake of the assessment until the student earns passing scores or achieves scores on a standardized assessment which are concordant with passing scores pursuant to subsection (10). If a student does not participate in the statewide assessment, the district must notify the student’s parent and provide the parent with information regarding the implications of such nonparticipation. A parent must provide signed consent for a student to receive classroom instructional accommodations that would not be available or permitted on the statewide assessments and must acknowledge in writing that he or she understands the implications of such instructional accommodations. The State Board of Education shall

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adopt rules, based upon recommendations of the commissioner, for the provision of test accommodations for students in exceptional education programs and for students who have limited English proficiency. Accommodations that negate the validity of a statewide assessment are not allowable in the administration of the FCAT or an end-of-course assessment. However, instructional accommodations are allowable in the classroom if included in a student's individual education plan. Students using instructional accommodations in the classroom that are not allowable as accommodations on the FCAT or an end-of-course assessment may have the FCAT or an end-of-course assessment requirement waived pursuant to the requirements of s. 1003.428(8)(b) or s. 1003.43(11)(b).

9. A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

10. District school boards must provide instruction to prepare students in the core curricular content established in the Next Generation Sunshine State Standards adopted under s. 1003.41, including the core content knowledge and skills necessary for successful grade-to-grade progression and high school graduation. If a student is provided with instructional accommodations in the classroom that are not allowable as accommodations in the statewide assessment program, as described in the test manuals, the district must inform the parent in writing and must provide the parent with information regarding the impact on the student's ability to meet expected performance levels in reading, writing, mathematics, and science. The commissioner shall conduct studies as necessary to verify that

the required core curricular content is part of the district instructional programs.

11. District school boards must provide opportunities for students to demonstrate an acceptable performance level on an alternative standardized assessment approved by the State Board of Education following enrollment in summer academies.

12. The Department of Education must develop, or select, and implement a common battery of assessment tools that will be used in all juvenile justice programs in the state. These tools must accurately measure the core curricular content established in the Next Generation Sunshine State Standards.

13. For students seeking a special diploma pursuant to s. 1003.438, the Department of Education must develop or select and implement an alternate assessment tool that accurately measures the core curricular content established in the Next Generation Sunshine State Standards for students with disabilities under s. 1003.438.

14. The Commissioner of Education shall establish schedules for the administration of statewide assessments and the reporting of student test results. When establishing the schedules for the administration of statewide assessments, the commissioner shall consider the observance of religious and school holidays. The commissioner shall, by August 1 of each year, notify each school district in writing and publish on the department's Internet website the testing and reporting schedules for, at a minimum, the school year following the upcoming school year. The testing and reporting schedules shall require that:

a. There is the latest possible administration of statewide

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assessments and the earliest possible reporting to the school districts of student test results which is feasible within available technology and specific appropriations; however, test results for the FCAT must be made available no later than the week of June 8. Student results for end-of-course assessments must be provided no later than 1 week after the school district completes testing for each course.

b. Beginning with the 2010-2011 school year, FCAT Writing is not administered earlier than the week of March 1 and a comprehensive statewide assessment of any other subject is not administered earlier than the week of April 15.

c. A statewide, standardized end-of-course assessment is administered during a 3-week period at the end of the course. The commissioner shall select a 3-week administration period for assessments that meets the intent of end-of-course assessments and provides student results prior to the end of the course. School districts shall select 1 testing week within the 3-week administration period for each end-of-course assessment. For an end-of-course assessment administered at the end of the first semester, the commissioner shall determine the most appropriate testing dates based on a school district’s academic calendar.

The commissioner may, based on collaboration and input from school districts, design and implement student testing programs, for any grade level and subject area, necessary to effectively monitor educational achievement in the state, including the measurement of educational achievement of the Next Generation Sunshine State Standards for students with disabilities. Development and refinement of assessments shall include

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universal design principles and accessibility standards that will prevent any unintended obstacles for students with disabilities while ensuring the validity and reliability of the test. These principles should be applicable to all technology platforms and assistive devices available for the assessments. The field testing process and psychometric analyses for the statewide assessment program must include an appropriate percentage of students with disabilities and an evaluation or determination of the effect of test items on such students.

Section 21. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to education law repeals; repealing s. 445.049, F.S., relating to the creation of the Digital Divide Council in the Department of Education; repealing s. 817.567, F.S., relating to making false claims of academic degree or title; repealing s. 1001.291, F.S., which provides for implementation of a pilot project relating to discounted computers and Internet access for low-income students; repealing s. 1004.50, F.S., relating to the Institute on Urban Policy and Commerce; repealing s. 1004.51, F.S., relating to the Community and Faith-based Organizations Initiative and the Library Technology

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Access Partnership; repealing s. 1004.52, F.S., relating to the community computer access grant program; repealing s. 1004.95, F.S., relating to adult literacy centers; repealing s. 1004.97, F.S., relating to the Florida Literacy Corps; repealing s. 1004.04(11) and (12), F.S., relating to the Preteacher and Teacher Education Pilot Programs and the Teacher Education Pilot Programs for High-Achieving Students; repealing s. 1009.54, F.S., relating to the Critical Teacher Shortage Program; repealing s. 1009.57, F.S., relating to the Florida Teacher Scholarship and Forgivable Loan Program; repealing s. 1009.58, F.S., relating to the critical teacher shortage tuition reimbursement program; repealing s. 1009.59, F.S., relating to the Critical Teacher Shortage Student Loan Forgiveness Program; repealing s. 1012.225, F.S., relating to the Merit Award Program for Instructional Personnel and School-Based Administrators; repealing s. 1012.2251, F.S., relating to the administration of end-of-course examinations for the Merit Award Program; repealing s. 447.403(2)(c), F.S., relating to the resolution of an impasse involving a dispute of a Merit Award Program plan, to conform; amending ss. 1002.33, 1003.52, 1009.40, 1009.94, 1011.62, and 1012.07, F.S.; conforming provisions to changes made by the act; repealing s. 1012.33(3)(a), (b), and (c), F.S., relating to professional service contracts for instructional staff; amending s. 1008.22, F.S.; deleting a provision requiring that certain middle


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school students who earned high school credit in Algebra I take the Algebra I end-of-course assessment during the 2010-2011 school year; 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 Budget Committee

BILL:	SB 1996
INTRODUCER:	Education Pre-K-12 Committee
SUBJECT:	Student Assessment
DATE:	March 24, 2011 REVISED:

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

I. Summary:

The bill repeals the requirement for students who took Algebra I in the middle grades from 2007-2008 through 2009-2010 to take the Algebra I end-of-course assessment in the 2010-2011 school year. Approximately 39,600 students would not have to take the Algebra I assessment, in some instances, several years after completion of the Algebra I course.

This bill amends section 1008.22(3) of the Florida Statutes.

II. Present Situation:

The 2010 Legislature enacted legislation to require students to take the statewide end-course-assessment (EOC) for Algebra I, beginning in the 2010-2011 school year.[1] Although students have been required to take and pass the Algebra I course for high school graduation, students were not previously required to take an EOC associated with the course. The Algebra I EOC, for the 2010-2011 school year, will count toward 30 percent of the student's grade, and beginning with the 2011-2012 school year, a student must pass the EOC in order to earn the required credit for the course.[2]

Beginning in the 2010-2011 school year, the Algebra I EOC will replace the mathematics portion of the 10th grade FCAT.[3] Federal law requires that all public school students be tested in reading

[1] ch. 2010-22, L.O.F.
[2] s. 1008.22(3)(c)2.a.(I), F.S.
[3] s. 1008.22(3)(c)1., F.S.

and mathematics at least once at the elementary, middle, and high school level.[4] To comply with federal law, students who earned high school credit for Algebra I while in middle school in the 2007-08 through 2009-10 school years and who have not taken the 10th grade mathematics FCAT are required to take the Algebra I EOC.[5] This provision was enacted to satisfy federal testing requirements. The Department of Education estimates that approximately 39,600 students completed Algebra I in the middle grades, did not take the 10th grade FCAT in mathematics, and would be required to take the Algebra I EOC in May, 2011.[6]

Although students who take high school level courses in the middle grades will, most likely, enroll in sequentially more rigorous courses, some school districts raised concerns that the lapse in time between taking the course in middle school and sitting for the EOC in high school would be unfair. As a result, the Department of Education (Department) submitted a request to the USDOE for a waiver from the federal law for the specific cohort of students who would have been affected. The waiver was granted on January 19, 2011.[7]

III. Effect of Proposed Changes:

The bill would repeal the requirement to take the Algebra I assessment in 2010-2011 for approximately 39,600 students, who previously took the Algebra I course in the middle grades. The bill would enact the waiver granted by the U.S. Department of Education for these students.

If the bill is not enacted before the spring administration of the Algebra I assessment, currently scheduled for early May, the bill will be moot.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[4] *See* Section 1111(b)(3)(C)(v)(I)(cc) of the Elementary and Secondary Education Act (ESEA), available at: http://www2.ed.gov/policy/elsec/leg/esea02/pg2.html.
[5] s. 8, ch. 2010-22, L.O.F., codified in s. 1008.22(3)(c)2.a.(I), F.S.
[6] Email correspondence from the Department of Education, on file with the committee.
[7] Letter to Commissioner of Education Eric Smith from the Assistant Secretary of the U.S. Department of Education, on file with the committee.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Education (DOE), there is no expected fiscal impact at this time. The DOE's contract for the end-of-course assessments allows for the number of students taking the Algebra I end-of-course assessment to be 241,579 students. If the number of students taking the assessment is more than five percent above the contract number, there could be an increase in cost. However, the contract does not provide for a reduction in price if fewer students take the Algebra I EOC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1618
INTRODUCER:	Rules Subcommittee on Ethics and Elections and Senator Diaz de la Portilla
SUBJECT:	Elections
DATE:	April 12, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Carlton	Roberts	EE	**Fav/CS**
2.	Fox/Carlton	Phelps	RC	**Favorable**
3.	O'Connor	Maclure	JU	**Pre-meeting**
4.	Pigott	Meyer, C.	BC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Committee Substitute for Senate Bill 1618 corrects an oversight in an omnibus 2007 election law that shifted final order authority, in many cases, from the Florida Elections Commission (Commission) to an administrative law judge (ALJ) at the Division of Administrative Hearings (DOAH), but neglected to statutorily authorize the ALJ to institute any civil penalties for election law violations. This bill grants the ALJ the same penalty powers as the Commission, and provides that the ALJ must consider the same aggravating and mitigating circumstances in determining the amount of penalties.

The bill also reverses the current default procedure under which alleged election law violations are transferred to DOAH *unless* the party charged with the offense elects to have a hearing before the Commission. The bill mandates that the alleged violator affirmatively request a hearing at DOAH within 30 days after the Commission's probable cause determination, or the Commission will hear the case.

The bill also specifically adds electioneering communications organizations (ECOs) to the list of entities embraced by the election law penalty provisions, to conform to 2010 changes to the ECO laws.

This bill substantially amends sections 106.25 and 106.265, Florida Statutes.

II. Present Situation:

Penalties for Election Violations

The Florida Elections Commission (Commission) has jurisdiction to investigate and determine violations of chs. 104 and 106, F.S.,[1] and to impose a civil penalty of up to $1,000 per violation, in most cases.[2]

Until 2007, when there were disputed issues of material fact, an alleged violator could elect to have a formal hearing at the Division of Administrative Hearings (DOAH), with the matter returning to the Commission for final disposition and a determination of penalties, if applicable. Otherwise, the Commission would conduct the hearing.

In 2007, the Legislature amended the procedure to have *all* cases default to an administrative law judge (ALJ) at DOAH after the Commission makes a probable cause determination, *unless* the alleged violator elects[3] to have a formal or informal hearing before the Commission or resolves the matter by consent order.[4] The 2007 changes also gave the ALJ the authority to enter a *final order* on the matter, appealable directly to Florida's appellate courts.[5] Cases forwarded to DOAH never return to the Commission for final disposition. The 2007 law, however, neglected to give the ALJ the power to impose a civil penalty in cases in which the ALJ found a violation.

This omission has been the subject of litigation.[6] In April 2006, the Commission received a sworn complaint alleging that James Davis, a candidate, had violated certain elections laws. The Commission conducted an investigation and found probable cause, charging Mr. Davis with five violations of ch. 106, F.S. Because he did not request a hearing before the Commission, or elect to resolve the matter by a consent order, the matter was referred to DOAH for a formal administrative hearing. Ultimately, the ALJ found that Mr. Davis violated the Election Code, as alleged. The ALJ declined to impose civil penalties, however, because he determined that he lacked the express authority to do so. The Commission appealed the case to the First District Court of Appeal, which affirmed the order. As a result, complaints heard by an ALJ can result in a violation without recourse to the imposition of a civil penalty for the violation.[7]

Electioneering Communications Organizations

Section 106.265, F.S., contains the specific authority for the Commission to impose a civil penalty for a violation of chs. 104 or 106, F.S. That section authorizes the Commission to impose

[1] Section 106.25(1), F.S.
[2] Section 106.265(1), F.S. In addition, ss. 104.271 and 106.19, F.S., provide for expanded and enhanced penalties for certain election law violations.
[3] Within 30 days after the probable cause determination.
[4] Chapter 2007-30, s. 48, Laws of Fla.
[5] Section 106.25(5), F.S.
[6] *Florida Elections Commission v. Davis*, 44 So. 3d 1211 (Fla. 1st DCA 2010).
[7] Because of the nature of such proceedings, it is unclear whether the Commission would have jurisdiction to impose a civil penalty based upon a final order from DOAH – or even how the Commission practically would accomplish it.

a civil penalty not to exceed $1,000 per count, with the precise amount dependent upon consideration of certain aggravating and mitigating factors. The section further provides that the Commission is responsible for collecting civil penalties when any person, political committee, committee of continuous existence, or political party fails or refuses to pay any civil penalties, and requires such penalties to be deposited into the now-defunct Election Campaign Financing Trust Fund.[8] Finally, the section permits a respondent, under certain circumstances, to seek reimbursement for attorneys' fees.

Nothing in s. 106.265, F.S., specifically addresses *electioneering communications organizations* (ECOs), which can also commit elections violations. Until last year, when they were more explicitly detailed in statute, ECOs were generally treated like political committees for most purposes under the campaign finance laws.[9] An ECO is defined as:

> any group, other than a political party, political committee, or committee of continuous existence, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party, political committee, or committee of continuous existence under [ch. 106, F.S.][10]

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1618 establishes a new default procedure for violations alleged by the Florida Elections Commission, providing that a hearing will be conducted by the Commission *unless* an alleged violator elects, as a matter of right, to have a formal hearing before an administrative law judge (ALJ) at the Division of Administrative Hearings (DOAH). Further, it authorizes the ALJ to impose the same civil penalties as the Commission pursuant to ss. 104.271, 106.19, and 106.265, F.S., and requires the ALJ to take into account the same mitigating and aggravating factors that the Commission must consider. As under current law, the ALJ's final order, which may now include civil penalties, is appealable directly to the District Courts of Appeal and does not return to the Commission for disposition.

The bill also integrates electioneering communications organizations (ECOs) into a statutory list of entities for the purpose of assessing election law civil penalties, and clarifies that all civil penalties collected are deposited to the General Revenue Fund of the state instead of the defunct Election Campaign Financing Trust Fund.

The bill takes effect upon becoming a law.

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[8] The Elections Campaign Financing Trust Fund expired effective November 4, 1996, by operation of law. Funding for public campaign financing in statewide races has since been handled through the General Revenue Fund.

[9] *See generally* ch. 2010-167, Laws of Fla. (detailing requirements for ECOs in sections such as s. 106.0703, F.S.); *see also* s. 106.011(1)(b)3., F.S. (2009) (for purposes of registering and reporting contributions and expenditures, ECOs are treated like political committees).

[10] Section 106.011(19), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could result in very modest increases to the General Revenue Fund depending on the number and extent of administrative fines collected, which is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Ethics and Elections on March 21, 2011:
The CS differs from the original bill in that it adds a cross-reference to allow a DOAH administrative law judge to impose an additional penalty for candidates who violate the political defamation provision in s. 104.271, F.S.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 556
INTRODUCER:	Criminal Justice Committee and Senators Oelrich, Dockery, and Garcia
SUBJECT:	Drug Screening/Beneficiaries/Temporary Assistance
DATE:	April 12, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Carpenter	Hansen	BHA	**Pre-meeting**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill creates s. 414.145, F.S., establishing that the Department of Children and Families (DCF) shall create a drug screening program for temporary cash assistance (TANF) applicants as a condition of eligibility. The bill provides the following:

- Adult applicants for TANF, to include both parents in a two-parent household, or caretaker relative who is included in the cash assistance group, shall be drug screened;
- Applicants that fail the drug screen have the right to submit to an additional drug screening under circumstances to be specified by DCF. The applicant who tests positive is ineligible for TANF benefits for one year. If, after one year, the person applies for TANF benefits and tests positive again, he or she shall be disqualified from receiving temporary cash assistance for 3 years;
- The applicant who has failed a drug screen may designate another individual, who must pass the drug screening, to receive the cash assistance benefits on behalf of a minor child;
- The methods of drug screening and confirmatory testing, including policies and procedures for specimen collection, testing, storage, and transportation are to be consistent with s. 112.0455, F.S.;
- The cost of screening and confirmatory testing shall be paid by the individual applicant;

- DCF shall provide any individual who tests positive for drugs with information concerning drug abuse and treatment programs in the area in which he or she resides. The bill specifies that neither DCF nor the state is responsible for providing or paying for substance abuse treatment as part of screening under this section; and
- There is no date specified in the bill for the beginning of the drug screening of TANF applicants although the bill provides an effective date of July 1, 2011.

This bill has no direct fiscal impact on the Department of Children and Family Services, and necessary changes to the ACCESS Program's information systems to accommodate new reporting and notice requirements can be handled within existing resources.

This bill creates section 414.145 of the Florida Statutes.

II. Present Situation:

Temporary Assistance for Needy Families (TANF)
Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act – PWRORA – Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families.

TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.[1] States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Those goals include:

- Assisting needy families so that children can be cared for in their homes;
- Reducing the dependency of needy parents by promoting job preparation, work, and marriage;
- Preventing out-of-wedlock pregnancies; and
- Encouraging the formation and maintenance of two-parent families.[2]

Currently, DCF administers the TANF program in conjunction with the Agency for Workforce Innovation (AWI). Current law provides that families are eligible for cash assistance for a lifetime cumulative total of 48 months (4 years).[3] DCF reports that approximately 113,346 people are receiving temporary cash assistance.[4] The FY 2010-2011 appropriation of TANF funds to support temporary cash assistance was $211,115,965.

[1] US Dept. of Health and Human Services, Administration on Children and Families http://www.acf.hhs.gov/programs/ofa/tanf/about.html (last visited on 2/15/11).
[2] *Id*
[3] s. 414.105, F.S.
[4] DCF Quick Facts, Access Program, January 1, 2011.

The TANF program expires on September 30, 2011, and must be reauthorized by Congress to continue.

Pilot Project for Drug Testing TANF Applicants

From January 1999 to May 2001, DCF in consultation with Workforce Florida implemented a pilot project in Regions 3 and 8 to drug screen and drug test applicants for TANF.[5] A Florida State University researcher under contract to evaluate the pilot program did not recommend continuation or statewide expansion of the project. Overall research and findings concluded that there is very little difference in employment and earnings between those who test positive versus those who test negative. Researchers concluded that the cost of the pilot program was not warranted.

Sanctions to Welfare and Food Assistance Recipients Resulting from Felony Drug Convictions

Federal law provides that an individual convicted (under federal or state law) of any offense which is classified as a felony related to the possession, use or distribution of a controlled substance shall not be eligible for assistance under the TANF program or benefits under the food stamp program or any program carried out under the Food and Nutrition Act of 2008.[6]

The same section of Federal law provides that each state has the right to exempt individuals from having benefits withheld due to a felony drug charge.[7] Florida has opted to exempt individuals from this provision and does not deny benefits for a felony drug conviction, unless the conviction is for drug trafficking.[8]

Drug Testing Welfare and Food Assistance Recipients

Federal law regarding the use of TANF funds provides that states may test welfare recipients for use of controlled substances and sanction those recipients who test positive.[9]

Protective Payees

The TANF program requires that people receiving cash assistance must satisfy work requirements established in federal law. Florida statutes provide that the Agency for Workforce Innovation develop specific activities that satisfy the work requirements.[10]

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.[11] In the event that assistance is terminated, DCF will establish a protective payee that will receive TANF funds on behalf of any children in the home who are under the age of 16.[12] The protective payee shall be designated by DCF and may include:[13]

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[5] Evaluation Report, Robert E. Crew, Florida State University (on file with House committee staff).
[6] P.L. 104-193, Section 115, 42 U.S.C. 862(a)
[7] *Id*
[8] s. 414.095, F.S.
[9] P.L. 104-193, Section 902, 21 U.S.C. 862(b)
[10] s. 445.024, F.S.
[11] s. 414.065, F.S.
[12] *Id*
[13] *Id*

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; and
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.

Agency for Health Care Administration – Laboratory Certifications
The Agency for Health Care Administration (AHCA) regulates facilities that perform clinical, anatomic, or cytology lab services to provide information or materials for use in diagnosis, prevention, or treatment of a disease or in the identification or assessment of a medical or physical condition in accordance with Chapters 408 and 483, F.S. These are considered clinical labs.

Additionally, AHCA regulates facilities for "Drug Free Workplaces," pursuant to s. 112.0455, F.S. These types of labs perform chemical, biological, or physical instrumental analyses to determine the presence or absence of specified drugs or their metabolites in job applicants of any agency in state government.[14] AHCA does not have the authority to drug screen temporary cash assistance benefits in either of these labs.

Department of Health and Human Services Division of Workplace Programs
The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Division of Workplace Programs (DWP) provide oversight for the Federal Drug Free Workplace Program. DWP certifies labs that conduct forensic drug testing for federal agencies and for some federally-regulated industries.[15]

III. Effect of Proposed Changes:

The bill creates s. 414.145, F.S., providing that the Department of Children and Family Services (DCF) will create a drug screening program that requires individuals who apply for temporary cash assistance benefits (TANF) to consent to being drug screened as a condition of eligibility. There is no implementation date for the program in the bill. Existing beneficiaries of the TANF program are not covered by the bill.

DCF must provide notice of the potential of drug screening to all applicants and shall require an applicant to sign an acknowledgement form that he or she has received notice of DCF's drug screen policy and that he or she can refuse to undergo the screen.

The screening shall be consistent with drug testing under The Drug-Free Workplace Act, s. 112.0455, F.S.

The bill provides that an adult applicant will be disqualified from receiving TANF benefits if:

[14] Chapter 408, F.S.
[15] *Id*

- They refuse to submit to a drug screen or confirmatory test; or
- They test positive for drugs as a result of a confirmation test.

If an applicant fails a confirmation test they will be ineligible for TANF benefits for 1 year. Upon application for TANF benefits after a one-year period, if the applicant tests positive again, he or she is disqualified from receiving TANF for 3 years.

In a two-parent household, both parents must be tested. Any caretaker relative included in the TANF group must also be tested.

The bill establishes that in the event the individual has minor children, the individual can designate an immediate family member or another individual approved by DCF to receive funds on behalf of the children. The designated individual must pass the drug screen.

DCF shall provide an individual who tests positive for drugs information concerning substance abuse treatment programs that may be available in their area. Neither DCF nor the state is responsible for providing or paying for substance abuse treatment for these individuals as part of the screening conducted in this section of law.

Applicants for cash assistance shall be responsible for the cost of both the initial drug screen and the confirmatory test (if needed).

Rule making authority is provided in order for DCF to implement the drug screening program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirement of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

In a Michigan case welfare recipients sought an injunction to stop enforcement of a state statute authorizing suspicionless drug testing of applicants for and recipients of benefits. The U.S. District Court issued the temporary injunction and the State of Michigan

appealed. The Circuit Court of Appeal overturned the District Court's ruling in 2003.[16] In doing so the court thoroughly analyzed the evidence presented by the state to show the state's "special need" for the suspicionless drug testing. The Court relied, in part, on the 2002 U.S. Supreme Court decision in *Board of Education v. Earls* that approved of drug testing of students who participate in extracurricular activities.[17]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an impact on applicants who are required to undergo a drug screen or confirmation test as a condition of eligibility for temporary cash assistance funds. The department estimates that initial drug screening will cost $10 per person and confirmatory tests will cost approximately $25 per person.

C. Government Sector Impact:

It is unknown whether the fiscal effect of this bill will be positive or negative for the state. Because of the bill's provision that a TANF applicant or recipient, who is a parent with a minor child, and who fails the drug screen, may designate another recipient on the child's behalf, it is less likely TANF funds would be "saved" in every case of a positive drug screen.

Currently, DCF does not drug screen any individual as a condition of eligibility for cash assistance. DCF estimates that between 170-340 people (based on current caseloads) would test positive as a result of a drug screen. This estimate may be low.

The Substance Abuse and Mental Health Administration, which is part of the U.S. Department of Health and Human Services found that 9.6 percent of people living in households that receive government assistance used illicit drugs (in the previous month) compared with a 6.8 percent rate among families who receive no assistance.[18]

As mentioned in the Present Situation section of the analysis, a drug-screening pilot project was conducted in the Jacksonville area and parts of Putnam County between 1999 and 2001. During the project, 8,797 applicants or recipients were tested. Of those 8,797 applicants who were tested, 335 applicants tested positive for a controlled substance. The Orlando Sentinel reported that the cost of the pilot project was $2.7 million.[19]

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[16] *Marchwinski v. Howard*, 309 F.3d 330 (6th Cir. 2002).
[17] *Earls*, 122 S.Ct. 2559 (2002).
[18] *Should Welfare Recipients Get Drug Testing?*, Alan Greenblatt, www.npr.org, March 31, 2010.
[19] Orlando Sentinel editorial, *Our take on: Welfare drug tests*, October 30, 2010.

The bill states that neither the department nor the state is responsible for paying for substance abuse treatment for individuals as part of the screening conducted in this section. This could create problems for DCF when individuals who failed TANF drug screening seek help at a DCF-licensed substance abuse treatment facility or provider. It appears that DCF would need to establish a system to cross-reference those denied temporary cash assistance due to drug screening with those who are seeking substance abuse treatment. It is unknown at this time what the cost of developing such a cross-referencing system would be.

The department does not have exact estimates of the costs to changing its information systems required by the bill but states that these changes can be done within existing resources. Specifically, changes to the ACCESS program's information systems would be necessary to address new reporting and notice requirements by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on March 22, 2011:

- Created a different section of law – by changing s. 414.095 to s. 414.145, F.S., in the bill;
- Eliminated Supplemental Nutrition Assistance Program (SNAP) applicants from the provisions in the bill;
- Eliminated the legislative intent, definitions, program implementation date, details related to specimen collection and preservation, and DCF's reporting requirement from the bill;
- Modified the period of ineligibility for TANF upon an initial failed drug screen from 3 years to one year. Provided that upon re-application in one year, if the applicant tests positive again, he or she is ineligible for 3 years;
- Restored current law in s. 414.095, F.S., regarding convictions for trafficking in drugs as a reason to deny benefits; and
- Provided that testing shall be consistent with s. 112.0455, F.S., the Drug-Free Workplace Act.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present paragraph (f) of subsection (1) of section 112.63, Florida Statutes, is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The

actuarial report shall consist of, but shall not be limited to, the following:

(f) A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return, in order to promote the comparability of actuarial data between local plans.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits shall only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.

Section 2. Subsections (11) through (13) are added to section 112.66, Florida Statutes, to read:

112.66 General provisions.—The following general provisions relating to the operation and administration of any retirement system or plan covered by this part shall be applicable:

(11) For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, a pension system or plan sponsored by a local government may not include any overtime compensation in excess of 300 hours per year, or any payments for accrued unused sick leave or annual leave for purposes of calculating retirement benefits. For those members whose terms and conditions of employment are collectively bargained, this subsection is effective for the first agreement entered into on or after July 1, 2011. This subsection does not apply to state-administered retirement

systems or plans.

(12) An actuarial or cash surplus in any system or plan may not be used for any expenses outside the plan.

(13) A local government sponsor of a retirement system or plan may not reduce contributions required to fund the normal cost. This subsection does not apply to state-administered retirement systems or plans.

Section 3. Present paragraphs (e) and (f) of subsection (1) of section 112.665, Florida Statutes, are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to that subsection, to read:

112.665 Duties of Department of Management Services.—

(1) The Department of Management Services shall:

(e) Provide a fact sheet for each participating local government defined benefit pension plan summarizing the plan's actuarial status. The fact sheet should provide a summary of the plan's most current actuarial data, minimum funding requirements as a percentage of pay, and a 5-year history of funded ratios. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans. These documents shall be posted on the department's website. Plan sponsors that have websites must provide a link to the department's website.

Section 4. Paragraph (b) of subsection (2) of section 121.051, Florida Statutes, is amended to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

(b)1. The governing body of any municipality, metropolitan planning organization, or special district ~~in the state~~ may

elect to participate in the system upon proper application to the administrator and may cover all or any of its units as approved by the Secretary of Health and Human Services and the administrator. The department shall adopt rules establishing provisions for the submission of documents necessary for such application. Before ~~Prior to~~ being approved for participation in the Florida Retirement System, the governing body of ~~any~~ such municipality, metropolitan planning organization, or special district that has a local retirement system shall submit to the administrator a certified financial statement showing the condition of the local retirement system ~~as of a date~~ within 3 months before ~~prior to~~ the proposed effective date of membership in the ~~Florida Retirement~~ system. The statement must be certified by a recognized accounting firm that is independent of the local retirement system. All required documents necessary for extending Florida Retirement System coverage must be received by the department for consideration at least 15 days before ~~prior to~~ the proposed effective date of coverage. If the municipality, metropolitan planning organization, or special district does not comply with this requirement, the department may require that the effective date of coverage be changed.

2. A local government employer sponsoring a local government retirement system or plan, including a firefighters' pension plan or a municipal police officers' pension plan established in accordance with chapter 175 or chapter 185, is eligible for membership under this chapter if the local government retirement system or plan has no unfunded actuarial liabilities. Any municipality ~~city~~, metropolitan planning organization, or special district that has an existing


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retirement system covering the employees in the units that are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in the ~~said~~ referendum are ~~shall be~~ eligible for coverage under this chapter, and those not participating or electing not to be covered by the ~~Florida Retirement~~ system shall remain in their present systems and are ~~shall~~ not ~~be~~ eligible for coverage under this chapter. After the referendum is held, all future employees are ~~shall be~~ compulsory members of the Florida Retirement System.

3. The governing body of any municipality ~~city~~, metropolitan planning organization, or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service benefits, such benefits must be provided for all officers and employees of its covered group.

4. Once ~~this~~ election is made and approved it may not be revoked, except pursuant to subparagraphs 5. and 6., and all present officers and employees electing coverage under this chapter and all future officers and employees are ~~shall be~~ compulsory members of the Florida Retirement System.

5. Subject to the conditions set forth in subparagraph 6., the governing body of any hospital licensed under chapter 395 which is governed by the board of a special district as defined in s. 189.403~~(1)~~ or by the board of trustees of a public health

trust created under s. 154.07, hereinafter referred to as "hospital district," and which participates in the system, may elect to cease participation in the system with regard to future employees in accordance with the following procedure:

a. No more than 30 days and at least 7 days before adopting a resolution to partially withdraw from the ~~Florida Retirement~~ system and establish an alternative retirement plan for future employees, a public hearing must be held on the proposed withdrawal and proposed alternative plan.

b. From 7 to 15 days before such hearing, notice of intent to withdraw, specifying the time and place of the hearing, must be provided in writing to employees of the hospital district proposing partial withdrawal and must be published in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031. Proof of publication of such notice shall be submitted to the department ~~of Management Services~~.

c. The governing body of any hospital district seeking to partially withdraw from the system must, before such hearing, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625~~(3)~~, illustrating the cost to the hospital district of providing, through the retirement plan that the hospital district is to adopt, benefits for new employees comparable to those provided under the ~~Florida Retirement~~ system.

d. Upon meeting all applicable requirements of this subparagraph, and subject to ~~the conditions set forth in~~ subparagraph 6., partial withdrawal from the system and adoption of the alternative retirement plan may be accomplished by

resolution duly adopted by the hospital district board. The hospital district board must provide written notice of such withdrawal to the division by mailing a copy of the resolution to the division, postmarked no later than December 15, 1995. The withdrawal shall take effect January 1, 1996.

6. Following the adoption of a resolution under sub-subparagraph 5.d., all employees of the withdrawing hospital district who were participants in the Florida Retirement System before ~~prior to~~ January 1, 1996, shall remain as participants in the system for as long as they are employees of the hospital district, and all rights, duties, and obligations between the hospital district, the system, and the employees ~~shall~~ remain in full force and effect. Any employee who is hired or appointed on or after January 1, 1996, may not participate in the Florida Retirement System, and the withdrawing hospital district has ~~shall have~~ no obligation to the system with respect to such employees.

Section 5. Subsection (3) of section 175.032, Florida Statutes, is amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(3) "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the fixed monthly remuneration paid a firefighter. If~~; where, as in the case of a volunteer firefighter,~~

remuneration is based on actual services rendered, as in the case of a volunteer firefighter, the term means the total cash remuneration received yearly for such services, prorated on a monthly basis. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that overtime compensation in excess of 300 hours per year, or payments for accrued unused sick or annual leave, may not be included for purposes of calculating retirement benefits.

~~(a) A retirement trust fund or plan may use a definition of salary other than the definition in this subsection but only if the monthly retirement income payable to each firefighter covered by the retirement trust fund or plan, as determined under s. 175.162(2)(a) and using such other definition, equals or exceeds the monthly retirement income that would be payable to each firefighter if his or her monthly retirement income were determined under s. 175.162(2)(a) and using the definition in this subsection.~~

(a) ~~(b)~~ Any retirement trust fund or plan that ~~which now or hereafter~~ meets the requirements of this chapter does ~~shall~~ not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each firefighter covered by the retirement trust fund or plan.

(b) ~~(c)~~ The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive

if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter.

(c) ~~(d)~~ For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that ~~any~~ plan year may ~~shall~~ not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation, ~~(~~as amended by the Omnibus Budget Reconciliation Act of 1993~~)~~, which limitation of $150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before ~~prior to~~ the first plan year beginning on or after January 1, 1996, the limitation on compensation may ~~shall be~~ not be less than the maximum compensation amount that was allowed to be taken into account under the plan ~~as~~ in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

Section 6. Section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters.—For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter, in order for municipalities and special fire control districts with their own pension plans for firefighters, or for firefighters and police officers if~~, where~~

included, to participate in the distribution of the tax fund established pursuant to s. 175.101, local law plans must meet the minimum benefits and minimum standards set forth in this chapter.

(1) ~~PREMIUM TAX INCOME.—~~If a municipality or special fire control district has a pension plan for firefighters, or a pension plan for firefighters and police officers if~~, where~~ included, which in the opinion of the division meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of firefighters, or firefighters and police officers, of the municipality or fire control district, may:

(a) Place the income from the premium tax in s. 175.101 in such pension plan for the sole and exclusive use of its firefighters, or for firefighters and police officers if~~, where~~ included, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the firefighters, or firefighters and police officers, included in that pension plan; or

(b) Place the income from the premium tax in s. 175.101 in a separate supplemental plan to pay extra benefits to firefighters, or to firefighters and police officers if ~~where~~ included, participating in such separate supplemental plan.

(2) The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to firefighters, or to firefighters and police officers if~~, where~~ included. However, local law plans in effect on October 1, 1998, must ~~shall be required to~~ comply with the minimum benefit provisions of this chapter only to the extent that additional

premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a). If ~~When~~ a plan is in compliance with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must ~~shall~~ be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed that amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters on March 12, 1999. Local law plans created by special act before May 27 ~~23~~, 1939, shall be deemed to comply with this chapter. Notwithstanding any other provisions of this section, if, based on the actuarial valuation prepared immediately before March 1, 2011:

(a) A defined benefit plan's market value of assets, divided by present value of accrued benefits, is less than 80 percent, 50 percent of the annual premium tax revenues in excess of the adjusted base amount and 50 percent of accumulated excess premium tax revenues held in reserve shall be used to pay the plan's actuarial accrued liability until the market value of assets, divided by the present value of accrued benefits, exceeds 80 percent. For purposes of this paragraph, the term "adjusted base amount" means the amount received for calendar year 1997, plus any amount attributable to the enactment of minimum benefits and any amount attributable to extra benefit improvements enacted since March 12, 1999.

(b) For a supplemental plan that exists in conjunction with

a defined benefit plan under this chapter, if the defined benefit plan's market value of assets, divided by present value of accrued benefits, is less than 70 percent, the premium tax revenues in excess of the premium tax revenues received for calendar year 2009 must be used to pay the defined plan's actuarial accrued liability until the defined benefit plan's market value of assets, divided by present value of accrued benefits, is at least 80 percent.

(3) ~~(2)~~ A ~~ADOPTION OR REVISION OF A LOCAL LAW PLAN.—No~~ retirement plan or amendment to a retirement plan may not ~~shall~~ be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. ~~No~~ Such proposed plan or proposed plan change may not ~~shall~~ be adopted without the approval of the municipality, special fire control district, or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before ~~prior to~~ the last public hearing thereon. Such statement must ~~shall~~ also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation before ~~prior to~~ May 27 ~~23~~, 1939, are ~~shall be~~ deemed to meet the minimum benefits and minimum standards only in this chapter.

(4) ~~(3)~~ Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) ~~Section 175.032(3)(a) shall not apply, and~~ A local law

plan and a supplemental plan may continue to use their definition of compensation or salary in existence on March 12, 1999 ~~the effective date of this act~~.

(b) Section 175.061(1)(b) does ~~shall~~ not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

(c) The election set forth in paragraph (1)(b) is ~~shall be~~ deemed to have been made.

(5)~~(4)~~ The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing, and copies ~~thereof must be~~ made available to the participants and to the general public.

Section 7. Subsection (4) of section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(4) "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or ~~a~~ special detail work performed on behalf of a second party

employer. ~~However,~~ A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, ~~but in no event shall~~ such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that overtime compensation in excess of 300 hours per year, or payments for accrued unused sick or annual leave, may not be included for purposes of calculating retirement benefits.

(a) Any retirement trust fund or plan that ~~which now or hereafter~~ meets the requirements of this chapter does ~~shall~~ not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that ~~any~~ plan year may ~~shall~~ not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation, ~~(~~as amended by the Omnibus Budget Reconciliation Act of 1993~~)~~, which

limitation of $150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before ~~prior to~~ the first plan year beginning on or after January 1, 1996, the limitation on compensation may ~~shall be~~ not be less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

Section 8. Section 185.35, Florida Statutes, is amended to read:

185.35 Municipalities having their own pension plans for police officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, in order for municipalities with their own pension plans for police officers, or for police officers and firefighters if ~~where~~ included, to participate in the distribution of the tax fund established pursuant to s. 185.08, local law plans must meet the minimum benefits and minimum standards set forth in this chapter:

(1) ~~PREMIUM TAX INCOME.—~~If a municipality has a pension plan for police officers, or for police officers and firefighters if ~~where~~ included, which, in the opinion of the division, meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of police officers, or police officers and firefighters, of the municipality, may:

(a) Place the income from the premium tax in s. 185.08 in


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such pension plan for the sole and exclusive use of its police officers, or its police officers and firefighters if ~~where~~ included, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the police officers, or police officers and firefighters, included in that pension plan; or

(b) May place the income from the premium tax in s. 185.08 in a separate supplemental plan to pay extra benefits to the police officers, or police officers and firefighters if ~~where~~ included, participating in such separate supplemental plan.

(2) The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to police officers, or to police officers and firefighters if~~,~~ ~~where~~ included. However, local law plans in effect on October 1, 1998, must ~~shall be required to~~ comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 185.16(2). If ~~When~~ a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed the amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police officers on March 12, 1999. Local law plans created by special act before May 27 ~~23~~, 1939, shall be deemed to comply with this chapter.

Notwithstanding any other provisions of this section, if, based on the actuarial valuation prepared immediately before March 1, 2011:

(a) A defined benefit plan's market value of assets, divided by present value of accrued benefits, is less than 80 percent, 50 percent of the annual premium tax revenues in excess of the adjusted base amount and 50 percent of accumulated excess premium tax revenues held in reserve shall be used to pay the plan's actuarial accrued liability until the market value of assets, divided by present value of accrued benefits, exceeds 80 percent. For purposes of this paragraph, the term "adjusted base amount" means the amount received for calendar year 1997, plus any amount attributable to the enactment of minimum benefits and any amount attributable to extra benefit improvements enacted since March 12, 1999.

(b) For a supplemental plan that exists in conjunction with a defined benefit plan under this chapter, if the defined benefit plan's market value of assets, divided by present value of accrued benefits, is less than 70 percent, the premium tax revenues in excess of the premium tax revenues received for calendar year 2009 must be used to pay the defined benefit plan's actuarial accrued liability until the market value of assets, divided by present value of accrued benefits, is at least 80 percent.

(3) ~~(2)~~ A ~~ADOPTION OR REVISION OF A LOCAL LAW PLAN.—No~~ retirement plan or amendment to a retirement plan may not ~~shall~~ be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. ~~No~~ Such proposed plan or proposed plan change may not ~~shall~~ be adopted

without the approval of the municipality or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before ~~prior to~~ the last public hearing thereon. Such statement must ~~shall~~ also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation before ~~prior to~~ May 27 ~~23~~, 1939, are ~~shall be~~ deemed to meet the minimum benefits and minimum standards only in this chapter.

(4) ~~(3)~~ Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) Section 185.02(4)(a) does ~~shall~~ not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on March 12, 1999 ~~the effective date of this act~~.

(b) Section 185.05(1)(b) does ~~shall~~ not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

(c) The election set forth in paragraph (1)(b) is ~~shall be~~ deemed to have been made.

(5) ~~(4)~~ The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the

investment of funds must be in writing and copies made available to the participants and to the general public.

Section 9. Financial rating of local pension plans.—The Department of Financial Services shall develop standardized ratings for classifying the financial strength of all local government defined benefit pension plans.

(1) In assigning a rating to a plan, the department shall consider, without limitation:

(a) The plan's current and future unfunded liabilities.

(b) The plan's net asset value, managed returns, and funded ratio.

(c) Metrics related to the sustainability of the plan, including, but not limited to, the percentage that the annual contribution is of the participating employee payroll.

(d) Municipal bond ratings for the local government, if applicable.

(e) Whether the local government has reduced contribution rates to the plan when the plan has an actuarial surplus.

(f) Whether the local government uses any actuarial surplus in the plan for obligations outside the plan.

(2) The department may obtain all necessary data to formulate the ratings from all relevant entities, including local pension boards, local governments, and the Division of Retirement, all of which shall cooperate with the department in supplying all necessary information.

(3) The ratings shall be posted on the department's website in a standardized format.

Section 10. Task Force on Public Employee Disability Presumptions.—

(1) The Task Force on Public Employee Disability Presumptions is created for the purpose of developing findings and issuing recommendations on the disability presumptions in ss. 112.18, 175.231, and 185.34, Florida Statutes.

(2) All members of the task force shall be appointed on or before July 15, 2011, and the task force shall hold its first meeting on or before August 15, 2011. The task force shall be composed of eight members as follows:

(a) Three members appointed by the President of the Senate, one of whom must be an attorney in private practice who has experience in the relevant laws; one of whom must be a representative of organized labor and who is a member of a pension plan under chapter 175, Florida Statutes; and one of whom must be from the Florida Association of Counties.

(b) Three members appointed by the Speaker of the House of Representatives, one of whom must be an attorney in private practice who has experience in the relevant laws; one of whom must be a representative of organized labor and who is a member of a pension plan under chapter 185, Florida Statutes; and one of whom must be from the Florida League of Cities.

(c) A member employed by the Division of Retirement of the Department of Management Services who has experience in local government pension plans, appointed by the Governor.

(d) A member employed by the Department of Financial Services who has relevant expertise in state risk management, appointed by the Chief Financial Officer.

(3) The task force shall address issues, including, but not limited to:

(a) Data related to the operation of the statutory

disability presumptions.

(b) The manner in which other states handle disability presumptions.

(c) Proposals for changes to the existing disability presumptions.

(4) The Department of Financial Services shall provide administrative support to the task force.

(5) Upon request, the Auditor General shall provide technical assistance to the task force regarding local government auditing and finances.

(6) Members of the task force shall serve without compensation while in the performance of their duties, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(7) The task force may obtain data, information, and assistance from any officer or state agency and any political subdivision thereof. All such officers, agencies, and political subdivisions shall provide the task force with all relevant information and assistance on any matter within their knowledge or control.

(8) The task force shall submit a report, including findings and recommendations, to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2012. The report must include specific recommendations for legislative action during the 2012 Regular Session of the Legislature.

(9) The task force is dissolved upon submission of its report.

Section 11. By December 1, 2011, the Department of

Financial Services shall submit a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives on actions to be taken to increase the visibility and transparency of local government pension plans, including, but not limited to, those created pursuant to chapter 175 or chapter 185, Florida Statutes, with the goal of increasing the ability of a taxpayer or policymaker to assess the financial health of the local plans. The report must include specific recommendations for legislative action during the 2012 Regular Session of the Legislature. The department shall consult with the Legislature's Office of Economic and Demographic Research in formulating the recommendations, which must address, but need not be limited to:

(1) Whether and what kinds of local pension plan data should be included in the financial audit reports required under s. 218.39, Florida Statutes.

(2) Whether the reporting requirements of ss. 175.261 and 185.221, Florida Statutes, should be supplemented with other types of financial data in order to give a more complete and transparent picture of a local government's financial solvency.

(3) Proposals for a uniform format for providing pension data, including standard terminology and data and the specific types of data which should be provided, including funding ratios, and whether contributions are sufficient to fund actuarial liabilities.

(4) Whether to require local governments to provide pension financial data on local public websites.

(5) Other related issues, including insurance benefits, health care benefits, and postemployment plan benefits.

(6) Proposals related to the composition of local pension plan boards.

Section 12. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and of its political subdivisions, and the dependents, survivors, and beneficiaries of those employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 13. 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 public retirement plans; amending s. 112.63, F.S.; requiring plans to regularly disclose the plan's accrued benefits; amending s. 112.66, F.S.; providing for the calculation of local government retirement benefits after a certain date; providing a prohibition on the use of certain compensation; prohibiting the use of surpluses for expenses outside the plan; prohibiting a reduction in certain

contributions to a plan; amending s. 112.665, F.S.; requiring the Department of Management Services to provide a fact sheet on each local plan; amending s. 121.051, F.S.; providing that a local government employer is eligible for participation in the Florida Retirement System if it has no unfunded actuarial liabilities; amending s. 175.032, F.S.; revising the definition of the term "compensation" or "salary" for purposes of firefighters' pensions; amending s. 175.351, F.S.; revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan; providing for funding a plan's actuarial accrued liability; conforming a cross-reference; amending s. 185.02, F.S.; revising the definition of the terms "compensation" and "salary" for purposes of police officers' pensions; amending s. 185.35, F.S.; revising provisions relating to benefits paid by a municipality that has its own pension plan; providing for funding a plan's actuarial accrued liability; directing the Department of Financial Services to rate the financial strength of local government defined benefit plans; specifying the factors for assigning the ratings; requiring local pension boards, local governments, the Division of Retirement, and all relevant entities to cooperate in providing data for the ratings; requiring the ratings to be posted on the department's website; creating the Task Force on Public Employee Disability Presumptions; providing for

appointment and membership; specifying the issues for the task force to address; providing for a report to be submitted to the Governor, Chief Financial Officer, and Legislature by a certain date; providing for future expiration; directing the Department of Financial Services to submit a report on the financial health of local government pension plans to the Governor and Legislature by a certain date; specifying the issues the report must address; providing a declaration of important state interest; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment to Amendment (138858) (with title amendment)

Between lines 236 and 237
insert:

Section 6. Paragraph (b) of subsection (1) of section 175.061, Florida Statutes, is amended to read:

175.061 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In each municipality and in each special fire control

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district there is hereby created a board of trustees of the firefighters' pension trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(b) The membership of boards of trustees for local law plans shall be as follows:

1. If a municipality or special fire control district has a pension plan for firefighters only, the provisions of paragraph (a) ~~shall~~ apply.

2. If a municipality has a pension plan for firefighters and police officers, the provisions of paragraph (a) ~~shall~~ apply, except that one member of the board must ~~shall~~ be a firefighter ~~as defined in s. 175.032~~ and one member of the board must ~~shall~~ be a police officer as defined in s. 185.02, respectively elected by a majority of the active firefighters or police officers who are members of the plan.

3. A ~~Any~~ board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the firefighters, or firefighters and police officers, if included, to determine whether a plan is to be established for firefighters only, or for firefighters and police officers where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality or fire control district shall enact an ordinance or resolution to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets ~~which is~~ attributable to firefighters, or firefighters and police

officers where included. Such assets ~~shall~~ include all employer, employee, and state contributions made by or on behalf of firefighters, or firefighters and police officers where included, and any investment income derived from such contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.

With respect to a ~~any~~ board of trustees operating a local law plan on June 30, 1986, ~~nothing in~~ this paragraph does not ~~shall~~ permit the reduction of the membership percentage of firefighters, or of firefighters and police officers where a joint or mixed fund exists. However, for the sole purpose of changing municipal representation, a municipality may, by ordinance, change the municipal representation on the board of trustees operating a local law plan by ordinance, only if such change does not reduce the membership percentage of firefighters, or firefighters and police officers.

Between lines 401 and 402
insert:

Section 8. Paragraph (b) of subsection (1) of section 185.05, Florida Statutes, is amended to read:

185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) In each municipality described in s. 185.03 there is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely


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responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(b) The membership of boards of trustees for local law plans is ~~shall be~~ as follows:

1. If a municipality has a pension plan for police officers only, the provisions of paragraph (a) shall apply.

2. If a municipality has a pension plan for police officers and firefighters, the provisions of paragraph (a) ~~shall~~ apply, except that one member of the board shall be a police officer ~~as defined in s. 185.02~~ and one member shall be a firefighter as defined in s. 175.032, respectively, elected by a majority of the active firefighters and police officers who are members of the plan.

3. Any board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the police officers, or police officers and firefighters if included, to determine whether a plan is to be established for police officers only, or for police officers and firefighters where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality shall enact an ordinance to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets which is attributable to police officers, or police officers and firefighters where included. Such assets shall include all employer, employee, and state contributions made by or on behalf of police officers, or police officers and firefighters where included, and any investment income derived from such

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contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.

With respect to any board of trustees operating a local law plan on June 30, 1986, ~~nothing in~~ this paragraph does not ~~shall~~ permit the reduction of the membership percentage of police officers or police officers and firefighters. However, for the sole purpose of changing municipal representation, a municipality may, by ordinance, change the municipal representation on the board of trustees operating a local law plan by ordinance, only if such change does not reduce the membership percentage of police officers, or police officers and firefighters.

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

And the title is amended as follows:

Delete lines 660 - 668

and insert:

purposes of firefighters' pensions; amending s. 175.061, F.S.; authorizing a municipality to change the municipality's membership on the board of trustees operating its firefighters' pension plan under certain circumstances; amending s. 175.351, F.S.; revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan; providing for funding a plan's actuarial accrued liability; conforming a cross-reference; amending s. 185.02, F.S.; revising the definition of the terms "compensation" and

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"salary" for purposes of police officers' pensions; amending s. 185.05, F.S.; authorizing a municipality to change the municipality's membership on the board of trustees operating its police officers' pension plan under certain circumstances; amending s. 185.35, F.S.;

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1128
INTRODUCER:	Governmental Oversight and Accountability and Senator Ring
SUBJECT:	Local Government Retirement Plans
DATE:	April 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	**Fav/CS**
2.	Leadbeater/Betta	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill makes a number of changes affecting local government pension plans:

- Accrued unused sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not reduce contributions required to fund normal cost;
- Local plans are eligible to enter the Florida Retirement System only if the plan has no unfunded actuarial liabilities;
- If a plan's actuarial liability is funded below 80 percent, then 50 percent of certain premium tax revenues must be used to pay unfunded plan liabilities, until the plan's actuarial accrued liability exceeds 80 percent. For a supplemental plan that exists in conjunction with a defined benefit plan, if the defined benefit is funded below 70 percent, certain premium tax revenues must be used to pay the plan's actuarial accrued liability, until the plan reaches 80 percent funding;
- A Task Force on Public Employee Disability Presumptions is created to study and make recommendations on disabilities incurred in the line of duty;
- The Department of Financial Services is required to make recommendations regarding how local pension plan financial data should be reported; and

- The Department of Financial Services is required to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department's website.

This bill substantially amends sections 112.66, 121.051, 175.032, 175.351, 185.02, and 185.35, F.S., and creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Local Retirement Systems and Plans

The Department of Management Services' Division of Retirement reports[1] that as of September 30, 2010, there are 489 defined benefit plans sponsored by 239 local governments. The vast majority of the plans, 483, are local government defined benefit systems that provide benefits to 67,724 retirees, with 107,007 active employees, and total plan assets of $23.1 billion.[2] The average annual pension in these local plans is $23,854, and the average annual required contribution rate as a percentage of payroll is 26.04 percent.

Collective Bargaining

Collective bargaining, pursuant to ch. 447, F.S., consists of a series of negotiations between a public employer's chief executive officer[3] and the selected bargaining agent[4] for an employee organization regarding the terms and conditions of employment.[5] The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.[6]

Employees have the right to collectively bargain under Article I, Section 6 of the Florida Constitution.[7] Statewide regulations for collective bargaining amongst public employees are addressed in part II of ch. 447, F.S.[8] Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

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[1] Division of Management Services, *Florida Local Government Retirement Systems*, 2010 Annual Report, available online at: https://www.rol.frs.state.fl.us/forms/2010_Local_Report.pdf (last visited on February 13, 2011).

[2] The other 6 plans are school board early retirement programs that provide benefits to 1,570 retirees, with active plan membership of 9,157, and total plan assets of $61.6 million.

[3] Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state, and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer."

[4] The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employers Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S, or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the PERC, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization, that is approved by the commission to be appropriate for the purposes of collective bargaining.

[5] Section 447.203(14), F.S.

[6] Section 447.201, F.S., *See also*, Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, 6 (2d ed. 2004).

[7] FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

[8] *See* s. 447.201, F.S. The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.[9]

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to the Public Employees Relations Commission.[10]

Actuarial Soundness and Minimum Funding Standards for Pensions
Article X, s. 14, of the State Constitution requires public retirement benefits to be funded on a sound actuarial basis:

> SECTION 14: State retirement systems benefit changes.- A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.[11]

The "Florida Protection of Public Employee Retirement Benefits Act" located in part VII of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this act is to "prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current tax payers."[12]

The "Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund" Acts
The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, in implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., all municipal and special district firefighters, and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.[13] The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund.[14]

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[9] Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years …").
[10] The Pubic Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.
[11] Art. X, section 14 of the Florida Constitution.
[12] Section 112.61, F.S.
[13] *See* ss. 175.021(1) and 185.01(1), F.S., (2006).
[14] *See* ss. 175.121 and 185.10, F.S.

Firefighters Pension Trust Fund **-** The Firefighters Pension Trust Fund is funded through an excise tax on property insurance policies that amounts up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary or the legally defined boundary of a special fire control district.[15] This excise tax is payable to the Department of Revenue on March 1 of each year, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.[16] In 2008, premium tax distributions to cities and special fire control districts from the Firefighters Pension Trust Fund amounted to $70.5 million.[17] The 2009 Legislature clarified that the boundaries of a special fire control district for purposes of the 1.85 percent excise tax shall "include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), F.S., or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3), F.S."[18]

Municipal Police Officers Retirement Trust Fund **-** The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.[19] This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2009, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to $59.4 million.[20]

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.[21]

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.[22] These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies and a 1 percent on annuity polices or contacts, to be distributed into the General Revenue Fund. Pursuant to s. 624.51055, F.S., the insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.[23] Each time a municipality that is currently not imposing the tax

[15] Section 175.101(1), F.S.
[16] Section 175.101(3), F.S.
[17] Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Fire,* available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on February 10, 2011).
[18] Chapter 2009-97, s. 6, Laws of Florida (L.O.F.).
[19] Section 185.08, F.S.
[20] Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police,* available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on February 10, 2011).
[21] *See* ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.
[22] Section 624.509(1), F.S.
[23] Section 624.51055, F.S., ("There is allowed a credit of 100 percent of … However, such credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting such tax deductions for … credits for taxes paid under ss. 175.101 and 185.08 …").

enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the department for deposit into the General Revenue Fund.[24]

Board of Trustees

Firefighters and Police Officers Retirement Trust Funds are administered by a local governing board of trustees that is created in participating cities and special fire control districts and subject to the regulatory oversight of the Division of Retirement.[25] The membership of the board consists of five members: two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma that are subject to two-year terms. The chair and secretary of the board are elected by a majority vote.[26]

The general powers and duties of the board of trustees are:

- To invest and reinvest pension trust fund assets in amounts sufficient to provide entitled benefits and initial and subsequent premiums;
- To invest and reinvest pension trust fund assets into:
  - Annuities and life insurance contracts;
  - Time or savings accounts of specified banks and financial institutions;
  - Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
  - Bonds issued by the State of Israel;
  - Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States Corporation; and
  - Foreign securities not to exceed 10 percent of plan assets;
- To issue drafts upon the pension trust fund;
- To convert fund securities into cash; and
- To keep record on all receipts and disbursements and the board's acts and proceedings.[27]

In addition to these duties, the board must hold quarterly meetings and retain a professional consultant at least once every three years to evaluate the performance of any existing money manager.[28]

Chapters 175 and 185 Plan Provisions

Sections 175.041(3) and 185.03(2), F.S., each provide that the provisions of the respective chapters do not apply to any governmental entity whose firefighters and/or police officers are eligible to participate in the FRS. Exceptions are provided for those cities and special districts that opted out of the FRS and established a chapter plan for all police officers and firefighters hired after January 1, 1996, and for a city or special district subject to a transfer, consolidation,

[24] According to the Department of Management Services, the state premium tax distribution made during 2009, amount to approximately $131,113,000.
[25] *See* ss. 175.061 and 185.05, F.S.
[26] The secretary of the board shall keep a record of all persons receiving retirement payments under ch. 175 and ch. 185. *See* ss. 175.071(4) and 185.06(3), F.S., respectively.
[27] *See* ss. 175.07(1)(a)-(e) and 185.06(1)-(f), F.S., (note **s.** 185.06(1)(d), F.S., provides that the board of trustees may also decide all claims to relief for municipal police pension plans).
[28] *See* ss. 175.061(3), 175.071(6)(a), 185.05(3), and 185.06(5), F.S.

or merger, and whose fire and law enforcement services are provided by the county in which the city or special districts are located.

Sections 175.411 and 185.60, F.S., provide that cities and special districts who opt out of a local or chapter plan but do not terminate the plan, are prohibited from receiving future insurance premium tax money used to fund the pension plans. Premium tax funds previously received must be used to fund existing benefits for vested firefighters or police officers, and the accrued benefits of such vested firefighters or police officers may not be reduced. Annual reports to the Municipal Police Officers' and Firefighters' Pension Office in the Division of Retirement at the Department of Management Services are required. Sections 175.361 and 185.37, F.S., provide requirements for distribution of plan assets when a city or a special district does terminate a chapter or local law pension plan.

Sections 175.371 and 185.38, F.S., provide that when every active firefighter or police officer in a chapter or local law pension plan elects to transfer to another state retirement system, the pension plan must be terminated and the assets must be distributed in accordance with ss. 175.361 and 185.37, F.S. If some participants elect to transfer to another state retirement system and others elect to remain in the chapter or local law plan, the chapter or local law plan will continue to receive insurance premium taxes until the plan is fully funded meaning that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis.

Disability Presumptions

General Provisions **-** Section 112.18(1)(a), F.S., provides that any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death will be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. The presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

The presumption for workers' compensation claims is different. For any workers' compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer, correctional officer, or correctional probation officer suffering from tuberculosis, heart disease, or hypertension is presumed not to have incurred disease in the line of duty as provided in this section if the law enforcement officer, correctional officer, or correctional probation officer:

- Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; or

- Was previously compensated pursuant to this section and chapter 440 for tuberculosis, heart disease, or hypertension and thereafter sustains and reports a new compensable workers' compensation claim under this section and chapter 440, and the law enforcement officer, correctional officer, or correctional probation officer has departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.

Disability of Firefighters Suffered in Line of Duty – Pursuant to s. 175.231, F.S., for any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this ch. 175, F.S., any condition or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section is applicable to all firefighters only with reference to pension and retirement benefits under ch. 175, F.S.

Disability of Police Officers Suffered in Line of Duty - Pursuant to s. 185.34, F.S., for any municipality, chapter plan, local law municipality, or local law plan adopted pursuant to ch. 185, F.S., any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section is applicable to all police officers only with reference to pension and retirement benefits under ch. 185, F.S.

Financial Reporting Requirements for Local Governments

Section 218.39, F.S., specifies the requirements for annual financial audit reports for local governments. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of $250,000;

- Any special district with revenues or the total of expenditures and expenses in excess of $100,000;
- Each district school board;
- Each charter school;
- Each charter technical center;
- Each municipality with revenues or the total of expenditures and expenses between $100,000 and $250,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years; and
- Each special district with revenues or the total of expenditures and expenses between $50,000 and $100,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

All audits conducted in accordance with this section must be conducted in accordance with the rules of the Auditor General. All audit reports and the officer's written statement of explanation or rebuttal must be submitted to the Auditor General within 45 days after delivery of the audit report to the entity's governing body, but no later than 12 months after the end of the fiscal year.

Section 218.32, F.S., provides that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district must submit to the Department of Financial Services (DFS) a copy of its annual financial report for the previous fiscal year in a format prescribed by DFS. Each local governmental entity that is required to provide for an audit in accordance with s. 218.39(1), F.S., must submit the annual financial report with the audit report. A copy of the audit report and annual financial report must be submitted to the department within 45 days after the completion of the audit report but no later than 12 months after the end of the fiscal year. Each local governmental entity that is not required to provide for an audit report in accordance with s. 218.39, F.S., must submit the annual financial report to DFS no later than April 30 of each year. DFS must consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. DFS must forward the financial information contained within these entities' annual financial reports to the Auditor General in electronic form.

Financial Reporting Requirements for Local Pension Plans
Sections 175.261 and 185.221, F.S., specify the financial reporting requirements for firefighter and municipal police pensions, respectively, which generally require an annual independent audit, and an actuarial valuation every three years. The reports must be submitted to DMS' Division of Retirement, which issues an annual report to the Legislature based upon the reporting from the local plans.

III. Effect of Proposed Changes:

Local Plans

Section 1 amends s. 112.66, F.S., to:
- Prohibit inclusion of accrued unused sick or annual leave in calculating retirement benefits, and cap inclusion of overtime at 300 hours per year, starting July 1, 2011;
- Prohibit a cash or actuarial surplus in a local plan from being used outside the plan; and

- Prohibit reducing contributions required to fund normal costs.

Florida Retirement System

Section 2 amends s. 121.051(2), F.S., by adding a new paragraph providing that local retirement systems or plans, including firefighters' or police officers' pension or retirement plans established in chapters 175 or 185, F.S., are eligible for membership in the FRS only if the plans have no unfunded actuarial liabilities.

Retirement Calculation - Firefighter and Municipal Police Pensions

Sections 3 and 5 amend ss. 175.032 and 185.02, F.S., respectively, to provide that payments for accrued unused sick or annual leave may not be included in a member's compensation or salary for purposes of calculating retirement benefits. Overtime compensation may be included in the calculation, but must be capped at 300 hours. This provision applies to:

- non-collectively bargained service earned on or after July 1, 2011; and
- service earned under collective bargaining agreements entered into on or after July 1, 2011.

Premium Tax Income - Firefighter and Municipal Police Pensions

Sections 4 and 6 amend ss. 175.351 and 185.35, F.S., respectively, to specify that, as of March 1, 2011:

- If a plan's actuarial accrued liability is funded below 80 percent, then 50 percent of the premium tax revenues in excess of the adjusted base amount and accumulated excess premium tax revenues held in reserve must be used to pay unfunded plan liabilities until the plan's actuarial accrued liability exceeds 80 percent;
- For a supplemental plan that exists in conjunction with a defined benefit plan, if the defined benefit plan's actuarial accrued liability is funded below 70 percent, the premium tax revenues in excess of the adjusted base amount of the defined benefit plan must be used to pay the plan's actuarial accrued liability, until the plan reaches 80 percent funding.

The bill adds subsection (3) to s. 185.35, F.S., providing that in a closed plan where police services have been transferred or merged with another governmental agency and the plan has fewer than five active members, the municipality may advance payment for purchasing an annuity contract applicable to the accrued liabilities of the plan. In such case, the board of trustees, as approved by the members, may authorize repayment from the future receipt of premium taxes; however, the plan may not be deemed fully funded until the full cost of the advanced payment has been returned to the municipality by the plan. This subsection does not preclude the continued receipt of premium tax to provide extra benefits for active or retired police officers.

Financial Rating of Local Plans

Section 7 requires the Department of Financial Services to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department's website. The ratings must include the following factors:

- Current and future unfunded liabilities;

- The net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan, including, but not limited to the percentage that the annual contribution is of the participating employee payroll;
- Municipal bond ratings for the local government, if applicable;
- Whether the local government has reduced contribution rates to the plan when the plan has an actuarial surplus; and
- Whether the local government uses any actuarial surplus in the plan for obligations outside the plan.

The department may obtain the data needed to formulate the ratings from all relevant sources, which must cooperate in furnishing the data.

Task Force on Public Employee Disability Presumptions

Section 8 creates the Task Force on Public Employee Disability Presumptions for the purpose of developing findings and issuing recommendations on the disability presumptions applicable to firefighters and police officers employed by the state and local governments.[29] The task force consists of nine members to be appointed by July 15, 2011, as follows:

- An attorney in private practice appointed by the President of the Senate;
- A representative of organized labor who is a member of a Ch. 175 pension plan, appointed by the President of the Senate;
- A representative from the Florida League of Cities appointed by the President of the Senate;
- An attorney in private practice appointed by the Speaker of the House;
- A representative of organized labor who is a member of a Ch. 185 pension plan, appointed by the Speaker of the House;
- A representative from the Florida League of Cities appointed by the Speaker of the House;
- A representative from the Auditor General;
- A representative from DMS' Division of Retirement; and
- A representative from the Department of Financial Services.

The task force must address, at a minimum, the following issues:

- Data related to the operation of the statutory disability presumptions;
- How disability presumptions are handled in other states; and
- Proposals for changes to the existing disability presumptions.

By January 1, 2012, the task force must submit, a report to the Legislature and the Governor on recommendations for legislative action to be taken.

[29] Sections 112.18, 185.34, and 175.231, Florida Statutes.

Local Government Pension Plan Transparency

Section 9 requires the Department of Financial Services, in consultation with the Legislature's Office of Economic and Demographic Research, to consider issues related to the transparency of the financial condition of local government pension plans, including:

- Whether and what kinds of local pension plan data should be included in the financial audit reports required under s. 218.39, F.S;
- Whether the reporting requirements related to local police and firefighter pension plans should be supplemented with other types of financial data in order to give a more complete and transparent picture of a local government's financial solvency;
- Proposals for a uniform format for providing pension data, including standard terminology and the specific types of data which should be provided, including funding ratios, and whether contributions are sufficient to fund actuarial liabilities;
- Whether to require local governments to provide pension financial data on local public websites;
- Other related issues, including insurance benefits, health care benefits, postemployment plan benefits; and
- Proposals related to the composition of local pension plan boards.

The department must report its recommendations to the Legislature and Governor by December 1, 2011.

Important State Interest

Section 10 provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

Effective Date

Section 11 provides that the bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (done in section 10 of the bill) and one of the following relevant exceptions must apply:

a. funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
b. Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

c. the expenditure is required to comply with a law that applies to all persons similarly situated; or
d. the law must be approved by two-thirds of the membership of each house of the Legislature.

It is unclear whether this constitutional provision applies, given that some of the provisions in the bill should reduce long term costs to local governments, and that premium tax income pays for at least some of the retirement benefits in plans created pursuant to Chapters 175 and 185, 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:

Some of the provisions of the bill may help reduce local plans' long term unfunded liabilities. The overall costs or savings associated with the bill are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 17, 2011:
The committee substitute:

- Removes a provision that would have prohibited local governments from offering defined benefit plans;
- Removes a provision that would have required local plans to use a minimum of 5 years to determine average final compensation;
- Provides that actuarial or cash surpluses in a local plan may not be used outside the plan;
- Provides that local plans may not reduce contributions required to fund normal cost;
- Removes a requirement that local plans provide a death benefit to members;
- Clarifies that no local plan with unfunded actuarial liabilities is eligible for membership in the FRS;
- Clarifies that payments for accrued unused sick or annual leave may not be used in retirement benefits calculation; caps use of overtime compensation in calculation at 300 hours;
- Provides that if a plan's actuarial liability is funded below 80 percent, then 50 percent of certain premium tax revenues must be used to pay unfunded plan liabilities, until the plan's actuarial accrued liability exceeds 80 percent. For a supplemental plan that exists in conjunction with a defined benefit plan, if the defined benefit is funded below 70 percent, certain premium tax revenues must be used to pay the plan's actuarial accrued liability, until the plan reaches 80 percent funding; and
- Allows closed "Chapter 185" plans with less than 5 members to purchase an annuity with premium tax income.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 1792
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Growth Policy
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	**Favorable**
2.	Martin	Meyer, R.	BTA	**Pre-meeting**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill eliminates the Urban Infill and Redevelopment Assistance Grant Program. This program was created by the Legislature in 1999 and has not been funded since fiscal year 2000-2001.

This bill repeals section 163.2523 of the Florida Statutes. This bill amends sections 163.065, 163.2511 and 163.2514 of the Florida Statutes to reflect the above-mentioned repeal.

II. Present Situation:

The Legislature passed the "Growth Policy Act" [1] in 1999, establishing a definition for urban infill and redevelopment areas (UIRAs), authorizing local governments to designate UIRAs and provide economic incentives for them, and setting standards for local governments to follow in designating them. The Act, currently found in ss. 163.2511-163.2523, F.S., has the goal of promoting and sustaining urban cores.[2]

Section 163.2523, F.S., establishes a grant program to be administered by the Division of Housing and Community Development of the Department of Community Affairs. This program includes three types of grants. The largest percentage, sixty percent, is allocated towards fifty-fifty matching grants for implanting urban infill and redevelopment projects. Thirty percent is allocated for planning grants to be used in the development of an urban infill and redevelopment plan. The remaining ten percent is to be used for grants to implement projects which require an

[1] Chapter 99-378, s. 1, Laws of Fla.
[2] Section 163.2511, F.S.

expenditure of under $50,000. The local government which receives the grants is specifically allowed to allocate them to special districts and nonprofits.

The program has not been funded since fiscal year 2000-2001 when it was appropriated $2.5 million which the Department of Community Affairs then awarded to 22 local governments.[3]

III. Effect of Proposed Changes:

Section 1 repeals s. 163.2523, F.S. This terminates the Urban Infill and Redevelopment Assistance Grant Program. The repeal of s. 163.2523, F.S., will not affect either the authority of local governments to designate UIRAs or use the economic incentives, such as revenue bonds and tax increment financing, currently available for local governments to use in implementing UIRA plans and projects.[4]

Section 2 amends s. 163.065, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 3 amends s. 163.2511, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 4 amends s. 163.2514, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 5 sets 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.

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[3] Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Status Report: Urban Infill and Redevelopment Areas Have Uncertain Impact But Perceived as Useful*, Report No. 04-14, 1 (Feb. 2004), http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0414rpt.pdf (last visited Mar. 22, 2011).

[4] Section 163.2520, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 432
INTRODUCER:	Health Regulation Committee; Criminal Justice Committee; and Senator Evers
SUBJECT:	Privacy of Firearm Owners
DATE:	April 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	O'Callaghan	Stovall	HR	**Fav/CS**
3.	Munroe	Maclure	JU	**Pre-meeting**
4.	Sneed	Meyer, C.	BC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill specifies that a health care provider or health care facility may not intentionally enter disclosed information concerning firearm ownership into a patient's medical record if the provider knows that the information is not relevant to the patient's medical care or safety. Furthermore, the bill provides that a health care provider or health care facility should refrain from inquiring about ownership of a firearm or ammunition by the patient or a family member of the patient or the presence of a firearm in a home or domicile of the patient or a family member of the patient, unless the provider or facility believes in good faith that the information is relevant to the patient's medical care or safety.

The bill provides that a patient may decline to answer questions about ownership of a firearm or the presence of a firearm in the home of the patient or a patient's family member, and the patient's refusal to answer does not alter existing law regarding a physician's authorization to choose his or her patients. The bill prohibits discrimination by a provider or facility based on a patient's exercise of the constitutional right to own or possess a firearm or ammunition.

The bill requires a provider or facility to respect a patient's legal right to own or possess a firearm and provides that the health care provider or health care facility should refrain from unnecessarily harassing a patient about such ownership.

The bill provides that certain violations under the bill constitute grounds for certain disciplinary actions.

The bill prohibits an insurer from denying coverage or increasing a premium, or otherwise discriminating against an insured or applicant for insurance, based on the lawful ownership, possession, use, or storage of a firearm or ammunition.

The bill provides for certain patient's rights concerning the ownership of firearms or ammunition under the Florida Patient's Bill of Rights and Responsibilities.

This bill substantially amends the following sections of the Florida Statutes: 381.026 and 456.072.

This bill creates section 790.338, Florida Statutes.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Physicians Inquiring About Firearms

In recent months, there has been media attention surrounding an incident in Ocala, Florida, where, during a routine doctor's visit, an Ocala pediatrician asked a patient's mother whether there were firearms in the home. When the mother refused to answer, the doctor advised her that she had 30 days to find a new pediatrician.[1] The doctor stated that he asked all of his patients the same question in an effort to provide safety advice in the event there was a firearm in the home.[2] He further stated that he asked similar questions about whether there was a pool at the home, and whether teenage drivers use their cell phone while driving for similar reasons – to give safety advice to patients. The mother, however, felt that the question invaded her privacy.[3] This incident has led many to question whether it should be an accepted practice for a doctor to inquire about a patient's firearm ownership.

Various professional medical groups have adopted policies that encourage or recommend that physicians ask patients about the presence of a firearm in the home. For example, the American Medical Association (AMA) encourages its members to inquire as to the presence of household firearms as a part of childproofing the home and to educate patients to the dangers of firearms to children.[4]

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[1] Fred Hiers, *Family and pediatrician tangle over gun question*, July 23 2010, Ocala.com, available at: http://www.ocala.com/article/20100723/news/100729867/1402/news?p=1&tc=pg (last visited Mar. 31, 2011).
[2] *Id*.
[3] *Id*.
[4] American Medical Association, *H-145.990 Prevention of Firearm Accidents in Children*, available at:

Additionally, the American Academy of Pediatrics (AAP) recommends that pediatricians incorporate questions about guns into their patient history taking.[5]

Florida law contains numerous provisions relating to the regulation of the medical profession, regulation of medical professionals, and the sale, purchase, possession, and carrying of firearms.[6] However, Florida law does not contain any provision that prohibits physicians or other medical staff from asking a patient whether he or she owns a firearm or whether there is a firearm in the patient's home.

Florida Firearms Safety Regulations Concerning Minors

Section 790.001, F.S., defines the term "firearm" to mean any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

Section 790.174, F.S., requires a person who stores or leaves, on a premise under his or her control, a loaded firearm and who knows (or reasonably should know) that a minor[7] is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, to keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure. Otherwise the person shall secure the firearm with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.

It is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., if a person fails to store or leave a firearm in the manner required by law and as a result thereof a minor gains access to the firearm, without the lawful permission of the minor's parent or the person having charge of the minor, and possesses or exhibits it, without the supervision required by law in a public place; or in a rude, careless, angry, or threatening manner in violation of s. 790.10, F.S. However, a person is not guilty of such an act if the minor obtains the firearm as a result of an unlawful entry by any person.

Section 790.175, F.S., requires that upon the retail commercial sale or retail transfer of any firearm, the seller or transferor is required to deliver a written warning to the purchaser or transferee, which must state, in block letters not less than 1/4 inch in height:

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https://ssl3.ama-assn.org/apps/ecomm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2fama1%2fpub%2fupload%2fmm%2fPolicyFinder%2fpolicyfiles%2fHnE%2fH-145.990.HTM (last visited accessed Mar. 31, 2011).

[5] American Academy of Pediatrics, *Firearm-Related Injuries Affecting the Pediatric Population*, Pediatrics Vol. 105, No. 4, April 2000, pp. 888-895, available at: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;105/4/888 (last visited Mar. 31, 2011). *See also* American Academy of Pediatrics, Committee on Injury, Violence, and Poison Prevention, TIPP (The Injury Prevention Program), *A Guide to Safety Counseling in Office Practice*, 1994, available at: http://www.aap.org/family/TIPPGuide.pdf (last accessed Mar. 31, 2011).

[6] *See, e.g.*, chs. 456, 458, and 790, F.S., respectively.

[7] A minor is any person under the age of 16. *See s.* 790.174(3), F.S.

> It is unlawful, and punishable by imprisonment and fine, for any adult to store or leave a firearm in any place within the reach or easy access of a minor under 18 years of age or to knowingly sell or otherwise transfer ownership or possession of a firearm to a minor or a person of unsound mind.

Additionally, any retail or wholesale store, shop, or sales outlet that sells firearms must conspicuously post at each purchase counter the following warning in block letters not less than 1 inch in height:

> It is unlawful to store or leave a firearm in any place within the reach or easy access of a minor under 18 years of age or to knowingly sell or otherwise transfer ownership or possession of a firearm to a minor or a person of unsound mind.

Any person or business knowingly violating a requirement to provide warning under this s. 790.175, F.S., commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Terminating the Doctor-Patient Relationship

The relationship between a physician and a patient is generally considered a private relationship and contractual in nature. According to the AMA, both the patient and the physician are free to enter into or decline the relationship.[8] Once a physician-patient relationship has been established, patients are free to terminate the relationship at any time.[9] Generally, doctors can only terminate existing relationships after giving the patient notice and a reasonable opportunity to obtain the services of another physician.[10] Florida's statutes do not currently contain any provisions that dictate when physicians and patients can terminate a doctor-patient relationship.

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[8] American Medical Association, Code of Medical Ethics, Opinion 9.12, *Patient-Physician Relationship: Respect for Law and Human Rights*, available at: http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion912.shtml (last visited Mar. 9, 2011). However, doctors who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity, or any other basis that would constitute invidious discrimination.

[9] American Medical Association, Code of Medical Ethics, Opinion 9.06, *Free Choice*, available at: http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion906.page (last visited Mar. 31, 2011).

[10] A health care provider owes a duty to the patient to provide the necessary and appropriate medical care to the patient with due diligence and to continue providing those services until: 1) they are no longer needed by the patient; 2) the relationship is ended with the consent of or at the request of the patient; or 3) the health care provider withdraws from the relationship after giving the patient notice and a reasonable opportunity to obtain the services of another health care provider. The relationship typically terminates when the patient's medical condition is cured or resolved, and this often occurs at the last visit when the health care provider notes in his records that the patient is to return as needed. *See Saunders v. Lischkoff*, 188 So. 815 (Fla. 1939). *See also, Ending the Patient-Physician Relationship*, AMA White Paper, available at: http://www.ama-assn.org/ama/pub/physician-resources/legal-topics/patient-physician-relationship-topics/ending-patient-physician-relationship.shtml (last accessed Mar. 9, 2011); American Medical Association, Code of Medical Ethics, Opinion 8.115 *Termination of the Physician-Patient Relationship*, available at: http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion8115.shtml (last visited Mar. 31, 2011).

Health Insurance Portability and Accountability Act

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA). The HIPAA contains detailed requirements for the use or disclosure of protected health information (PHI). The regulations define PHI as all "individually identifiable health information," which includes information relating to:

- The individual's past, present, or future physical or mental health or condition;
- The provision of health care to the individual; or
- The past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.[11]

Covered entities[12] may only use and disclose PHI as permitted by the HIPAA or more protective state rules.[13] The HIPAA establishes both civil monetary penalties and criminal penalties for the knowing use or disclosure of individually identifiable health information in violation of the HIPAA.[14]

Confidentiality of Medical Records in Florida

Under s. 456.057(7), F.S., medical records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, medical records may be released without written authorization in the following circumstances:

- When any person, firm, or corporation has procured or furnished such examination or treatment with the patient's consent.
- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.

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[11] 45 C.F.R. s. 160.103

[12] A "covered entity" is a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the HIPAA. *See id.*

[13] In general, covered entities may use PHI for the purposes of treatment, payment and health care operations (TPO) without any special permission from a patient. Special permission, called an authorization, must be obtained for uses and disclosures other than for TPO. For some uses and disclosures, a covered entity need not obtain an authorization but must give the patient the opportunity to agree or object (e.g., give patients the option to disclose health information to family or friends). Finally, in some situations, such as reporting to public health authorities, emergencies, or in research studies in which a waiver has been obtained from an Institutional Review Board (IRB), a covered entity does not need to obtain an authorization or provide an opportunity to agree or object. Yale University, *Health Insurance Portability and Accountability Act*, available at: http://hipaa.yale.edu/overview/index.html (last visited Mar. 9, 2011).

[14] *Id.* Fines under HIPAA range from $100 to $50,000 per violation with specified annual caps. Criminal penalties include fines ranging from $50,000 to $250,000 and imprisonment of up to 10 years. *See* American Medical Association, *HIPAA Violations and Enforcement*, available at: http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/hipaahealth-insurance-portability-accountability-act/hipaa-violations-enforcement.shtml (last accessed Mar. 31, 2011).

- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.
- To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

The Florida Supreme Court has addressed the issue of whether a health care provider, absent any of the above-referenced circumstances, can disclose confidential information contained in a patient's medical records as part of a medical malpractice action.[15] The Florida Supreme Court ruled that, pursuant to s. 455.241, F.S. (the predecessor to current s. 456.057(7)(a), F.S.), only a health care provider who is a defendant, or reasonably expects to become a defendant, in a medical malpractice action can discuss a patient's medical condition.[16] The Court also held that the health care provider can only discuss the patient's medical condition with his or her attorney in conjunction with the defense of the action.[17] The Court determined that a defendant's attorney cannot have ex parte discussions about the patient's medical condition with any other treating health care provider.

III. Effect of Proposed Changes:

The bill specifies that a health care provider or a health care facility[18] may not intentionally enter disclosed information concerning firearm ownership into a patient's medical record if the provider knows that the information is not relevant to the patient's medical care or safety.

The bill also provides that a health care provider or health care facility must respect a patient's right to privacy and should refrain from making a written or verbal inquiry about the ownership of a firearm or ammunition by the patient or the patient's family members or the presence of a firearm in a home or domicile of the patient or the patient's family members, unless the provider or facility in good faith believes that the information is relevant to the patient's medical care or safety.

The bill provides that a patient may decline to answer questions about ownership of a firearm by the patient or the patient's family members or the presence of a firearm in the home of the patient or a patient's family member. The patient's refusal to answer does not alter existing law regarding a physician's authorization to choose his or her patients. The bill prohibits discrimination by a provider or facility based solely on a patient's exercise of the constitutional right to own or possess a firearm or ammunition.

The bill requires a provider or facility to respect a patient's legal right to own or possess a firearm and provides that a health care provider or health care facility should refrain from unnecessarily harassing a patient about such ownership.

[15] *Acosta v. Richter*, 671 So. 2d 149 (Fla. 1996).
[16] *Id.*
[17] *Id.*
[18] Health care facilities licensed under ch. 395, F.S., include hospitals, ambulatory surgical centers, and mobile surgical facilities.

The bill provides that the following violations constitute grounds for disciplinary actions under s. 456.072(2) and s. 395.1055, F.S.:[19]

- Entering disclosed information concerning firearm ownership into the patient's medical record, if the information is not relevant to the patient's medical care or safety.
- Making a written or verbal inquiry as to the ownership of a firearm or ammunition by a patient or the patient's family members or the presence of a firearm in the home of the patient or the patient's family members and the information is not relevant to the patient's medical care or safety.
- Requiring a patient to answer information regarding the ownership of a firearm by the patient or a family member or the presence of a firearm in the home of the patient or a family member.
- Discriminating against a patient based solely upon the patient's exercise of the constitutional right to own and possess firearms or ammunition.[20]

The bill prohibits an insurer from denying coverage or increasing a premium, or otherwise discriminating against an insured or applicant for insurance, based on the lawful ownership, possession, use, or storage of a firearm or ammunition.

The bill provides the following under the Florida Patient's Bill of Rights and Responsibilities:

- A health care provider or health care facility must respect a patient's right to privacy and should refrain from making a written or verbal inquiry about the ownership of a firearm or ammunition by the patient or the patient's family members or the presence of a firearm in a home or domicile of the patient or the patient's family members, unless the provider or facility in good faith believes that the information is relevant to the patient's medical care or safety.
- A patient may decline to answer questions about ownership of a firearm by the patient or the patient's family members or the presence of a firearm in the home of the patient or a patient's family member, and the patient's refusal to answer does not alter existing law regarding a physician's authorization to choose his or her patients.
- A health care provider or health care facility may not discriminate against a patient based solely on the patient's exercise of the constitutional right to own or possess a firearm or ammunition.
- A health care provider or health care facility must respect a patient's legal right to own or possess a firearm, and a health care provider or health care facility should refrain from unnecessarily harassing a patient about such ownership.

[19] The appropriate board within the DOH, or the DOH if there is no board may impose the following disciplinary actions: (1) Refusal to certify, or to certify with restrictions, an application for a license; (2) Suspension or permanent revocation of a license. (3) Restriction of practice or license. (4) Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. (5) Issuance of a reprimand or letter of concern. (6) Placement of the licensee on probation for a period of time and subject to such conditions as the board or the DOH may specify. (7) Corrective action. (8) Imposition of an administrative fine in accordance with s. 381.0261, F.S., for violations regarding patient rights. (9) Refund of fees billed and collected from the patient or a third party on behalf of the patient. (10) Requirement that the practitioner undergo remedial education.

[20] However, the bill contains a redundancy because it also provides that any violation of s. 790.338, F.S., constitutes grounds for disciplinary action. *See* explanation under the heading "Technical Deficiencies."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Although this bill states that a health care provider or health care facility should refrain from making a written or verbal inquiry about the ownership of a firearm or ammunition or presence of a firearm in the home of a patient or his or her family, it should be noted that the individual's right to exercise free speech is only regulated in the most egregious of circumstances.

The First Amendment to the United States Constitution provides that "Congress shall make no law ... abridging the freedom of speech."[21] The Florida Constitution similarly provides that "[n]o law shall be passed to restrain or abridge the liberty of speech…"[22] Florida courts have equated the scope of the Florida Constitution with that of the Federal Constitution in terms of the guarantees of freedom of speech.[23]

A regulation that abridges speech because of the content of the speech is subject to the strict scrutiny standard of judicial review.[24] However, the state may regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.[25] "Unlike the case of personal speech, it is not necessary to show a compelling state interest in order to justify infringement of commercial speech through regulation."[26] Commercial free speech that concerns lawful activity and is not misleading may be restricted where the asserted

[21] U.S. CONST. amend. I.
[22] FLA. CONST. art. I, s. 4.
[23] *See, Florida Canners Ass'n v. State, Dep't of Citrus,* 371 So.2d 503 (Fla.1979).
[24] *See, e.g., Reno v. Flores,* 507 U.S. 292, 302 (1993); *Mitchell v. Moore,* 786 So.2d 521, 527 (Fla.2001).
[25] *See United States v. Playboy Entm't Group, Inc.,* 529 U.S. 803, 813 (2000); *Sable Commc'ns of Cal., Inc. v. FCC,* 492 U.S. 115, 126 (1989).
[26] *Florida Canners Ass'n*, 371 So.2d at 519.

governmental interest is substantial, the regulation directly advanced that interest, and the regulation is no more extensive than necessary to serve that interest.[27]

It should also be noted that any civil action that might ensue will likely raise issues surrounding personal, professional, and contractual obligations between the parties; physician-patient privileges of confidentiality; and the weight given to the right to exercise free speech versus a right to privacy.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who violates certain provisions of the bill may be subject to disciplinary action, including, but not limited to, the imposition of an administrative fine not to exceed $10,000 for each count or separate offense and the suspension or permanent revocation of a license.[28]

C. Government Sector Impact:

Additional regulatory and enforcement action may occur for the boards and agencies with oversight responsibilities of the health care professionals and health care facilities due to patient complaints.

VI. Technical Deficiencies:

Lines 53, 59, 78, and 83 refer to health care providers licensed under ch. 456, F.S. Health care providers are not licensed under that chapter, although certain health care practitioners are subject to the general provisions of ch. 456, F.S.

Lines 89 through 90 of the bill provide that certain violations constitute grounds for disciplinary action under ss. 456.072 and 395.1055, F.S. However, s. 395.1055, F.S., does not provide for any disciplinary action and instead requires the Agency for Health Care Administration to adopt rules that relate to standards of care, among other things.

Lines 88 through 89 of the bill provide that a violation of certain provisions within s. 790.338, F.S., constitutes grounds for disciplinary action under s. 456.072(2), F.S. This appears to be redundant because line 163 provides that *any* violation under s. 790.338, F.S., constitutes grounds for which disciplinary actions may be taken under s. 456.072(2), F.S.

[27] *See Abramson v. Gonzalez*, 949 F.2d 1567, 1575-76 (11th Cir. 1992) (holding that is not misleading for an unlicensed person who practices psychology to call himself or herself a psychologist although a state statute defines psychologist as someone with a psychologist license).
[28] *See* s. 456.072, F.S.

VII. Related Issues:

Lines 164 through 170 of the bill may affect an insurer's current insurance policy pertaining to the insuring of firearms.

Because the provision of the bill that prohibits an insurer from discriminating against an insured or applicant for insurance on the basis of his or her lawful ownership, possession, use, or storage of a firearm or ammunition is in an undesignated section of the Florida Statutes, it is unclear what penalty, if any, the insurer would be subject to if the insurer committed this violation.

VIII. Additional Information:

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

CS/CS by Health Regulation on March 28, 2011:

- Specifies that a health care provider or health care facility may not intentionally enter disclosed information concerning firearm ownership into a patient's medical record if the provider knows the information is not relevant to the patient's medical care or safety.
- Provides that a health care provider or health care facility should refrain from inquiring about ownership of a firearm or ammunition by the patient or a family member of the patient or the presence of a firearm in a home or domicile of the patient or a family member of the patient, unless the provider or facility believes in good faith that the information is relevant to the patient's medical care or safety.
- Permits a patient to decline to answer questions about ownership of a firearm or the presence of a firearm in the home of the patient or a family member of the patient and a patient's refusal to answer does not alter existing law regarding a physician's authorization to choose his or her patients.
- Prohibits discrimination by a provider or facility based on a patient's constitutional right to own or possess a firearm or ammunition.
- Requires a provider or facility to respect a patient's legal right to own or possess a firearm and to refrain from unnecessarily harassing a patient about such ownership.
- Provides for certain patient rights concerning the ownership of firearms or ammunition in the Florida Patient's Bill of Rights and Responsibilities.
- Provides that any violations related to disclosures, inquiries, discrimination, and harassment constitutes grounds for certain disciplinary actions.
- Prohibits an insurer from denying coverage or increasing a premium, or otherwise discriminating against an insured or applicant for insurance based on the lawful ownership, possession, use, or storage of a firearm or ammunition.

CS by Criminal Justice on February 22, 2011:

- Removes the criminal penalties from the bill and instead provides for noncriminal violations which could result in graduated fines for each successive violation of the prohibitions in the bill.
- Provides limited exemptions from the prohibitions in the bill in the course of emergency treatment, including mental health emergencies, and where certain mental

health professionals believe it is necessary to inquire about firearm possession. The patient's response is only to be disclosed to others participating in the patient's treatment or to law enforcement conducting an active investigation of the events giving rise to a medical emergency.

- Provides an exemption for medical records created on or before the effective date of the bill.

B. Amendments:

None.

125572

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Lynn) recommended the following:

Senate Amendment

Delete lines 39 - 41

and insert:

period. The department shall provide such information within 45 days after a request by an eligible nonprofit scholarship-funding organization, but may not release a taxpayer's information without the taxpayer's written consent. The information may be used by the

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1388
INTRODUCER:	Education Pre-K Committee and Senator Flores
SUBJECT:	Department of Revenue
DATE:	April 8, 2011
REVISED:	

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

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill allows nonprofit scholarship-funding organizations (SFOs) with $10 million of approved tax credit allocations in the prior year to obtain from the Department of Revenue the names and addresses of the 100 taxpayers having the greatest tax liability after all tax credits are applied. This applies to taxpayers making contributions for credits related to taxes for oil and gas production, direct pay permits, insurance premiums, and corporate income tax. An SFO would only be permitted to use the taxpayer information to raise funds for the Florida Tax Credit Scholarship Program.

Under the bill, a corporation may claim the tax credit for donations to an eligible SFO up to the full amount of its state corporate income tax and insurance premium tax, instead of up to 75 percent of its tax. Taxpayers are permitted to carry forward an unused tax credit for up to five years. Additionally, the bill removes the prohibition against taxpayers rescinding tax credits unless the taxpayer has rescinded credit less than once in the previous three tax years.

This bill substantially amends sections 213.053, 220.1875, and 1002.395 of the Florida Statutes.

II. Present Situation:

Florida Tax Credit Scholarship Program (FTC program)
Under the FTC program, tax credit scholarships were created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations.[1] A corporation can receive a dollar for dollar tax credit against its state corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage tax on beer, wine, and spirits for donations to private nonprofit scholarship-funding organizations.

Eligible Private Schools and Students
Private schools participating in the FTC program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.[2] To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness and accountability.[3]

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act[4] or who qualifies for the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) [5] and:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade;
- Received a scholarship under the FTC program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed, in foster care.

A student does not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 230 percent of the federal poverty guidelines.[6] A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is considered to be a first-time FTC scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230 percent of the federal poverty level.[7]

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[1] Sections 1002.395(1) and 1002.421, F.S. In 2010, the program was transferred from s. 220.187, F.S., to s. 1002.395, F.S., by ch. 2010-24, L.O.F.
[2] Sections 1002.395(8) and 1002.421, F.S.
[3] Section 1002.421, F.S.
[4] Section 1002.395(3)(b), F.S. The eligibility guidelines are available at: http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs10-11.htm.
[5] Children from households that receive benefits under SNAP (formerly the Food Stamp Program), TANF, or the FDPIR, are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. *Direct Certification in the National School Lunch Program: State Progress in Implementation, Report to Congress –Summary*, U.S. Department of Agriculture (USDA), October 2010, available at: http://www.fns.usda.gov/ora/menu/published/CNP/FILES/DirectCert2010Summary.pdf.
[6] Section 1002.395(3)(b)2., F.S.
[7] Section 1002.395(3)(b)3., F.S. The student must also meet one or more of the eligibility criteria.

Eligibility is contingent upon available funds.[8] The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:[9]

- For FY 2010-2011, the maximum scholarship amount is 60 percent of the Florida Education Finance Program (FEFP) unweighted full-time equivalent (FTE) amount for the fiscal year, for a scholarship awarded to a student for tuition and fees;[10] or
- $500 for a scholarship awarded to a student for transportation to a Florida public school that is located outside the district in which the student resides.

Scholarship Funding Organizations

An SFO must be a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.[11] Scholarships must be provided for eligible students on a first-come, first-served basis, unless the student qualifies for priority consideration.[12] An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO. A taxpayer making the contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.[13] If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may retain up to three percent of the taxpayer's contributions for reasonable and necessary administrative expenses.[14]

The Legislature initially capped the scholarship program at $50 million in tax credits per state fiscal year,[15] but subsequently expanded the cap to $88 million in 2003.[16] Beginning with FY 2008-2009, the cap was increased by $30 million to $118 million.[17] Until 2009, tax credits under the scholarship program were only available against the state's corporate income tax.

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed for donations to an SFO to include the premium tax under s. 624.509, F.S., which is imposed on insurance premiums written in Florida and paid by insurance companies to the Department of Revenue (DOR).[18]

[8] Section 1002.395(3)(b), F.S.
[9] Section 1002.395(12)(a), F.S. Beginning in FY 2011-2012, the percentage used to determine the maximum scholarship award increases by four percent in any fiscal year when the tax credit cap also increases, until it reaches a maximum of 80 percent. In that fiscal year and thereafter, the scholarship limit will be equal to 80 percent of the per FTE funding amount.
[10] While chapter 2010-24, L.O.F., increased the maximum household income threshold for renewing scholarship recipients and their siblings from 200 percent of the federal poverty level to 230 percent of that level, it reduced the maximum scholarship award available to the newly eligible scholarship recipients.
[11] Section 1002.395(2)(f), F.S.
[12] Sections 1002.395(6)(e) and (f), F.S.
[13] Section 1002.395(2)(e), F.S.
[14] Section 1002.395(6)(i), F.S.
[15] Chapter 2001-225, L.O.F.
[16] Section 9, ch. 2003-391, L.O.F.
[17] Chapter 2008-241, L.O.F.
[18] Section 624.51055, F.S., allows insurance companies to receive a credit of 100 percent of an eligible contribution to an eligible SFO against any tax due for a taxable year under the provisions of the insurance premium tax. However, the credit may not exceed 75 percent of the tax due.

In 2010, the Legislature added three new revenue sources by allowing taxpayers to receive credits for eligible contributions against: severance taxes on oil and gas production;[19] self-accrued sales tax liabilities of direct pay permit holders;[20] and alcoholic beverage taxes on beer, wine, and spirits.[21] The 2010-2011 fiscal year cap on tax credits authorized under the FTC program is $140 million.[22] In fiscal year 2011-2012 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year. The tax credit cap amount is $175 million for the 2011-2012 state fiscal year.

The following summarizes information related to the tax credits approved by the DOR:[23]

Tax Year	Number of Approved Tax Credit Allocation Applications	Number of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses[24]
2002-03	77	48	$47,686,000	4	$186,000
2003-04	114	56	$47,579,000	3	$79,000
2004-05	102	58	$47,560,000	2	$60,000
2005-06	126	79	$80,323,071	2	$4,000
2006-07	94	65	$87,123,000	1	$3,000
2007-08[25]	106	62	$85,611,140	0	$0
2008-09	125	75	$97,415,847	0	$0
2009-10	121	83	$111,773,617[26]	0	$0
2010-11	125	104	$139,777,856	0	$0
2011-12	19	19	$9,545,000	0	$0

The following reflects the credit allocations per SFO for 2007-2008, 2008-2009, 2009-2010, 2010-2011,[27] and 2011-2012:

[19] Section 211.0251, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against any tax due under ss. 211.02 or 211.025, F.S., for oil or gas production. However, the credit may not exceed 50 percent of the tax due on the return the credit is taken.

[20] Section 212.1831, F.S., authorizes a credit of 100 percent of an eligible contribution against any state sales tax due from a direct pay permit holder (e.g., dealers who annually make purchases in excess of $10 million per year in any county and dealers who purchase promotional materials whose ultimate use is unknown at purchase) as a result of the direct pay permit held. *See* s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

[21] Section 561.1211, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against tax due under ss. 563.05, 564.06, or 565.12, F.S., except for taxes imposed on domestic wine production. Further, the credit is limited to 90 percent of the tax due on the return on which the credit is taken.

[22] Section 1, ch. 2010-24, L.O.F., codified in s. 1002.395(5), F.S.

[23] E-mail, DOR, March 28, 2011, on file with the Senate Committee on Education Pre-K - 12.

[24] Until 2006, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by ch. 2008-241, L.O.F.

[25] Effective for tax years beginning January 1, 2006, s. 220.187(5)(d), F.S., (currently s. 1002.395(5)(e), F.S.) permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

[26] Of the total amount of the allocation of tax credits, $15,130,000 was allocated to insurance companies based on 18 approved applications.

Credit Allocations per SFO 2007-2008[28]	
SFO	**TOTAL**
Academy Prep Foundation, Inc.	$0
Children First Central Florida[29]	$38,178,882
Florida School Choice Fund[30] (Florida P.R.I.D.E.)	$41,663,140
The Carrie Meek Foundation, Inc.	$1,875,000
Credit Carry Forward	$3,894,118
Total Allocations	$85,611,140
Credit Allocations per SFO 2008-2009[31]	
SFO	**TOTAL**
The Children's Cause, Inc.[32]	$0
Children First Florida (Children First Central Florida)	$42,317,008
Florida P.R.I.D.E.	$35,930,000
The Carrie Meek Foundation, Inc.	$3,010,000
Step Up for Students[33]	$7,001,750
Credit Carry Forward	$9,157,089
Total Allocations	$97,415,847
Credit Allocations per SFO 2009-2010[34]	
SFO	**TOTAL**
Children First Florida[35]	$14,406,666
Florida P.R.I.D.E.[36]	$7,431,666
The Carrie Meek Foundation, Inc.	$2,734,318
Step Up for Students	$64,909,850
Credit Carry Forward	$22,291,117
Total Allocations	$111,773,617
Credit Allocations per SFO 2010-2011[37]	
SFO	**TOTAL**
The Carrie Meek Foundation, Inc.	$3,186,666
Light Bearer's, Inc.	$0
Step Up for Students	$136,591,199
Total Allocations	$139,777,856
Credit Allocations per SFO 2011-2012[38]	
SFO	**TOTAL**
Step Up for Students	$9,545,000
Total Allocations	$9,545,000

[27] Data for applications for credit allocations current through February, 2010. The 2008-09 and 2009-10 applications are still open as of that date.
[28] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2007. The allocation began January 1, 2007, for tax years beginning in calendar year 2007. The allocation is closed.
[29] Children First Central Florida was subsequently known as Children First Florida.
[30] Florida School Choice Fund was subsequently known as Florida P.R.I.D.E.
[31] DOR, March 1, 2010, for tax years beginning in 2008. The allocation began January 1, 2008, for tax years beginning in calendar year 2008. This allocation is closed.
[32] The Children's Cause was approved by the DOE for 2008-2009.
[33] The Florida School Choice Fund, Inc., d/b/a Step Up for Students, was approved effective July 1, 2009. The assets of Florida PRIDE and Children First Florida were transferred to Florida School Choice Fund, Inc.
[34] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2009. The allocation began January 1, 2009, for tax years beginning in calendar year 2009. This allocation is closed.
[35] Children First Florida ceased to exist on July 1, 2009. The assets of Children First Florida were transferred to Step Up for Students.
[36] Florida PRIDE ceased to exist on July 1, 2009. The assets of Florida Pride have been transferred to Step Up for Students.
[37] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2010. The allocation began January 1, 2010, for tax years beginning in calendar year 2010. The allocation is open.
[38] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2011. The allocation began January 1, 2011, for tax years beginning in calendar year 2011. The allocation is open.

Currently, there are 1,073 participating private schools and 32,320 students receiving scholarships from two SFOs: Step Up for Students and the Carrie Meek Foundation, Inc.[39] The following data represents the number of students receiving FTC scholarships, by SFO, for the current year: Step Up for Students, 30,923 students (95.7 percent) and the Carrie Meek Foundation, Inc., 1,397 students (4.3 percent.) Five SFOs are eligible to participate in the FTC Scholarship program, Step Up For Students, Educate Today (serving the Tampa Bay area), The Carrie Meek Foundation (serving select areas of Miami-Dade County), and Lightbearers, Inc.(serving Volusia and Flagler counties).[40] Two SFOs no longer participate in the program: Academy Prep Foundation, Inc., and The Children's Cause, Inc.

Confidentiality of Taxpayer Information

Current law provides that all information contained in returns, report, accounts, or declarations received by DOR is confidential and exempt from public records inspection and copying requirements under s. 119.07(1), F.S. [41] This information may not be shared with parties outside DOR unless expressly authorized by statute. The law allows DOR to provide the Department of Education (DOE) and the Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation with confidential and exempt information related to the administration of the tax credit program.[42]

The law requires ABT, DOR, and DOE to develop a cooperative agreement and requires DOR to obtain prior approval from ABT before approving the tax credits, carryforwards, and rescindments related to alcoholic beverage taxes.[43] Additionally, the law directs DOR, ABT, and the State Board of Education to adopt rules necessary to administer their responsibilities.[44]

Any information and documentation provided to the DOE and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution remains confidential, in accordance with s. 213.053, F.S.[45]

III. Effect of Proposed Changes:

Contributions

A corporation can receive a dollar for dollar tax credit up to 75 percent of both its state corporate income tax and its insurance premium tax for donations to an eligible SFO.[46] Under the bill, this 75 percent limitation is removed for both corporate income tax and insurance premium tax, and thus, a corporation could claim the credit up to the full amount of the tax due under chapter 220, F.S., and s. 624.51055, F.S.

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[39] *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, November 2010. Of the participating private schools, 79.3 percent are religious schools and 20.7 percent are non-religious schools. *See* https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf.

[40] *See https://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.*

[41] Section 213.053(8)(u), F.S.

[42] *Id.*

[43] Sections 1002.395(5)(b),(c), (e) and (13), F.S.

[44] Section 1002.395(13), F.S.

[45] Section 1002.395(6), F.S. (flush language beginning after subparagraph (6)(n)2.)

[46] Sections 220.1875 and 624.51055, F.S.

Carry Forward
Taxpayers are permitted to carry forward an unused tax credit when the credit cannot be used because of an insufficient tax liability.[47] The carry forward of unused credit is subject to DOR approval.[48] A taxpayer may only convey, assign, or transfer an approved tax credit or carry forward to another taxpayer when all the taxpayer's assets are also conveyed, assigned, or transferred. Under the bill, the time that a taxpayer can carry forward unused tax credit is increased to five years from three years.[49]

Rescindment of Approved Tax Credit
Within any state fiscal year, a taxpayer may rescind all or part of an approved tax credit.[50] The amount rescinded becomes available for that state fiscal year to another eligible taxpayer as approved by the DOR, *if the taxpayer has not previously rescinded any or all of its approved tax credits more than once in the previous three tax years*. The amount rescinded may be reallocated to other taxpayers on a first-come, first-served basis. Under the bill, the ability to rescind tax credit would no longer be contingent upon the taxpayer's rescindment history.

Confidentiality of Taxpayer Information
Florida's Taxpayer's Bill of Rights guarantees Florida taxpayers the right to have tax information kept confidential, unless otherwise specified by law.[51] Current law does not permit DOR to share any tax information with an SFO. Under s. 213.053, F.S., the DOR may disclose specified taxpayer information to governmental and nongovernmental agencies. However, most of these provisions relate to governmental agencies when performing their official duties.

The bill grants a new exception to the confidentiality requirement in s. 213.053, F.S., to allow SFOs with $10 million approved tax credit allocations in the prior year to obtain the names and addresses of the 100 taxpayers having the greatest tax liability after all tax credits are applied. This applies to taxpayers making contributions for credit related to taxes for oil and gas production, direct pay permits, insurance premiums, and corporate income tax. However, the bill includes an exception from the disclosure requirement for corporate income tax information that compromises an information-sharing agreement between the DOR and a federal government agency. Each SFO would be limited to one request for each tax year in any 12-month period. Taxpayer information for contributions for credit against taxes on alcoholic beverages is not affected by the bill.

An SFO would only be permitted to use the taxpayer information to raise funds for the FTC program. Currently, only one SFO, Step Up for Students, would be eligible to request the names and addresses of taxpayers.

[47] Section 1002.395(5)(c), F.S.
[48] *Id.*
[49] While some provisions of tax law limit a taxpayer's ability to carry forward unused tax credit to one year, other provisions permit taxpayers to carry forward unused tax credit for five years. *Compare* s. 220.1896(6), F.S., (Jobs for the Unemployed Tax Credit Program), *with* ss. 220.19(1), F.S., (Child Care Tax Credits), and 220.193(3)(d), F.S., (Renewable Energy Production Tax Credit), F.S.
[50] Section 1002.395(5)(e), F.S.
[51] Section 213.015(9), F.S.

Pursuant to current law, information would be disclosed under a written agreement between the DOR's executive director and the SFO. An SFO would be bound by the same confidentially requirements as the DOR. Breach of confidentiality is a first degree misdemeanor.[52]

The bill provides that taxpayer information would be provided for the most recent years it is available. Presumably, an SFO would be able to access only that information which was not confidential prior to the effective date of the bill, when a taxpayer had an expectation that it remain confidential.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The rescindment provisions of the bill may allow other taxpayers to use available tax credits.

The provisions removing the current credit limitation of 75 percent of a taxpayer's tax liability may allow some taxpayers to take more credit in a given year.

C. Government Sector Impact:

According to the official estimate adopted by the Revenue Estimating Conference on March 11, 2011, current projections and credits approved show SFOs are meeting the allotted cap. The estimate also notes that the provisions of the bill for sharing taxpayer information, claiming credit up to the full amount of the tax, and carrying forward unused tax credit are expected to have no fiscal impact.[53]

[52] Section 213.053(2)(b), F.S.
[53] *See* http://edr.state.fl.us/Content/conferences/revenueimpact/pdf/impact0311.pdf (pp. 129 and 130).

The DOR reports that the bill will have an insignificant impact on the operation of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Education Pre-K – 12 on March 30, 2011:

The committee substitute:

- Allows an insurance company to claim a tax credit up to the full amount of its insurance premium tax for donations to an eligible SFO by eliminating the current limitation to 75 percent of its tax liability; and
- Allows the Department of Revenue to provide the names and addresses of the 100 taxpayers having the greatest tax liability after all tax credits are applied to an SFO that had $10 million approved tax credit allocations in the prior year.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 900
INTRODUCER:	Transportation Committee and Senator Bennett
SUBJECT:	Special License Plates
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Fav/CS**
2.	Carey	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates the "Combat Infantry Badge" special license plate. Such plates may be issued to recipients of the Combat Infantry Badge upon application, accompanied by proof of membership in the Combat Infantryman's Association, Inc., or other proof of being a recipient of the Combat Infantry Badge, and payment of the vehicle license tax.

This bill substantially amends section 320.089, Florida Statutes.

II. Present Situation:

"Specialty license plates" are available to any owner or lessee of a motor vehicle who is willing to pay an annual fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.[1]

[1] Sections 320.08056 and 320.08058, F.S.

However, special license plates are issued by the Department of Highway Safety and Motor Vehicles (DHSMV) to those who meet certain qualifying criteria and include the National Guard, U. S. Armed Forces Reserves, Ex-POW, Pearl Harbor Survivor, Combat-wounded Veteran, Purple Heart Recipient, Operation Iraqi Freedom, and Operation Enduring Freedom plates. License taxes for these special plates, excluding the Pearl Harbor Survivor, Purple Heart, and Ex-POW plates under certain circumstances, are the same as any other motor vehicle plate as prescribed in s. 320.08, F.S.

The first $100,000 of revenues from the sales of these special plates are deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act. Any additional revenues are deposited into the State Homes for Veterans Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.

The Combat Infantryman Badge is the U.S. Army combat service recognition decoration awarded to soldiers—enlisted men and officers (commissioned and warrant) holding colonel rank or below, who personally fought in active ground combat while an assigned member of either an infantry or a Special Forces unit, of brigade size or smaller, any time after December 6 1941. [2] The Combat Infantryman Badge and its non-combat analogue, the infantry skill-recognition Expert Infantryman Badge were simultaneously created during World War II as primary recognition of the combat service and sacrifices of the infantrymen who would likely be wounded or killed in numbers disproportionate to those of soldiers from the Army's other service branches.[3]

Combat Infantryman Badge recipients must have met the following criteria to have been awarded this honor as provided by the Military Awards Army Regulation 600-8-22:

- Be an infantryman satisfactorily performing infantry duties.
- Assigned to an infantry unit during such time as the unit is engaged in active ground combat.
- Actively participate in such ground combat. Campaign or battle credit alone is not sufficient for the award of the Combat Infantry Badge.

III. Effect of Proposed Changes:

This bill creates the "Combat Infantry Badge" special license plate. This bill requires the manufacture and issuance of a special license plate stamped with the words "Combat Infantry Badge" to any recipient of the Combat Infantry Badge, who applies for the special license plate, pays the applicable license taxes provided in s. 320.08, F.S., and provides proof of membership in the Combat Infantrymen's Association, Inc., or other acceptable proof of being a Combat Infantry Badge recipient.

[2] http://en.wikipedia.org/wiki/Combat_Infantryman_Badge

[3] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who are eligible to purchase a "Combat Infantry Badge" special license plate created by the bill will be required to pay applicable taxes as provided in s. 320.08, F.S.

C. Government Sector Impact:

According to DHSMV, costs to produce the "Combat Infantry Badge" special plate are minimal and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation on March 29, 2011:
Changes the effective date of the bill to October 1, 2011, rather than July 1, 2011.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 1974
INTRODUCER:	Senator Hill
SUBJECT:	DL Exams/Blind Pedestrians
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Spalla	TR	**Favorable**
2.	Carey	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

This bill mandates that all examinations given for Class E or Commercial Driver's Licenses must include one question testing the applicant's knowledge of traffic regulations to assist blind persons which must be answered correctly in order to pass the examination. This bill also mandates that the Department of Highway Safety and Motor Vehicles emphasize pedestrian right of way when a driver is making a right turn when developing questions under this subsection.

This bill substantially amends section 322.12 of the Florida Statutes.

II. Present Situation:

Currently, the Florida Driver's Handbook, 2011, contains section 5.16.2 entitled "Persons Who are Blind" which includes advice as to how to recognize a blind pedestrian and which also states that "[d]rivers must always yield the right-of-way to persons who are blind. When a pedestrian is crossing a street or highway guided by a dog or carrying a white cane (or a white cane with a red tip), vehicles must come to a complete stop." Driver's License exams are currently formulated by pulling random questions from a large pool of questions. Questions about blind pedestrians may be, but are not guaranteed to be, tested on current driver's license examinations.

Currently, applicants for a Class E or Commercial Driver's License must pass each individual knowledge test (road signs, road laws, Commercial Driver License General Knowledge) by

answering 80% or more of the questions correctly. A passing score is based on all of the questions asked on each exam, not just one individual question.[1]

III. Effect of Proposed Changes:

Section 1 mandates that all examinations given for Class E or Commercial Driver's Licenses must include one question testing the applicant's knowledge of traffic regulations to assist blind persons which must be answered correctly in order to pass the examination. This section also mandates that the Department of Highway Safety and Motor Vehicles emphasize pedestrian right of way when a driver is making a right turn when developing questions under this subsection.

Section 2 sets an effective date of July 1, 2011.

Other Potential Implications:

According to the Department of Highway Safety and Motor Vehicles, if enacted this bill may result in a higher failure rate since passing the test would require both an overall test score of 80% or above and correctly answering the question about traffic regulations to assist blind persons. This would have a negative impact on customer service when individuals score 80% or above but fail because they incorrectly answered the question about traffic regulations to assist blind persons and this would cause these customers to pay a $10 retest fee. The modifications to include the question would be simple. However, the process to disqualify someone for failing the specific question on blind persons even if they score 80% correctly would require extensive programming.[2] Also, ensuring that the test pulls one of the required questions from the pool of available questions would require extensive reprogramming as well.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[1] Florida Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis, SB 1974* (on file with the Senate Transportation Committee)
[2] Id.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could cost the private sector additional money due to imposing additional $10.00 retest fees on drivers who fail the exam due to incorrectly answering the mandated question.

C. Government Sector Impact:

Enacting this bill would impose an indeterminate non-recurring cost for contract reprogramming due to extensive modifications to the Automated Driver License Test System.[3]

This bill could generate additional revenue due to imposing additional $10.00 retest fees on drivers who fail the exam due to incorrectly answering the mandated question. Retest fees are deposited into the Highway Safety Operating Trust Fund.

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.

[3] Id.

421848

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Altman) recommended the following:

Senate Amendment (with title amendment)

Between lines 211 and 212

insert:

Section 21. Harry T. and Harriette V. Moore Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 46 in Brevard County from U.S. 1 to the Volusia County line is designated as "Harry T. and Harriette V. Moore Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Harry T. and Harriette V. Moore Memorial Highway as described in subsection (1).

421848

14

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

16 And the title is amended as follows:

17 Delete line 28

18 and insert:

19 Anderson Boulevard in Miami-Dade County; designating

20 Harry T. and Harriette V. Moore Memorial Highway in

21 Brevard County; directing the

161170

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Budget (Siplin) recommended the following:

Senate Amendment (with title amendment)

Between lines 211 and 212
insert:

Section 21. Elizabeth G. Means Memorial Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of Beaver Street in Duval County between Laura Street and Rushing Street is designated as "Elizabeth G. Means Memorial Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Elizabeth G. Means Memorial Boulevard as described in subsection (1).

161170

Section 22. Louise Steward Memorial Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of Dr. Martin Luther King Boulevard in Duval County between 8th Street and Bay Street is designated as "Louise Steward Memorial Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Louise Steward Memorial Boulevard as described in subsection (1).

Section 23. Isiah J. Williams, III, Memorial Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of Edgewood Avenue in Duval County between Commonwealth Avenue and Beaver Street is designated as "Isiah J. Williams, III, Memorial Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Isiah J. Williams, III, Memorial Boulevard as described in subsection (1).

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

And the title is amended as follows:

Delete line 28

and insert:

Anderson Boulevard in Miami-Dade County; designating Elizabeth G. Means Memorial Boulevard, Louise Steward Memorial Boulevard, and Isiah J. Williams, III, Memorial Boulevard in Duval County; directing the

501476

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 211 and 212
insert:

Section 21. Reverend Max Salvadore Avenue designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.W. 27th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 13th Street is designated as "Reverend Max Salvadore Avenue."

(2) The Department of Transportation is directed to erect suitable markers designating Reverend Max Salvadore Avenue as described in subsection (1).

Section 22. BRIGADA 2506 STREET, Carlos Rodriguez Santana

501476

designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.W. 8th Street in Miami-Dade County between S.W. 10th Avenue and S.W. 12th Avenue is designated as "BRIGADA 2506 STREET, Carlos Rodriguez Santana."

(2) The Department of Transportation is directed to erect suitable markers designating BRIGADA 2506 STREET, Carlos Rodriguez Santana as described in subsection (1).

Section 23. Reverend Jorge Comesanas Way designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.W. 87th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 24th Street is designated as "Reverend Jorge Comesanas Way."

(2) The Department of Transportation is directed to erect suitable markers designating Reverend Jorge Comesanas Way as described in subsection (1).

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

And the title is amended as follows:

Delete line 28

and insert:

Anderson Boulevard, Reverend Max Salvadore Avenue, BRIGADA 2506 STREET, Carlos Rodriguez Santana, and Reverend Jorge Comesanas Way in Miami-Dade County; directing the

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 274
INTRODUCER:	Transportation Committee and Senator Lynn
SUBJECT:	Road Designations/Veterans Memorial Highway
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Fav/CS**
2.	Carey	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Section 334.071, F.S., specifies the purpose and effect of the designation of roads, bridges, and other transportation facilities for honorary or memorial purposes by the Florida Legislature. These designations are for honorary purposes only, and do not require changing of street signs, mailing addresses, or 911 listings. The bill designates the following roads as follows:

- State Road 19 in Putnam County between U.S. Highway 17 (State Road 15) and Carriage Drive in Palatka is designated as "Veterans Memorial Highway."
- The Interstate 295/State Road 9A overpass (Bridge Nos. 720256 and 720347) over Interstate 10/State Road 8 in Duval County is designated as "Duval County Law Enforcement Memorial Overpass."
- U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County is designated as "SP4 Thomas Berry Corbin Memorial Highway."

- U.S. Highway 19/98/State Road 55 between N.E. 592 Street/Chavous Road/ Kate Green Road and N.E. 170th Street in Dixie County is designated as "U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway."

- State Road 24 between County road 374 and Bridge Number 340053 in Levy County is designated as "Marine Lance Corporal Brian R. Buesing Memorial Highway."

- U.S. Highway 19/98/State Road 55/S. Main Street between N.W. 1st Avenue and S.E. 2nd Avenue in Levy County is designated as "United States Army Sergeant Karl A. Campbell Memorial Highway."

- U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County is designated as "U.S. Army SPC James A. Page Memorial Highway."

- State Road 100 in Union County from the Bradford County Line to the Columbia County line is designated "Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway."

- State Road 26A in Gainesville, Alachua County, between West University Avenue and S.W. 25th Street, is designated "Deputy Jack A. Romeis Road."

- State Road 824 between I-95 and State Road A1A in Broward County is designated as "Mardi Gras Way."

- State Road 7 between Pembroke Road and County Line Road in Broward County is designated as "West Park Boulevard."

- SR 976 (Bird Road) between S.W. 87th Ave and Palmetto Expressway Ramp is designated as "Senator Javier D. Souto Way."

- The San Juan Road Extension in Anastasia State Park is designated as "Nona and Papa Road."

- State Road 293 from the Mid-Bay Bridge Toll plaza north of Chocatawhatchee Bay to its intersection with State Highway 85 is designated as "Walter Francis Spence Parkway."

- State Route 87 from its intersection with US98 northward to its intersection of U.S. 90 in Santa Rosa County is designated as "Beaches and Rivers Parkway."

- U.S. 41/State Road 45/ Nebraska Ave from County Road 584/Waters Avenue to State Road 580/Busch Boulevard is designated as "Corporal Michael J. Roberts Parkway."

- Milepost 22.182 on U.S. 27 in Highlands County is designated as "Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial."

- Biscayne Boulevard from N.E. 88th Street to N.E. 105th Street in Miami Shores Village in Miami-Dade County is designated as "Hugh Anderson Boulevard."

- N.W. 79th Street between N.W. 6th Avenue and N.W. 7th Avenue in Miami-Dade County is designated as "Miss Lillie Williams Boulevard."

- N.W. 54th Street between N.W. 2nd Avenue and N.E. 3rd Avenue in Miami Dade-County is designated as "Father Gerard Jean-Juste."

This bill creates undesignated sections of Florida Law.

II. Present Situation:

Section 334.071, F.S., provides: (1) Legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility, and may not be construed to require any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes; (2) When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility; and (3) The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, resolutions supporting the designations must be passed by each affected local government prior to the erection of the markers.

III. Effect of Proposed Changes:

The effects of the bill are as follows:

Section 1: The bill designates the portion of State Road 19 in Putnam County between U.S. Highway 17 (State Road 15) and Carriage Drive in Palatka as "Veterans Memorial Highway" in recognition of military veterans.

Section 2: The bill designates the portion of Interstate 295/State Road 9A overpass (Bridge Nos. 720256 and 720347) over Interstate 10/State Road 8 in Duval County is designated as "Duval County Law Enforcement Memorial Overpass."

This memorial is dedicated to the men and women in all law enforcement agencies located within Duval County who have died in the line of duty.

Section 3: The bill designates U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County is designated as "SP4 Thomas Berry Corbin Memorial Highway." Also this bill directs FDOT to erect suitable markers.

Thomas Corbin, born in Old Town Dixie, lived in Cross City, served in the United States Army as a Specialist Fourth Class and was killed in action during the Vietnam War during a mission against the Viet Cong. He was awarded the Silver Star due to his dedication and commitment.

Section 4: The bill designates U.S. Highway 19/98/State Road 55 between N.E. 592 Street/Chavous Road/ Kate Green Road and N.E. 170th Street in Dixie County is designated as "U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway." Also this bill directs FDOT to erect suitable markers.

Samuel Chavous Jr. was born in Cross City and served in the US Navy. He served in the US Navy in the Vietnam War and was killed in action. For his service, he was awarded the Purple Heart.

Section 5: The bill designates State Road 24 between County road 374 and Bridge Number 340053 in Levy County is designated as "Marine Lance Corporal Brian R. Buesing Memorial Highway." Also this bill directs FDOT to erect suitable markers.

Lance Corporal Brian Buesing was born and raised in Cedar Key. He enlisted in the Marines and at the young age of 21 during Operation Iraqi Freedom, he was killed in action while trying to protect two fellow Marines. For his bravery and dedication, he was awarded the Purple Heart.

Section 6: The bill designates U.S. Highway 19/98/State Road 55/S. Main Street between N.W. 1st Avenue and S.E. 2nd Avenue in Levy County is designated as "United States Army Sergeant Karl A. Campbell Memorial Highway." Also this bill directs FDOT to erect suitable markers.

Army Sergeant Karl Campbell of Chiefland enlisted in the Army in 1995 and served as an infantryman until 2003. He re-enlisted in November 2009. Sergeant Campbell died from wounds suffered when insurgents in Afghanistan attacked his unit with an improvised explosive device. He has been awarded the Bronze Star and the Purple Heart.

Section 7: The bill designates U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County is designated as "U.S. Army SPC James A. Page Memorial Highway." Also this bill directs FDOT to erect suitable markers.

Army Specialist James Page of Titusville died from an improvised explosive device at the young age of 23. He has been awarded the Bronze Star and the Purple Heart.

Section 8: The bill designates State Road 100 in Union County from the Bradford County Line to the Columbia County line is designated "Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway." Also this bill directs FDOT to erect suitable markers.

Deputy Hal P. Croft and Deputy Ronald Jackson were shot and killed while serving an arrest warrant on May 23rd, 1961. Both men were residents of Lake Butler and served the Union County Sheriff's Department.

Section 9: The bill designates State Road 26A in Gainesville, Alachua County, between West University Avenue and S.W. 25th Street, is designated "Deputy Jack A. Romeis Road." Also this bill directs FDOT to erect suitable markers.

Deputy Romeis died after sustaining injuries due to an automobile accident while in pursuit of a stolen vehicle. Deputy Romeis has served as a full time deputy for 5 years and had previously served as a reserve deputy for 15 years.

Section 10: The bill designates State Road 824 between I-95 and State Road A1A in Broward County is designated as "Mardi Gras Way." Also this bill directs FDOT to erect suitable markers.

The City of Hallandale recognizes pari-mutual gaming as part of Florida's history. The city has made efforts to be gaming friendly to bolster marketing and economic development.

Section 11: The bill designates State Road 7 between Pembroke Road and County Line Road in Broward County is designated as "West Park Boulevard." Also this bill directs FDOT to erect suitable markers.

The City Commission of West Park recognizes the designated West Park Boulevard as a means to increase visibility.

Section 12: The bill designates SR 976 (Bird Road) between S.W. 87th Ave and Palmetto Expressway Ramp as "Senator Javier D. Souto Way."

Senator Souto served the people of Miami-Dade for over 30 years. He has served as both a Florida Representative and Senator; his active participation in the community is exemplified by his appointments to various organizations such as the Child Abuse Prevention Program of South Florida and the Alliance for the Aging. In addition, he was a member of the Dade County Civil Defense, the Lions, Kiwanis, and Rotary Clubs.

Section 13: The bill designates the San Juan Road Extension in Anastasia State Park as "Nona and Papa Road."

This is a dedication for grandparents in the State of Florida who have given to our state parks by volunteering their time and providing an example for future generations of Florida how important our state parks are.

Section 14: The bill designates State Road 293 from the Mid-Bay Bridge Toll plaza north of Chocatawhatchee Bay to its intersection with State Highway 85 as "Walter Francis Spence Parkway."

Walter Francis Spence was born in the Village of Boston. He attended Tulane University, where he earned a Bachelor's degree in engineering. He later began working with the United States Air Force at Englin in the 1950s. Walter was President of the Chamber of Commerce, and founded the Boggy Bayou Mullet Festival in Niceville, FL. He started working towards building the Mid-Bay Bridge in 1977 and also formed the Spence Brothers Properties to develop and build commercial property in the area.

Section 15: The bill designates State Route 87 from its intersection with U.S. 98 northward to its intersection of U.S. 90 in Santa Rosa County as "Beaches and Rivers Parkway."

This road designation aide in the enhancement of tourism in Santa Rosa County.

Section 16: The bill designates U.S. 41/State Road 45/ Nebraska Ave from County Road 584/Waters Avenue to State Road 580/Busch Boulevard as "Corporal Michael J. Roberts Parkway."

Corporal Roberts was shot and killed in the line of duty after 11 years of service with the Tampa Police. During his service with the Tampa Police Department, Corporal Roberts was honored with a Life Saving Award in 2005 as well as numerous letters of appreciation from citizens and other law enforcement agencies.

Section 17: The bill designates Milepost 22.182 on U.S. 27 in Highlands County as "Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial."

Sgt. Sottile died in the line of duty while performing a traffic stop at the intersection of U.S. 27 and Whitmore Road in Highlands County. Sgt. Sottile served for over 24 years with the Florida Highway Patrol.

Section 18: The bill designates Biscayne Boulevard from N.E. 88th Street to N.E. 105th Street in Miami Shores Village in Miami-Dade County as "Hugh Anderson Boulevard."

Hugh Anderson was a land developer and businessman in Miami, Florida. He pioneered the construction of Biscayne Boulevard as a historic thoroughfare.

Section 19: The bill designates N.W. 79th Street between N.W. 6th Avenue and N.W. 7th Avenue in Miami-Dade County as "Miss Lillie Williams Boulevard."

This bill corrects the designation made last year by changing E. 12th to N.W. 7th Avenue in Miami-Dade County.

Section 20: The bill designates N.W. 54th Street between N.W. 2nd Avenue and N.E. 3rd Avenue in Miami Dade-County as "Father Gerard Jean-Juste Street."

This bill corrects the designation made last year by changing N.W. to N.E. 3rd Avenue.

Section 21: The bill will take effect on July 1, 2011 if passed by 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:

FDOT estimates the cost to erect suitable road designation markers is $16,000. This is based on the assumption that 20 markers will be erected at a cost $400 each, maintaining these signs over time, and for future replacement of signs as necessary.

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 Committee on March 29, 2011:
This committee substitute incorporates road designations into one bill.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 550
INTRODUCER:	Senator Hays
SUBJECT:	Repealing Budget Provisions/Mobility 2000
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	**Favorable**
2.	Carey	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

Chapter 216, F.S., the planning and budgeting law, provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations. This bill repeals requirements related to unit cost data which have been found to be limited in their usefulness as budgeting, policy-making, and accountability tools.

The bill also repeals s. 339.1371 which will have the effect of providing more funding for public transportation and less funding for the County Incentive Grant Program and the Small County Outreach Program.

This bill substantially amends sections 216.013, 216.023, and 489.145, F.S.

This bill repeals s. 339.1371, F.S.

II. Present Situation:

Chapter 216, F.S., the planning and budgeting law, provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations.

Section 216.023, F.S., requires each agency to include in its legislative budget request the legislatively-approved output and outcome performance and accountability measures and any revisions proposed by the agency. Subsection (4)(b) provides “it is the intent of the Legislature that total accountability measures, including unit-cost data, serve not only as a budgeting tool but

also as a policymaking tool and an accountability tool." Accordingly, each state agency and the judicial branch is required to submit a one-page summary of information for the preceding year that must contain:

1. The final budget for the agency and the judicial branch.
2. Total funds from the General Appropriations Act.
3. Adjustments to the General Appropriations Act.
4. The line-item listings of all activities.
5. The number of activity units performed or accomplished.
6. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with output measures prior to computing unit costs.
7. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.
8. The total amount of reversions and pass-through expenditures omitted from unit-cost calculations.

The Legislature is required to reduce an agency's General Appropriations Act allocation by at least 10 percent if the agency does not submit this information.

According to a report[1] prepared by the Office of Program Policy Analysis and Government Accountability, agencies have submitted the information. However, inherent differences in methodologies used by the various agencies in calculating their direct and indirect activity costs, "limit the Legislature's ability to reliably compare the efficiency of similar activities performed by different agencies or to assess changes in agency performance over time."

Mobility 2000 is a transportation funding initiative created during the 2000 Legislative Session in ch. 2000-257, L.O.F., which provided additional funds to the State Transportation Trust Fund (STTF) that allowed the advancement of more than $4 billion in transportation projects over a ten year period and additional funding thereafter. To provide funding for the advancement of projects, the act:

- increased the percentage of the rental car surcharge deposited into the STTF;
- created the Small County Outreach Program and the County Incentive Grant Program within FDOT;
- eliminated certain service charges; and
- appropriated funds from General Revenue to the STTF.

Section 339.1371, F.S., requires the Florida Department of Transportation (department), beginning in Fiscal Year 2000-2001, to allocate funds to implement the Mobility 2000 initiative. The section requires the department to develop a plan to expend these revenues and amend the current tentative work program for the time period 2000-2001 through 2004-2005 prior to adoption to include Mobility 2000 projects. The department was required to submit a budget

[1] *More Uniform Methodology Is Needed for State Agencies' Unit Cost Information*, Report No. 05-35, May 2005 http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0535rpt.pdf (last visited on Feb. 10, 2011)

amendment prior to work program adoption requesting budget authority needed to implement the Mobility 2000 initiative. The section also provides that in Fiscal Year 2001-2002 and each year thereafter, the increase in revenue to the STTF derived from specified sections of ch. 2000-257, L.O.F. must be first used by FDOT to fund the Mobility 2000 initiative. Any remaining funds were to be used to fund the Florida Strategic Intermodal System created pursuant to s. 339.61, F.S. The increased revenues provided for in the section are not subject to s. 206.46(3), F.S., and s. 206.606(2), F.S., which require minimum annual commitments or allocations of STTF funds to public transportation.

III. Effect of Proposed Changes:

Section 1 amends s. 216.023, F.S., to remove legislative intent related to accountability measures, including unit-costs from requirements for submission of legislative budget requests by agencies and the judicial branch.

Section 2 repeals s. 339.1371, F.S., which means certain transportation revenues are now subject to the minimum allocation of STTF revenues to public transportation. This will have the effect of providing more funding for public transportation and less funding to the County Incentive Grant Program and the Small County Outreach Program..

Section 3 amends s. 216.013, F.S., to conform a cross-reference made obsolete by Section 1 of the bill.

Section 4 amends s. 489.145, F.S., to conform a cross-reference made obsolete by Section 1 of the bill.

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:

Section 339.1371(2), F.S., stipulates the increase in revenue to the STTF derived from specified sections of ch. 2000-257, L.O.F. is not subject to the minimum public transportation funding percentages required by s. 206.46(3), F.S., and s. 206.606(2), F.S. The repeal of s. 339.1371, F.S., will result in increased funds for public transportation; however, the Small County Outreach Program and the County Incentive Grant Program will be negatively impacted due to the removal of the exemption from the public transportation requirements. According to FDOT, there will be a negative fiscal impact to these programs of $6 million. Minor revisions to the FDOT work program may be required in outer years to ensure the minimum funding requirements are maintained.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee					
BILL:	CS/SB 998				
INTRODUCER:	Judiciary Committee, Senator Simmons, and others				
SUBJECT:	Property Rights				
DATE:	April 8, 2011	REVISED:			

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Munroe	Maclure	JU	**Fav/CS**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill amends the Bert Harris Act to make the following changes to Florida's statutory protections on real property rights. The bill:

- specifies that a moratorium on a development that is in effect for longer than one year may, depending upon the circumstances, constitute an "inordinate burden";
- changes a notification period from 180 days to 120 days before filing an action against a governmental entity;
- renames the term "ripeness decision" to "statement of allowable uses" and revises language specifying when the prerequisites for judicial review are met for property owners;
- specifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property for purposes of the statute of limitations to pursue remedies under the Bert Harris Act; and
- specifies that sovereign immunity is waived for purposes of the Bert Harris Act.

This bill substantially amends section 70.001, Florida Statutes.

II. Present Situation:

Takings

The Fifth Amendment to the United States Constitution guarantees that citizens' private property shall not be taken for public use without just compensation. The "takings" clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." The government may acquire private property through the power of eminent domain, provided the property owner is compensated.[1]

Article I, s. 2 of the State Constitution also guarantees all natural persons the right to "acquire, possess and protect property" and the State Constitution further provides that no person will be deprived of property without due process of law.[2] Article X, s. 6 of the State Constitution is complimentary to the Fifth and Fourteenth Amendments to the United States Constitution. It provides that "[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner."[3]

In addition to actually physically infringing upon the property, certain regulations on property can constitute a taking. Where a governmental regulation results in permanent physical occupation of the property or deprives the owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred, thereby requiring full compensation for the property.[4] Additionally, where the regulation does not substantially advance a legitimate state interest, it is invalid[5] and the property owner may recover compensation for the period during which the invalid regulation deprived all use of the property.[6]

In other "takings" cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. Some of the factors considered by the courts include:

- the economic impact of the regulation on the property owner;
- the extent to which the regulation interferes with the property owner's investment-backed expectations;
- whether the regulation confers a public benefit or prevents a public harm (the nature of the regulation);
- whether the regulation is arbitrarily and capriciously applied; and
- the history of the property, history of the development, and history of the zoning and regulation.[7]

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[1] Chapters 73 and 74, F.S.
[2] Art. I, s. 9, Fla. Const.
[3] Art. X, s. 6(a), Fla. Const.
[4] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1030 (1992). *See also First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 321 (1987).
[5] *See Nollan v. California Coastal Comm'n*, 483 U.S. 825, 834 (1987) (citing *Agins v. Tiburon*, 447 U.S. 255, 260 (1980)).
[6] *See First English Evangelical Lutheran Church of Glendale, supra* note 4.
[7] *See Reahard v. Lee County*, 968 F.2d 1131, 1136 (11th Cir. 1992). *See also Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 485-98 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 130-31 (1978); *Graham v. Estuary Properties*, 399 So. 2d 1374, 1380-81 (Fla. 1981).

The Supreme Court, in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, rejected property owners' contentions that a three-year moratorium on development constituted a per se taking of property requiring compensation under the Takings Clause.[8] The court recognized that there are a wide range of "moratoria" that occur as a regular part of land use regulation, such as "normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like."[9] The court ultimately determined that the length of time that a parcel of property was undevelopable was one of the many factors to be considered when determining whether a taking has occurred.[10]

The Bert Harris Act

In 1995, the Bert Harris Act was enacted by the Legislature to provide a new cause of action for private property owners whose property has been "inordinately burdened" by state and local government action that may not rise to the level of a "taking" under the State or Federal Constitution.[11] The inordinate burden applies either to an existing use of real property or a vested right to a specific use.[12]

Under the Bert Harris Act, the term "existing use" means:

> an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.[13]

In *City of Jacksonville v. Coffield*, the First District Court of Appeal held that a city's closure of a public road did not inordinately burden an existing use or a vested right to use of the property under the Bert Harris Act.[14] The court held that the property owner's planned development was not an existing use to the property, nor did he have a vested right to develop the property prior to the city's closing the public road near the property.[15] Specifically, the court stated that once the property owner "learned that an application had been filed to close the only roadway providing ingress and egress to the property, development of the property into eight single-family lots was, if still a possibility, by no means a 'reasonably foreseeable, nonspeculative,' use of the property."[16] Furthermore the court stated that:

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[8] 535 U.S. 302, 342-43 (2002).
[9] *See id.* at 329 (quoting *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 321 (1987)).
[10] *Id.* at 318-19.
[11] Section 70.001(1) and (9), F.S.
[12] Section 70.001(2)-(3)(a), F.S.
[13] Section 70.001(3)(b), F.S.
[14] 18 So. 3d 589, 599 (Fla. 1st DCA 2009).
[15] *Id*.
[16] *Id.* at 596.

> Determinations under the Act that a claimant has "an existing use of the real property or a vested right to a specific use of the real property" and that government action has permanently precluded the claimant from attaining "the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property" are conclusions of law.[17]

The court then proceeded to review the conclusions of law in the case *de novo*.[18] "The existence of a 'vested right' is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state."[19] The common law doctrine of equitable estoppel limits the government in the exercise of its power over real property when "a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired."[20]

An often quoted Second District Court of Appeal case said, "the theory of estoppel amounts to nothing more than an application of the rules of fair play."[21] Equitable estoppel applies against a governmental entity "only in rare instances and exceptional circumstances;" the government's act must "go beyond mere negligence."[22]

In addition to the elements of equitable estoppel, the landowner's knowledge of future changes to a zoning ordinance is an important consideration in determining whether the landowner has obtained a vested right. A series of cases from the Florida Supreme Court have emphasized that the doctrine of equitable estoppel may not be invoked where "the party claiming to have been injured by relying upon an official determination had good reason to believe before or while acting to his detriment that the official mind would soon change."[23] *Sakolsky v. City of Coral Gables* (*Sakolsky*)[24] clarified the rule, stating that "[n]otice or knowledge of mere equivocation independent of actual infirmities or pending official action cannot operate to negative or prevent reliance on the official act."[25]

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[17] *Id*. at 594.
[18] *Id*.
[19] Section 70.001(3)(a), F.S.
[20] *Smith v. City of Clearwater*, 383 So. 2d 681, 686 (Fla. 2d DCA 1980). *See also Coral Springs Street Systems, Inc. v. City of Sunrise*, 371 F.3d 1320, 1334 (11th Cir. 2004).
[21] *Town of Largo v. Imperial Homes Corp*., 309 So. 2d 571, 573 (Fla. 2d DCA 1975). *See also Equity Resources Inc. v. County of Leon*, 643 So. 2d 1112, 1119-20 (Fla. 1st DCA 1994); *Branca v. City of Miramar*, 634 So. 2d 604, 606 (Fla. 1994).
[22] *Villas of Lake Jackson, Ltd. v. Leon County*, 884 F. Supp. 1544, 1568 (N.D. Fla. 1995), *aff'd*, 121 F.3d 610 (11th Cir. 1997) (internal citations omitted) (finding that although fact questions existed on issue of equitable estoppel and vested property right, rational basis for rezoning precluded due process claims).
[23] *Sharrow v. City of Dania*, 83 So. 2d 274, 276 (Fla. 1955); *Gross v. City of Miami*, 62 So. 2d 418 (Fla. 1953); *City of Ft. Lauderdale v. Lauderdale Industrial Sites*, 97 So. 2d 47, 50 (Fla. 2d DCA 1957); *City of Miami v. State ex rel. Ergene, Inc.*, 132 So. 2d 474, 476 (Fla. 3d DCA 1961) (*per curiam*) ("It would appear childish to assert that the permittees were without knowledge of these undisputed facts and for the respondents to wholly disregard them and simultaneously incur financial obligations incidental to the construction of the building under the questioned permit, shows that they acted while red flags were flying and cannot complain of lack of notice."(quoting *Miami Shores Village v. Wm. N. Brockway Post*, 24 So.2d 33, 36 (Fla. 1945)).
[24] 151 So. 2d 433 (Fla. 1963).
[25] *Id.* at 435-36.

An inordinate burden is a government action that has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for:

- the existing use of the real property;
- a vested right to a specific use of the real property with respect to the real property as a whole; or
- when the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.[26]

The terms "inordinate burden" or "inordinately burdened" do not include:

- temporary impacts to real property;
- impacts to real property occasioned by governmental abatement;
- prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner.[27]

Under s. 70.001, F.S., a property owner seeking compensation must present a written claim to the head of the governmental agency whose action caused the inordinate burden 180 days (90 days for agriculture) prior to bringing a suit.[28] The written notice must be accompanied by a valid appraisal that shows the loss of the fair market value.[29] The property owner must commence his or her cause of action within one year of the date the "law or regulation is first applied by the governmental entity."[30] This has been interpreted as starting the running of the time limitation when the legislative or quasi-legislative restriction is adopted.[31]

The governmental entity must make a written settlement offer within the 180-day-notice period that may include:

- An adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of on-site mitigation;
- Location of the least sensitive portion of the property;
- Conditioning the amount of development permitted;
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;

[26] Section 70.001(3)(e), F.S.
[27] *Id.*
[28] Section 70.001(4)(a), F.S.
[29] *Id.*
[30] Section 70.001(11), F.S.
[31] *See Citrus County v. Halls River Development, Inc*., 8 So. 3d 413, 422-24 (Fla. 5th DCA 2009).

- Issuance of the development order, a variance, special exception, or other extraordinary relief;
- Purchase of the real property, or an interest therein, by an appropriate governmental agency; or
- No changes to the action of the governmental entity.[32]

If the property owner accepts the settlement offer, then the government implements it pursuant to s. 70.001(4)(d), F.S. If the settlement offer is declined, the government must issue within the 180-day period a written ripeness decision, which must contain identification of allowable uses on the affected land.[33] This ripeness decision serves as the last prerequisite to judicial review, thus allowing the landowner to file a claim in circuit court.[34]

Under s. 70.001(6)(a), F.S., the court decides if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property. Private property is inordinately burdened when a government action has directly restricted or limited the use of the property so that the owner is unable to attain reasonable, investment-backed expectations for the existing use, or a vested right in the existing use, of the property as a whole.[35] Alternatively, property is inordinately burdened if the owner is left with existing or vested uses which are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good which should be borne by the public at large.[36]

If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved.[37] The court then impanels a jury to decide the monetary value, pursuant to s. 70.001(6)(b), F.S., based upon the loss in fair market value attributable to the governmental action. The prevailing party is entitled to reasonable costs and attorney's fees, pursuant to s. 70.001(6)(c), F.S., if the losing party did not make, or reject, a bona fide settlement offer.

Citrus County v. Halls River Development held that the one-year limitation period applicable under the Bert Harris Act accrued on the date the statute was amended and first impacted the land in question by changing its zoning designation from mixed use to low intensity coastal and lakes.[38] In *Citrus County*, the Fifth District Court of Appeal rejected a equitable estoppel argument by the developer's that the Bert Harris Act should be liberally construed to permit the developer access to the Act's remedies for aggrieved property owners where the developer and local government both misperceived the legal significance in determining the timeliness of the developer's claim.[39]

[32] Section 70.001(4)(c), F.S.
[33] Section 70.001(5)(a), F.S.
[34] *Id.*
[35] Section 70.001(3)(e), F.S.
[36] *Id.*
[37] Section 70.001(6)(a), F.S.
[38] *Citrus*, 8 So. 3d at 422-24.
[39] *Id.*

However *M & H Profit, Inc. v. Panama City*, stated that the clear and unambiguous language of the Bert Harris Act establishes that the law is limited to "as-applied" challenges not facial challenges based on the mere enactment of a new ordinance or regulation.[40] The First District Court of Appeal in *M &H Profit*, found that the "language of the Bert Harris Act does not contemplate facial challenges to general, health, safety, and welfare ordinances of a municipality."[41] The court found that "an interpretation of state statutes which would impede the ability of local government to protect the health and welfare of its citizens should be rejected unless the Legislature has clearly expressed the intent to limit or constrain local government action."[42]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.[43] This blanket of immunity applies to all subdivisions of the state including its agencies, counties, municipalities, and school boards; however, Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of general law.

The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. A claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.[44] Notwithstanding this limited waiver of sovereign immunity, certain discretionary governmental functions remain immune from tort liability.[45]

The Bert Harris Act provides a process for claims against a governmental entity for certain actions. Specifically, the provisions of the Act operate as a separate and distinct cause of action from the law of takings to provide "for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property."[46]

Section 70.001(13), F.S., provides that, "This section does not affect the sovereign immunity of government." In 2003, the Third District Court of Appeal in *Royal World Metropolitan, Inc. v. City of Miami Beach* overturned a trial court's decision that subsection (13) serves to bar a cause

[40] 28 So. 3d 71, 75-76 (Fla. 1st DCA 2010).
[41] *Id.* at 73.
[42] *Id.* at 77.
[43] See generally, Wetherington and Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 Fla. L. Rev. 1 (1992).
[44] Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), F.S., effective October 1, 2011, to increase the limits to $200,000 for one person for one incident and $300,000 for all recovery related to one incident, to apply to claims arising on or after that effective date.
[45] *See Commercial Carrier Corp., v. Indian River County*, 371 So. 2d 1010, 1019 (Fla. 1979), *citing Evangelical United Brethren Church v. State*, 67 Wash. 2d 246, 407 P.2d 440, 444-45 (1965).
[46] Section 70.001(1), F.S. Section 70.001(13), F.S., provides that "section does not affect the sovereign immunity of government".

of action against a governmental entity.[47] Specifically, the court found s. 70.001, F.S., "evinces a sufficiently clear legislative intent to waive sovereign immunity as to a private property owner whose property rights are inordinately burdened, restricted or limited by governmental regulation does not rise to the level of taking under the Florida and United States Constitutions."[48]

III. Effect of Proposed Changes:

The bill amends the "Bert J. Harris, Jr., Private Property Rights Protection Act."

Section 1 amends s. 70.001, F.S. The bill restructures the definition of existing use to make it clearer that the term "existing use" has two separate definitions:

(1) an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity *or*
(2) such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

The bill clarifies that both "inordinate burden" *and* "inordinately burdened" mean the same thing.

The bill specifies that a moratorium on a development[49] that is in effect for longer than one year may, depending upon the circumstances, constitute an "inordinate burden."

The bill changes the requirement that property owners who seek compensation under the Bert Harris Act present the claim in writing to the head of the governmental entity 180 days prior to filing an action, to make it 120 days prior to filing an action. The bill specifies that payment of compensation can be part of a settlement offer from the local government.

The bill deletes the term "ripeness" and in lieu thereof requires the local government to provide a "statement of allowable uses," which is a written decision identifying the allowable uses to which the subject property may be put. The bill clarifies that the failure of the local government to issue the "statement of allowable uses" within the notice period is deemed the local government's denial for purposes of allowing a property owner to file an action in the circuit court under the Bert Harris Act. If a written statement of allowable uses is issued, it constitutes the last prerequisite to judicial review for purposes of the judicial proceeding created under the Bert Harris Act.

The bill specifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property. This provision should allow property owners to sue when the

[47] *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So. 2d 320, 322-23 (Fla. 3rd DCA 2003).
[48] *Id.* at 322.
[49] Development, as defined in s. 380.04, F.S., means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

restrictions are applied to their property without being excluded by the statute of limitations even if the law or regulation was enacted more than a year before it is applied to the property.

The bill provides that s. 70.001, F.S., waives sovereign immunity "solely to the extent provided" in the Bert Harris Act; however, the Bert Harris Act does not otherwise affect the sovereign immunity of government. This is consistent with how the section of law was interpreted by the court in *Royal World Metropolitan, Inc. v. City of Miami Beach*.[50]

Section 2 states that the act is applied prospectively and does not affect pending litigation.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill expands the options for private property owners to obtain compensation or another remedy for governmental action that inordinately burdens real property by providing that certain moratoria lasting more than one year, depending on the circumstances, may constitute an "inordinate burden" on property under the Bert Harris Act.

C. Government Sector Impact:

The bill reduces the timeframe for the governmental entity to respond to the claim, and expressly waives sovereign immunity for claims under the Bert Harris Act.

The Department of Community Affairs (DCA) indicates in an analysis dated February 25, 2011, that for local governments, the potential for very significant claims for damages

[50] *Royal World Metropolitan, Inc.*, 863 So. 2d at 322-23.

exists, and for state government, the potential for claims for damages exists but is indeterminate.[51]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 28, 2011:
The committee substitute makes the following changes to the bill:

- Deletes the whereas clauses, which provided legislative intent for implementation of the Bert Harris Act;
- Specifies that a moratorium on development that is effect for longer than one year may still constitute an inordinate burden but is no longer statutorily defined as a temporary impact to real property for purposes of the Bert Harris Act;
- Provides that the "statement of allowable uses" is the written decision identifying the allowable uses to which the subject property may be put to under the Bert Harris Act;
- Specifies that the failure of local government to issue the written statement of allowable use is deemed a denial for purposes of allowing a property owner to file an action in circuit court to pursue remedies under the Bert Harris Act; and
- Revises the sovereign immunity language applicable to local governments under the Bert Harris Act to provide that sovereign immunity is waived solely to the extent provided in the Bert Harris Act.

B. Amendments:

None.

[51] DCA analysis dated February 25, 2011 on file with the Senate Budget Committee.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 1990
INTRODUCER:	Health Regulation Committee
SUBJECT:	Ratification of Rule
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HR	**Favorable**
2.	Bradford	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

The bill ratifies a rule relating to Standards of Practice for Physicians Practicing in Pain Management Clinics that has been filed for adoption by the Department of Health, Board of Medicine.

This bill has no fiscal impact on state or local government but will result in increased costs to the private sector of $64.459 million in the first year, with $60.912 million in costs expected in the following years (please see fiscal impact statement for details.)

This bill does not amend, create, or repeal any section of the Florida Statutes.

II. Present Situation:

Current Law

Chapter 2010-279, Laws of Florida (L.O.F.), became effective on November 17, 2010,[1] when the Legislature over-rode the Governor's veto of CS/CS/HB 1565, which was passed during the 2010 Regular Session. This law requires a proposed administrative rule that has an adverse impact or regulatory costs that exceed certain thresholds to be submitted to the Legislature for ratification before the rule can take effect. The Legislature provided for a statement of estimated regulatory costs (SERC) as the tool to assess a proposed rule's impact.

[1] House Joint Resolution 9-A passed during the 2010A Special Session on November 16, 2010.

An agency proposing a rule is required to prepare a SERC of the proposed rule if the proposed rule:[2]

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

A SERC is required to include:[3]

- An economic analysis showing whether the rule directly or indirectly:
  - Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;
  - Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or
  - Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

If the adverse impact or regulatory costs of the rule exceed any of these criteria, then the rule may not take effect until it is ratified by the Legislature;

- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule;

- A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues;

- A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. "Transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule;

- An analysis of the impact on small businesses,[4] and an analysis of the impact on small counties and small cities.[5] The impact analysis for small businesses must include the

[2] *See* s. 120.54(3)(b)1., F.S.
[3] *See* s. 120.241(2), F.S.

basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses;

- Any additional information that the agency determines may be useful; and

- A description of any regulatory alternative submitted by a substantially affected person and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

Regulation of Pain Management Clinics

The 2010 Legislature enacted CS/CS/SB 2272 and CS/CS/SB 2722[6] to help address the prescription drug abuse epidemic that is fueled by "pill mills." This law created ss. 458.3265 and 459.0137, F.S., to create a registration and inspection program for pain management clinics in which allopathic physicians and osteopathic physicians who primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications may practice. These two sections of law are similar for the respective practice acts.

Among other things, this law requires the Board of Medicine and the Board of Osteopathic Medicine to adopt rules setting forth standards of practice for physicians and osteopathic physicians practicing in pain management clinics, as they are defined in law. The rules are required to address, at a minimum, facility operations; physical operations; infection control requirements; health and safety requirements; quality assurance requirements; patient records; training requirements for all facility health care practitioners who are not regulated by another board; inspections; and data collection and reporting requirements.[7]

Both boards proceeded through the rulemaking process, with similar language. The Board of Osteopathic Medicine filed its rule 64B15-14.0051, Florida Administrative Code, Standards of Practice for Physicians Practicing in Pain Management Clinics, on October 10, 2010, and the rule became effective on November 11, 2010. The Board of Medicine filed its rule for adoption on November 8, 2010. However, ch. 2010-279, L.O.F., became effective on November 17, 2010, before the Board of Medicine's rule became effective.[8]

The Board of Medicine's rule 64B8-9.0131, Florida Administrative Code, that was filed for adoption provides standards of practice in pain management clinics in the following broad categories:

- Evaluation of patient and medical diagnosis;

[4] "Small business" is defined to mean an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.
[5] "Small county" and "small city" are defined to mean any county that has an unincarcerated population of 75,000 or less and any municipality that has an unincarcerated population of 10,000 or less, respectively, according to the most recent decennial census.
[6] Ch. 2010-211, L.O.F.
[7] *See* ss. 458.3265(4)(d) and 459.0137(4)(d), F.S.
[8] A proposed rule is adopted on being filed with the Department of State and becomes effective 20 days after being filed, on a later date specified in the notice of proposed rulemaking, or on a date required by statute. *See* s. 120.54(3)(d)6., F.S.

- Treatment plan;
- Informed consent and agreement for treatment;
- Periodic review;
- Consultation;
- Patient drug testing;
- Patient medical records;
- Denial or termination of controlled substance therapy;
- Facility and physical operations;
- Infection control;
- Health and safety;
- Quality assurance; and
- Data collection and reporting.

SERC for Rule 64B8-9.0131, Florida Administrative Code

The Center for Economic Forecasting and Analysis (CEFA), part of the Florida State University Institute of Science and Public Affairs, was engaged to estimate the costs for the Department of Health and the Pain Management Clinics for proposed rule 64B8-9.0131, Standards of Practice for Physicians Practicing in Pain Management Clinics, for the Board of Medicine. For purposes of determining whether the proposed rule requires Legislative ratification, the SERC indicates the proposed rule "is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule."[9]

Specifically, the SERC indicates the expected statewide transactional costs are $64.459 million in the first year, with $60,912 million in costs expected in the following years. On a per-clinic basis, this represents estimated costs of $69,162 in the first year with an expected $65,356 in costs in the following years. On a per-patient basis for an existing patient, the costs average $43.73 in the first year and $40.91 per year for years 2 through 5. For a new patient, the first year costs average $60.83 per year.[10]

In summary, the bulk of the expected statewide transactional costs is related to the patient drug testing requirement. The proposed rule provides:

> Patient Drug Testing. To assure the medical necessity and safety of any controlled substances that the physician may consider prescribing as part of the patient's treatment plan, patient drug testing shall be performed in accordance with one of the collection methods set forth below[11] and shall be conducted and the results reviewed prior to the initial issuance or dispensing of a controlled substance prescription, and thereafter, on a random basis at least twice a year and when requested by the treating physician. Nothing

[9] *See* The SERC of Proposed Rules in Regulation of Pain Management Clinics in Florida, BOM 64B8-9.0131, Standards of Practice for Physicians Practicing in PMC, January 18, 2011, page 15, paragraph (a)3. A copy of the SERC is on file in the Senate Health Regulation Committee.
[10] *Id*, page 17, paragraph (d).
[11] The collection methods set forth in the proposed rule include referral to an outside laboratory, specimen collection in the pain management clinic and sent to an outside laboratory for testing, and specimen collected and tested in the office.

in this rule shall preclude a pain management clinic from employing additional measures to assure the integrity of the urine specimens provided by patients.[12]

The SERC bases this component of the estimate on several assumptions and statistical modeling methods. To provide a perspective, estimates included 932 pain management clinics and 1,314 full time physicians seeing between 20 – 30 patients per day, for 250 annual work days.

III. Effect of Proposed Changes:

The bill provides for Legislative ratification of the Board of Medicine's Rule 64B8-9.0131, Florida Administrative Code, Standards of Practice for Physicians Practicing in Pain Management Clinics.

The act shall take effect upon becoming a law.

Other Potential Implications: The Board of Osteopathic Medicine adopted a similar rule with an effective date of November 8, 2010. Osteopathic physicians or allopathic physicians, or both, may practice in a pain management clinic. The absence of similar practice standards could prove unmanageable from a quality of care perspective, an operational perspective, and an enforcement perspective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[12] *See* proposed rule 64B8-9.0131(2)(f).

B. Private Sector Impact:

The bill ratifies a rule for which its SERC indicates the expected statewide transactional costs are $64.459 million in the first year, with $60.912 million in costs expected in the following years. On a per-clinic basis, this represents estimated costs of $69,162 in the first year with an expected $65,356 in costs in the following years. On a per-patient basis for an existing patient, the costs average $43.73 in the first year and $40.91 per year for years 2 through 5. For a new patient, the first year costs average $60.83 per year.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 1086
INTRODUCER:	Health Regulation Committee; Criminal Justice Committee; and Senators Hill and Bullard
SUBJECT:	Restraint of Incarcerated Pregnant Women
DATE:	April 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	O'Callaghan	Stovall	HR	**Fav/CS**
3.	Wolfgang	Yeatman	CA	**Favorable**
4.	Sneed	Meyer, C.	BC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates the "Healthy Pregnancies for Incarcerated Women Act." It generally prohibits the use of restraints during labor, delivery, or postpartum recovery on women who are known to be pregnant and who are incarcerated in a state, local, or privately-operated adult or juvenile facility. However, exceptions are allowed on an individual basis if there is a substantial flight risk or an extraordinary medical or security circumstance that dictates the use of restraints. The bill also sets standards for restraint of pregnant prisoners during the third trimester of pregnancy. A woman who is restrained in violation of the bill's provisions can file a grievance within one year in addition to pursuing any other remedies that are available under state or federal law for harm caused by the restraint.

The bill includes several administrative requirements: (1) any exception must be documented in writing and kept available for public inspection for a period of 5 years; (2) an annual report must be made to the governor's office of every instance in which restraints were used pursuant to the exception or in violation of the provisions of the bill; (3) the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) must adopt rules to administer the new law, and (4)

each correctional institution must inform female prisoners of the rules and post the policies in the institution where they will be seen by female prisoners.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Background

The issue of whether or not pregnant female inmates should be exempted from normal policies regarding use of restraints has been widely debated during the last few years.

In October 2010, the National Women's Law Center[1] published a state-by-state report card on the conditions of confinement for pregnant and parenting women and the effect on their children. The report found that, overall, the grades for prenatal care, shackling, and family-based treatment as an alternative to incarceration were poor with twenty-one states receiving either a D or F (failing grades) and twenty-two states receiving a grade of C.[2] Seven states received a B and only one state, Pennsylvania, received an A-. For prenatal care, thirty-eight states received failing grades (D or F grade) for failure to institute adequate policies requiring incarcerated pregnant women to receive adequate prenatal care, despite the fact that many women in prison have higher-risk pregnancies.[3] Furthermore, thirty-six states received failing grades for their failure to comprehensively limit the use of restraints[4] on pregnant women during transportation, labor and delivery, and postpartum recuperation.[5]

A number of states have considered legislation prohibiting or limiting the use of restraints for pregnant inmates, and in 2008 the Federal Bureau of Prisons revised its policy to limit the use of restraints. The Board of Directors of the National Commission on Correctional Health Care recently adopted a position paper on restraint of pregnant inmates. The introduction states:

> Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the

[1] The National Women's Law Center is a nonprofit corporation that was established in 1972. The Center works to protect and advance the progress of women in their families in core aspects of their lives, with an emphasis on the needs of low-income women. National Women's Law Center, *Annual Report 2007-2008*, available at: http://dev2.nwlc.org/sites/default/files/pdfs/NWLCAnnualReport07-08w.pdf, last visited on March 17, 2011.
[2] Florida received a composite grade of C.
[3] Florida received a grade of C for prenatal care.
[4] Florida received a grade of F for its shackling policies.
[5] National Women's Law Center, The Rebecca Project for Human Rights, *Mothers Behind Bars: A State-by-State Report Card and Analysis of Federal Policies on Conditions of Confinement for Pregnant and Parenting Women and the Effect on Their Children*, October 2010, available at: The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution, last viewed on March 17, 2011.

most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.[6]

Department of Corrections Policy

The DOC is responsible for the health care of inmates in its custody[7] and treats more than 80 pregnant inmates per year.[8] Florida law under s. 944.24, F.S., requires the DOC to provide each pregnant inmate with prenatal care and medical treatment through the duration of her pregnancy.[9] Inmates receive prenatal counseling, vitamins, and exams. They also receive an extra nutritional meal each day.[10] A pregnant inmate must be transferred to a hospital outside the prison grounds if a condition develops which is beyond the scope and capabilities of the prison's medical facilities. Any woman inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purpose of childbirth, and the charge for hospital and medical care must be charged against the funds allocated to the institution. The department must provide for the care of an inmate's newborn and must pay for the child's care until the child is suitably placed outside the prison system.[11]

The DOC has an established procedure regarding the use of restraints. Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.
- An inmate in labor is not restrained, but after delivery she may be restrained to the bed with normal procedures (tethered to the bed by one ankle) for the remainder of her hospital stay. A correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or for other needs that require movement.[12]

The DOC reports that its procedures for the use of restraints on pregnant inmates are consistent with national guidelines. It also reports that there were no formal medical grievances submitted regarding the application of restraints during pregnancy from January 1, 2009, to the present.[13]

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[6] Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html , last viewed March 16, 2011.
[7] Section 945.6034, F.S.
[8] DOC Analysis of Senate Bill 1086 (March 10, 2011), page 4.
[9] *See also* s. 951.175, F.S.
[10] Guidelines for the care and treatment of pregnant inmates are defined in DOC Procedure 506.201 (*Pregnant Inmates and the Placement of Newborn Infants*) and Health Services Bulletin 15.03.39 (*Health Care for Pregnant Inmates*).
[11] Section 944.24, F.S.
[12] DOC Procedure 506.201, section 12, and DOC Analysis, page 2.
[13] DOC Analysis, *supra* fn. 3, pages 2 and 4.

Department of Juvenile Justice Policy

The DJJ policy is that pregnant youth must be handcuffed in the front when they are transported outside the secure area. Leg restraints, waist chains, and restraint belts cannot be used on pregnant youth.[14] There is no formal rule addressing the use of restraints during labor and delivery. However, the practice is for restraints to be removed during labor and delivery and whenever requested by the treating health care professional.[15]

III. Effect of Proposed Changes:

The bill generally prohibits corrections officials from using restraints on a prisoner who is known to be pregnant during labor, delivery, or postpartum recovery. It also regulates the use of restraints during the third trimester. The following are summarized definitions of terms used in the bill:

- "Corrections official" refers to the person who is responsible for oversight of a correctional facility, or his or her designee.
- "Restraints" include any physical restraint or mechanical device used to control the movement of the body or limbs. Examples include flex cuffs, soft restraints, hard metal handcuffs, black boxes, chubb cuffs, leg irons, belly chains, security chairs, and convex shields.
- "Prisoner" includes any person who is incarcerated or detained in a correctional institution at any time in relation to a criminal offense, including both pre-trial and post-trial actions. It also includes any woman who is detained in a correctional institution under federal immigration laws.
- "Correctional institutions" include any facilities under the authority of the DOC or the DJJ as well as county and municipal detention facilities. It also includes detention facilities operated by private entities.
- "Labor" is the time before birth when contractions bring about effacement and progressive cervical dilation.
- "Postpartum recovery" is the time immediately following delivery, including recovery time in the hospital or infirmary. The duration of postpartum recovery is determined by the physician.

Restraints can only be used during labor, delivery or post-partum recovery if the corrections official makes an individualized determination that extraordinary circumstances exist requiring their use. This is permissible in two situations: (1) when the prisoner presents a substantial flight risk; or (2) when there is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, corrections or medical staff, other prisoners, or the public. However, there are situations that override the exceptions: (1) the corrections official accompanying the prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and (2) use of leg, ankle, or waist restraints are completely prohibited during labor and delivery.

[14] DJJ Basic Curricula (PAR) 63H-1.001-.016(10).
[15] DJJ Analysis of Senate Bill 1086 (2011), pages 1-2.

The corrections official who authorizes the use of restraints due to an extraordinary circumstance must document the reasons for the exception within 10 days of their use. The correctional institution must maintain this documentation on file and available for public inspection for at least 5 years. However, the prisoner's identifying information may not be made public without the prisoner's consent.

The bill also establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional. These requirements are:

- Waist restraints that directly constrict the area of pregnancy cannot be used.
- Any wrist restraints must be applied so that the pregnant prisoner can protect herself in the event of a forward fall (handcuff must be in front).
- Leg and ankle restraints that restrain the legs close together cannot be used when the prisoner is required to walk or stand.

In addition to the specific requirements during the third trimester and during labor, delivery, and post-partum recovery, the bill provides that any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary. The purpose of this general requirement is to reduce the possibility of adverse clinical consequences.

The secretaries of the DOC and the DJJ and the official responsible for any local correctional facility where a pregnant prisoner was restrained pursuant to an exception, or in violation of the provisions of the bill, during the previous year must submit a written report to the Executive Office of the Governor with an account of every instance in which such restraint was used.

The bill requires the DOC and the DJJ to adopt rules to administer the new law, and each correctional institution must inform female prisoners of the rules when they are admitted to the institution, include the policies and practices in the prison handbook, and post the policies in appropriate places within the institution that are visible to female prisoners.

The bill also specifies that a woman who is harmed may file a grievance pursuant to s. 944.331, F.S., within one year in addition to any other remedies that might be available under state or federal law. Chapter 33-103, F.A.C., governs inmate grievances. The grievance procedure is designed to provide an inmate with a channel for the internal, administrative settlement of a grievance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The requirement for correctional institutions under the authority of the DOC to keep records of incidents in which extraordinary circumstances dictated the use of restraints includes a prohibition against releasing the name of the prisoner without her consent. It is unclear whether this new law provides protection of this personal identifying information within existing public records exemptions found in s. 945.10, F.S.

It appears that s. 985.04, F.S., which states that records in the custody of the DJJ regarding children are not open to inspection by the public, is consistent with the bill as it prohibits releasing the name of the child prisoner.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It does not appear that the bill would have a significant fiscal impact on the government sector. In its analysis of the bill, the DOC notes that staff will have to maintain files and prepare the annual report to the Governor but does not quantify any costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health Regulation on March 22, 2011:

- Clarifies the time within which a corrections official must make written findings justifying the use of restraints.

- Clarifies the definition of "correctional institution."
- Clarifies the type of complaint that may be filed by an incarcerated woman who has been restrained during her third trimester, labor, delivery, or postpartum recovery.

CS by Criminal Justice on March 14, 2011:

- Clarifies that the bill is only intended to apply to restraint of pregnant inmates during specified times in the latter stages of pregnancy.
- Establishes regulations for restraint of pregnant women during the third trimester.
- Modifies annual report requirement to apply only to instances when an exception is made to allow restraint or when the requirements are violated, not to all instances of shackling during pregnancy.
- Clarifies that the bill applies to correctional facilities operated by private companies.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 520
INTRODUCER:	Military Affairs, Space, and Domestic Security Committee and Senator Bennett
SUBJECT:	State Memorials
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Fav/CS**
2.	Mason	Roberts	GO	**Fav/CS**
3.	Hansen	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates the Florida Veterans Hall of Fame (Hall of Fame), which is to be administered by the Department of Veterans' Affairs (DVA). This bill directs the Department of Management Services (DMS) to set aside an area for the Hall of Fame inside the Capitol Building adjacent to the existing Medal of Honor Wall on the Plaza Level. DMS must consult with DVA regarding the design and theme of the area.

This bill has no fiscal impact on state or local government. According to the DVA, the Florida Veterans Foundation, a 501(c)(3) organization, has indicated it will be responsible for initial and ongoing operation and maintenance costs of the Hall of Fame.

This bill creates section 265.003 of the Florida Statutes.

II. Present Situation:

Veterans in Florida

Florida has the third largest population of veterans in the nation with more than 1.6 million.[1] Only California and Texas have larger populations of veterans. Florida has more than 189,000 veterans from World War II, the largest number in the nation. In addition, more than 192,000 Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn service members and veterans claim Florida as their home of record.

Veterans Halls of Fame in Other States

Four other states have Veterans Halls of Fame: Ohio, Arizona, Connecticut, and New York. The primary goals for this type of Hall of Fame appear to be recognizing the post-military achievements of outstanding veterans and spotlighting the contributions of veterans to their communities, states and nation.

Ohio's Veterans Hall of Fame was established in 1992.[2] Since its inception, more than 400 veterans have been inducted.[3] A committee of veterans serves as advisors and selects approximately 20 inductees annually from nominations solicited from all citizens of Ohio throughout the year.

Arizona's Veterans Hall of Fame, created in 2001, is an extension of the Hall of Fame created by the Arizona Department of the Disabled American Veterans in 1978.[4] Since the inception in 2001, 223 veterans have been inducted. A committee of veterans serves as advisors and selects inductees annually from nominations solicited from all veterans' organizations and citizens of Arizona throughout the year.

Connecticut's Hall of Fame was created by an Executive Order by Governor M. Jodi Rell in 2005.[5] As of December 2010, 51 veterans had been inducted. An Executive Committee, comprised of the Commissioner of the state's Department of Veterans' Affairs, Adjutant General of the Connecticut National Guard, three appointees selected by the Governor, and two appointees from the legislative branch, reviews nominations and submits recommendations for induction to the Governor.[6]

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[1] Florida Department of Veterans' Affairs. 2009-10 Annual Report. Available at: http://www.floridavets.org/pdf/ann_rprt_10.pdf

[2] Ohio Veterans' Hall of Fame. *History.* Available at: http://dvs.ohio.gov/veterans_hall_of_fame/history.aspx. Site last visited March 31, 2011.

[3] Ohio Veterans' Hall of Fame. *Inductees.* Available at: http://dvs.ohio.gov/veterans_hall_of_fame/inductees.aspx. Site last visited March 31, 2011.

[4] Arizona Veterans Hall of Fame Society. *History*, Available at: http://www.avhof.org/content.aspx?page_id=22&club_id=501042&module_id=20188. Site last visited March 31, 2011.

[5] Connecticut Veterans Hall of Fame . *History* (Updated December 2010), Available at: http://www.ct.gov/ctva/lib/ctva/THE_CONNECTICUT_VETERANS_HALL_OF_FAME.pdf Site last visited March 31, 2011.

[6] Connecticut Veterans' Hall of Fame Nomination Packet (Class of 2011), Available at: http://www.ct.gov/ctva/lib/ctva/veterans_hall_of_fame_nomination_packet_2011.pdf . Site last visited March 31, 2011.

New York's Hall of Fame was created in 2005.[7] The law provided for the creation of an 18 member New York State Veterans' Hall of Fame Council, whose purpose was to establish a permanent Veterans' Hall of Fame and a traveling exhibit, as well as promulgate the rules and regulations for the operation of the Veterans' Hall of Fame, including the manner of choosing nominees for induction and inductees. The council was directed to complete its work within three years. It appears that New York is not utilizing the Hall of Fame format found in its laws; however, the New York State Senate does have a Hall of Fame program to recognize outstanding veterans.[8]

Halls of Fame in Florida

The Legislature has established Halls of Fame in Florida. Examples of Halls of Fame previously created include the Florida Civil Rights Hall of Fame,[9] Florida Women's Hall of Fame,[10] Florida Artists Hall of Fame,[11] Florida Educator Hall of Fame,[12] and Florida Sports Hall of Fame.[13]

III. Effect of Proposed Changes:

This bill creates the Florida Veterans Hall of Fame (Hall of Fame). The Hall of Fame is to be administered by the Department of Veterans' Affairs (DVA). This bill directs the Department of Management Services (DMS) to set aside an area on the Plaza Level of the Capitol Building along the northeast front wall for the Hall of Fame. DMS must consult with DVA regarding the design and theme of the area.

DVA must annually accept nominations for persons to be considered for the Hall of Fame and transmit its recommendations to the Governor and the Cabinet, who will select the nominees to be inducted. Each veteran selected will have his or her name placed on a plaque in the Hall of Fame.

DVA is to give preference to veterans who:

- Were born in Florida or adopted Florida as their home state or base of operation; and,
- Have made a significant contribution to Florida in civic, business, public service, or other pursuits.

DVA may establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day. The initial nomination review committee shall be chaired by Col. Bruce J. Host, USAF, Ret., in cooperation with the Florida Veterans Foundation.

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[7] The provisions may be found in New York's Executive Laws, Article 17 § 365.See Laws of New York – search results for "Veterans Hall of Fame", available at: http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=+&LIST=SEA+&BROWSER=EXPLORER+&TOKEN=49253296+&TARGET=VIEW. Site last visited March 31, 2011.

[8] New York State . Senate Veterans' Hall of Fame. Available at http://www.nysenate.gov/veterans-hall-of-fame. Site last accessed March 31, 2011.

[9] Section 760.065, F.S.

[10] Section 265.001, F.S.

[11] Section 265.2865, F.S.

[12] Chapter 98-281, s. 13, Laws of Florida; s. 231.63, F.S. (1998 Supp.).

[13] Section 15.051, F.S.

This bill states that the Hall of Fame will not require the appropriation of state funds. The Florida Veterans Foundation, DVA's Direct Support Organization, has indicated it will be responsible for the initial and ongoing operation and maintenance costs of the Hall of Fame.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.
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B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution one.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution one.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DVA, the Florida Veterans Foundation, a 501(c)(3) organization, has indicated it will be responsible for initial and ongoing operation and maintenance costs of the Hall of Fame. The Department of Management Services has stated there is no fiscal impact to their agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on April 5, 2011:
Adds that Col. Bruce J. Host, USAF, Ret., in cooperation with the Florida Veterans Foundation, will chair the initial nomination review committee.

CS by Military Affairs, Space, and Domestic Security on March 17, 2011:
Removes the requirement for the Department of Management Services to set aside an area of the Plaza Level of the Capitol Building adjacent to the existing Medal of Honor Wall and directs them to set aside an area along the northeast front wall instead.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1140
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Sachs
SUBJECT:	Child Care Facilities
DATE:	April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Fav/CS**
2.	Davis	Spalla	TR	**Favorable**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Committee Substitute for SB 1140 creates the "Haile Brockington Act" and provides that on or before January 1, 2012, vehicles used by child care facilities to transport children must be equipped with an alarm system approved by the Department of Children and Families (DCF or department) that prompts the driver to inspect the vehicle for children before exiting. The bill provides that DCF shall adopt rules to administer the new provision of law and shall maintain a list of alarm manufacturers and alarm systems that are approved to be installed in such vehicles.

This bill has no direct fiscal impact on the Department of Children and Family Services but will have a fiscal impact on the owners and operators of child care facilities.

This bill substantially amends section 402.305, Florida Statutes.

II. Present Situation:

Licensing Standards for Child Care Facilities

The Department of Children and Families (DCF or department) establishes licensing standards that each licensed child care facility in the state must meet.[1] A child care facility is defined in Florida law as "any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit."[2] The department currently regulates 7,909 child care arrangements, including child care facilities, large family child care homes, family day care homes, and registered homes.[3] In addition, as of January 2010, six counties in the state which conduct their own licensure of homes currently license 4,292 child care arrangements.[4]

The statutory licensing standards for child care facilities are extensive and include standards for transportation and vehicles; however, current standards for licensed child care providers do not address alarm systems in vehicles. Rule 65C-22.001(6) of the Florida Administrative Code provides requirements for licensed child care facilities to follow in relation to vehicles that are owned, operated, or regularly used by the child care facility, as well as vehicles that provide transportation through a contract or agreement with an outside entity. Specifically:

- The driver of any such vehicle must have a valid driver's license and must have an annual physical exam granting the driver medical approval to drive;
- All child care facilities must comply with insurance requirements;
- All vehicles must be inspected annually;
- The maximum number of individuals transported may not exceed the manufacturer's designated seating capacity or the number of factory installed seat belts;
- Each child must be wearing a factory installed seat belt when riding in the vehicle;
- When transporting children, the staff-to-child ratios must be maintained;
- Each vehicle must have the contact information of each child being transported;
- Providers must maintain a driver's log for all children being transported. This log includes the child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle;
- Upon arrival at the destination, the driver of the vehicle must mark each child off the log as the child departs the vehicle; conduct a physical inspection and visual sweep of the vehicle; and sign, date, and record the driver's log immediately to verify all children were accounted for and that the sweep was conducted; and
- Upon arrival at the destination, a second staff member must also conduct a physical inspection and visual sweep of the vehicle and sign, date, and record the driver's log to verify all children were accounted for and that the driver's log is complete.

[1] See s. 402.305, F.S.
[2] Section 402.302(2), F.S.
[3] Florida Dep't of Children and Families, *DCF Quick Facts*, 7 (Jan. 31, 2011), *available at* http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf (last visited Mar. 25, 2011).
[4] Health Care Servs. Policy Comm., Florida House of Representatives, *Staff Analysis on HB 487*, 2 (Jan. 26, 2010), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0487.HCS.doc&DocumentType=Analysis&BillNumber=0487&Session=2010 (last visited Mar. 25, 2011).

There are similar requirements for family day care homes and large family child care homes.[5]

Children and Vehicles

In August 2010, 2 1/2 year old Haile Brockington died after being left in her car seat for nearly six hours in the back of a van employed by a Palm Beach County child care facility. According to the National Weather Service in Miami, the weather that day reached a high of 91 degrees.[6] The child care facility was licensed by DCF and had no violations against it at the time of the incident.[7]

"Death by hyperthermia" (or overheating of the body) has become much more prevalent since Federal law required that children ride in the backseat due to the danger of front passenger seat airbags.[8] Between 1998 and 2010, there have been approximately 495 child hyperthermia deaths, with 49 during the year 2010.[9] Thirty-one percent of hyperthermia deaths involve children under the age of one.[10] According to a Miami newspaper, roughly one-sixth of hyperthermia cases occur in Florida.[11] Approximately 60 children have died in Florida from being left in a vehicle and more than 150 have been injured.[12] Prosecutions and penalties vary widely and in total, charges were filed in 58 percent of Florida cases.[13]

III. Effect of Proposed Changes:

This bill creates the "Haile Brockington Act" and provides that on or before January 1, 2012, vehicles used by child care facilities to transport children must be equipped with an alarm system approved by DCF that prompts the driver to inspect the vehicle for children before exiting. The bill provides that DCF shall adopt rules to administer the new provision of law and shall maintain a list of alarm manufacturers and alarm systems that are approved to be installed in such vehicles.

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

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[5] See Rules 65C-20.010(8) and 65C-20.013(8), F.A.C.
[6] Julius Whigham II and Eliot Kleinberg, *Girl, 2 1/2, found dead in van at Delray Beach day care center*, THE PALM BEACH POST, Aug. 5, 2010 (updated Aug. 12, 2010), *available at* http://www.palmbeachpost.com/news/girl-1-1-2-found-dead-in-van-843774.html (last visited Mar. 25, 2011).
[7] *Id*.
[8] See Kids and Cars.org, *Fact Sheet*, http://www.kidsandcars.org/userfiles/dangers/heat-stroke/heat-stroke-fact-sheet.pdf (last visited Mar. 25, 2011); *see also* Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car is a Horrifying Mistake. Is it a Crime?*, THE WASHINGTON POST, Mar. 8, 2009, at W08, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549.html (last visited Mar. 25, 2011).
[9] Kids and Cars.org, *supra* note 8.
[10] *Id*.
[11] Michael J. Mooney, *Babies left in hot cars: Accident or crime?*, MIAMI NEW TIMES, Oct. 14, 2010, *available at* http://www.miaminewtimes.com/2010-10-14/news/babies-left-in-hot-cars-accident-or-crime/# (last visited Mar. 25, 2011).
[12] *Id*.
[13] *Id*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of the bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Statutes.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires owners and operators of child care facilities to purchase and install an alarm system in all vehicles used by the facility or home to transport children that alerts the driver to inspect the vehicle for children before exiting the vehicle. According to the Department of Children and Family Services, the estimated cost for owners and operators of child care facilities statewide is approximately $942,836 for the first year and $135,720 each additional fiscal year thereafter.[14] See breakdown of cost below.

Unit Price of Device	$289.95
Installation Cost	$85.00
Shipping Cost	$11.60
Manufacturer's Required Annual Re-certification Cost*	$65.00
Total Cost for One Facility	$451.55
Total Cost for 2,088 Facilities	**$942,836.40**

*Recurring cost

[14] Dept. of Children and Families, *Staff Analysis and Economic Impact SB 1140* (Feb. 16, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

C. Government Sector Impact:

The department will be responsible for writing rules to regulate this new requirement, as well as creating and maintaining manufacturer and alarm system approval protocols and compliance enforcement methodology.[15]

VI. Technical Deficiencies:

According to the DCF, the implementation date of January 1, 2012, may not provide the department with enough time to research the types of alarm systems available, to craft rules and compliance enforcement methodology, and to prepare licensing staff to enforce and provide technical assistance. Additionally, all requirements are contingent upon the development of DCF's approval process through public hearings and final adoption of the rule pursuant to s. 120.536, F.S.; dissemination of the requirement to providers; the availability of the device statewide; and the availability of certified system installation professionals.[16]

The department recommends only requiring that DCF maintain a list of available products, without providing approval for the actual product.

Lastly, the title of the bill (lines 4 and 5) states the alarm system requirement applies to large family child care homes; however, placement of the language in the bill within s. 402.305(10), F.S., restricts the requirement to licensed child care facilities.[17] Additional provisions would need to be included in s. 402.3131, F.S., to have the requirements of the bill apply to large family child care homes.

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 substitute amends the bill to provide that "on or before" January 1, 2012, vehicles used by child care facilities to transport children must be equipped with an alarm system approved by the Department of Children and Families, rather than "on or after" January 1, 2012.

B. Amendments:

None.

[15] *Id*.
[16] *Id*.
[17] *Id*.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1226
INTRODUCER:	Criminal Justice Committee and Senators Joyner and Gaetz
SUBJECT:	Health Care Fraud
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	**Favorable**
2.	Erickson	Cannon	CJ	**Fav/CS**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill amends current law relating to the licensure responsibility and authority of the Department of Health (DOH) over health professions and occupations. The bill also amends current law relating to the grounds for a board, or the DOH if there is no applicable board, to refuse to admit certain candidates seeking licensure to any examination and refuse to issue or renew a license, certificate, or registration to certain applicants.

This bill will result in a recurring increase in workload to the DOH to implement and non-recurring costs for rule-making, the costs of which are indeterminate

This bill substantially amends the following sections of the Florida Statutes: 456.0635, 456.036.

II. Present Situation:

The Legislature created s. 456.0635, F.S., in 2009 with the enactment of CS/CS/CS/SB 1986, a comprehensive bill designed to address systemic health care fraud in Florida. That bill:

- Increased the Medicaid program's authority to address fraud, particularly as it relates to home health services.
- Increased health care facility and health care practitioner licensing standards to keep fraudulent actors from obtaining a health care license in Florida.
- Created disincentives to commit Medicaid fraud by increasing the administrative penalties for committing Medicaid fraud, posting sanctioned and terminated Medicaid providers on the Agency for Health Care Administration (AHCA) website, and creating additional criminal felonies for committing health care fraud; among other anti-fraud provisions.[1]

Health Care Practitioner Licensure Authority of the Department of Health

The DOH is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture).
- Chapter 458 (medical practice).
- Chapter 459 (osteopathic medicine).
- Chapter 460 (chiropractic medicine).
- Chapter 461 (podiatric medicine).
- Chapter 462 (naturopathy).
- Chapter 463 (optometry).
- Chapter 464 (nursing).
- Chapter 465 (pharmacy).
- Chapter 466 (dentistry).
- Chapter 467 (midwifery).
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics).
- Chapter 478 (electrolysis).
- Chapter 480 (massage practice).
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists).
- Chapter 484 (dispensing of optical devices and hearing aids).
- Chapter 486 (physical therapy practice).
- Chapter 490 (psychological services).
- Chapter 491 (clinical, counseling, and psychotherapy services).

Current law[2] prohibits the DOH and the medical boards within the DOH from allowing any person to sit for an examination who has been:

- Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S.,[3] ch. 817, F.S.,[4] ch. 893, F.S.,[5] 21 U.S.C. ss. 801-970,[6] or

[1] *See* ch. 2009-223, L.O.F.
[2] *See* s. 456.0635, F.S.

42 U.S.C. ss. 1395-1396,[7] unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application;
- Terminated for cause from the Florida Medicaid program unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years; or
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of application.

The DOH and the medical boards must refuse to issue or renew a license, certificate, or registration to an applicant, or person affiliated with that applicant, who has violated any of the provisions listed above.

Implementation of Current Law by the Department of Health
Neither the DOH nor the boards deny licensure based on an applicant's termination for cause from the federal Medicare program because federal law does not implement such terminations "for cause." The DOH does not deny licensure renewal based on an applicant's termination for cause from the federal Medicare program for the same reason.

The DOH applies the denial of renewals to offenses occurring after July 1, 2009, when s. 456.0635, F.S., took effect.

III. Effect of Proposed Changes:

Section 1 amends s. 456.0635, F.S. The catch line is changed from "Medicaid fraud; disqualification for license, certificate, or registration," to "Health care fraud; disqualification for license, certificate, or registration." Other references in the statute to the general subject of "Medicaid fraud" are changed to "health care fraud."

The bill separates the disqualifications for licensure, certification, or registration from those relating to licensure renewal into two different statutory subsections.

The bill expands the current provisions that require a board or the DOH to refuse to admit a candidate to any examination and to refuse to issue a license to any applicant who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S., ch. 817, F.S., or ch. 893, F.S., to include similar felony offenses committed in another state or jurisdiction. The bill deletes the provision in current law that nullifies the prohibition if the sentence and probation period ended more than 15 years prior to the date of application, and replaces it with the following provisions:

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[3] ch. 409, F.S., "Social and Economic Assistance," is in Title XXX, "Social Welfare," and includes the Florida Medicaid and Kidcare programs, among other programs.
[4] ch. 817, F.S., "Fraudulent Practices," is in Title XLVI, "Crimes."
[5] ch. 893, F.S., "Drug Abuse Prevention and Control," is in Title XLVI, "Crimes."
[6] 21 U.S.C. ss. 801-970 create the Controlled Substances Act, which regulates the registration of manufacturers, distributors, and dispensers of controlled substances at the federal level.
[7] 42 U.S.C. ss. 1395-1396 create the federal Medicare, Medicaid, and Children's Health Insurance programs.

- For felonies of the first or second degree, the prohibition expires when the sentence and probation period have ended more than 15 years before the date of application.
- For felonies of the third degree, the prohibition expires when the sentence and probation period have ended more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S.[8]
- For felonies of the third degree under s. 893.13(6)(a), F.S., the prohibition expires when the sentence and probation period have ended more than 5 years before the date of application.

Notwithstanding s. 120.60, F.S., or felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the board, or the DOH if there is no board, may not approve or deny the application for a license, certificate, or registration until the final resolution of the case.

The bill requires a board or the DOH to refuse to admit a candidate to any examination and to refuse to issue a license to any applicant who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any probation period for such conviction or plea ended more than 15 years before the date of the application.

The bill deletes reference to "terminated for cause" from the federal Medicare program as grounds for which the DOH is required to deny a license and creates a new standard to exclude applicants currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

The bill specifies that the prohibitions above relating to examination, licensure, certification, and registration do not apply to applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2010, which was recognized by a board, or by the DOH if there is no applicable board, and who applied for licensure after July 1, 2010.

The bill creates a new statutory subsection relating to licensure *renewal* that requires the DOH to deny renewal for the same felony offenses referenced above, except that in order to trigger the renewal prohibition, the conviction or plea must have occurred after July 1, 2010. The bill includes the same provisions for denying licensure renewal as those described above for examination, licensure, certification, and registration, relative to exclusion from the Medicare program and termination from Medicaid programs in Florida or other states, as well as identical provisions regarding applicants who have entered a pretrial intervention or drug diversion program.

Section 2 amends s. 456.036, F.S. For licensure renewals, current law provides that if the DOH does not approve a renewal, the license will automatically become delinquent and then null. The amendment of s. 456.036, F.S., will prevent such licenses from becoming null while the licensee

[8] Section 893.13(6)(a), F.S., makes it unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or to be in actual or constructive possession of a controlled substance except as otherwise authorized by ch. 893, F.S.

is taking part in a court-approved pretrial intervention of drug diversion program. Upon final resolution of the case, the licensee may apply to have his or her license placed back into active status, without the license becoming automatically null in the meantime.

Section 3 provides that the effective date of the bill is July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will affect the ability of certain applicants to become licensed or to renew a license and thereby affect their ability to qualify or remain qualified for gainful employment within certain occupations regulated by the DOH. The bill will apply the statutory licensure prohibitions to persons with felony convictions or pleas effective in other states the same as they are applied to persons with felony convictions or pleas effective in Florida. This will create more equity in the application of the law and should result in more mandatory denials among persons within that demographic. However, the bill also relaxes the standards in other ways, such as the "sliding scale" for the prohibition's duration based on the type of felony, which should result in fewer mandatory denials under those circumstances.

C. Government Sector Impact:

The DOH will experience a recurring increase in workload to implement the bill and non-recurring costs for rule-making, the costs of which are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains no guidance or standards for determining what constitutes a "similar felony offense committed in another state or jurisdiction." Criminal statutes are different in every state. When licensure or renewal is denied based on a "similar" felony committed in another state or jurisdiction, the applicant may be encouraged to challenge the denial and argue that without specific standards within Florida law, the characteristics of the out-of-state felony cannot be justified by the DOH in keeping with legislative intent as being adequately "similar" to any certain offense within chs. 409, 817, or 893, F.S. However, a counterargument is that there are numerous statutes which require a determination whether an offense in another jurisdiction is similar to a Florida offense and that do not provide any guidance or standards for making that determination.[9]

VIII. Additional Information:

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

CS by Criminal Justice on March 28, 2011:

- For initial applications, current law requires an agency to approve or deny a completed application within 90 days. Otherwise the application is deemed approved. The CS allows the tolling to take place without the application being automatically approved in the meantime.
- The CS includes a missing reference to "the department if there is no board" in the previously described tolling provision.
- For licensure renewals, current law provides that if the DOH does not approve a renewal, the license will automatically become delinquent and then null. The CS prevents such licenses from becoming null while the licensee is taking part in a court-approved pretrial intervention of drug diversion program. Upon final resolution of the case, the licensee may apply to have his or her license placed back into active status, without the license becoming automatically null in the meantime.

B. Amendments:

None.

[9] *See e.g.*, ss. 39.0139, 311.12, 322.03, 373.6055, 393.0655, 408.809, 430.0402, 435.03, 435.04, 464.018, 468.3101, 744.474, 775.21, 943.0435, 948.30, 985.644, and 1012.467.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1300
INTRODUCER:	Criminal Justice Committee and Senator Storms
SUBJECT:	Juvenile Civil Citation Programs
DATE:	April 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	O'Connor	Maclure	JU	**Favorable**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill requires juvenile civil citation programs or other similar diversion programs to be established at the local level. Currently, these local diversion programs are discretionary. The bill specifies that they may be operated by any number of entities, including law enforcement, the Department of Juvenile Justice (DJJ), a juvenile assessment center, the county or city, or an entity selected by the county or city. Unlike current law, only first-time juvenile misdemeanants will be eligible to participate in a civil citation program. Current law allows second-time juvenile misdemeanants to participate. The bill also provides that intervention services will be required during the civil citation program if a needs assessment determines such services are necessary.

Finally, the DJJ is required to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state. The DJJ must also develop guidelines for the civil citation program which include intervention services. The guidelines must be based on proven civil citation programs or other similar programs within Florida.

This bill substantially amends section 985.12, Florida Statutes.

II. Present Situation:

Statutory Requirements for Civil Citation Programs

Currently, juvenile civil citation programs provide an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ) custody. They provide swift and appropriate consequences for youth who commit nonserious delinquent acts. A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor.[1]

The programs are discretionary under the authorizing statute. They exist at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved.[2] Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.[3]

Upon issuance of a citation, the local law enforcement agencies are required to send a copy of the citation to the DJJ so that the department can enter the appropriate information into the Juvenile Justice Information System (JJIS).[4] A copy must also be sent by law enforcement to the sheriff, state attorney, the DJJ's intake office, the community service performance monitor, the youth's parent, and the victim.[5] At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.[6]

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports to the DJJ information regarding the youth's service hour completion and the expected completion date.[7] If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a third or subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.[8]

[1] Section 985.12(1), F.S.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Section 985.12(2), F.S.
[6] Section 985.12(5), F.S.
[7] Section 985.12(3), F.S.
[8] Section 985.12(4), F.S.

Input from Local Civil Citation Programs

Last summer, 21 local civil citation programs around the state received a questionnaire about their civil citation expungement procedures.[9] Out of that number, 18 responses were received.[10] One of these programs ended on June 30, 2010, because of inadequate funding.[11] Similarly, one of the three program recipients that did not complete the questionnaire also indicated that its program ended then for the same reason.[12] (Nine of the 21 civil citation programs were funded through the DJJ until the end of June when the 3-year grant funding stopped.[13]) Another of the program respondents indicated that its civil citation program was discontinued last year by choice, and instead, a local diversion program was developed in its place.[14]

About half of these programs are run through the local sheriff,[15] and the rest are run through the local DJJ or a youth services organization,[16] the state attorney,[17] or the city or court administrator.[18] Program lengths range anywhere from one month to six months, with a length of two or three months being the most typical.

Several programs specified the following misdemeanors as being "acceptable" for admission into their respective programs:[19]

- Petit theft;
- Criminal mischief;
- Trespassing;
- Simple assault/battery;
- Disruption of a school function;
- Disorderly conduct; and
- Breach of the peace.

Although program admission eligibility requirements varied from circuit to circuit, the majority of programs seemed consistent with their general requirements, including:[20]

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[9] *Senate Criminal Justice Committee Interim Report 2011-113* (October 2010), *available at* http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-113cj.pdf (last visited Mar. 25, 2011).

[10] The following judicial circuits have (or had) at least one such program: judicial circuit 1 (program ended June 2010); judicial circuit 2 (2 of 3 programs responded); judicial circuits 4, 5, and 6 (program ended but started a similar diversion program); judicial circuit 7 (2 of 3 programs responded); judicial circuit 8 (program ended June 2010); and judicial circuits 9, 11, 13, 16, 17, 18, 19, and 20.

[11] Judicial circuit 8.

[12] Judicial circuit 1.

[13] Judicial circuits 1, 4, 5, 8, 11, 13, 17, 19, and 20.

[14] Judicial circuit 6. The program is called "Juvenile Arrest Avoidance Program," and its purpose is to prevent first time juvenile misdemeanants in Pinellas County from having a juvenile record. Everything about the program is kept local, including the youth's record. (Palm Beach County also has a diversion program that is handled completely on the local level, according to the state attorney's office in the 15th judicial circuit.)

[15] Judicial circuits 2, 5, 7 (has several programs), 16, 17, and 20 (has a few programs).

[16] Judicial circuits 6, 9, 11 are DJJ operated and Circuits 1, 2, 13, and 18 are operated by a youth services organization.

[17] Judicial circuit 20.

[18] Judicial circuits 4 and 19.

[19] *Senate Criminal Justice Committee Interim Report 2011-113, supra* note 9.

[20] *Id.*

- Must not have a prior criminal history (some programs specify no prior felony arrests, but will allow one prior misdemeanor);
- Must be between 10 and 17 years of age (some programs do not specify a minimum age, but specify the maximum age to be 17 years);
- Must not have participated in a prior diversion program, including civil citation, or be on any form of court-ordered supervision;
- Must be a first-time misdemeanor offense (some programs require there be no restitution issues, or some specify that it must be a nonviolent misdemeanor);
- Must not have committed a domestic violence offense, traffic offense, sexual crime, hate crime, or malicious act of violence;
- Must be a resident of the applicable county; and
- Must have a written agreement among the youth, the victim, and the parents.

III. Effect of Proposed Changes:

This bill requires juvenile civil citation programs or other similar diversion programs to be established at the local level. Currently, these local diversion programs are discretionary. The bill specifies that they may be operated by any number of entities, including law enforcement, the Department of Juvenile Justice (DJJ), a juvenile assessment center, the county or city, or an entity selected by the county or city. However, the state attorney and local law enforcement agencies must be in agreement with the selected entity.

The bill deletes the county sheriff and the victim as entities that are required to receive a copy of the issued citation. The bill also provides that intervention services will be required during the civil citation program if a needs assessment determines that such services are necessary. Unlike current law, only first-time juvenile misdemeanants will be eligible to participate in a civil citation program. The statute currently allows second-time juvenile misdemeanants to participate.

Upon program completion, the agency operating the program must report the outcome to the DJJ. The bill also states that the issuance of a civil citation will not be considered a referral to the DJJ, meaning it will not initiate formal judicial processing. However, if the youth fails to comply, the juvenile probation officer must process the original delinquent act as a referral to the DJJ and send the report to the state attorney for review.

Finally, the DJJ is required to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state. The DJJ must also develop guidelines for the civil citation program which include intervention services. Furthermore, the guidelines must be based on proven civil citation programs or other similar programs in Florida.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expansion of juvenile civil citation programs or other similar diversion programs in Florida may result in more eligible youth benefiting from this diversion program, especially as it relates to future opportunities for employment since these youth will not have to deal with the obstacle of having an arrest record.

C. Government Sector Impact:

By requiring the local establishment of civil citation programs or other similar diversion programs, the bill may result in an indeterminate fiscal impact on those jurisdictions that do not have adequate diversion resources available.

On the other hand, to the extent that youth are increasingly diverted from the more costly juvenile justice system, the greater the potential cost savings will be to Florida.

According to the Office of the State Courts Administrator, the bill will have an indeterminate effect on judicial workload.[21]

VI. Technical Deficiencies:

None.

[21] Office of the State Courts Administrator, *Senate Bill 1300 Fiscal Analysis* (Mar. 4, 2011) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

This bill is one of the criminal and juvenile justice cost saving proposals recommended by Florida Tax Watch.[22]

VIII. Additional Information:

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

CS by Criminal Justice on March 22, 2011:
The committee substitute:

- Requires the DJJ to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state.
- Requires the DJJ to develop guidelines for the civil citation program which include intervention services.
- Requires the civil citation guidelines to be based on proven civil citation programs or other similar diversion programs within Florida.
- Provides that the state attorney and local law enforcement agencies must be in agreement with whatever entity is selected to operate the local civil citation or other similar diversion program.

B. Amendments:

None.

[22] Florida Tax Watch, *Cost-Savings Recommendations for the Criminal and Juvenile Justice System*, presented to the Senate Committee on Criminal Justice, January 11, 2011 (on file with the Senate Committee on Criminal Justice).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 1372
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Storms
SUBJECT:	Persons with Developmental Disabilities/Medication
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/1 amendment**
2.	Daniell	Walsh	CF	**Fav/CS**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends s. 393.506, F.S., to require a registered nurse or a physician to annually assess and validate the competency of a direct service provider, who is not licensed to administer prescription medication, in certain routes of medication administration, including oral, ophthalmic, rectal, inhaled, and enteral. The bill provides that topical, transdermal, and otic routes of medication administration do not require annual revalidation.

Additionally, the bill requires the Department of Children and Family Services (department) to submit a recommended order after the conclusion of an administrative hearing to the Agency for Persons with Disabilities (agency) and the agency must issue a final order after the recommendation is made. This amendment clarifies that the final order authority rests with the agency after a hearing is conducted by department on behalf of the agency.

This bill has no fiscal impact on state or local government. Direct service providers to the developmentally disabled may save money as they will no longer be required to have a registered nurse licensed under ch. 464, F.S., or a physician licensed under ch. 458 or ch. 459, F.S., perform an annual validation of the administration of certain medicines by the unlicensed direct service provider.

This bill substantially amends sections 393.125 and 393.506, Florida Statutes.

II. Present Situation:

Agency for Persons with Disabilities

In October 2004, the Agency for Persons with Disabilities (APD) became an agency separate from the DCF and was specifically tasked with serving the needs of Floridians with developmental disabilities.[1] Prior to that time, it existed as the Developmental Disabilities Program.[2]

The primary purpose of APD is to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served by the agency, provide assistance in identifying needs, and funding to purchase supports and services.[3]

Developmental Disabilities Institutions

Clients of APD may receive services through home or community settings, private intermediate care facilities, or state-run developmental services institutions. Developmental services institutions provide secure[4] residential services for individuals who have been charged with a serious crime and who have been found by the court to be incompetent to proceed through the court process due to mental retardation.[5] There are currently two non-secure developmental services institutions which are staffed by state employees: Marianna Sunland and Tacachale.[6]

Direct Service Providers

A direct service provider is a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.[7]

Currently, APD requires that each direct service provider submit to a Level 2 employment screening pursuant to s. 435.03, F.S.[8] Section 393.0657, F.S., currently exempts a person who

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[1] Section 393.063(9), F.S., defines the term "developmental disability" as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
[2] Agency for Persons with Disabilities, *About Us*, http://apd.myflorida.com/about (last visited Mar. 24, 2011).
[3] Office of Program Policy Analysis & Government Accountability, The Florida Legislature, *Agency for Persons with Disabilities*, http://www.oppaga.state.fl.us/profiles/5060 (last visited Mar. 24, 2011).
[4] The only secure forensic facility under APD is the Mentally Retarded Defendant Program (MRDP) in Chattahoochee. *See* Agency for Persons with Disabilities, *Mentally Retarded Defendant Program*, http://apd.myflorida.com/ddc/mrdp/ (last visited Mar. 24, 2011).
[5] Office of Program Policy Analysis & Government Accountability, *supra* note 3.
[6] Agency for Persons with Disabilities, *Statewide Developmental Disability Centers*, http://apd.myflorida.com/ddc/ (last visited Mar. 24, 2011).
[7] Section 393.063(11), F.S.
[8] Section 393.0655, F.S.

has undergone any portion of the background screening requirements required in s. 393.0655, F.S., within the last year from being required to repeat those screening requirements.

Section 402.3057, F.S., exempts certain individuals from background screening requirements pursuant to ch. 393, F.S. The exemption does not apply to an individual who has had a 90-day break in employment.[9]

Administration of Medication

Section 393.506, F.S., provides that a direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication or may administer several types of prescription medications to clients, including:

- Oral,[10]
- Transdermal,[11]
- Ophthalmic,[12]
- Otic,[13]
- Rectal,[14]
- Inhaled,[15]
- Enteral,[16] or
- Topical.[17]

In order to supervise the self-administration of medication or to administer medications, a direct service provider must satisfactorily complete a training course of not less than four hours in medication administration and be found competent to supervise the self-administration of

[9] Section 402.3057, F.S.
[10] "Oral" means medication taken by mouth. Merriam-Webster, Medline Plus Medical Dictionary, *Oral*, http://www.merriam-webster.com/medlineplus/Oral (last visited Mar. 24, 2011).
[11] "Transdermal" means relating to, being, or supplying a medication in a form for absorption through the skin into the bloodstream. Merriam-Webster, Medline Plus Medical Dictionary, *Transdermal*, http://www.merriam-webster.com/medlineplus/Transdermal (last visited Mar. 24, 2011).
[12] "Ophthalmic" means of, relating to, or situated near the eye (meaning administration of medicine to the eye). Merriam-Webster, Medline Plus Medical Dictionary, *Ophthalmic*, http://www.merriam-webster.com/medlineplus/Ophthalmic (last visited Mar. 24, 2011).
[13] "Otic" means of, relating to, or located in the region of the ear (meaning the administration of medicine to the ear). Merriam-Webster, Medline Plus Medical Dictionary, *Otic*, http://www.merriam-webster.com/medlineplus/otic (last visited Mar. 24, 2011).
[14] "Rectal" means relating to, affecting, or being near the rectum (meaning the administration of medicine to the rectum). Merriam-Webster, Medline Plus Medical Dictionary, *Rectal*, http://www.merriam-webster.com/medlineplus/rectal (last visited Mar. 24, 2011).
[15] "Inhaled" means medicine that is administered by being breathed in. Merriam-Webster, Medline Plus Medical Dictionary, *Inhaled*, http://www.merriam-webster.com/medlineplus/Inhaled (last visited Mar. 24, 2011).
[16] "Enteral" or "enteric" means being or possessing a coating designed to pass through the stomach unaltered and to disintegrate in the intestines (meaning medication is administered usually by tube in order to pass through the stomach and into the intestines). Merriam-Webster, Medline Plus Medical Dictionary, *Enteric*, http://www.merriam-webster.com/medlineplus/enteric (last visited Mar. 24, 2011).
[17] "Topical" means designed for or involving application to or action on the surface of a part of the body (meaning the application of medicine on the surface of the body). Merriam-Webster, Medline Plus Medical Dictionary, *Topical*, http://www.merriam-webster.com/medlineplus/topical (last visited Mar. 24, 2011).

medication by a client or to administer medication to a client in a safe and sanitary manner.[18] Competency must be assessed and validated at least annually by a registered nurse licensed pursuant to ch. 464, F.S., or a physician licensed pursuant to ch. 458 or ch. 459, F.S., in an onsite setting and must include the registered nurse or physician personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client, and administering medication to a client.[19]

The client or the client's guardian or legal representative must give his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider.[20]

Medicaid: Review of Agency Decisions

Medicaid provides health care options for low-income families and individuals. In Florida, the Agency for Health Care Administration (AHCA) is responsible for Medicaid and the Department of Children and Family Services (DCF) helps AHCA by enrolling eligible persons into the Medicaid program.[21] The AHCA also contracts with other state entities and private organizations to provide services. Medicaid serves approximately 2.97 million people in Florida and the estimated expenditure for fiscal year 2010-2011 is $20.2 billion.[22]

The Home and Community-Based Services waivers administered by the Agency for Persons with Disabilities (APD) offer 28 supports and services to assist individuals with developmental disabilities to live in their community.[23] If APD takes an action that substantially affects a person using one of these services, the person has a right to an administrative hearing. When APD seeks to deny, reduce, terminate, or suspend Medicaid Waiver services, the hearings are conducted by the Office of Appeal Hearings within DCF.[24] Any other developmental services applicant who has any substantial interest determined by APD may request an administrative hearing pursuant to ch. 120, F.S., the Administrative Procedures Act.[25]

If APD notifies a person that it intends to reduce, terminate, or suspend Medicaid Waiver services, the person may file a hearing request with the following information:

- The name, address, and telephone number of the person for whom the hearing is being requested, as well as the name, address, and telephone number of the person's counsel or representative designated to receive pleadings and other official papers;

[18] Section 393.506(2), F.S.
[19] See ss. 393.506(2) and (4), F.S.
[20] Section 393.506(3), F.S.
[21] Agency for Health Care Admin., *Welcome to Medicaid!*, http://www.fdhc.state.fl.us/Medicaid/index.shtml (last visited Mar. 29, 2011).
[22] *Id*.
[23] Agency for Persons with Disabilities, *HCBS Waiver Services*, http://apd.myflorida.com/brochures/supports-and-services-brochure.pdf (last visited Mar. 29, 2011).
[24] Agency for Persons with Disabilities, *Guide to Administrative Hearings on Medicaid Programs* (Oct. 2010), *available at* http://apd.myflorida.com/brochures/administrative-hearings-guide.pdf (last visited Mar. 29, 2011); *see also* s. 393.125(1)(a), F.S.
[25] Section 393.125(1)(b), F.S. Specifically, the hearing shall be pursuant to ss. 120.569 and 120.57, F.S.

- A statement that the person is requesting the hearing and whether the person disputes the facts alleged by APD; and
- A reference to, or copy of, APD's decision and the date on which it was received.[26]

Once APD determines that the hearing request was filed on time and is complete, it will forward the request to DCF, where a hearing officer will be assigned to the case.[27]

III. Effect of Proposed Changes:

This bill amends s. 393.506, F.S., to require a registered nurse licensed under ch. 464, F.S., or a physician licensed under chs. 458 or 459, F.S., to annually assess and validate the competency of a direct service provider in the administration of oral, ophthalmic, rectal, inhaled and enteral prescription medications, in an onsite setting with an actual client. For topical, transdermal, and otic routes of medication administration, a direct service provider's competency may be validated by simulation during a training course required under s. 393.506(2), F.S.,[28] and do not require annual revalidation.

Additionally, the bill requires the Department of Children and Family Services (department) to submit a recommended order after the conclusion of a Medicaid administrative hearing to the Agency for Persons with Disabilities (agency) and the agency must issue a final order after the recommendation is made. This amendment clarifies that the final order authority rests with the agency after a hearing is conducted by department on behalf of the agency.

The bill provides that it shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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[26] *Guide to Administrative Hearings on Medicaid Programs*, *supra* note 24.
[27] *Id*.
[28] A direct service provider who is not licensed to administer medication must satisfactorily complete a training course of not less than 4 hours in medication administration and be found competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Direct service providers may save money as they will no longer be required to have a registered nurse licensed under ch. 464, F.S., or a physician licensed under ch. 458 or ch. 459, F.S., perform an annual validation of the administration of certain medicines by the unlicensed direct service provider.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

There may be an inconsistency in subsection (4) of this bill and subsection (2) in s. 393.506, F.S. This bill exempts an annual revalidation for the topical, transdermal, and otic routes of administration. However, subsection (2) requires that the competency of a direct service provider be assessed and validated at least annually in an onsite setting and must include personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client and administering medication to a client.

VII. Related Issues:

Disability Rights Florida suggests providing the hearing officer for the Department of Children and Family Services the authority to issue the final order because an appeal will be able to move forward faster and it will provide more credibility to the system if an independent hearing officer issues the final order rather than the agency that is also seeking the action.[29]

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 28, 2011:
The committee substitute requires the Department of Children and Family Services (department) to submit a recommended order after the conclusion of an administrative hearing to the Agency for Persons with Disabilities (agency) and the agency must issue a final order after the recommendation is made. This amendment clarifies that the final order authority rests with the agency after a hearing is conducted by department on behalf of the agency.

[29] E-mail from Sylvia Smith, Disability Rights Florida, to professional staff of the Senate Committee on Children, Families, and Elder Affairs (Mar. 29, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 1586
INTRODUCER:	Senator Hays
SUBJECT:	Authority of Certain Professionals to Practice in Florida
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Favorable**
2.	Oxamendi	Imhof	RI	**Favorable**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill removes the authority for professionals and health care professionals (veterinarians), who are licensed in another state or in a foreign jurisdiction, are in Florida for a specific sporting event, and are employed or designated by the sport's team, to practice on animals used in the sport.

This bill substantially amends sections 455.2185 and 456.023, Florida Statutes.

II. Present Situation:

Veterinary Medical Practice

The Board of Veterinary Medicine (board) within the Department of Business and Professional Regulation (department) is the agency charged with the regulation of the practice of veterinary medicine under ch. 474, F.S., the Veterinary Medical Practice Act (act). The legislative purpose for the act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice and veterinarians who are not normally competent or who otherwise present a danger to the public are disciplined or prohibited from practicing in Florida.[1]

[1] Section 474.201, F.S.

The department is the state agency responsible for the licensing of veterinarians, while the board[2] within the department is responsible for adopting rules to establish fees and implement the provisions of ch. 474, F.S.

For a person to be licensed as a veterinarian he or she must apply to the department to take a licensure examination. The department must license each applicant who the board certifies has:

- Completed the application form and remitted an examination fee set by the board.[3]
- Graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education or graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World and obtained a certificate from the Education Commission for Foreign Veterinary Graduates.
- Successfully completed the examination provided by the department for this purpose, or an examination determined by the board to be equivalent.
- Demonstrated knowledge of the laws and rules governing the practice of veterinary medicine in Florida in a manner designated by rules of the board.[4]

The department is prohibited from issuing a license to any applicant who is under investigation in any state or territory of the United States or in the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.[5]

An unlicensed doctor of veterinary medicine who has graduated from an approved college or school of veterinary medicine and has completed all parts of the examination for licensure is permitted, while awaiting the results of the examination for licensure or while awaiting issuance of the license, to practice under the immediate supervision of a licensed veterinarian. A person who fails any part of the examination may not continue to practice, except in the same capacity as other nonlicensed veterinary employees, until the person passes the examination and is eligible for licensure.[6]

An applicant may be eligible for temporary licensure if certain requirements are met. In order for the board to certify an applicant to the department for issuance of a temporary license to practice veterinary medicine, an applicant must demonstrate to the board that the applicant:

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[2] The board consists of seven members, who are appointed by the Governor, and are subject to confirmation by the Senate. Five members of the board must be licensed veterinarians and two members of the board must be laypersons who are not and have never been veterinarians or members of any closely related profession or occupation. *See* s. 474.204, F.S.

[3] For applicants taking the Laws and Rules examination that is not conducted by a professional testing service, the examination fee is $165.00, payable to the DBPR. For applicants taking the Laws and Rules examination that is conducted by a professional testing service, the examination fee is $151.50 payable to the department plus $13.50 payable to the testing service. Rule 61G18-12.002, F.A.C. The applicant for licensure must also pay an initial licensure fee of $200, if the person is licensed in the first 12 months of the biennium, or $100, if the person is licensed in the second 12 months of the biennium. Rule 61G18-12.007, F.A.C.

[4] Section 474.207, F.S.

[5] *Id.*

[6] *Id.*

- Has filed an application for temporary licensure identifying the name and address of the owner of the animals to be treated, the type of animals to be treated and their injury or disease, the location the treatment is to be performed, and the names, addresses, and titles of all persons entering the state with the applicant to perform the treatment; or
- Has filed an application and is responding to an emergency for the treatment of animals of multiple owners.
- Has paid the temporary licensure fee.
- Holds an active license to practice veterinary medicine in another state of the United States and that any license to practice veterinary medicine that the person has ever held has never been revoked, suspended or otherwise acted against by the licensing authority.
- Is neither the subject of any pending prosecution nor has ever been convicted of any offense which is related to the practice of veterinary medicine; and
- Satisfies the qualifications for licensure by endorsement.[7]

A temporary license is valid for a period of 30 days from its issuance. A temporary license does not cover more than the treatment of the animals of the owner identified in the application. Upon expiration of the license, a new license is required.[8]

An applicant may also be eligible for licensure by endorsement if specific requirements are met. The department must issue a license by endorsement to any applicant who, upon applying to the department and remitting the requisite fee,[9] demonstrates to the board that she or he:

- Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of veterinary medicine in Florida; and
- Either holds, and has held for the 3 years immediately preceding the application for licensure, a valid, active license to practice veterinary medicine in another state of the United States, the District of Columbia, or a territory of the United States, provided that the requirements for licensure in the issuing state, district, or territory are equivalent to or more stringent than the requirements of ch. 474, F.S.; or meets the application and examination requirements under Florida law and has successfully completed a state, regional, national, or other examination which is equivalent to or more stringent than the examination given by the department.[10]

The department is prohibited from issuing a license by endorsement to any applicant who is under investigation in any state, territory, or the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.

Under s. 474.213, F.S., a person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. (maximum imprisonment of 5 years, maximum fine of $5,000, or penalties applicable for a habitual offender) if the person:

[7] Rule 61G18-25.001, F.A.C.
[8] *Id.*
[9] The fee for licensure by endorsement is $500. Rule 61G18-12.011, F.A.C.
[10] Section 474.217, F.S.

- Leads the public to believe that such person is licensed as a veterinarian, or is engaged in the licensed practice of veterinary medicine, without such person holding a valid, active license pursuant to ch. 474, F.S.;
- Uses the name or title "veterinarian" when the person has not been licensed pursuant to ch. 474, F.S.;
- Presents as her or his own the license of another;
- Gives false or forged evidence to the board or a member thereof for the purpose of obtaining a license;
- Uses or attempts to use a veterinarian's license which has been suspended or revoked;
- Knowingly employs unlicensed persons in the practice of veterinary medicine;
- Knowingly concealing information relative to violations of ch. 474, F.S.;
- Obtains or attempts to obtain a license to practice veterinary medicine by fraudulent representation;
- Practices veterinary medicine in Florida, unless the person holds a valid, active license to practice veterinary medicine pursuant to ch. 474, F.S.;
- Sells or offers to sell a diploma conferring a degree from a veterinary school or college, or a license issued pursuant to ch. 474, F.S., or procures such diploma or license with the intent that it shall be used as evidence of that which the document stands for by a person other than the one upon whom it was conferred or to whom it was granted; or
- Knowingly operates a veterinary establishment or premises without having a premise permit issued under s. 474.215, F.S.

General Provisions for Business and Health Professionals

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department. The general provisions for licensure, certification, education, examination, and penalties for the following medical professionals are provided under ch. 456, F.S. In addition, ch. 456, F.S., provides the authority of the following boards to regulate their respective professions.

Exemption for Out-of-state or Foreign Professionals

Sections 455.2185(1) and 456.023(1), F.S., permit professionals from another state, nation, or foreign jurisdiction who are licenses under ch. 455 and 456, F.S., respectively, to practice in Florida under limited circumstances. Such professional are exempt from the license requirements under ch. 455 and 456, F.S., and the applicable professional practice act if that person:

- Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.
- Engages in the active practice of that profession outside the state.
- Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

Sections 455.2185(2) and 456.023(2), F.S., limited the practice of the professional to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or

designated involves animals. Both sections also provide that these professionals do not have practice privileges in any licensed veterinary facility without the approval of that facility.

III. Effect of Proposed Changes:

The bill amends s. 455.2185, F.S., to delete the authority of a professional, who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport's team, to practice on animals used in the sport.

The bill also amends s. 456.023, F.S., to delete the authority of a health care professional, who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport's team, to practice on animals used in the sport.

The bill deletes the provisions in ss. 455.2185 and 456.023, F.S., that prohibit these professionals from practicing in veterinary facilities without the approval of the facility, which is consistent with the above changes that prohibit the professionals from practicing on animals used by the sporting teams while in Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sports teams from out-of-state or from foreign jurisdictions that participate in sporting events involving animals in Florida may incur additional costs associated with hiring a Florida-licensed veterinarian for veterinary services. These costs are indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee	
BILL:	CS/CS/SB 1150
INTRODUCER:	Government Oversight and Accountability Committee, Transportation Committee, and Senator Latvala
SUBJECT:	Department of Highway Safety and Motor Vehicles
DATE:	April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Fav/CS**
2.	McKay	Roberts	GO	**Fav/CS**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

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;
- Revises safety standard requirements for bicycle helmets worn by minor riders and passengers to require the helmets to meet certain federal safety standards;
- Modifies motorcycle and moped license tag legibility and positioning requirements;
- Modernizes the format of motor vehicle certificates of title;

- Revises child restraint requirements for children passengers in motor vehicles;
- 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., and "swamp buggy";
- Defines the term "swamp buggy":
- 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; for Autism Services and Supports; and, to improve traffic safety culture in communities;
- Creates the "Combat Infantry Badge" special license plate;
- 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;
- Creates the "Highway Safety Act"; directs DHSMV to provide information about this act in driver's license educational materials; prohibits a driver from continuing to operate a vehicle in the left lane of a multi-lane highway when the driver knows, or should reasonably know, he or she is being overtaken (and establishes exceptions to this prohibition); increases from two or more to three or more, the number of driving infractions committed simultaneously in order to qualify as aggressive careless driving; includes the failure to yield to overtaking vehicles to the infractions considered acts of aggressive careless driving; establishes penalties for aggressive careless driving; and provides for the distribution of money received from increased fines associated with penalties, including financial support of trauma centers and emergency medical services organizations throughout Florida.
- Repeals obsolete chauffeurs' 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, 316.003, 316.1905, 316.1933, 316.1957, 316.2015, 316.2065, 316.2085, 316.2122, 316.2124, 316.21265, 316.3026, 316.545,316.550, 316.613, 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, 713.78, 316.083, 316.1923, 318.121, 318.18, 318.19, 320.089, 318.1451, and 322.095.

The bill creates ss. 322.1415 and 322.145, F.S., and creates four undesignated sections of Florida Law.

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

Section 316.650, F.S, is reenacted for the purpose of incorporating amendments made by this act.

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. DMV 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 (TR) registers and titles motor vehicles, vessels and mobile homes. Titles and Registrations issues and cancels titles, records liens, and maintains records of motor vehicle and vessel title transactions. Further, TR 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 (MHRVC) 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. MHRVC 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), F.S., 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.

Riding on the Exterior of Vehicles

Section 316.2015 (1), F.S. provides it is unlawful for any operator of a passenger vehicle 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 which is maintained by the state, county or municipality. This infraction is a moving violation punishable by a fine of $60 plus applicable court costs and fees and an assessment of 3 points against the driver's license. The fees and court costs vary county by county.

Section 316.2015 (2)(a), F.S., prohibits a passenger from riding on any portion of a vehicle that is not designed or intended for the use of passengers, except for employees doing so as part of employment duties, or persons riding within truck bodies in space intended for merchandise (i.e., the bed of pick-up trucks). This infraction is a non-moving violation punishable by a fine of $30 plus applicable court costs and fees.

Section 316.2015(2)(b), F.S., s. 316.2015, F.S., to prohibits operators of pickup trucks and flatbed trucks from allowing minors, defined as individuals under 18 years of age, from riding on the bed of these trucks unless the trucks have been modified to include secure seating and safety restraints and the minors are properly restrained. This provision applies to operation upon secure access facilities of the state such as limited access parkways and freeways. However, this section exempts operators from this provision when a truck is being operated in medical emergencies if the child is accompanied by an adult. This section also authorizes counties to exempt themselves from the provisions contained in s. 316.2015(b), F.S.

Person who violates ss. 316.2015(2)(a) or (b), F.S., commits a nonmoving violation, punishable by a fine of $30 plus applicable court costs and fees.

Section 316.2015 (3), F.S., provides that the prohibitions within s. 316.2015, F.S., do not apply to a performer engaging in, or preparing for, an exhibition or parade.

Bicycle Regulations

Current Bicycle Helmet Requirements

Under current law, a bicycle rider or passenger who is less than 16 years of age must wear a bicycle helmet properly fitted and fastened securely by a strap. The helmet must meet the 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 of Highway Safety and Motor Vehicles. The term "passenger" includes a child who is riding in a trailer or semi trailer attached to a bicycle. A law enforcement officer or school crossing guard is specifically authorized to issue a bicycle safety brochure and a verbal warning to a rider or passenger who violates the helmet law. A law enforcement officer is authorized to issue a citation and the violator will be assessed a $15 fine plus applicable court costs and fees. An officer may issue a traffic citation for a violation of this provision only if the violation occurs on a bicycle path or road. A court is required to dismiss the charge against a bicycle rider or passenger for a first violation of the provision upon proof of purchase of a bicycle helmet in compliance with the law. Further, a court is authorized to waive, reduce or suspend payment of any fine imposed for a violation of the helmet law.

Standards for Bicycle Helmet Manufacturing

Nearly 17 years ago, the United States Congress passed the Child Safety Protection Act of 1994, requiring the Consumer Product Safety Commission (CPSC) to develop mandatory bicycle helmet standards. The CPSC published 16 CFR Part 1203 in March, 1998, to apply to all helmets manufactured since March, 1999. The rule mandates several performance requirements related to impact protection, children's helmets head coverage, and chin strap strength and stability. Helmets meeting the requirements display a label indicating compliance with the standards.

Operating Procedures

Section 316.2065, F.S., requires bicyclists on the roadway to ride in the marked bicycle lane if the roadway is marked for bicycle use or if no lane is marked, as close as practicable to the right-hand curb or edge of the roadway, with the following exceptions:

- When overtaking and passing another bicycle or vehicle moving in the same direction;
- When preparing to turn left; or
- When "reasonably necessary" to avoid unsafe conditions such as fixed objects, surface hazards, parked vehicles, etc.

Law enforcement officers are authorized to issue noncriminal traffic citations for violations of s. 316.02065, F.S.

Current Bicycle Lighting Requirements

Currently, every bicycle in use between sunset and sunrise must 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 law. Violation of bicycle lighting requirements is a non-criminal traffic infraction punishable as a pedestrian violation by a $15 fine plus applicable court costs and fees.

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.

Child Restraint Devices

Currently, s. 316.613, F.S., requires every motor vehicle operator to properly use a crash-tested, federally approved child restraint device when transporting a child 5 years of age or younger. For children 3 years of age or younger, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. These requirements apply to motor vehicles operated on the roadways, streets, and highways of this state. The requirements do not apply to a school bus; a bus used to transport persons for compensation; a farm tractor; a truck of net weight of more than 26,000 pounds; or a motorcycle, moped, or bicycle. A driver who violates this requirement is subject to a $60 fine, court costs and add-ons, and having 3 points assessed against their driver's license.

A driver who violates this requirement may elect, with the court's approval, to participate in a child restraint safety program. Upon completing such program the above penalties may be waived at the court's discretion and the assessment of points waived. The child restraint safety program must use a course approved by the DHSMV, and the fee for the course must bear a reasonable relationship to the cost of providing the course.

Section 316.613(4), F.S., provides it is legislative intent that all state, county, and local law enforcement agencies, and safety councils, conduct a continuing safety and public awareness campaign as to the magnitude of the problem with child death and injury from unrestrained occupancy in motor vehicles.

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 is transferee.

Course Curricula

Driver Improvement Schools
Section 318.1451, F.S., as related to driver improvement schools, provides: (1) The department shall approve the courses and technology used as the delivery method of driver improvement schools; (2) In approving a driver improvement course, the department shall consider course content related to promoting safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve the driver performance from a safety viewpoint; (3) The department may only consider those driver improvement schools that have obtained approval for statewide delivery; (4) Persons that elected to take courses through unapproved schools shall receive a refund from the school and may retake the course through a department approved school; (5) Approved driver improvement schools shall collect a fee of $2.50 from each person who elects to attend a course which shall be remitted to the DHSMV and deposited in the Highway Safety Operating Trust Fund; (8) The department is authorized to maintain records and information necessary for administration for driver improvement courses and may prepare a traffic school reference guide which lists the benefits of attending driver improvement schools and a list of approved course providers.

Currently, s. 318.1451, F.S. does not include criteria for course curricula pertaining to the risks associated with the use of handheld electronic devices used for communication purposes while operating a motor vehicle.

Traffic Law and Substance Abuse Education Programs
Section 322.095, F.S., as related to traffic law and substance abuse education programs for driver's license applicants, provides: (1) DHSMV must approve traffic law and substance abuse education courses; (2) Curricula of these courses must provide instruction on the physiological and psychological consequences of the abuse of alcohol and other drugs, the societal and economic costs of alcohol and drug abuse, the effects of alcohol and drug abuse on the drive of a motor vehicle, and the laws of this state relating to the operation of a motor vehicle; and (3) The course provider must obtain certification from the department that the course complied with the requirements of this section.

Currently, s. 322.095, F.S., does not include criteria for course curricula pertaining to the risks associated with the use of handheld electronic devices used for communication purposes while operating a motor vehicle.

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]

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

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

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 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., Achievement and Rehabilitation Centers, Inc., and Auto Club South Traffic Safety Foundation
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; and

- 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 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.

[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.

[5] S. 45, 2008-176, Laws of Florida

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 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.

Special Plates – Combat Infantry Badge

"Specialty license plates" are available to any owner or lessee of a motor vehicle who is willing to pay an annual fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.[6]

However, special license plates are issued by the DHSMV to those who meet certain qualifying criteria and include the National Guard, U. S. Armed Forces Reserves, Ex-POW, Pearl Harbor Survivor, Combat-wounded Veteran, Purple Heart Recipient, Operation Iraqi Freedom, and Operation Enduring Freedom plates. License taxes for these special plates, excluding the Pearl Harbor Survivor, Purple Heart, and Ex-POW plates under certain circumstances, are the same as any other motor vehicle plate as prescribed in s. 320.08, F.S.

The first $100,000 of revenues from the sales of these special plates are deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act. Any additional revenues are deposited into the State Homes for Veterans Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.

[6] Sections 320.08056 and 320.08058, F.S.

The Combat Infantryman Badge is the U.S. Army combat service recognition decoration awarded to soldiers—enlisted men and officers (commissioned and warrant) holding colonel rank or below, who personally fought in active ground combat while an assigned member of either an infantry or a Special Forces unit, of brigade size or smaller, any time after December 6, 1941.[7] The Combat Infantryman Badge and its non-combat analogue, the infantry skill-recognition Expert Infantryman Badge were simultaneously created during World War II as primary recognition of the combat service and sacrifices of the infantrymen who would likely be wounded or killed in numbers disproportionate to those of soldiers from the Army's other service branches.[8]

Combat Infantryman Badge recipients must have met the following criteria to have been awarded this honor as provided by the Military Awards Army Regulation 600-8-22:

- Be an infantryman satisfactorily performing infantry duties.
- Assigned to an infantry unit during such time as the unit is engaged in active ground combat.
- Actively participate in such ground combat. Campaign or battle credit alone is not sufficient for the award of the Combat Infantry Badge.

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.

[7] http://en.wikipedia.org/wiki/Combat_Infantryman_Badge

[8] *Id.*

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 one 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 that 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 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.

- 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.

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.

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.

Road Rage and Aggressive Driving

According to the National Highway Traffic Safety Administration (NHTSA), "aggressive driving" comprises following too closely, driving at excessive speeds, weaving through traffic,

running stoplights and signs, and other forms of negligent or inconsiderate driving.[9] Occasionally, aggressive driving transforms into confrontation, physical assault, and even murder. A study on road deaths and injuries shows that:

> "road death and injury rates are the result, to a considerable extent, of the expression of aggressive behavior. . . . Those societies with the greatest amount of violence and aggression in their structure will show this by externalizing some of this violence in the form of dangerous and aggressive driving…"[10]

"Road Rage" is the label that has emerged to describe the angry and violent behaviors at the extreme of the aggressive driving continuum. A literature review commissioned by the American Automobile Association (AAA) Foundation for Traffic Safety defines road rage as:

> an incident in which an angry or impatient motorist or passenger intentionally injures or kills another motorist, passenger, or pedestrian, or attempts or threatens to injure or kill another motorist, passenger, or pedestrian.[11]

The willful intent to injure other individuals or to cause damage, although directed at a specific target, presents an immediate danger to all in the vicinity of those engaged in acts of road rage. There are numerous accounts in which road rage incidents inadvertently involve drivers or pedestrians not targeted in the incident.

Aggressive driving maneuvers, such as tailgating and speeding, can also be seen as the result of the driving environment, and are also connected with the issue of congestion.[12] Studies show most incidents happen between the hours of four and six o'clock in the evening, times in which traffic congestion is more than likely a factor or the primary cause of an accident. In addition, there is strong evidence correlating the number of lane change maneuvers to accidents, and speed to accidents. Some researchers have theorized the root cause of these aggressive behaviors is passive-aggressive driving, i.e., the failure to move to the right from a left lane of a multi-lane highway when being overtaken by faster traffic. The theory contends that because slower moving traffic often refuses to yield to vehicles wishing to pass, those faster moving vehicles resort to aggressive driving such as "bobbing and weaving" from lane to lane.

On most roads, drivers are made relatively equal by the prescribed limits of the law regardless of individual differences in capability and status. The vast majority of cars are fully capable of

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[9] National Highway Traffic Safety Administration, *Aggressive Driving Enforcement: Evaluations of Two Demonstration Programs* (Mar. 2004) (DOT HS 809 707), *available at* http://www.nhtsa.dot.gov/people/injury/research/AggDrivingEnf/images/AggresDrvngEnforce-5.0.pdf (last visited Feb. 1, 2011).

[10] Whitlock, F.A., *Death on the Road: A Study in Social Violence*. London (Tavistock Publications 1971).

[11] Daniel B. Rathbone and Jorg C. Huckabee, AAA Foundation for Traffic Safety, *Controlling Road Rage: A Literature Review and Pilot Study* (June 1999), *available at* http://www.aaafoundation.org/resources/index.cfm?button=roadrage (last visited Feb. 1, 2011).

[12] Dominic Connell and Matthew Joint, *Driver Aggression*, Road Safety Unit Group Public Policy (Nov. 1996), *available at* http://www.aaafoundation.org/resources/index.cfm?button=agdrtext#Driver%20Aggression (last visited Feb. 1, 2011).

exceeding 70 mph, yet all cars are directed by law to adhere to the same upper and lower limits. Drivers must adhere to the limitations placed on their speed and movement, prescribed directly (by speed limits, or variations in the number of lanes available) and indirectly (by congestion). For this reason, it is easier for the driver to ascribe frustration at being impeded by an ambiguous source, especially if there is no logical reason for the obstruction (to the impeded driver).[13] This is an example of the possible escalating frustration, which may transform from driving aggressively into an instance of road rage.

Current Florida law in relation to "driving on right side of roadway" does require vehicles moving at a lesser rate of speed to drive in the right hand lane as soon as it is reasonable to proceed into that lane. Exceptions and exemptions include: when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.[14] Violations of this law are noncriminal offenses. However, enforcement of these provisions has been minimal.

Another important distinction is that aggressive driving is considered a traffic violation, while road rage results in criminal offense(s). Currently nine states have laws pertaining to aggressive driving as described above (including Florida). Most, if not all acts under the umbrella of what is considered road rage, are labeled criminal offenses with applicable punishments. Road rage, if not accompanied by some other type of violation, is not considered a punishable crime in any existing statute. Some crimes considered to be an act of road rage if carried out while driving include: *Criminal Damage, Using Threatening, Abusive, or Insulting Words or Behavior* (thereby causing fear or provocation), *Wounding with Intent, Common Assault, Assault with a Deadly Weapon, Murder, Manslaughter, and Vehicular Homicide.*

Florida Aggressive Driving Laws

Section 316.1923, F.S., describes, "aggressive careless driving" as committing two or more of the following acts simultaneously or in succession:

- Exceeding the posted speed as defined in s. 322.27(3)(d)5.b., F.S;
- Unsafely or improperly changing lanes as defined in s. 316.085, F.S.;
- Following another vehicle too closely as defined in s. 316.0895(1), F.S.;
- Failing to yield the right-of-way as defined in ss. 316.079, 316.0815, or 316.123, F.S.;
- Improperly passing as defined in ss. 316.083, 316.084, or 316.085, F.S.; or
- Violating traffic control and signal devices as defined in ss. 316.074 and 316.075, F.S.

These violations carry separate penalties for each offense. Section 316.1923, F.S., does not, however, provide for any penalties to be administered for the act of aggressive driving itself. Law enforcement officers, by law are to check off a box, which is included on a ticket or an accident report form, when the officer believes the traffic violation or crash was due to aggressive careless driving.[15] The information is recorded and used by DHSMV.

[13] *Id.*
[14] Section 316.081(1), (2), and (3), F.S.
[15] Section 316.650, F.S.

Current law provides that drivers overtaking other drivers must use the proper signal, and those being overtaken must yield the right of way to the overtaking vehicle. In addition, vehicles being overtaken may not increase speed until the attempted pass is complete or it is reasonably safe to do so.[16] Some of the infractions may require a mandatory court hearing.[17]

Trauma Centers, Emergency Medical Services/Funding from Traffic Violations

Trauma centers are governed by ch. 395, part II, F.S. A trauma center is defined as "a type of hospital that provides trauma surgeons, neurosurgeons and other surgical and non-surgical specialists and medical personnel, equipment and facilities for immediate or follow-up treatment for severely injured patients, 24 hours-a-day, 7-days-a-week." Florida currently has 22 trauma centers. There are seven Level I Centers, thirteen Level II Centers (four of which are also Pediatric Centers), and two centers specializing solely in pediatrics. "Florida is divided into 19 trauma service areas to facilitate planning for system development."[18]

Trauma centers are defined in s. 395.4001, F.S. as follows:

A Level I trauma center:

- Has formal research and education programs for the enhancement of trauma care; is verified by the department to be in substantial compliance with Level I trauma center and pediatric trauma center standards; and has been approved by the Department of Health (department) to operate as a Level I trauma center.
- Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities.
- Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.

A Level II trauma center:

- Is verified by the department to be in substantial compliance with Level II trauma center standards and has been approved by the department to operate as a Level II trauma center.
- Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities.
- Participates in an inclusive system of trauma care.

A Pediatric trauma center is defined as a hospital that is verified by the department to be in substantial compliance with pediatric trauma center standards as established by rule of the department and has been approved by the department to operate as a pediatric trauma center. "Pediatric trauma centers are required to participate in collaborative research and conduct education programs for the enhancement of pediatric trauma care."[19]

[16] Section 316.083, F.S.
[17] Section 318.19, F.S.
[18] Comm. On Appropriations, Fla. Senate, *Review of Trauma Care Planning and Funding in Florida* (Interim Project Report 2004-108)(Nov. 2003).
[19] The Department of Health, Division of Emergency Medical Operations website, Office of Trauma, located at: <http://www.doh.state.fl.us/demo/trauma/center.htm> (Last visited on February 16, 2011).

Emergency Medical Services are defined in s. 401.107, F.S., as the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state. "Florida's trauma system helps to ensure that emergency medical services providers provide pre-hospital care and transport of injured residents and visitors to the nearest trauma center."[20]

Florida law provides for the distribution of fines from various traffic violations to be deposited into the department's Administrative Trust Fund and the department's Emergency Medical Services Trust Fund to support trauma centers and emergency medical services according to various allocation methodologies.[21]

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. 316.003(21), F.S., to revise the term "motor vehicle" to exclude "swamp buggy". In addition, s. 316.003(89), F.S., defines the term "swamp buggy" to mean a motorized off-road vehicle designed to travel over swamp terrain, which may utilize lare 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 ch. 261, F.S., or defined or classified in ch. 316, F.S. A swamp buggy may not be operated upon the public roads, streets, or highways, 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.

Creates s. 316.003(90), F.S., by defining the term "road rage" to mean the act of a driver or passenger to intentionally or unintentionally, due to a loss of emotional control, injure or kill

[20] *Id.*
[21] *See* for example ss. 318.14, 318.18, 318.21, 395.4065, and 401.113, F.S.

another driver, passenger, or pedestrian, or to attempt or threaten to injure or kill another driver, passenger, or pedestrian.

Section 5. 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 6. 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 7. 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 8. Amends s. 316.2015, F.S., to place restrictions on operators of pickup trucks and flatbed trucks and makes it unlawful for these operators to ride on any publicly maintained street or highway having a posted speed limit greater than 35 m.p.h. with minors under the age of 6 within the open body of the pickup trucks or flatbed trucks. Specifically, the bill prohibits a child younger than 6 years of age from riding on the bed of a pickup or flatbed truck unless the truck has been modified to include secure seating and safety restraints and the minor is properly restrained. The provisions of this paragraph do not apply when a truck is being operated in medical emergencies if the child is accompanied by an adult. Additionally, this section of the bill gives counties the authority to exempt themselves by a majority vote from the provisions provided for in s. 316.2015, F.S. An operator of a pickup truck is exempt if the pickup truck is the only vehicle owned by the operator or his or her immediate family.

Section 9. Amends s. 316.2065(3), F.S. This section amends bicycle helmet regulations effective October 1, 2011, to require compliance with the federal safety standard for bicycle helmets contained in 16 C.F.R., part 1203. Helmets purchased prior to October 1, 2011, in compliance with the existing statutory standards may continue to be worn legally by riders or passengers until January 1, 2015.

Amends s. 316.2065(5), F.S., to clarify situations when a bicyclists is not required to ride in the marked bicycle lane if the roadway is marked for bicycle use or as close as practicable to the right-hand curb or edge of the roadway.

Amends s. 316.2065(8), F.S., to allow law enforcement officers to issue bicycle safety brochures and verbal warnings to bicycle riders and passengers who violate bicycle lighting equipment standards in lieu of issuing a citation. At the discretion of the law enforcement officer, a bicycle rider who violates the bicycle lighting equipment standards may still be issued a citation and assessed a fine as described above. However, the bill requires the court to dismiss the charge

against a bicycle rider for a first violation of this offense upon proof of purchase and installation of the proper lighting equipment.

Section 10. 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 11. 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 12. 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 13. 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 14. 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 15. Amends s. 316.545, F.S., to replace the term "apportioned motor vehicle" with "apportionable vehicle."

Section 16. 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 17. Amends s. 316.613, F.S., to require an operator of a motor vehicle who is transporting a child 7 years of age or younger when that child is less than 4 feet 9 inches in height, to provide for the protection of the child by properly using a crash-tested, federally approved child restraint device. The bill specifies the device must be appropriate for the height and weight of the child, and provides such devices 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.

Any such device must comply with the standards of the United States Department of Transportation and be secured in the vehicle in accordance with instructions of the manufacturer.

Children through 3 years of age must be transported in an integrated or separate child safety seat, and children aged 4 through 7 years who are less than 4 feet 9 inches in height must be transported in a separate carrier, integrated child seat, or booster seat. Under the provisions of

this bill, motorists will no longer be permitted to transport children aged 4 to 7 years who are less than 4 feet 9 inches in height with only a safety belt used as protection.

The bill also provides the term "motor vehicle" as used in s. 316.613, F.S., does not include a passenger vehicle designed to accommodate ten or more persons used for the transportation of persons for compensation, and therefore, exempts such vehicle from the child-restraint requirements for children ages 4 through 7 years.

The infraction is a moving violation punishable by a fine of $60 plus court costs and add-ons, and by assessment of 3 points against the driver's license. The requirement to use a booster seat does not apply to a person who is transporting a child aged 4 to 7 years who is less than 4 feet 9 inches in height if the person is:

- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child; or
- Transporting a child whose medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

Courts may dismiss the charge against a driver for a first violation of the child restraint law upon proof of purchase of or otherwise obtained a federally approved child restraint device.

Section 18. The new child restraint requirements as provided in the bill will not take effect until July 1, 2012. However, the bill authorizes law enforcement personnel to issue a warning and distribute educational literature beginning July 1, 2011, to a person who is in compliance with current law, but whose actions violate the provisions that take effect July 1, 2012.

Section 19. 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 20. 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 21. 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 22. Amends s. 318.15, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 23. 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 24. 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 ss. 319.225(1) through 319.225(6)(a), F.S., to eliminate the requirements for actions to be taken on the back of the 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 25. 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.[22]

Section 26. 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 27. 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 28. 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.

Section 29. 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., and "swamp buggies". In addition, s. 320.01(45), F.S., is created to define the term "swamp buggy" to mean a motorized off-road vehicle designed to travel over swamp terrain, which may utilize lare 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 ch. 261, F.s., or defined or classified in ch. 320, F.S. A swamp buggy may not be operated upon the public roads, streets, or highways, 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.

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 30. 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.

[22] *Id.*

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(15), F.S., is amended to include a voluntary contribution check-off option of $1 on motor vehicle registration and renewal forms for Autism Services and Supports. The department must distribute the proceeds monthly to the Achievement and Rehabilitation Centers, Inc., Autism Services Fund. 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 Achievement and Rehabilitation Centers, Inc., has met the requirements set forth in s. 320.023, F.S.

Section 320.02(15)(q), F.S., is amended, notwithstanding s. 26 Ch. 2010-223, L.O.F., to include a voluntary contribution check-off option of $1 or more on motor vehicle registration and renewal forms to be distributed to the Auto Club South Traffic Safety Foundation, a non-profit organization to be used to improve traffic safety culture in communities through effective outreach, education, and activities that will save lives, reduce injuries, and prevent crashes. Contributions are not income of a revenue nature for the purposes of applying the service charge provided in s. 215.20, F.S. The foundation must comply with the requirements set forth in s. 320.023, F.S., which have not currently been met.

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 31. 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 32. 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 33. 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 34. 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 program 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.[23]

Section 35. 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 36. 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 37. 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 38. 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 39. 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 40. 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.

[23] *Id.*

Section 41. Amends s. 320.275, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 42. 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 43. 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 44. 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 45. Amends s. 322.02, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 46. 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. The person must be in immediate possession of both an IDP and a valid driver's license issued in the person's country of residence.

Section 47. 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.

Creates s. 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 48. 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 49. 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 50. Amends s. 322.07, F.S., requires an applicant for a temporary commercial instruction permit to have a valid Florida license.

Section 51. 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(7)(o), F.S., is amended to include a voluntary contribution check-off option of $1 on driver's license and renewal forms for Autism Services and Supports. The department must distribute the proceeds monthly to the Achievement and Rehabilitation Centers, Inc., Autism Services Fund. 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 Achievement and Rehabilitation Centers, Inc., has met the requirements set forth in s. 322.081, F.S.

Section 320.02(15)(q), F.S., is amended, notwithstanding s. 26, ch. 2010-223, L.O.F., to include a voluntary contribution check-off option of $1 or more on motor vehicle registration and renewal forms to be distributed to the Auto Club South Traffic Safety Foundation, a non-profit organization to be used to improve traffic safety culture in communities through effective outreach, education, and activities that will save lives, reduce injuries, and prevent crashes.. Contributions are not income of a revenue nature for the purposes of applying the service charge provided in s. 215.20, F.S. The foundation must comply with the requirements set forth in s. 322.081, F.S., which have not currently been met.

Section 322.08(7)(p), F.S., is created, notwithstanding s. 26, ch. 2010-223, L.O.F., to include a voluntary contribution check-off option of $1 or more on motor vehicle registration and renewal forms to be distributed to the Auto Club South Traffic Safety Foundation, a non-profit

organization to be used to improve traffic safety culture in communities through effective outreach, education, and activities that will save lives, reduce injuries, and prevent crashes.. Contributions are not income of a revenue nature for the purposes of applying the service charge provided in s. 215.20, F.S. The foundation must comply with the requirements set forth in s. 322.081, F.S., which have not currently been met.

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.[24]

Section 52. 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.

Section 53. 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 54. 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 55. 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 56. 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

[24] *Id.*

approved by the department and the organization that is recognized by the driver's license or card.

Section 57. Creates s. 322.145, F.S., to require a driver's license issued on or after July 1, 2012, to 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, medimetrics, or biometrics. The department must provide, at the applicant's option a security token that can be electronically authenticated through a personal computer. The department must negotiate a new contract with the vendor selected to implement the electronic authentification feature which provides that the vendor pay all costs of implementing the system; however, the contract must not conflict with current contractual arrangements for the issuance of driver's licenses.

Section 58. Amends s. 322.20, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 59. Amends s. 322.202, F.S., to conform provisions relating to the creation of the Division of Motorists Services.

Section 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. 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 70. Effective October 1, 2011, sections 70 – 78 of the bill, may be cited as the "Highway Safety Act."

Section 71. Provides findings and expresses the legislative intent of the Highway Safety Act 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 traffic on the roads and highways of Florida.

Section 72. Effective October 1, 2011, amends s. 316.083, F.S., to provide that on roads, streets, or highways having two or more lanes that allow movement in the same direction, a driver may not continue to operate a motor vehicle in the furthermost left-hand lane if the driver knows, or reasonably should know, that he or she is being overtaken in that lane from the rear by a motor vehicle traveling at a higher rate of speed.

The bill provides that this prohibition does not apply to a driver operating a motor vehicle in the furthermost left-hand lane if:

- The driver is driving the legal speed limit and is not impeding the flow of traffic in the furthermost left-hand lane;
- The driver is in the process of overtaking a slower motor vehicle in the adjacent right-hand lane for the purpose of passing the slower moving vehicle so that the driver may move to the adjacent right-hand lane;
- Conditions make the flow of traffic substantially the same in all lanes or preclude the driver from moving to the adjacent right-hand lane;
- The driver's movement to the adjacent right-hand lane could endanger the driver or other drivers;
- The driver is directed by a law enforcement officer, road sign, or road crew to remain in the furthermost left-hand lane; or
- The driver is preparing to make a left turn.

A driver simultaneously violating these provisions and the provisions of s. 316.183, F.S., (relating to Unlawful Speed) shall receive a uniform noncriminal traffic citation for the unlawful speed violation.

Section 73. Effective October 1, 2011, amends s. 316.1923, F.S., by adding "failing to yield to overtaking vehicles" to the list of offenses that constitute aggressive careless driving. In addition, the number of acts performed simultaneously, or in succession, constituting aggressive careless driving is increased from two or more to three or more.

The bill provides that any person convicted of aggressive careless driving is to be cited for a moving violation and punished as provided in ch. 318, F.S., and by the accumulation of points as provided in s. 322.27, F.S., for each act of aggressive careless driving. Under s. 322.27(3)(d)7, and 8., F.S., a driver will accumulate 3 points for this moving violation or 4 points if it results in a crash.

Section 74. Effective October 1, 2011, amends s. 318.121, F.S. to authorize additional fines for aggressive careless driving provided for in the bill to be included in ch. 318, F.S.

Section 75. Effective October 1, 2011, amends s. 318.18, F.S. to include subsection (22), to read:

In addition to any penalties or points imposed under s. 316.9123, F.S., (section 5 of the bill), a person convicted of aggressive careless driving must also pay:

- Upon a first conviction, a fine of $100.
- Upon a second or subsequent "conviction," a fine of not less than $250 but not more than $500 and be subject to a mandatory hearing under s. 318.19, F.S.

The moneys collected from the increased fine are to be remitted by the clerk of court to the Department of Revenue (DOR) for deposit into the department's Administrative Trust Fund. The department is required to transfer $200,000 in the first year and $50,000 in the second and third years after this bill takes effect into the Highway Safety Operating Trust Fund to offset the cost of providing educational materials related to the act. The remaining funds deposited into the department's Administrative Trust Fund under this act, are to be allocated as follows:

- Twenty-five percent is to be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services;
- Twenty-five percent is to 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's Trauma Registry;
- Twenty-five percent is to 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), F.S.; and,
- Twenty-five percent is to be transferred to the Emergency Medical Services Trust Fund and made available to rural emergency medical services as defined in s. 401.107(5), F.S., and must be used solely to improve and expand prehospital emergency medical services in Florida. Additionally, these moneys may be used for the improvement, expansion, or continuation of services provided.

Section 76. Effective October 1, 2011, amends s. 318.19, F.S., to include second or subsequent violations of s. 316.1923(1), F.S., (Aggressive Careless Driving) in the list of infractions requiring a mandatory court hearing.

Section 77. Requires DHSMV to provide information about the Highway Safety Act in all newly printed driver's license educational materials after October 1, 2011.

Section 78. Effective October 1, 2011, reenacts s. 316.650, F.S., for the purpose of incorporating the amendments made by this act.

Section 79. Effective October 1, 2011, amends s. 320.089, F.S., to create the "Combat Infantry Badge" special license plate. This bill requires the manufacture and issuance of a special license plate stamped with the words "Combat Infantry Badge" to any recipient of the Combat Infantry Badge, who applies for the special license plate, pays the applicable license taxes provided in s. 320.08, F.S., and provides proof of membership in the Combat Infantrymen's Association, Inc., or other acceptable proof of being a Combat Infantry Badge recipient.

Section 80. Amends s. 318.1451, F.S., to require DHSMV to consider whether a driver improvement school's curriculum includes awareness of the risks associated with the use of handheld electronic communication devices while operating a motor vehicle when the department is approving such courses.

Section 81. Amends s. 322.095, F.S., to require an additional minimum course requirement to traffic law and substance abuse education courses. This section requires such courses to include the risks associated with the use of handheld electronic communication devices while operating a motor vehicle.

Section 82. Provides this act shall take effect July 1, 2011, except as otherwise expressly provided in the act.

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:

Section 17. Drivers of vehicles must use a separate carrier, an integrated child seat or a child booster seat to transport children through age 7 years if they are less than 4 feet 9 inches in height. Seat belts alone will not satisfy the legal requirements for child restraints for children between the ages of 4 and 7 years who are less than the required height when being transported in a motor vehicle on roadways, streets, or highways in Florida. This will have a fiscal impact to vehicle operators for the cost of acquiring the necessary restraint devices.

However, because the number of additional children who will need restraint devices other than seat belts is unknown, the amount of this impact cannot be determined. Violation of the law would be punishable by a fine of at least $60 plus court costs and add-ons, and a 3 point assessment on the operator's driver license. The court may dismiss a first violation if the operator purchases an approved device. Furthermore, for six months prior to the new requirements becoming effective, a law enforcement officer may issue verbal

warning and provide informational material to drivers who would violate the requirements after the effective date.

Sections 30 and 51. Persons who elect to donate to a charitable cause on a motor vehicle registration application or renewal or a driver license 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.

Section 47. Persons who present good cause for a fee waiver, may be issued a new or renewal identification card at no charge.

Section 56. Persons who elect to purchase a specialty driver's license or identification card will be required to pay an additional $25 fee.

Sections 70 – 78. Persons convicted of aggressive careless driving are to pay $100 in addition to all fines associated with each individual violation. Upon a second or subsequent conviction, violators will have to pay a fine of no less than $250 and no more than $500 in addition to any other fines associated with each individual violation.

Sections 80 – 81. There are currently 22 different organizations who are providers, some of which are multiple course providers. Providers not currently including such information in their curricula will likely experience a direct, but indeterminate fiscal impact due to the need to expand the curricula to meet the bill requirements.

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.

Section 17. Enactment of section 17 of the bill may result in increased issuance of traffic citations, resulting in revenue increases to state and local governments. Since the number of additional citations that will be issued is unknown, any resulting positive fiscal impact on state and local governments is indeterminate. Also, the cost to DHSMV of providing educational literature is expected to be minimal and will be absorbed within existing resources

Section 31 and 52. 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.

Section 52. 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.

Section 42. 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. Programming will be required to identify a model number associated with each line-make for each of the current manufacturers and dealers and for vendors that provide the industry access to the department's FRVIS system for titling and registration via the electronic filing system (EFS). According to DHSMV, all costs for programming will be absorbed within existing resources.

Sections 30 and 51. 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.

The Achievement and Rehabilitation Centers, Inc., has paid an application fee of $20,000 for motor vehicle registrations and driver's license applications to defray DHSMV's costs for reviewing the application and developing the check-off.

Therefore, the Highway Safety Operating Trust Fund has received $30,000 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.

Section 56. Issuance of specialty driver's license and identification cards for a $25 fee will have an indeterminate fiscal impact on the department.

Sections 70-78. According to DHSMV, 40 hours of programming would be required to include "aggressive careless driving" as a moving violation for the purpose of assessing points specified in s. 322.27, F.S. This would be absorbed in the DHSMV's normal course of work without the need for an additional appropriation.[25] The department recommends revising the effective date to October 1, 2011, to allow for the programmatic updates to be implemented.

In addition, section 75 of the bill provides that $200,000 will be transferred to the DHSMV General Revenue Fund in the first year and $50,000 for the two subsequent years to fund the cost of developing educational materials related to this bill. Additional fine revenue collected will be distributed to the DOH Administrative Trust Fund for use by certain trauma centers and emergency medical services organizations, of which the total amount is indeterminate.

Section 79. Persons who are eligible to purchase a "Combat Infantry Badge" special license plate created by the bill will be required to pay applicable taxes as provided in s. 320.08, F.S.

[25] Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 244*, 6 (Dec. 17, 2010).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 30, 2011:

- Provides a definition of "swamp buggy."
- Deletes the requirement directing 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.
- Revises safety standard requirements for bicycle helmets worn by minor riders and passengers to require the helmets to meet certain federal safety standards; provides the option for law enforcement to issue a verbal warning and a safety brochure or to issue a citation to violators of the bicycle lighting equipment requirements; clarifies penalties for violations, and provides for dismissal of a first offense.
- Clarifies situations when a bicyclists is not required to ride in the marked bicycle lane if the roadway is marked for bicycle use or as close as practicable to the right-hand curb or edge of the roadway.
- Revises child restraint requirements for children passengers in motor vehicles; provides a seat belt alone will no longer legally provide sufficient protection for children aged 4 through 7 years if they are less than 4 feet 9 inches in height; provides the infraction is a moving violation punishable by a fine of $60 plus court costs and add-ons and by the assessment of 3 points against the driver's license of the motor vehicle operator; provides exceptions; and provides a grace period.
- Creates a voluntary check-off on motor vehicle registrations and driver's license applications and renewals for the Achievement and Rehabilitation Centers, Inc., and the Auto Club South Traffic Safety Foundation.
- Creates the "Combat Infantry Badge" special license plate.
- Requires DHSMV to implement a system providing for the electronic authentication of driver's licenses; and requires the department to contract for implementation of the electronic verification.
- Creates the "Highway Safety Act;" directs DHSMV to provide information about this act in driver's license educational materials; prohibits a driver from continuing to operate a vehicle in the left lane of a multi-lane highway when the driver knows, or should reasonably know, he or she is being overtaken (and establishes exceptions to this prohibition); increases from two or more to three or more, the number of driving infractions committed simultaneously in order to qualify as aggressive careless driving; includes the failure to yield to overtaking vehicles to the infractions considered acts of aggressive careless driving; establishes penalties for aggressive

careless driving; and provides for the distribution of money received from increased fines associated with penalties, including financial support of trauma centers and emergency medical services organizations throughout Florida.
- Requires the curricula of the driver improvement schools and education programs for driver's license applicants to include course content regarding the risks associated with the use of handheld electronic communication devices while operating a motor vehicle.

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 Budget Committee							
BILL:	SB 1190						
INTRODUCER:	Senator Detert and others						
SUBJECT:	Driver's Licenses and Identification Cards						
DATE:	April 8, 2011	REVISED:					

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Favorable**
2.	Davis	Spalla	TR	**Favorable**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill allows a veteran who presents proof of military service and pays an additional $1 fee to the Department of Highway Safety and Motor Vehicles (DHSMV) to receive a capital "V" on his or her driver license or identification card.

This bill substantially amends the following sections of the Florida Statutes: 322.14 and 322.051.

II. Present Situation:

Issuance of Florida Identification Cards and Driver Licenses

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; and
3) Proof of identity satisfactory to DHSMV. 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-subparagraphs b. through g., below;
    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) 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 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.

The resulting driver license must contain a color photograph of the licensee, the name of the state, a unique identification number, and the licensee's full name, date of birth, and residence address.[1]

Veterans in Florida

Florida has the third largest population of veterans in the nation with more than 1.6 million. Only California and Texas have larger populations of veterans. [2] Section 1.01(14), F.S., defines the term "veteran" as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States

[1] Section 322.14, F.S.
[2] Florida Department of Veterans' Affairs. 2009-10 Annual Report. Available at: http://www.floridavets.org/pdf/ann_rprt_10.pdf

Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

III. Effect of Proposed Changes:

This bill amends s. 322.14, F.S., to permit a veteran to request a capital "V" on his or her driver license. This bill amends s. 322.051, F.S., to permit a veteran to request a capital "V" on his or her identification card.

In order to receive a capital "V" on either of these documents, the bill requires a veteran to present his or her DD Form 214 (a "Certificate of Release or Discharge from Active Duty," promulgated by the United States Department of Defense) to DHSMV, along with an additional $1 fee.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Veterans who desire a capital "V" on their driver license or identification card will be charged an additional $1 fee.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles believes that implementing this legislation will require in-house programming modifications will be managed within

existing workload. However, this bill will also require contracted programming to the driver license issuance system at a cost of $35,000 to implement.[3]

The additional $1 fee for a driver license or identification stamped with a capital "V" will be distributed to the General Revenue Fund. A positive, but indeterminate, fiscal impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[3] Department of Highway Safety and Motor Vehicles. *Agency Senate Bill 1190 Analysis*. (March 9, 2011, on file with the Senate Transportation Committee).