

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BUDGET

Senator Alexander, Chair
Senator Negrón, Vice Chair

MEETING DATE: Friday, April 15, 2011

TIME: 1:30 —6:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Alexander, Chair; Senator Negrón, 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	SCR 4 Haridopolos	Balanced Federal Budget; Urges Congress to call a convention for the purpose of proposing amendments to the Constitution of the United States to achieve and maintain a balanced federal budget.	
		BC	04/15/2011
2	CS/SB 1198 Communications, Energy, and Public Utilities / Bogdanoff (Similar CS/CS/H 887)	Communications Services Tax; Requires that a dealer compute the communications services tax based on a rounding algorithm. Provides options to the dealer for applying the rounding algorithm. Provides that a dealer is not required to collect the tax based on a bracket system. Removes the provision requiring the Department of Revenue to make available tax amounts and applicable brackets. Provides that the act does not provide a basis for assessment of any tax not paid or create a right to certain refunds or credits, etc.	
		CU	03/21/2011 Fav/CS
		BFT	04/13/2011 Not Considered
		BC	04/15/2011
3	CS/SB 1180 Transportation / Latvala (Similar CS/CS/H 1363, Compare CS/H 149, CS/CS/H 991, H 1371, H 1389, CS/S 524, CS/CS/S 768, S 1404, CS/S 1570, S 1934, S 1966, S 2152)	Transportation; Provides that the Florida Statewide Passenger Rail Commission has the primary and exclusive authority to monitor certain designated functions related to passenger rail systems. Removes from the Florida Transportation Commission the responsibility and duty to monitor the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, etc.	
		TR	03/22/2011 Temporarily Postponed
		TR	03/29/2011 Fav/CS
		BTA	04/13/2011 Fav/12 Amendments
		BC	04/15/2011

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4	SB 1252 Smith (Identical H 1087)	Persons Designated to Receive Insurer Notification; Changes the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in situations involving the nonrenewal, renewal premium, cancellation, or termination of workers' compensation, employer liability, or certain property and casualty insurance coverage. Changes the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in certain situations involving the cancellation or nonrenewal of motor vehicle insurance coverage, etc. BI 03/16/2011 Favorable BC 04/15/2011 RC	
5	CS/SB 1312 Agriculture / Siplin (Similar H 7219)	School Nutrition Programs; Cites this act as the "Healthy Schools for Healthy Lives Act." Transfers and reassigns functions and responsibilities, including records, personnel, property, and unexpended balances of appropriations and other resources for the administration of the school food and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services. Requires the Department of Agriculture and Consumer Services to conduct, supervise, and administer all school food and nutrition programs, etc. AG 03/28/2011 Fav/CS BGA 04/13/2011 Favorable BC 04/15/2011 RC	
6	SB 1330 Hays	Residential Property Insurance; Authorizes an insurer to use a rate for residential property insurance that differs from its otherwise filed rate after a specified date under certain circumstances. Requires insurance agents to obtain a signed acknowledgment from an applicant for coverage and certain policyholders relating to surcharges and assessments potentially being imposed under a Citizens Property Insurance Corporation policy. Specifies circumstances under which an insurer may offer or renew residential property insurance policies subject to the amendments to provisions contained in this act, etc. BI 03/16/2011 Favorable BC 04/15/2011 RC	

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7	CS/SB 2010 Criminal Justice / Braynon (Similar CS/H 369, Compare H 4215, S 2018)	Faith- and Character-based Correctional Programs; Provides legislative intent with respect to expansion of the faith- and character-based initiative. Provides requirements for faith- and character-based programs. Deletes provisions relating to funding. Revises requirements for participation by inmates in such programs. Deletes provisions requiring the assignment of chaplains to community correctional centers. Provides for the faith- and character-based institutions within the state correctional system to allow peer-to-peer programming whenever appropriate, etc. CJ 04/04/2011 Fav/CS BC 04/15/2011 RC	
8	CS/SB 1568 Banking and Insurance / Montford (Similar CS/H 1007)	Insurer Insolvency; Authorizes the Department of Financial Services to request appointment as ancillary receiver if necessary to obtain records to adjudicate covered claims. Provides for the reimbursement of specified costs associated with ancillary delinquency proceedings. Provides for the State Risk Management Trust Fund to cover specified officers, employees, agents, and other representatives of the Department of Financial Services for liability under specified federal laws relating to receiverships, etc. BI 03/22/2011 Fav/CS BC 04/14/2011 Not Considered BC 04/15/2011 RC	
9	CS/SB 1714 Banking and Insurance / Hays (Compare CS/CS/H 1243)	Citizens Property Insurance Corporation; Discontinues policy discounts relating to the Citizens Property Insurance Corporation after a certain date. Directs the corporation to provide coverage to certain excluded residential structures but at rates deemed appropriate by the corporation. Provides that certain residential structures are not eligible for coverage by the corporation after a certain date. Prohibits the corporation from levying certain assessments with respect to a year's deficit until the corporation has first levied a specified surcharge, etc. BI 03/29/2011 Fav/CS BC 04/14/2011 Not Considered BC 04/15/2011 RC	

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10	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 Temporarily Postponed BC 04/14/2011 Not Considered BC 04/15/2011	
11	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 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011 RC 04/15/2011 If received	
12	CS/SB 740 Transportation / Negrón (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 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011	

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13	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 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011	
14	CS/CS/SB 1618 Judiciary / Rules Subcommittee on Ethics and Elections / Diaz de la Portilla (Compare CS/H 1355)	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 Fav/CS BC 04/13/2011 Not Received BC 04/14/2011 Not Considered BC 04/15/2011	
15	CS/SB 556 Criminal Justice / Oelrich (Compare CS/CS/CS/CS/H 353)	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 Fav/1 Amendment BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011	

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16	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 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011 RC 04/15/2011 If received	
17	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 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011	
18	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 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011 RC 04/15/2011 If received	
19	CS/SB 100 Banking and Insurance / Ring (Similar H 1431)	Autism; Requires that a physician refer a minor to an appropriate specialist for screening for autism spectrum disorder under certain circumstances. Requires that certain insurers and health maintenance organizations provide direct patient access to an appropriate specialist for screening for or evaluation or diagnosis of autism spectrum disorder. Requires certain insurance policies and health maintenance organization contracts to provide a minimum number of visits per year for screening for or evaluation or diagnosis of autism spectrum disorder, etc. HR 03/22/2011 Favorable BI 03/29/2011 Fav/CS BC 04/14/2011 Not Considered BC 04/15/2011	

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20	SB 1850 Evers (Similar H 1233, Compare CS/H 4157, CS/S 618)	Juvenile Justice; Includes children 9 years of age or younger at the time of referral for a delinquent act within the definition of those children who are eligible to receive comprehensive mental health services. Encourages law enforcement agencies, school districts, counties, municipalities, and the Department of Juvenile Justice to establish prearrest or postarrest diversion programs and to give first-time misdemeanor offenders and offenders who are 9 years of age or younger an opportunity to participate in the programs, etc. CJ 03/28/2011 Favorable CF 04/04/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	
21	SB 352 Joyner (Similar H 263)	Civil Citations/Minors; Requires the expungement of the nonjudicial arrest record of a minor who successfully completes a civil citation program. Requires the Department of Law Enforcement to expunge the nonjudicial record. Sets forth the conditions that apply in order for the department to expunge the record. Authorizes the department to charge a processing fee. BC 04/14/2011 Not Considered BC 04/15/2011	
22	SB 1052 Altman (Identical H 673, H 1463)	Crisis Stabilization Units; Increases the number of client beds a crisis stabilization unit is authorized to provide. HR 03/22/2011 Favorable BC 04/15/2011	
23	SB 1632 Lynn (Identical H 4033)	Florida Industrial Development Corporation; Repeals provisions relating to the Florida Industrial Development Corporation. Deletes references to conform to changes made by the act. CM 04/05/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	

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24	SB 1992 Children, Families, and Elder Affairs (Compare H 7233)	Background Screening; Includes volunteers within the definition of the term "direct service provider" for purposes of background screening. Exempts a volunteer who meets certain criteria and a client's relative or spouse from the screening requirement. Excepts certain licensed professionals and persons screened as a licensure requirement from further screening under certain circumstances. Requires direct service providers working as of a certain date to be screened within a specified period. Provides a phase-in for screening direct service providers, etc. CF 03/22/2011 Favorable BC 04/15/2011	
BILLS FOR EXPEDITED CONSIDERATION:			
25	CS/SB 746 Criminal Justice / Altman (Similar CS/H 105)	Open House Parties; Provides that a person who violates the open house party statute a second or subsequent time commits a misdemeanor of the first degree. Provides that a person commits a misdemeanor of the first degree if the violation of the open house party statute causes or contributes to causing serious bodily injury or death to the minor, or causes or contributes to causing serious bodily injury or death to another person as a result of the minor's consumption of alcohol or drugs at the open house party. Provides criminal penalties. RI 03/09/2011 Favorable CJ 03/28/2011 CJ 04/04/2011 Fav/CS BC 04/15/2011	
26	CS/CS/SB 888 Communications, Energy, and Public Utilities / Judiciary / Dean (Identical CS/CS/H 75)	Offense of Sexting; Provides that a minor commits the offense of sexting if he or she knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors. Provides noncriminal and criminal penalties. Provides that the act does not prohibit prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement or for stalking, etc. CJ 03/14/2011 Fav/1 Amendment JU 03/28/2011 Fav/CS CU 04/04/2011 Fav/CS BC 04/15/2011	

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27	SB 714 Margolis (Identical H 247)	Disabled Parking Permits; Provides for a parking enforcement specialist or agency to validate compliance for the disposition of a citation issued for illegally parking in a space provided for people who have disabilities. Revises requirements for renewal or replacement of a disabled parking permit. Prohibits applying for a new disabled parking permit for a certain period of time upon a second finding of guilt or plea of nolo contendere to unlawful use of such permit, etc. TR 03/09/2011 Favorable CJ 03/28/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	
28	CS/CS/SB 1524 Commerce and Tourism / Communications, Energy, and Public Utilities / Simmons (Similar CS/H 1231, Compare H 4149)	Telecommunications; Creates the "Regulatory Reform Act." Revises legislative intent with respect to the jurisdiction of the Florida Public Service Commission. Repeals provisions relating to price regulation, regulatory methods for small local exchange telecommunications companies, experimental and transitional rates, limited proceedings, procedures for seeking a stay of proceedings, joint rates, tolls, and contracts, rate adjustment orders, intrastate interexchange service contracts, and unlawful charges against consumers, respectively, etc. CU 03/21/2011 Fav/CS CM 03/29/2011 Fav/CS BC 04/14/2011 Not Considered BC 04/15/2011	
29	SB 118 Bullard (Identical H 981, Compare CS/CS/S 1150)	Bicycle Safety; Revises safety standard requirements for bicycle helmets that must be worn by certain riders and passengers. Provides for enforcement of requirements for bicycle lighting equipment. Provides penalties for violations. Provides for dismissal of the charge following a first offense under certain circumstances. TR 02/22/2011 Favorable CJ 03/14/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	SB 996 Simmons (Identical CS/H 87)	Communications Among Branches of State Government; Cites this act as the "Communication of Judicial Opinions Act." Requires the clerks of the State Supreme Court and district courts of appeal to transmit certain judicial opinions to the Governor, the President of the Senate, and the Speaker of the House of Representatives within a specified time. JU 03/22/2011 Favorable GO 04/05/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	
31	SB 904 Dean (Identical H 431)	Driver's Licenses and Identification Cards; Requires that the application form for an original, renewal, or replacement driver's license or identification card include an option to make a voluntary contribution to Disabled American Veterans, Department of Florida. Provides that such contributions are not income of a revenue nature. MS 03/23/2011 Favorable TR 04/05/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	
32	CS/SB 378 Rules Subcommittee on Ethics and Elections / Gaetz (Identical CS/H 227)	Federal Write-in Absentee Ballot; Authorizes absent uniformed services voters and overseas voters to use the federal write-in absentee ballot to vote in any federal and certain state or local elections, under certain circumstances. Prescribes requirements for designating candidate choices. Provides for the disposition of valid votes involving joint candidacies. Allows for abbreviations, misspellings, and other minor variations in the name of an office, candidate, or political party. Authorizes the submission of multiple ballots under certain circumstances, etc. EE 03/07/2011 Fav/CS RC 04/05/2011 Favorable BC 04/14/2011 Not Considered BC 04/15/2011	
33	SB 1792 Díaz de la Portilla (Identical H 4001)	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 Favorable BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Bill will be taken up the week of 4/25 -			
34	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 Temporarily Postponed BC 04/14/2011 Not Considered BC 04/15/2011	



404034

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment

Delete lines 21 - 22
and insert:

WHEREAS, in the 8 months between May 1, 2010, and December
31, 2010, the national debt grew by more than \$1 trillion, and
as of April 1,

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: SCR 4

INTRODUCER: President Haridopolos

SUBJECT: Balanced Federal Budget

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Diez-Arguelles	Meyer, C.	BC	Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Through this concurrent resolution, the Legislature calls upon Congress to convene a constitutional convention under article V of the U.S. Constitution for the purpose of proposing amendments to the Constitution to achieve and maintain a balanced federal budget. The concurrent resolution specifies that it is revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any other purpose.

II. Present Situation:¹

Conventions as Method of Proposing Amendments to U.S. Constitution

The Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress – upon the agreement of two-thirds of both houses – may propose an amendment itself. Under the second, Congress – upon application from legislatures in two-thirds of the states – “shall call a Convention for proposing Amendments.”²

¹ The Present Situation section of this analysis relies in large part on the Bill Analysis and Fiscal Impact Statement prepared by the staff of the Senate Judiciary Committee for Senate Concurrent Resolution 10 (Reg. Sess. 2010)

² U.S. CONST. art. V. By comparison, the Florida Constitution provides the following methods for proposing amendments to the document: by joint resolution agreed to by three-fifths of the membership of each house of the Legislature (FLA. CONST. art. XI, s. 1); by constitutional revision commission (FLA. CONST. art. XI, s. 2); by citizen initiative (FLA. CONST. art. XI, s. 3); by a constitutional convention to consider revision to the entire document called by the people of the state (FLA. CONST. art. XI, s. 4); and by a taxation and budget reform commission (FLA. CONST. art. XI, s. 6). Regardless of the method by which an amendment to the Florida Constitution is proposed, the amendment must be approved by at least 60 percent of the electors voting on the measure (FLA. CONST. art. XI, s. 5(e)).

Under either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.³

Legal scholarship notes that the convention method for proposing amendments to the U.S. Constitution emerged as a compromise among “Founding Fathers” who disagreed on the respective roles of Congress and the states in proposing amendments to the document. Although some participants in the Philadelphia Convention of 1787 argued that Congress’ concurrence should not be required to amend the Constitution, others argued that Congress should have the power to propose amendments, and the states’ role should be restricted to ratification.⁴ The language ultimately agreed upon, and which became article V of the U.S. Constitution, states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Despite the fact that over time states have made at least 400 convention applications to Congress on a variety of topics,⁵ the constitutional convention method of proposing amendments has never been fully employed and, as authors have noted, occupies some unknown legal territory. Some of the legal questions surrounding the method relate to whether Congress has discretion to call a convention once 34 states make application; whether the scope of a convention may be limited to certain subject matters and by whom; and how applications from the states are to be tallied – “separately by subject matter or cumulatively, regardless of their subject matter.”⁶

Over time, some states have rescinded applications, in part amid concerns that the scope of a constitutional convention could extend to subjects beyond the subject proposed in a given state’s application. For example, in 2003 the Arizona Legislature adopted a concurrent resolution that “repeals, rescinds, cancels, renders null and void and supersedes any and all existing applications to the Congress ... for a constitutional convention ... for any purpose, whether limited or general.”⁷ Article V of the U.S. Constitution is silent on the legal effect of a state’s decision to rescind a previously submitted application.

³ U.S. CONST. art. V.

⁴ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL’Y 1005, 1006-07 (2007).

⁵ *Id.* at 1005. The author cites this figure as of 1993.

⁶ *Id.*

⁷ Senate Concurrent Resolution 1022, State of Arizona, Senate, Forty-sixth Legislature (First Reg. Sess. 2003) (copy on file with the Florida Senate Committee on Judiciary). The concurrent resolution notes that “certain persons or states have called for a constitutional convention on issues that may be directly in opposition to the will of the people of this state.” *Id.*

Calls for a Constitutional Convention on a Balanced Federal Budget

One of the country's most significant movements toward activation of the constitutional convention method of proposing an amendment to the U.S. Constitution occurred starting in the mid-1970s, when eventually 32 states adopted measures, of varying forms, urging Congress to convene a constitutional convention to address federal budget deficits.⁸ Depending upon the manner of tallying applications, that count was two short of the 34 state applications necessary under article V of the U.S. Constitution.

Florida's 1976 Convention Application

Florida participated in that movement, when in 1976 the Legislature adopted Senate Memorial 234. Through that memorial, the Legislature made "application to the Congress of the United States ... to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."⁹

That same year, the Legislature adopted House Memorial 2801, through which the Legislature also made application to Congress for a convention to consider an amendment to the U.S. Constitution requiring a balanced federal budget. Unlike Senate Memorial 234, House Memorial 2801 prescribed the precise language of the proposed constitutional amendment. Among other provisions, the proposed amendment stated:

[T]he Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year. ... There shall be no increase in the national debt, and the existing debt, as it exists on the date which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification.

The proposed constitutional language also authorized Congress to suspend the requirement for a balanced budget in times of national emergency, as identified by a concurrent resolution of three-fourths of the membership of the U.S. Senate and the U.S. House of Representatives.

House Memorial 2801 further specified that "the purview of any convention called by the Congress pursuant to this resolution [shall] be strictly limited to the consideration" of a balanced-budget amendment. In addition, the Legislature resolved that the 1976 application for a constitutional convention "constitutes a continuing application ... until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened."¹⁰

⁸ E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).

⁹ Senate Memorial 234 (Reg. Sess. 1976).

¹⁰ House Memorial 2801 (Reg. Sess. 1976).

Florida's 1988 Request to Congress

In 1988, the Legislature adopted a measure urging congressional action related to the federal budget deficit. Adopted by both chambers, Senate Memorial 302, rather than making application for a constitutional convention, urged Congress to use its own power to propose an amendment to the U.S. Constitution requiring the federal budget to be in balance except under specified emergencies.

The memorial specified that it superseded “all previous memorials applying to the Congress of the United States to call a convention to propose an amendment to the Constitution of the United States to require a balanced federal budget,” including the two memorials passed in 1976. The 1988 memorial further specified that the previous memorials were “revoked and withdrawn.”¹¹

Florida's 2010 Application to Congress

In 2010, the Legislature again adopted a measure making application to Congress for a constitutional convention. Senate Concurrent Resolution 10 asked Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States “to achieve and maintain a balance budget,” and “to control the ability of the Congress and the various federal executive agencies to require states to expend funds.” Like previous requests to Congress, the concurrent resolution stated that it superseded all previous memorials applying to Congress to call a constitutional convention.¹²

State Balanced-Budget Requirements

Although it noted that there is not agreement on what is meant by a “balanced budget,” the National Conference of State Legislatures reported in 2004 that 49 states “have at least a limited statutory or constitutional requirement of a balanced budget.”¹³ Florida’s requirement is prescribed in article VII, section 1 of the Florida Constitution. The constitution requires that “[p]rovision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.”¹⁴ Among other elements, the implementing statute, s. 216.221, F.S., provides that all appropriations shall be maximum appropriations, based on the collection of sufficient revenue. In addition, “[i]t is the duty of the Governor, as chief budget officer, to ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund.”¹⁵

Section 215.98, F.S., provides that the “Legislature shall not authorize the issuance of additional state tax-supported debt if such authorization would cause the designated benchmark debt ratio

¹¹ Senate Memorial 302 (Reg. Sess. 1988).

¹² Senate Concurrent Resolution 10 (Reg. Sess. 2010).

¹³ Nat’l Conference of State Legislatures, *State Balanced Budget Requirements: Provisions and Practice* (updated 2004), <http://www.ncsl.org/IssuesResearch/BudgetTax/StateBalancedBudgetRequirementsProvisionsand/tabid/12651/Default.aspx> (last visited Mar. 7, 2010).

¹⁴ FLA. CONST. art VII, s. 1(d).

¹⁵ Section 216.221(1), F.S.

of debt service to revenues available to pay debt service to exceed 7 percent unless” it finds that the additional debt is necessary to address a critical state emergency.¹⁶

Federal Budget Deficit and National Debt

The Congressional Budget Office (CBO) estimates that the federal budget deficit will be approximately \$1.5 trillion for fiscal year 2011, assuming current law and policies remain unchanged.¹⁷ According to the CBO:

*The resulting federal budget deficit of nearly \$1.5 trillion projected for this year will equal 9.8 percent of GDP, a share that is nearly 1 percentage point higher than the shortfall recorded last year and almost equal to the deficit posted in 2009, which at 10.0 percent of GDP was the highest in nearly 65 years.*¹⁸

The CBO projects deficits ranging from \$600 to \$800 billion per year over the 2012-2021 period.¹⁹

In turn, the deficits will cause federal debt held by the public to increase significantly. As of April 12, 2011, the federal government’s Total Public Debt Outstanding is estimated to be \$14.3 trillion. Of this amount, \$9.7 trillion is debt held by the public and \$4.6 trillion is debt held by government trust funds.²⁰ For comparison purposes, on April 12, 2001, ten years ago, Total Public Debt Outstanding was estimated to be \$5.8 trillion.²¹ Finally, during a recent 8-month period, from May 1, 2010 to December 31, 2010, Total Public Debt Outstanding grew by more than \$1 trillion.²²

III. Effect of Proposed Changes:

Through this concurrent resolution, the Legislature makes application to the Congress of the United States to call a convention under article V of the U.S. Constitution for the sole purpose of proposing an amendment to the Constitution to achieve and maintain a balanced budget.

The concurrent resolution does not contain specific constitutional language; however, it proposes achieving and maintaining a balanced federal budget by, among other things:

- (1) Requiring that total outlays not exceed total receipts for any fiscal year;

¹⁶ Section 215.98(1), F.S.

¹⁷ Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, Summary (Jan. 2011), <http://www.cbo.gov/ftpdocs/120xx/doc12039/SummaryforWeb.pdf>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ TreasuryDirect, *The Debt to the Penny and Who Holds It*, <http://www.treasurydirect.gov/NP/BPDLogin?application=np> (last visited April 14, 2011). TreasuryDirect is a financial services website through which a person may purchase and redeem securities directly from the U.S. Department of the Treasury in paperless electronic form. TreasuryDirect is a service of the U.S. Department of the Treasury Bureau of the Public Debt. See TreasuryDirect, *About TreasuryDirect*, <http://www.treasurydirect.gov/about.htm> (last visited April 14, 2011).

²¹ *Id.*

²² *Id.*

- (2) Requiring the setting of a fiscal year total outlay limit;
- (3) Prohibiting increases in taxes or other revenue sources;
- (4) Providing that, for reasons other than war or military conflict, the limits of this amendment may be waived by law for any fiscal year if approved by at least two-thirds of both houses of Congress;
- (5) Allowing for provisions of the amendment to take effect within specified time periods;
- (6) Providing for the waiver of the provisions of the amendment for any fiscal year in which a declaration of war is in effect or the United States is engaged in military conflict that causes an imminent and serious military threat to national security; and
- (7) Allowing for congressional enforcement.

The concurrent resolution specifies that it supersedes all previous memorials and concurrent resolutions applying to Congress for a constitutional convention for the purpose of proposing a balanced budget amendment to the U.S. Constitution, including the memorials and concurrent resolutions adopted in 1976, 1988, and 2010. The concurrent resolution provides that the previous memorials and resolutions are “revoked and withdrawn, nullified, and superseded to the same effect as if they had never been passed.”

In addition, the concurrent resolution specifies that it is similarly revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any purpose other than requiring a balanced federal budget. Under the Senate rules, a concurrent resolution must be read twice, passed by both houses of the Legislature, and signed by the presiding officers.²³

Other Potential Implications:

Unlike Florida, which has a constitutional requirement for raising sufficient revenue to defray the expenses of the state in each fiscal year, the U.S. Constitution does not contain a requirement for a balanced federal budget. Amending the U.S. Constitution to require a balanced federal budget would represent a fundamental change in federal fiscal policy and practice and would undoubtedly affect decisions ranging from the nature and quantity of government expenditures to the sources and level of revenue generation. The potential implications for government at all levels and for private citizens and businesses are difficult to quantify but likely to be significant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²³ The Florida Senate, *Manual for Drafting Legislation*, 129 (6th ed. 2009); see also Rule 4.13, *Rules and Manual of the Senate of the State of Florida*, Senator Mike Haridopolos, President, 2010-2012.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This concurrent resolution makes an application to Congress under article V of the U.S. Constitution for a convention to propose amendments to the Constitution requiring a balanced federal budget. See the “Present Situation” section of this bill analysis for a discussion of the convention as a method of proposing amendments to the Constitution.

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

None.

B. Private Sector Impact:

The concurrent resolution itself does not directly affect the private sector fiscally. However, to the extent applications from the states to Congress for a constitutional convention ultimately result in amendments to the U.S. Constitution requiring a balanced federal budget, the private sector may be affected by budgetary and economic changes stemming from the constitutional changes.

C. Government Sector Impact:

The concurrent resolution itself does not directly affect state government or local governments fiscally. However, to the extent applications from the states to Congress for a constitutional convention ultimately result in amendments to the U.S. Constitution requiring a balanced federal budget, the government sector may be affected by budgetary and economic changes stemming from the constitutional changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Concurrent Resolution 1558 has also been filed during the 2011 Regular Session. That resolution makes application to Congress for a convention to propose the following amendment to the U.S. Constitution:

Any provision of law or regulation of the United States may be repealed by the several states, and such repeal shall be effective when the

legislatures of two-thirds of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed.

The resolution also states that “the State of Florida reserves its right to add future amendments as the Legislature deems warranted to this application.”

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



289018

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 202.16, Florida
Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under
this chapter and chapter 203 shall be collected from all dealers
of taxable communications services on the sale at retail in this
state of communications services taxable under this chapter and
chapter 203. The full amount of the taxes on a credit sale,
installment sale, or sale made on any kind of deferred payment
plan is due at the moment of the transaction in the same manner



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as a cash sale.

(3)(a) A dealer must compute the tax due on the sale of communications services imposed pursuant to this chapter and chapter 203 based on a rounding algorithm that meets the following criteria:

1. The computation of the tax must be carried to the third decimal place.

2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) The rounding algorithm must be applied to the local communications services tax imposed pursuant to this chapter separately from its application to the communications services taxes imposed pursuant to s. 202.12 and the gross receipts taxes imposed pursuant to s. 203.01.

(c) A dealer may apply the rounding algorithm to the taxes imposed pursuant to ss. 202.12 and 203.01 in one of the following ways:

1. Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12 and 203.01.

2. Apply the rounding algorithm to the communications services taxes imposed pursuant to s. 202.12(1) and apply the rounding algorithm separately to the combined gross receipts taxes imposed pursuant to ss. 203.01(1)(b)2. and 203.01(1)(b)3.

3. Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12(1) and 203.01(1)(b)3., as allowed by ss. 202.12001 and 203.001, and apply the rounding algorithm separately to the gross receipts tax imposed pursuant to s. 203.01(1)(b)2.



289018

(d) Under paragraph (b) or paragraph (c), a dealer may apply the rounding algorithm to the aggregate tax amount that is computed on all taxable items on an invoice or to each tax amount that is computed on one or more, but less than all, taxable items on an invoice. The aggregate tax amount for all items on the invoice must equal at least the result that would have been obtained if the rounding algorithm had been applied to the aggregate tax amount computed on all taxable items on the invoice. A dealer may satisfy this requirement by setting a minimum tax amount of not less than 1 cent with respect to each item, or group of items, to which the rounding algorithm is applied.

(e) The department may not require a dealer to collect the tax based on a bracket system. ~~Notwithstanding the rate of tax on the sale of communications services imposed pursuant to this chapter and chapter 203, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to this chapter and chapter 203.~~

Section 2. This act is intended to be remedial in nature and applies retroactively. This act does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid under s. 202.16, Florida Statutes, before July 1, 2011.

Section 3. 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:



289018

72 Delete everything before the enacting clause
73 and insert:

74 A bill to be entitled
75 An act relating to communications services tax;
76 amending s. 202.16, F.S.; requiring that a dealer
77 compute the communications services tax based on a
78 rounding algorithm; providing criteria; providing for
79 application of the tax; providing options to the
80 dealer for applying the rounding algorithm; providing
81 that a dealer may apply the rounding algorithm to the
82 aggregate tax amount under certain conditions;
83 providing that a dealer is not required to collect the
84 tax based on a bracket system; removing the provision
85 requiring the Department of Revenue to make available
86 tax amounts and applicable brackets; providing that
87 the provisions of the act are remedial in nature and
88 apply retroactively; providing that the act does not
89 provide a basis for assessment of any tax not paid or
90 create a right to certain refunds or credits;
91 providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 1198

INTRODUCER: Committee on Communications, Energy and Public Utilities and Senator Bogdanoff

SUBJECT: Communications Services Tax

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Fav/CS
2.	Cote	Diez-Arguelles	BFT	Not Considered
3.	Cote	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill requires that a communication service provider compute the tax due on a sale of communications services imposed pursuant to the communications services tax and the gross receipts tax based on a rounding algorithm that meets specified criteria. The bill is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

The bill substantially amends section 202.16 of the Florida Statutes.

II. Present Situation:

Chapter 202, F.S., establishes the Communications Services Tax Simplification Law. This law restructured taxes applicable to a broad array of communications services, including local and long distance telephone services, cable television, direct-to-home satellite television, and other related services.

The communications services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.65 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.

Chapter 203, F.S., provides for gross receipts tax of 2.52 percent applied to communication services. The state CST and gross receipt tax result in a combined rate of 9.17 percent applied to the purchase of most communication services. Direct-to-home services are taxed at a rate of 2.37 percent, for a combined state CST and gross receipt tax rate of 13.17 percent.

Section 202.16(3), F.S., requires the Department of Revenue (DOR) to make available to dealers, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapters 202 and 203, F.S. To clarify the law, the DOR has created proposed Rule 12A-19.021, F.A.C.¹. The purpose of the proposed rule is to make available the tax amounts and brackets applicable to each taxable sale of communication services on the DOR's website. The proposed rule provides that any communication services tax resulting in a fraction of a cent is rounded to the next whole cent. The DOR has held a public workshop and multiple hearings to address concerns or questions regarding the proposed rule. At this time, no rule has been adopted.

III. Effect of Proposed Changes:

Section 1 amends s. 202.16, F.S., to require that a communication service provider compute the tax due on a sale of communications services based on a rounding algorithm that meets the following criteria:

- The tax computation must be carried to the third decimal place.
- The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

A service provider will be allowed to compute the tax due on a sale of communications services on an item or an invoice basis.

The rounding algorithm must be applied to the local CST separately from its application to the state CST and gross receipts tax.

A dealer may elect to apply the rounding algorithm to the communications services taxes imposed pursuant to ss. 202.12 and 203.01, F.S., in one of the following manners:

- Apply the rounding algorithm to the combined communications services tax imposed pursuant to ss. 202.12 and 203.01, F.S.

¹ <http://dor.myflorida.com/dor/rules/12a-19021.html>

- Apply the rounding algorithm separately to the communications services tax imposed pursuant to s. 202.12(1)(a), F.S., and gross receipt tax imposed pursuant to ss. 203.01(1)(b)2, and 203.01(1)(b)3, F.S.
- Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12(1)(a) and 203.01(1)(b)3, F.S., as allowed by s. 203.001, F.S., and apply the rounding algorithm separately to the gross receipts tax pursuant to s. 203.01(1)(b)2, F.S.

A dealer is not required to collect the tax based on a bracket system.

Section 2 provides that the bill is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

Section 3 provides that the bill takes 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:

On April 8, 2011, the REC determined that this bill, if amended to clarify how taxable items would be treated, would have no impact on state or local revenues because the proposed change does not differ from current administration.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Communications, Energy, and Public Utilities on March 21, 2011.

The committee substitute requires application of the rounding algorithm to the local communications services tax separately from the state taxes, and provides a more detailed statement of how the algorithm may be applied to the state taxes.

- B. Amendments:

None.



196352

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment

Delete line 817
and insert:
costs of the utility work ~~removing or relocating that utility~~



785450

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment

Delete lines 1939 - 1986

and insert:

driveway or designated parking area has the potential to
endanger the safe movement of vehicles.

(2) DEFINITIONS.—As used in this section, the term
“solicit” means to request employment, business, contributions,
donations, sales, or exchanges of any kind.

(3) PERMIT REQUIRED.— Where a permit is required by a
municipality or county, it is unlawful for any person, willfully
and without a permit, to solicit or obstruct the free,
convenient, and normal use of any public street, highway, or



785450

road by standing or approaching motor vehicles while on or immediately adjacent to the street, highway, or road in a manner that could endanger the safe movement of vehicles or pedestrians traveling thereon.

(a) Each county and municipality shall adopt a permitting process that protects public safety but does not impair the rights of free speech, except to the extent necessary to protect public safety. The permitting process must authorize or deny a permit within 2 business days. A permit application denial by a county or municipality shall be in writing and be based on a finding that the proposed activity:

1. Increases the likelihood of traffic accidents;
2. Violates traffic laws, rules, or ordinances;
3. Makes the sidewalk impassable for pedestrians; or
4. Significantly increases the likelihood of harm to motorists and passersby.

(b) If the county or municipality approves the permit, it must issue to the applicant a document specifying:

1. The name and address of the person or entity to whom the permit is granted;
 2. The name of the company the person represents, if any;
- and
3. The expiration date of the permit.

(c) The permit holder must keep the permit on his or her person at all times when engaging in activity authorized by the permit.

(d) The cost of the permit may not exceed an amount that is reasonably necessary to administer the permitting process. However, a permit may not be denied to any applicant for lack of



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43 financial means, as attested to by a signed affidavit.

44 (4) LOCAL GOVERNMENT JURISDICTION.—For purposes of this
45 section, counties and municipalities have original jurisdiction
46 over non-limited access state roads, and local roads, streets,
47 and highways within their physical jurisdiction. Counties and
48 municipalities may increase the restrictions of the permit
49 program if those restrictions are narrowly tailored to serve an
50 important public purpose. A county or municipality may opt out
51 of the permit program by a majority vote of the members of the
52 county or municipal governing body. This section does not
53 preempt any existing ordinances, such as any ordinance requiring
54 a peddler's license or similar type of authorization.
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663606

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Sobel) recommended the following:

Senate Amendment (with title amendment)

Between lines 2959 and 2960

insert:

Section 58. High-speed rail and fixed-guideway
transportation systems; contracting procedures; public
disclosure.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that the design, engineering,
operation, and maintenance of Florida's proposed high-speed rail
system and other fixed-guideway transportation systems will be
funded with public moneys provided by federal and state
taxpayers, bond sales, and public-private partnerships following



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14 competitive bidding processes.

15 (b) The Florida Rail Enterprise and residents of this state
16 should have the benefit of appropriate and complete disclosure
17 by all entities competing to build and operate the high-speed
18 rail system and other fixed-guideway transportation systems.
19 Such disclosure and related due diligence is essential to this
20 state's regulation and oversight of the contracting process and
21 expenditure of state funds.

22 (c) It has come to the Legislature's attention that certain
23 potential entities that have expressed interest in competing for
24 publicly funded rail system contracts have engaged in conduct
25 that the Legislature believes requires public disclosures. For
26 instance, between 1942 and 1944, many thousands of persons,
27 including current residents of this state, were deported to
28 extermination camps, work camps, concentration camps, prisoner-
29 of-war camps, or any similar camps by whatever name in Europe on
30 trains.

31 (d) It is the intent of the Legislature that, in the spirit
32 of complete transparency, the bidding and contract entities
33 competing for contracts reveal what, if any, relationship the
34 entity had with those entities that served the interests of
35 those responsible for the mass deportations in wartime.

36 (2) CONTRACTING PROCEDURES; FULL DISCLOSURE.—This
37 subsection establishes the proper procedures for entities that
38 intend to bid or submit a proposal to contract with the Florida
39 Rail Enterprise or a fixed-guideway transportation system for
40 goods or services related to the high-speed and other rail
41 systems, as contemplated by the Florida Rail Enterprise Act.

42 (a) Notwithstanding any other law, each entity applying for



663606

a publicly funded contract with the Florida Rail Enterprise or a fixed-guideway transportation system, including, but not limited to, the engineering, construction, manufacture, or operation of a high-speed rail system or other fixed-guideway transportation system, shall affirmatively certify the following in advance of submitting a formal bid:

1. Whether the entity had any direct involvement in the deportation of any individual to an extermination camp, work camp, concentration camp, prisoner-of-war camp, or any similar camp in Europe during the period from January 1, 1942, through December 31, 1944.

2. If an entity responds that it had a direct involvement in the deportation of any individual, as described in subparagraph 1., the entity shall certify all of the following:

a. Whether the entity has any records, whenever created, in its possession, custody, or control related to those deportations.

b. Whether the entity has taken any remedial action concerning those deportations, and whether the entity has provided restitution to all identifiable victims of those deportations.

(b) An entity that certifies its direct involvement under this subsection may provide any mitigating circumstances in narrative or documentary form.

(c) The Florida Rail Enterprise or other fixed-guideway transportation system shall acknowledge receipt of the information as required by this subsection when awarding contracts.

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



663606

(a) "Direct involvement" means ownership or operation of the trains on which a person was deported to an extermination camp, work camp, concentration camp, prisoner-of-war camp, or any similar camp by whatever name in Europe during the period from January 1, 1942, through December 31, 1944.

(b) "Entity" includes any corporation, affiliate, or other entity that controls, is controlled by, or is under common control with, or that is a member of a partnership or a consortium with, an entity that is subject to this section. An entity is presumed to be in control of another corporation or entity if it owns or directly or indirectly controls more than 50 percent of the voting securities or more than 50 percent of any other ownership interest of the other corporation or entity. This definition applies irrespective of whether or not the equity interest in the entity is owned by a foreign state.

(c) "Fixed-guideway transportation system" means a public transit system for the transporting of people by a conveyance, or a series of interconnected conveyances, which is specifically designed for travel on a stationary rail or other guideway, whether located on, above, or under the ground.

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

And the title is amended as follows:

Delete line 224

and insert:

future expiration of the pilot program; providing legislative findings and intent relating to high-speed rail; requiring each entity intending to bid or submit a proposal to



663606

contract with the Florida Rail Enterprise or a fixed-guideway transportation system for goods or services related to high-speed or other rail systems to certify whether the entity had any direct involvement in the deportation of any individual to an extermination camp, work camp, concentration camp, prisoner-of-war camp, or any similar camp by whatever name located in Europe during the period from January 1, 1942, through December 31, 1944, and if so, whether the entity has physical possession of records related to the deportations and has provided restitution to identifiable victims; authorizing the entity to offer proof of mitigating circumstances related to acts committed during the wartime period; requiring that the Florida Rail Enterprise and other fixed-guideway transportation system acknowledge receipt of the information when awarding contracts; providing definitions; providing an



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment to Amendment (328518)

Delete line 8

and insert:

Such affirmation is admissible in any proceeding to enforce this



636292

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Flores) recommended the following:

Senate Amendment

Delete lines 2146 - 2147
and insert:
materials. ~~with,~~ To the greatest extent practical, a minimum of
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622374

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 2959 and 2960

insert:

Section 58. Paragraph (d) of subsection (2) of section 318.18, Florida Statutes, is amended, and subsection (22) is added to that section, to read:

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

(2) Thirty dollars for all nonmoving traffic violations and:

~~(d) For all violations of s. 316.126(1)(b), unless~~



622374

~~otherwise specified.~~

(22) Notwithstanding any other law to the contrary, the
total fine for all violations of s. 316.126(1)(b) is \$100.

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

And the title is amended as follows:

Delete line 224
and insert:

future expiration of the pilot program; amending s.
318.18, F.S.; increasing the fine for the failure to
comply with s. 316.126(1)(b), relating to yielding to
emergency vehicles; conforming provisions to changes
made by the act; providing an



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment to Amendment (853702) (with title amendment)

Delete lines 1 - 26.

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

And the title is amended as follows:

Delete lines 29 - 35.

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 1180

INTRODUCER: Senate Budget Subcommittee on Transportation, Tourism, and Economic Development
Appropriations; Transportation Committee; and Senator Latvala

SUBJECT: Transportation

DATE: April 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	Fav/CS
2.	Carey	Meyer, R.	BTA	Fav/12 amendments
3.	Carey	Meyer, C.	BC	Premeeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

SB 1180 makes a number of revisions to statutes addressing the functions and responsibilities of the Florida Department of Transportation (FDOT, or department) and various transportation issues. Specifically, the bill:

- clarifies that the Florida Statewide Passenger Rail Commission has the exclusive authority to monitor all publicly funded passenger rail system in the state;
- allows certain transportation authorities to hold public meetings using communications media technology;
- authorizes a pilot-program to allow bicycles on selected limited-access bridges;
- provides a reduced penalty for operators of commercial motor vehicles who fail to possess a current medical examiner's certificate as required by federal law;
- revises definitions and FDOT duties relating to road jurisdiction and transfer of public roads between governmental entities;
- delays the date of a new levy or rate change of a local option fuel tax from July 1 to October 1;
- authorizes use of additional forms of financial securities required prior to the installation of military monuments or memorials in rest areas;

- repeals the Florida Intrastate Highway System as a separate statewide highway network and relocates provisions for the designation and function of limited access facilities to provide for Strategic Intermodal System Highway Corridors;
- repeals the Statewide Intermodal Transportation Advisory Council (SITAC);
- repeals federally required planning factors listed in state statute and replaces the factors with a reference to the United States Code containing the factors;
- repeals duplicative reporting requirements;
- establishes Strategic Intermodal System Highway corridors;
- repeals s. 316.2045, F.S., which addresses panhandling on public streets but has been struck down as unconstitutional on First Amendment grounds;
- creates a narrowly tailored, content neutral permitting scheme for pedestrian activities that might obstruct the free flow of traffic;
- prohibits aggressive panhandling and establishes local governmental authority to issue permits for roadside solicitations;
- requires traffic signals to have a minimum yellow interval time;
- exempts operators of farm labor vehicles from hours-of-service requirements during declared agricultural emergencies, such as hard-freezes when fruit needs to be harvested as quickly as possible;
- places a maximum percentage cap on funds to be used by FDOT in landscaping projects;
- establishes legislative intent relating to stormwater management systems associated with state transportation projects, allowing FDOT to use regional systems and removing the department's responsibility for abating pollution entering their system from neighboring properties;
- requires bus stop benches and other street furniture to comply with federal Americans with Disabilities Act requirements;
- establishes legislative intent to allow flexibility in the permitting of stormwater treatment facilities for transportation facilities;
- makes the requirement for FDOT and other authorities to submit environmental impact inventories a voluntary act and allows the release of environmental mitigation funds when the associated transportation project is excluded from the mitigation plan;
- designates Port Citrus in Citrus County as a deepwater port and assign it the same benefits and responsibilities as the other 14 ports;
- conforms various provisions to changes made by the act; and
- provides an effective date.

This bill substantially amends the following sections of the Florida Statutes: 20.23, 163.3180, 286.011, 288.063, 310.002, 311.07, 311.09, 316.075, 316.0083, 316.091, , 316.2122, 316.302, 316.3025, 316.515, 334.03, 334.044, 334.047, 336.021, 336.025, 336.01, 336.021, 336.025, 337.111, 337.403, 337.404, 337.406, 337.408, 338.01, 338.222, 338.227, 338.2275, 338.228, 338.234, 339.155, 339.62, 339.63, 339.64, 339.65, 341.8225, 341.840, 373.413, 373.4137, 374.976, 403.021, 403.061, 403.813, 403.816, 479.01, 479.07, 479.106, 479.16, 479.261, and 479.263.

This bill creates the following sections of the Florida Statutes: 339.65, 316.2046 and 316.2047.

This bill repeals the following section of the Florida Statutes: 316.2045, 338.001

II. Present Situation:

Overlapping responsibility for Passenger Rail Systems

Section 20.23(2)(b)8., F.S., currently directs the Florida Transportation Commission (FTC) to:

Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, including any authority formed using the provisions of part I of chapter 348 and any authority formed under chapter 343 which is not monitored under subsection (3). The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

Similarly, s. 20.23(3)(b)1., F.S., currently charges the Florida Statewide Passenger Rail Commission (FSPRC) with the function of:

Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

Public Meetings

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.¹

Article I, section 24 of the Florida Constitution, chapter 119, F.S., and chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under article I, Section 24(a) of the Florida Constitution, "any public body, officer, or employee of the state, or persons acting on their behalf" is subject to the public records law. Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be

¹ Section 286.011, F.S.

transacted or discussed, is subject to the open meetings law. Under chapter 119, F.S., any agency² is subject to the public records laws. Under s. 286.011, F.S., all meetings of any board or commission of any state agency or authority of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws.

Section 120.54(5)(b)2., F.S., provides requirements for the Administration Commission's rules for state agencies regarding meetings using "communications media technology" which means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

If a public meeting or hearing is to be conducted by means of communications media technology, or if attendance may be provided by such means, this information must be included in the meeting notice. The notice for public meetings and hearings using communications media technology must also state how persons interested in attending may do so and must name locations, if any, where communications media technology facilities will be available.

Operation of Bicycles on Limited Access Highways

A limited access facility is "a street or highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a limited right or easement, of access" Subsection 316.091(4), F.S., prohibits persons from operating a bicycle on a limited access facility and along the shoulder of a limited access highway, except as provided in statute. Currently, the only exception is the Jacksonville Expressway System, as provided for under s. 349.04(1), F.S. Highways identified with state highway route signs that include the word TOLL are limited access facilities.

Commercial Motor Vehicle Medical Certificate

Federal law (49 CFR 391.41 and 391.43) prohibits a person from operating a commercial motor vehicle (CMV) unless he or she is medically certified as physically qualified to drive a CMV. Federal law also prescribes the form of the medical certificate. Currently, law enforcement officers issue uniform traffic citations for no or improper medical certificate under either s. 316.215(1), F.S., or s. 316.302(1), F.S.

If written under s. 316.215(1), F.S., Florida law specifies that such violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318. Under s. 318.18(2), F.S., the penalty is \$30. The violator pays a total of approximately \$108 after the addition of court costs.

However, if written under s. 316.302(1), F.S., Florida law is not specific as to the penalty. Courts are either dismissing the citations, citing the absence of a specific penalty, or are imposing fines ranging anywhere from \$100 to \$500, plus court costs. If deemed a nonmoving violation, a violator pays \$108 in court costs and, if deemed a moving violation, \$158 for court costs.

² "Agency" is defined as "any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Section 119.011(2), F.S.

Road System Definitions/Functional Classification/Jurisdiction

Prior to 1995, the department assigned road jurisdiction over a roadway based on a functional classification system. In 1995, the law was revised to recognize existing road jurisdiction and establish a system whereby any future transfer of public roads would be effectuated by mutual agreement between affected governmental entities. This change was accomplished by revisions to ch. 335, F.S., (State Highway System), in which section s. 335.04, F.S., was repealed and s. 335.0415, F.S., was enacted.

Certain definitions and duties contained in ch. 334, F.S., (Transportation Administration) related to the functional classification/road jurisdiction process formerly contained in ch. 335, F.S., should have been revised or repealed consistent with the 1995 changes, but were not.

Ninth Cent Fuel Tax

The Ninth-Cent Fuel Tax is a tax of 1 cent on every gallon of motor and diesel fuel sold within a county. The tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

Pursuant to ss. 206.41(1)(d), 206.87(1)(b), and 336.021 F.S., any county in the state may levy a 1 cent per gallon tax on motor and diesel fuels sold in the county by extraordinary vote of the membership of its governing body or voter approval in a county-wide referendum. However, this tax shall be imposed on diesel fuel in each county as the result of statewide equalization. The tax must be imposed before July 1 in any given year to be effective January 1st of the following year.

1 to 6 Cents Local Option Fuel Tax

Local governments are authorized to levy a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold in a county. This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

Pursuant to ss. 206.41(1)(e), 206.87(1)(c), and 336.025, F.S., this tax may be levied by an ordinance adopted (under one of two sets of circumstances, whichever is applicable) by a majority vote of the county's governing body or upon approval by referendum. If no interlocal agreement or resolution is adopted pursuant to the procedures setting out the two sets of specified circumstances, then municipalities representing more than 50 percent of the county population may, prior to June 20th, adopt uniform resolutions approving the tax, establishing the duration of the levy and the rate, and setting the date for a county-wide referendum on whether or not to levy the tax. A referendum shall be held in accordance with the provisions of such resolution and applicable state law, provided that the county shall bear the costs of such referendum. The tax shall be levied and collected countywide on January 1st, following 30 days after voter approval.

This tax shall be imposed on diesel fuel in each county at the maximum rate of 6 cents per gallon as the result of statewide equalization.

1 to 5 cents Local Option Fuel Tax

County governments are authorized to levy a tax of 1 to 5 cents upon every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. Pursuant to ss. 206.41(1)(e) and 336.025, F.S., the tax may be levied by an ordinance adopted (under one of two sets of circumstances) by a majority plus one vote of the county's governing body or upon approval by referendum. The tax proceeds may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan. With certain exception, this tax shall be levied before July 1st to be effective January 1st of the following year.

Removal or Relocation of Monuments from Rest Areas

The 2005 Legislature created the “Ellwood Robinson ‘Bob’ Pipping, Jr., Memorial Act” (act), codified in s. 337.111, F.S. The stated purpose of the act was creating “an environment in which state residents and visitors will be reminded of the accomplishments made by military veterans in past conflicts and the continuing sacrifices made by veterans and their families to protect the freedoms we enjoy today.” The act authorizes FDOT to enter into contracts, as approved by a reviewing committee, with not-for-profit groups or organizations, for the installation of monuments and memorials honoring Florida’s military veterans at highway rest areas around the state.

The act requires the group or organization making the proposal to be responsible for all costs of the monument and its installation. The act also requires the group or organization to provide a 10-year bond securing the cost of removal or relocation or necessary modifications of the monument in the event the department determines such actions are necessary.

Following passage of the act, an interested group sought installation of a monument (a replica of the Iwo Jima Memorial) in a department rest area but was unable to obtain a 10-year bond from the bonding industry. It appears that the bonding industry has reservations about issuing such bonds, and the monument has not been installed. As a result, no installations have occurred under the act.

Utility Relocations

Section 337.401, F.S., addresses the use of road and rail corridor right-of-way by utilities, authorizing FDOT and local government entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining of any electric transmission lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when the utility interferes with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The utility, upon 30 days written notice, is required to remove or relocate the utility at its own expense subject to the following exceptions:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, the FDOT pays for the removal or relocation with federal funds;
- Where the cost of the utility improvement, installation, or removal exceeds the FDOT’s official cost estimates for such work by 10 percent, FDOT participation is limited to the

- difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract;
- When the relocation of the utility takes place before construction commences, FDOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation;
 - When necessary for the construction of a transportation project, the responsibility for relocating a utility falls on the authority having jurisdiction over the transportation facility if the utility was initially installed to serve only the authority, its tenants, or both. (For example, if a power line originally installed to supply electricity to a toll plaza must be relocated due to widening the toll road, the toll authority, not the power company, must pay the cost of moving the line.);
 - If the utility has conveyed, subordinated, or relinquished a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation; and
 - If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears all costs of the relocation.

Generally, the 30-day relocation provision has been construed as a notice provision, and the utility does not need to be removed or relocated within 30 days. Often, an authority and a utility owner negotiate a period of time to reasonably accommodate the relocation and removal of the utility.

Florida Intrastate Highway System and the Strategic Intermodal System

The 1990 Legislature created s. 338.001, F.S. requiring the department to develop a Florida Intrastate Highway System (FIHS) Plan. The department identified candidate routes after reviewing local transportation plans, Metropolitan Planning Organization (MPO) plans, and the results of statewide planning studies. In January 1991, the department submitted the Florida Transportation Plan to the Legislature, including an initial FIHS network map and preliminary standards and formally adopted the standards in 1992. The section also requires a status report on the FIHS Plan be provided annually to the Legislature's transportation committees.

The Strategic Intermodal System Plan (SIS) was established by the Florida Legislature in 2003 to enhance Florida's economic prosperity and competitiveness. FDOT works with its partners to determine investment needs based on the performance of the transportation system relative to the goals and objectives of the SIS. Chapter 339, F.S., includes provisions for developing and updating the SIS. The system encompasses transportation facilities of statewide and interregional significance and is focused on the efficient movement of passengers and freight. The SIS Highway Component was designated using the SIS/Emerging SIS criteria and thresholds and comprises:

- Interstate Highways;
- Florida's Turnpike;

- Selected urban expressways;
- Major arterial highways;
- Intermodal connectors between SIS; and
- Emerging SIS hubs and SIS corridors.

The SIS Highway Component consists of 3,531 miles of SIS Highways and 761 miles of Emerging SIS Highways. In total, the SIS Highway Component is less than 4% of Florida's roads, yet carries almost 30% of all traffic. It carries more than two-thirds of all truck traffic using the State Highway System.

All but a few highway miles in the FIHS are also in the SIS, which is why the 2010 SIS Strategic Plan, developed by the department and its partners, includes a recommendation to sunset the FIHS as a separate statewide highway network to simplify the planning process. Currently, s. 338.001, F.S., only deals with the FIHS, a portion of the SIS highway component. Chapter 339, F.S., defines the entire SIS, including the highway component. The continued planning for and reporting on the FIHS and the SIS highway components as separate systems is redundant.

Statewide Intermodal Transportation Advisory Council

Chapter 339, F.S., also created the Statewide Intermodal Transportation Advisory Council (SITAC) and provided for initial membership appointment in January 2005. This council assisted in developing the initial 2005 SIS Strategic Plan. Subsequent to January 16, 2005, no further appointments to the SITAC have occurred and the council no longer officially convenes; however, all of the members' organizations have been included in the ongoing planning and updating of the SIS plan.

Transportation Planning

Federal law requires states to adhere to certain requirements in the transportation planning process. On occasion, these federal requirements have been amended, and the State of Florida has revised its statutes from time to time in accordance with federal revisions as they have occurred. As to more recent changes, the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) contained 23 planning factors to be considered in the statewide planning process and 16 planning factors to be included in the metropolitan planning process. Subsequently, the Transportation Equity Act for the 21st Century (TEA-21) was passed by Congress in June of 1998, which consolidated the statewide and metropolitan planning factors into seven broad areas to be considered. Florida law was amended by the 1999 Legislature (HB 591) to accommodate the TEA-21 revisions, and s. 339.155, F.S., currently reflects the seven broad factors to be considered in the planning process. However, the 2005 federal legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), separated the "safety and security" factor into two separate factors and modified the wording of other factors. Once again, Florida's statutes do not accurately reflect the most recent federal requirements that must be adhered to in statewide transportation planning.

Further, the federal requirement that each state have a "Long-Range Transportation Plan" was amended in the SAFETEA-LU legislation to be a "Long-Range Statewide Transportation Plan." Federal legislation has not required a short-range component of the long-range plan or an annual performance report. The department has, in the past, issued a separate Short Range Component of the Florida Transportation Plan and an Annual Performance Report, but most recently

combined those reports into a single report. The Short Range Component is not an annual update of the Florida Transportation Plan but rather documents FDOT's efforts to implement the Florida Transportation Plan. The department and the Florida Transportation Commission conduct extensive performance measurement of Florida's transportation system and FDOT's activities. An annual Long Range Program Plan is also submitted by the department to the Governor and Legislature reflecting state goals, agency program objectives, and service outcomes.

Florida Transportation Plan

The Florida Transportation Plan (FTP) establishes long range goals to provide a policy framework for expenditure of federal and state transportation funds in Florida. Development of the FTP includes local, regional, and state partners who make decisions about future transportation investments. Every five years, FDOT updates this plan to respond to new trends and challenges to meet the future mobility needs of Florida's residents, visitors and businesses. In 2010, FDOT and its partners worked to update the FTP. After six meetings of a 29 member Steering Committee, twenty four web meetings of four advisory groups, one statewide summit, two statewide webinars, twelve regional workshops, nearly three hundred briefings at regularly scheduled meetings of transportation partners, and an interactive website helping to gather input and feedback from more than ten thousand Floridians, the update process is completed. The 2060 FTP establishes Florida's transportation vision and identifies goals, objectives, and strategies to guide transportation decisions and investments over the next 50 years.

Florida High Speed Rail Authority/Florida Rail Enterprise

Chapter 2009-271, L.O.F., repealed the Florida High-Speed Rail Authority Act and related provisions and converted much of the act to establish the Florida Rail Enterprise within the department. However, s. 341.830, F.S., still contains references to the repealed "authority" that should have been changed to the "enterprise" at the time of the repeal/creation. "Enterprise" is now defined in s. 341.8203(2), F.S., to mean the Florida Rail Enterprise.

Pedestrian Safety

Florida was the deadliest state in the nation for pedestrians and bicyclists according to a US News and World Report article for 2010.³ Similarly, a Transportation for America study stated that four out of the five most dangerous cities in the United States for pedestrians are in Florida.⁴ A preliminary study by the Governors Highway Safety Association indicates that Florida is currently the second highest state for pedestrian fatalities.⁵

Statutory Restrictions on Solicitations

Under s. 316.2045, F.S., it is a pedestrian violation punishable under ch. 318, F.S. to willfully obstruct any public street by impeding or restraining traffic by standing or approaching motor vehicles, or endanger the safe movement of vehicles or pedestrians.

³ Larry Copeland, Fla. *Deadliest State for Walkers, Cyclists*, U.S. NEWS AND WORLD REPORT (March 1, 2010) available at http://www.usatoday.com/news/nation/2010-02-28-florida-pedestrians-cyclists-deaths_N.htm.

⁴ TRANSPORTATION FOR AMERICA, DANGEROUS BY DESIGN, available at http://t4america.org/docs/dangerousbydesign/dangerous_by_design.pdf.

⁵ GOVERNORS HIGHWAYS SAFETY ASSOCIATION, PEDESTRIAN TRAFFIC FATALITIES BY STATE 2010 PRELIMINARY DATA, available at http://www.ghsa.org/html/publications/spotlight/pdf/spotlight_ped.pdf.

However, the local government that has jurisdiction over the road may issue permits, including permits to solicit, for the use of any street, road, or right-of-way not maintained by the state. The statute has exceptions for charitable and political organizations as well as for certain service vehicles. The court in *Bischoff v. Florida* held that this statute was content-based and vague, and therefore violated First Amendment free speech rights.⁶ Additionally, the court held that the statute facially preferred the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects.⁷ As a result, s. 316.2045, F.S., is no longer enforceable in the middle district of Florida.

Similarly, s. 337.406, F.S., makes it unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. An earlier version of this statute was struck down as unconstitutional. *News & Sun-Sentinel Co. v. Cox*⁸ stated that public streets and sidewalks are the “archetype of a traditional public forum,”⁹ because of their usage for public assembly and debate. The court recognized that the city had significant interests in regulating the conduct of pedestrians in its streets while motor vehicles are present. However, the court determined that it was not “narrowly tailored” to serve the City’s significant governmental interest. The statute was found to be unreasonably restrictive because it “ban[s] newspaper sales by persons of all ages to occupants of all motor vehicles located on public property ... regardless of the time of day or night and regardless of whether the cars are moving, standing, parked or even not in the traffic lanes.”¹⁰ The court noted that it failed to take into account the fact that actual traffic hazards may vary with the level of traffic flow which exists at each of the state roads. The City of Fort Lauderdale argued that safety is its primary concern and that street solicitation is unsafe under any condition, but the court stated that the argument was undermined by the fact that the statute prohibited only “commercial” activity on state-maintained roads.

Traffic Signal Yellow Intervals

Drivers approaching a traffic signal displaying a yellow light face at least four conditions:

1. The vehicle is traveling at a speed where the driver can stop comfortably;
2. The vehicle is too close to the intersection to stop comfortably, and must thus continue at the same speed or accelerate to travel through the intersection before conflicting traffic movements begin;
3. The driver can neither stop comfortably nor continue without encountering a conflicting traffic movement (prevalent with short yellow intervals and/or high approach speeds); or
4. The driver can either stop or proceed safely through the intersection.

The ideal yellow interval accommodates conditions 1 and 2, eliminates condition 3, and minimizes condition 4. To accomplish this, traffic engineers nationwide typically employ the

⁶ 242 F.Supp.2d 1226 (M.D. Fla. 2003).

⁷ *Id.*

⁸ 702 F.Supp. 891(S.D. Fla. 1988)

⁹ *Id.* (quoting *Frisby v. Schultz*, 487 U.S. 474 (1988)).

¹⁰ *Id.*

following formula, which is heavily influenced by vehicle approach speed, and was developed by the Institute of Transportation Engineers (ITE):

$$Y = t + \frac{1.47v}{2(a + Gg)}$$

Where:

Y = length of yellow interval, sec.

t = perception-reaction time, (Use 1 sec.).

v = speed of approaching vehicles, in mph.

a = deceleration rate in response to the onset of a yellow indication. (Use 10 ft/sec²)

g = acceleration due to gravity. (Use 32.2 ft/sec²)

G = grade, with uphill positive and downhill negative. (percent grade /100)

For Florida traffic signal timing, the FDOT Traffic Engineering Manual (Topic No. 750-000-005) provides required minimum durations for the yellow change interval in the following table which was computed using the ITE formula:

APPROACH SPEED (MPH)	YELLOW INTERVAL (SECONDS)
25	3.0
30	3.2
35	3.6
40	4.0
45	4.3
50	4.7
55	5.0
60	5.4
65	5.8
* For approach grades other than 0%, Use ITE Formula.	

Panhandling

Panhandling has been labeled as a symptom of deeper societal problems. However, it is generally considered a nuisance and can undermine the positive character of a community. State and local governments have struggled with how to minimize the secondary effects of panhandling on a community. Regulation in this area is complicated by the fact that begging can carry with it constitutional protections. *Smith v. Fort Lauderdale*¹¹ upheld an ordinance that proscribed begging on a five-mile strip of beach and two attendant sidewalks. The court determined that, like other charitable solicitations, begging is speech entitled to First Amendment protection. The court noted that even in a public forum, the government may enforce regulations of the time, place, and manner of expression which: (1) are content-neutral; (2) are narrowly tailored to serve

¹¹ 177 F.3d 954 (11th Cir. 1999). See also *Chad v. Ft. Lauderdale*, 66 F.Supp.2d 1242 (N.D. Fla. 1998). For a general discussion about the legal challenges of regulating panhandling, see William L. Mitchell, "Secondary Effects" Analysis: A Balanced Approach to the Problem of Prohibitions on Aggressive Panhandling, UNIV. OF BALTIMORE LAW REV., 1995.

a significant government interest; and (3) leave open ample alternative channels of communication. The court held that the ordinance was narrowly tailored to serve the city's significant government interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach. The city had determined that begging in such areas adversely impacted tourism. The court stated that the ordinance did not need to be the least restrictive or least intrusive means of serving the city's interest in order to qualify as narrowly tailored.

Hours of Service for Operators of Commercial Motor Vehicles

Section 316.302(2)(b), F.S., provides that except as provided in federal regulations,¹² a person operating a commercial motor vehicle (CMV) solely in intrastate commerce and not transporting hazardous material may not drive:

- More than 12 hours following 10 consecutive hours of duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

FDOT Landscaping and Highway Beautification Projects

By policy, FDOT strives to conserve, protect, restore, and enhance Florida's natural resources and scenic beauty. Consistent with s. 334.044(26), F.S., the department allocates no less than 1.5% of the amount contracted for construction projects in each fiscal year to beautification programs. In implementing the policy and the statute, FDOT:

- Integrates highway beautification into the processes that are used to plan, design, construct and maintain roadways;
- Uses color, texture, pattern, and form to develop naturally beautiful and enjoyable transportation facilities that are context sensitive, and conserve scenic, aesthetic, historic, and environmental resources while maintaining safety and mobility;
- Makes use of innovative design strategies to minimize costs of high quality vegetation management; and
- Uses innovative vegetation management practices and measures to maintain safety, improve aesthetics and environmental quality, while reducing life cycle costs.

In 2009, FDOT allocated \$41,819,034 comprising 2.44% of the amount contracted for construction projects.

Americans with Disabilities Act (ADA)

The ADA is a federal civil rights law that requires pedestrian facilities to be accessible to and usable by all people, including those with disabilities. Local jurisdictions, and other entities covered by the ADA, must ensure that the facilities they build or alter comply with ADA requirements.

The ADA accessibility guidelines specify the minimum level of accessibility in new construction and alteration projects and serve as the basis for enforceable standards maintained by other agencies. The guidelines focus mainly on facilities and certain features common to public sidewalks, such as curb ramps, signs, street furniture (including bus stops and shelters), and

¹² 49.C.F.R. s. 395.1

landscaping that may obstruct the walking path or become protruding objects if located within, adjacent to, or above a sidewalk.

Bus Stops and Transit Shelters on State Roads

Local governments are authorized to install bus benches and transit shelters at designated stops on official bus routes including within the right-of-way of state roads (except limited-access facilities.) FDOT is currently authorized to direct the immediate removal or relocation of any bench or transit shelter, but only if life or property are endangered or deemed a roadway safety hazard. FDOT currently does not have the authority to deny installation of bus stops, bus benches, or transit shelters within the right-of-way for failure to comply with the ADA. However, FDOT may be liable for such non-compliance and subject to legal action as a result of its jurisdiction over the State Highway System. FDOT has been named in an ADA suit in Pinellas County because the local government has permitted the installation of bus stops in inaccessible locations, with non-compliant benches and shelters, on state roads.

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System;
- States have the discretion to remove legal nonconforming signs¹³ along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads;
- States and localities may enact stricter laws than stipulated in the HBA; and
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

¹³ A “legal nonconforming sign” is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices". Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement.

Vegetation Management and View Zones for Outdoor Advertising

Section 479.106, F.S., addresses vegetation management and establishes "view zones" for lawfully permitted outdoor advertising signs on the interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. The intent of the section is to create partnering relationships which will have the effect of improving the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads.¹⁴

The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility or future visibility of a sign or future sign, to obtain written permission from FDOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-40.030, F.A.C., requires mitigation where:

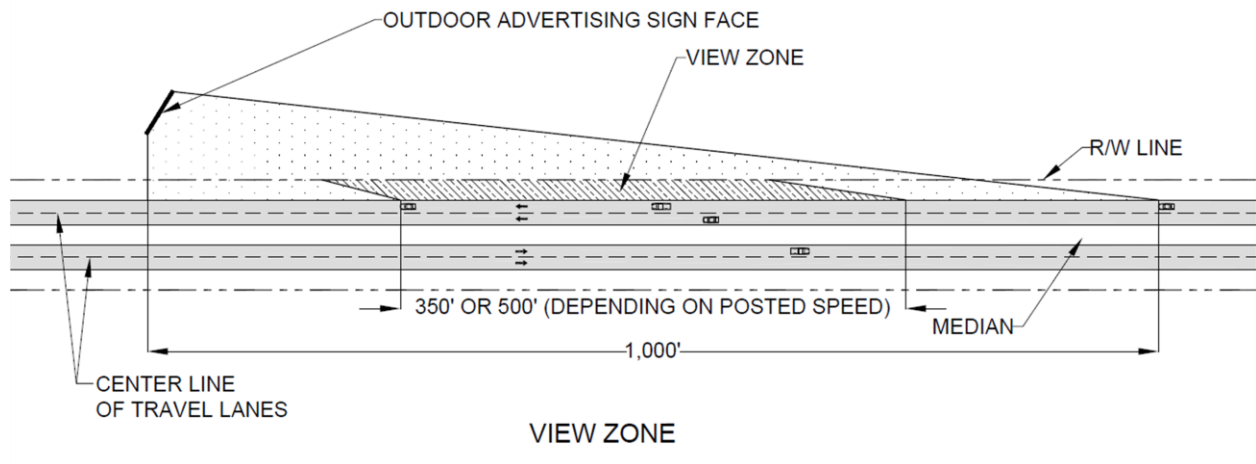
- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or destroyed;
- Trees that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

When the installation of a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, FDOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs' permits.

The measurements of a view zone are 350 feet, in areas where the posted speed limit is 35 m.p.h. or less, and 500 feet, where the speed limit is over 35 m.p.h. These view zones are to be within

¹⁴ Section 479.106(8), F.S.

the first 1,000 feet as measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the sign's edge facing the highway unless interrupted by naturally occurring vegetation. The following illustration taken from agency rule (Rule 14-40.030, F.A.C.) depicts a view zone for signs on one side of a roadway.



Section 479.106, F.S., allows FDOT and sign owners to enter into agreements identifying the specific location of an outdoor advertising sign's view zone, and if no agreement is reached, then the view zone shall be measured as described above. For some signs viewed across the median (cross readers), part of the view zone may include the highway median.

Rural Areas of Critical Economic Concern

Rural Areas of Critical Economic Concern (RACEC) are defined in s. 288.0656, F.S., as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor may designate up to three RACECs, which allows the Governor to waive criteria of any economic development incentive. Florida's three designated RACECs include:

- Northwest Rural Area of Critical Economic Concern: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Washington counties, and the City of Freeport in Walton County;
- South Central Rural Area of Critical Economic Concern: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County); and
- North Central Rural Area of Critical Economic Concern: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

Florida's Public Seaports

Florida has 14 public seaports:

Port of Fernandina

Port of Fort Pierce

Jacksonville (JaxPort)
Port of Key West
Port of Miami
Port of Palm Beach
Port Panama City
Port of Pensacola
Port Canaveral
Port Everglades
Port Manatee
Port St. Joe
Port of St. Petersburg
Port of Tampa

These seaports¹⁵ are considered significant economic drivers and compete for a minimum of \$8 million a year¹⁶ in grants from the State Transportation Trust Fund under s. 311.07, F.S. The grants are used for projects to improve the “movement and intermodal transportation” of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council and approved by the Florida Department of Transportation. Most years, the Legislature appropriates more than \$8 million to the seaports; for FY 2009-2010, for example, FDOT was directed to spend \$21.9 million on seaport grants and \$25.6 million in FY 10-11.¹⁷ The ports also benefit from an additional \$25 million in debt service paid with motor vehicle license fees¹⁸ from the State Transportation Trust Fund.

The Citrus County Board of County Commissioners recently voted to move toward developing Port Citrus, a publicly run port to be developed on the Cross Florida Barge Canal, putting the county in line for state funding for a port study. Although no port currently exists, Citrus County has had a private port authority since 1984. One concept being considered is the development of accommodations for a new type of vessel, a trans-sea lifter (TSL), which would deploy container-laden barges offshore, which are then floated to docking facilities. The shallow-draft barges eliminate the need for deep draft berthing used by conventional container ships.

III. Effect of Proposed Changes:

Section 1: Amends s. 20.23(3)(b)1., F.S., to provide that the FSPRC has the primary and exclusive function of monitoring all publicly funded passenger rail systems in the state. Further, the bill removes current law providing that the FTC is not precluded from conducting its performance and work program monitoring activities. As a result, the FSPRC would be the only entity statutorily authorized to monitor all publicly funded passenger rail systems in the state.

Section 2: Amends s. 286.011, F.S., to allow transportation authorities created under chs. 343, 348, and 349, F.S., to conduct public meetings and workshops by means of communications

¹⁵ Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: http://flaports.org/Sub_Content2.aspx?id=3. Last visited Feb. 28, 2011.

¹⁶ Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least \$15 million for FSTED projects.

¹⁷ In 2007, the Legislature appropriated an additional \$50 million for port projects as a line-item.

¹⁸ Section 320.20(3) and (4), F.S.

media technology, i.e., the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video. the authorities affected are:

Ch. 343, F.S.

- South Florida Regional Transportation Authority (SFRTA/Tri-Rail)
- Central Florida Regional Transportation Authority (CFRTA/LYNX)
- Northwest Florida Transportation Corridor Authority (NWFTCA)
- Tampa Bay Area Regional Transportation Authority (TBARTA)

Ch. 348, F.S.

- Miami-Dade Expressway Authority (MDX)
- Tampa-Hillsborough Expressway Authority (THEA)
- Orlando-Orange County Expressway Authority (O-OCEA)
- Santa Rosa Bay Bridge Authority (SRBBA)

Ch. 349, F.S.

- Jacksonville Transportation Authority (JTA)

Section 3: Amends s. 316.091, F.S., to create a 2-year Limited Access Facilities Pilot Program under FDOT. The program would provide access to bicycles and other human-powered vehicles to select limited access bridges when no other non-limited access alternative is located within two miles. The department will select three such bridges or approaches in conjunction with the Federal Highway Administration under specified criteria. Upon completion, the department will present the results of the pilot program to the Governor and Legislature.

Section 4: Amends s. 316.3025(3)(b), F.S., to specify a reduced, uniform civil penalty of \$100 for a violation of the requirement to possess a proper medical certificate when operating a CMV as required by 49 CFR 391.41 and 391.43.

Section 5: Amends s. 334.03, F.S., deleting definitions for the following terms:

- arterial road;
- collector road;
- local road;
- urban minor arterial road;
- urban principal arterial road; and
- Florida Intrastate Highway System.

At one time, these terms were used to determine the functional classification of roads under s. 335.04, F.S., which was instrumental in determining a road's jurisdiction, i.e., whether the state, a county, or a municipality was responsible for the facility. However, the repeal of s. 335.04, F.S., and the adoption of s. 335.0415, F.S., rendered the use of these terms for functional classification obsolete. These terms are not used in chs. 334 or 335, F.S., except in s. 335.04(11), and in s. 334.047, F.S., which this bill also amends.

The bill also revises the following definitions contained in s. 334.03, F.S.:

- City street system;

- county road system;
- functional classification; and
- State Highway System.

The definitions are revised to remove conflict with s. 334.0415, F.S. and s. 335.188(3)(c)1, F.S., clarifying these definitions to be:

- Roads under the appropriate jurisdiction on June 10, 1995;
- Roads constructed by the city, county, or state for the appropriate jurisdiction; and
- Roads subsequently transferred to that jurisdiction, but not roads transferred from the appropriate jurisdiction.

The bill amends the definition of “functional classification” to link the usage of “functional classification” in state statute to the functional classification that is done according to federal procedures, rather than what FDOT previously used for jurisdictional requirements. The only reference to this term in state statute relates to the access management classification system.

Section 6: Amends ss. 344.044(11) and (13), F.S., relating to department powers and duties, removing references to assigning jurisdictional responsibility and designating facilities as part of the State Highway System.

Section 7: Amends s. 334.047, F.S., to remove a prohibition against FDOT establishing a maximum number of miles of urban principal arterial roads, as defined in s. 334.03, F.S. Since the definition of the term “urban principal arterial road” is being deleted, the prohibition will become obsolete.

Section 8: Amends s. 336.021, F.S., to revise from July 1 to October 1 the date on which the ninth-cent fuel tax will be levied, to be effective January 1 of the following year. This aligns the levy or rate change with the local government’s fiscal year.

Section 9: Amends s. 336.025(1)(a) and (b), F.S., to revise from July 1 to October 1 the date on which impositions or rate changes of the local option fuel tax will be levied, to be effective January 1 of the following year. This aligns the levy or rate change with the local government’s fiscal year.

Section 10: Amends s. 337.111(4), F.S., to provide for other forms of security (besides a 10-year bond) an annual bond, irrevocable letter of credit, or other form of security approved by the FDOT comptroller which could be provided by groups installing monuments and memorials in rest areas. The bill also removes language requiring the automatic renewal of the 10-year bond upon its expiration.

Sections 11 and 12: Amend ss. 337.403 and 337.404, F.S., to provide that upon 30 days written notice, the utility is required to initiate the work to alleviate the interference with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The bill requires the work to be completed within the time stated in the notice or in the time agreed to by the authority and the utility owner. The bill amends various subsections to s. 337.403, F.S., and s. 337.404, F.S., to conform to changes made to the notice provision and to change the terms “improvements, relocation, and removal” to “utility work.”

Section 13: Repeals s. 338.001, F.S., which directed the department to plan and develop the “Florida Intrastate Highway System Plan.” The proposed changes eliminate the FIHS designation and extract the FIHS Plan components from ch. 338, F.S. The provisions are re-established in ch. 339, F.S., (see Section 22 of the bill), thereby grouping FDOT’s highway planning provisions with the majority of SIS provisions.

Section 14: Amends s. 338.01(1), F.S., relocating language relating to FDOT’s authority to establish limited access facilities from the repealed s. 338.001, F.S.

Sections 15 through 19 correct various cross-references:

- *Section 15* amends s. 338.227(4), F.S., relating to Turnpike Revenue Bonds, to replace a reference to the “Florida Intrastate Highway System Plan” with a reference to the “Strategic Intermodal System Plan developed pursuant to s. 339.64, F.S.”;
- *Section 16* amends s. 338.2275, F.S., relating to approved Turnpike projects, to replace a reference to the repealed s. 338.001, F.S., with the new s. 339.65, F.S.;
- *Section 17* amends s. 338.228, relating to Turnpike bonds, to replace a reference to the repealed s. 338.001, F.S., with the new s. 339.65, F.S.;
- *Section 18* amends s. 338.234(2), F.S., relating to concessions on the Turnpike, to replace a reference to the FIHS with a reference to the SIS; and
- *Section 19* amends s. 339.62, F.S., to replace a reference to the FIHS with a reference to “highway corridors,” which are required to be established under newly created s. 339.65, F.S.

Section 20 Amends s. 339.63(2), F.S., to add military access facilities to the types of facilities included in the SIS and Emerging SIS.

Section 21: Amends s. 339.64, F.S., to repeal the obsolete SITAC and related provisions.

Section 22: Creates s. 339.65, F.S., to establish SIS “highway corridors” provisions, including planning and policy language, and to continue necessary functions previously included in the FIHS Plan. Essentially, this newly-created section maintains the substantive provisions applicable to FIHS facilities but applies them to SIS highway corridors instead. Both limited and controlled access facilities established as components of the FIHS are designated as components within the SIS. All facility descriptions, designations, and other definitions provided within the FIHS have been included within the SIS highway component. However, while the FIHS plan required consistency with the FTP, this requirement was omitted from the provisions of this bill.

Section 23: Amends s. 339.155, F.S., to provide a reference to that portion of the United States Code in which the planning factors are contained and avoid the need to modify state law to match the federal requirements each time the planning factors are changed. This proposal would also delete the short-range component of the long-range plan and the annual performance report

requirements from state law, as these reports duplicate information provided in other required reports and are not required by federal law.

Sections 24 through 36 correct various cross-references:

- *Section 24* amends s. 341.840, F.S., to replace references to the now repealed High Speed Rail Authority to the new Florida Rail Enterprise;
- *Section 25* amends a cross-reference in s. 163.3180, F.S., relating to concurrency, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 26* amends a cross-reference in s. 288.063(3), F.S., relating to contracts for transportation projects, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 27* amends a cross-reference in s. 311.07(3)(b), F.S., relating to Florida Seaport Transportation and Economic Development funding, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 28* amends a cross-reference in s. 311.09(7), F.S., relating to the Florida Seaport Transportation and Economic Development Council, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 29* repeals cross-references to s. 334.03, F.S., in s. 316.2122, F.S., made obsolete by the road system definitions revisions.
- *Section 30* amends a cross-reference in s. 316.515(5)(c), F.S., relating to implements of husbandry, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 31* amends a cross-reference in s. 336.01, F.S., relating to designation of a county road system, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 32* amends a cross-reference in s. 338.222(2), F.S., relating to Turnpike projects, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 33* amends a cross-reference in s. 341.8225(2), F.S., relating to high-speed rail projects, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 34* amends a cross-reference in s. 479.01(27), F.S., relating to urban areas, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 35* amends a cross-reference in s. 479.07(1), F.S., relating to sign permits, resulting from the road system definitions revisions in s. 334.03, F.S.; and

- *Section 36* amends a cross-reference in s. 479.261(5), F.S., relating to the logo sign program, resulting from the road system definitions revisions in s. 334.03, F.S.

Sections 37, 38, and 50 – 54: Amend various sections of statute which collectively identify the state’s deepwater ports to include Port Citrus in those sections’ provisions.

Specifically, the bill amends:

- Section 310.002, F.S., to add Port Citrus to the definition of the term “port”;
- Section 311.09, F.S., to include a representative of Port Citrus as a member of the Florida Seaport Transportation and Economic Development Council;
- Section 374.976, F.S., to conform provisions relating to include Port Citrus in provisions relating to the authority of inland navigation districts;
- Section 403.021, F.S., to conform provisions to include Port Citrus in legislative declarations relating to environmental control;
- Section 403.061, F.S., to conform provisions to include Port Citrus in provisions relating to powers of the Department of Environmental Protection;
- Section 403.813, F.S., to conform provisions to include Port Citrus in provisions relating to permits issued at Department of Environmental Protection district centers; and
- Section 403.816, F.S., to conform provisions to include Port Citrus in provisions relating to certain maintenance projects at deepwater ports and beach restoration projects.

Section 39: Amends s. 316.0083, F.S., to require the department to establish a minimum yellow light change interval time for use in traffic signals. The minimum time is set in accordance with nationally-recognized engineering standards.

Section 40: Amends s. 316.0083, F.S., relating to red light camera enforcement. The bill prohibits the issuance of a violation notice and traffic citation for violations committed at intersections where the traffic signals does not meet the requirements of s. 316.0083, F.S., including yellow light change interval minimum time. Any notice or citation issued is rendered unenforceable and must be dismissed by the court.

Panhandling Sections (Sections 41, 42, 43, and 46)

The bill contains a number of “whereas” clauses addressing the public safety concerns associated with certain pedestrian activities on or adjacent to roadways. Additionally, the bill describes problematic forms of panhandling that the bill attempts to regulate. Sections 41, 42, 43, and 46 address panhandling and the obstruction of public streets.

Section 41: Repeals s. 316.2045, F.S., which has been struck down as unconstitutional on First Amendment grounds.

Section 42: Creates s. 316.2046, F.S., to create a narrowly tailored, content-neutral permitting scheme for pedestrian activities that might obstruct the free flow of traffic. Specifically, the bill makes it a pedestrian violation of ch. 318, F.S., for any person or persons to willfully and without a permit obstruct the free, convenient, and normal use of any public street, highway, or road by standing or approaching motor vehicles while on or immediately adjacent to the street, highway, or road in a manner that could endanger

the safe movement of vehicles or pedestrians traveling thereon. The bill specifies that soliciting funds or engaging in a commercial exchange with a person who is in a vehicle that is not stopped in a driveway or a designated parking area endangers the safe movement of vehicles. To solicit means to request employment, business, contributions, donations, sales or exchanges of any kind. In addition to the fine for the pedestrian fine, ten dollars will be levied and allotted to the Department of Children and Family Services' Office on Homelessness to support programs designed to assist in housing the homeless.

Cities and counties shall have in place the requisite permitting schemes unless they opt out by a majority vote of the members of the local governing authority. Local governments may also make the permit program more restrictive so long as it is narrowly tailored to serve an important public purpose.

The bill specifies a number of the required characteristics of the permit program. The bill contains a number of exceptions including festivals, fairs, etc. where the streets are blocked off and where emergency or service vehicles are road adjacent.

The bill explicitly authorizes and directs the Department of Highway Safety and Motor Vehicles and other law enforcement agencies to enforce the statute.

Section 43: Creates s. 316.2047, F.S., which would make it illegal to engage in unlawful panhandling, fraudulent panhandling, or panhandling in certain specified locations. Under the provisions of the bill:

Aggressive panhandling occurs when a person knowingly requests money, gifts, or donations:

- by unwanted touching, detaining, impeding, or intimidation;
- under circumstances that warrant justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity;
- when the panhandler follows the solicited person after that person has made a negative response; or
- by using obscene or abusive language or gestures that are reasonably likely to intimidate or cause fear of bodily harm.

It is unlawful to panhandle:

- At a bus stop;
- Within 20 feet of an automated teller machine or the entrance to a bank;
- While blocking the entrance to a building or motor vehicle; or
- In a parking garage owned or operated by a county, a municipality, the state government, or the federal government.

Fraudulent panhandling occurs when a person knowingly makes any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

- Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;

- Stating that the solicitor is from out of town and stranded, when such is not true;
- Wearing a military uniform or other indication of military service when the solicitor is neither a present nor former member of the service indicated;
- Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;
- Use of any makeup or device to simulate any deformity; or
- Stating that the solicitor is homeless, when he or she is not.

Panhandling is defined to mean:

- Solicit, request, or beg for an immediate donation of money or something else of value; or
- Offer an individual an item of little or no monetary value in exchange for money or another gratuity under circumstances that would cause a reasonable individual to understand that the transaction is only a donation.

Counties and municipalities may increase the restrictions on panhandling so long as those restrictions are content neutral and narrowly tailored to serve an important public purpose. A county or municipality may opt out of the provisions of this section by a majority vote of the members of the county or municipal governing authority. This section does not preempt any existing ordinances that are consistent with this section.

Any person or persons who violate the provisions of this section, upon conviction, shall be cited for a pedestrian violation, punishable as provided in ch. 318. An additional ten dollars shall be added to the fine and deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services to be used by the State Office on Homelessness

The bill explicitly authorizes and directs the Department of Highway Safety and Motor Vehicles and other law enforcement agencies to enforce the statute.

Section 46: Deletes provisions in current law which authorize FDOT to regulate activities that interfere with the safe and efficient movement of people and property on state transportation facilities, instead directing local governments to regulate the use of facilities within their jurisdiction. However, the bill explicitly retains FDOT's authority to regulate limited access highways, rest areas, and welcome centers.

Section 44: Amends s. 316.302, F.S., to exempt the operators of Farm Labor Vehicles from hour-of-service limits during declared agricultural emergencies (such as hard freezes when fruit needs to be harvested as quickly as possible.)

Section 45: Amends s. 334.044, F.S., to limit the amount of funds allocated for the purchase of plant materials used in landscaping and highway beautification projects statewide. The bill replaces the current floor of not less than 1.5% of the amount contracted for construction

projects, with a cap of not more than 1.5% of the amount contracted for capacity-adding construction projects, up to \$1 million per project.

Section 47: Amends s. 337.408, F.S., to provide that the installation of bus stops and transit shelters on the right-of-way must comply with all applicable laws and rules including, without limitation, the ADA. Municipalities or counties are required to indemnify, defend, and hold FDOT harmless from any suits, damages, liabilities, attorney fees, and court costs relating to the installation, removal, or relocation of these installations. The bill gives FDOT the authority to direct the immediate relocation of any bus stop, bench, transit shelter, waste disposal receptacle, public pay telephone, or modular news rack that either endangers life or property, or that is otherwise not in compliance with applicable laws and rules.¹⁹

If a municipality or county fails to comply with the department's direction, FDOT is required to remove the noncompliant installation, charge the cost of removal to the municipality or county, and may deduct or offset such cost from any other funding available to the municipality or county from FDOT.

Section 48: Amends s. 373.413, F.S., establishing legislative intent to allow flexibility in the permitting of stormwater treatment facilities for transportation facilities due to their linear nature. The bill also releases the department from the responsibility of abating pollutants that enter transportation stormwater facilities.

Section 49: Amends s. 373.4137, F.S., clarifying that environmental mitigation options available to the department allow the use of any mitigation options that satisfy state and federal law. The revisions make the requirement for FDOT and other authorities to submit environmental impact inventories a voluntary act, and allow the release of environmental mitigation escrow funds when the associated transportation project is excluded from the mitigation plan.

Sections 50-54: (See Port Citrus designation above.)

Section 55: Amends multiple subsections of s. 479.106, F.S., relating to the management of vegetation affecting visibility of signs.

Subsection 479.106 (2), F.S., is amended to delete an existing provision mandating the submission of a management plan when applying for a vegetation management permit. The bill replaces the mandate with an allowance for one of the following:

- submission of a vegetation management plan consisting of a depiction of the vegetation to be removed, cut, or trimmed and a description of the existing conditions and the work to be performed;
- a mitigation contribution to the tree planting program administered by the Department of Agriculture and Consumer Services' Division of Forestry under s. 589.277, F.S.; or
- a combination of a vegetation management plan and mitigation contribution.

¹⁹Except for transit bus benches placed into service before April 1, 1992, DOT currently has the authority to direct the immediate relocation or removal of benches, transit shelters, waste disposal receptacles, public pay telephones, or modular news racks that endanger life or property.

The decision to submit a management plan, mitigation contribution, or combination of both is to be made by the applicant.

Subsection 479.106(3), F.S., is amended to require FDOT to take into consideration the existing condition of the vegetation being affected by the plan when evaluating a vegetation management plan. The current requirement for a plan to include plantings to screen a sign's structural support, where applicable, is made permissive.

The bill provides that only herbicides approved by the Department of Agriculture and Consumer Services may be used in the management of vegetation.

Permit applications for vegetation management or mitigation must be acted on by FDOT within 30 days. An approved permit is valid for five years and may be renewed for an additional five years upon payment of the application fee.

Subsection 479.106(5), F.S., is amended to reduce the number of nonconforming signs that must be removed prior to the department issuing a permit for a new sign that requires vegetation to be cleared, from at least two to one.

A new *s. 479.106(6), F.S.*, is created to revise view zone requirements. Under the bill's provisions, the current dimensions for view zones are established as minimum dimensions. The current exception for view zone disruption, *i.e.*, allowable natural vegetation, is reduced to allow only vegetation that:

- has established historical significance,
- is protected by state law, or
- has a circumference of 70% or more of the circumference of the Florida Champion of that species when both are measured at 4 and ½ feet above grade.

Renumbered *subsection 479.106(7), F.S.* is amended, allowing the specific location of a sign's view zone may be designated by the sign owner and the department must notify the owner within 90 days of any planting or beautification project that may affect a view zone. No less than 60 days are to be afforded to such affected sign owners to designate the view zone. Vegetation management plans and permits are not required due to implementation of beautification projects.

Section 56: Amends *s. 479.16, F.S.*, which establishes the conditions and criteria under which a sign does not require a permit. The revisions provide that signs installed under the tourist-oriented commerce sign pilot program do not require permitting and allow signs no larger than 32 square feet to be temporarily installed by a farm operation during harvest season denoting the distance or direction of the farm operation. The temporary harvest sign provision may not be implemented if it would result in federal penalties.

Section 57: Creates *s. 479.263, F.S.*, to establish the tourist-oriented commerce signs pilot program in rural areas of critical economic concern as defined by *ss. 288.0656(2)(d) and (e)*,

F.S.²⁰ Signs created under the section do not require permits provided the sign advertises a small business as defined in s. 288.703, F.S.²¹ and:

- is not more than 8 square feet in size or 4 feet in height;
- is located in a rural area but not along a limited-access highway;
- is located within 2 miles of the business location and not less than 500 feet from another sign advertising the same business; and
- contains only the name of the business or the merchandise or services sold or furnished at the business.

Businesses placing such signs must be not be located closer than 4 miles from another business placing such signs. Also, the business may not participate in both the tourist-oriented commerce signs pilot program created in this section and the logo sign program created in s. 479.261, F.S. Businesses conducted in building primarily used for residential purposes are ineligible. Any business participating in the program must notify the department prior to installing signs. The department is directed to maintain statistics related to the program. If the Federal Highway Administration notifies FDOT in writing that the program constitutes a loss of effective control of outdoor advertising (thereby jeopardizing the receipt of federal funds), the program will not be implemented.

Section 58: Provides an effective date of July 1, 2011.

Other Potential Implications:

Section 2 makes revisions to s. 286.011, F.S., the Sunshine Law, to allow certain transportation authorities to conduct public meetings and workshops by means of communications media technology. This change will subject those transportation authorities to different standards than the standards governing other similarly situated public bodies that are subject to the provisions of the Sunshine Law. Generally, public bodies may only meet electronically for workshops and meetings at which no formal action will be taken.²² For meetings at which formal decisions will be made, a quorum of the public body's members must be present at a physical location, and

²⁰ "Rural area of critical economic concern" means a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

"Rural community" means:

1. A county with a population of 75,000 or fewer.
2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.
3. A municipality within a county described in subparagraph 1. or subparagraph 2.
4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (c) and verified by the Office of Tourism, Trade, and Economic Development.

²¹ "Small business" means 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.

²² see 2005 WL 3262434 (Fla.A.G.)

electronic participation of an absent member should be permitted only in extraordinary circumstances.²³

Section 19 proposes to reference federal law as it relates to planning factors would eliminate the need for repeated statutory revisions to accommodate changes in federal planning factors. Florida is required to follow the federal requirements, even if state law is not amended to reflect the new planning factors. The department acknowledges the responsibility to seek reenactment of the reference any time the federal requirements change but suggests re-enactment of the reference is more efficient than revising the current list of factors in state statute with each round of federal changes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 4: The provisions effecting a reduced penalty for certain CMV violations will result in unquantifiable but positive fiscal impact to the trucking industry.

Section 8: The provisions expanding the type of financial instruments securing the removal or relocation of monuments at rest areas will result in unquantifiable fiscal assistance to interested participants by facilitating use of other appropriate forms of security for the protection of the public.

C. Government Sector Impact:

Section 1: Currently, the only state funded passenger rail system in the state (Tri-Rail) is operated by the South Florida Regional Transportation Authority. Any administrative expense to the department associated with conducting the required monitoring activities is expected to be absorbed within existing department resources.

²³ see AGO 2003-41

Section 2: The provisions effecting a reduced penalty for certain CMV violations will result in insignificant but negative fiscal impacts. Approximately 2,000 citations were issued statewide for the subject violations in the last fiscal year. The clerks of court, using the highest possible assessment of \$158 in court costs in each of the 2,000 cases, would receive \$316,000 less than under the current situation -- spread over the state's 67 counties, a reduction of approximately \$4,716.42 per county -- offset by the reduced burden on the clerks and the court system, as uniform traffic citations would no longer be issued for such violations.

Sections 39 and 40. The provisions requiring FDOT to establish minimum yellow light change interval times for traffic control devices and nullifying notices of violation or traffic citations issued at intersections where the traffic signal device does not meet the requirements, may result in a revenue loss to local governments and the state General Revenue Fund (up to \$70 million) due to a reduction in the number of citations issued.

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:

The committee adopted five amendments at its meeting and incorporated them into the original bill as a committee substitute. The amendments:

- allow expressway authorities to use electronic media to fulfill open meeting requirement in ch. 120, F.S;
- allow flexibility in the time allotted for the relocation of utilities due to transportation construction projects;
- incorporate the provisions of SB 1966;
- authorize a pilot program allowing bicyclists to use certain limited-access bridges when no other bridge is located nearby; and
- make several changes to outdoor advertising regulations.

B. Amendments:

Barcode 629586 by Sen. Margolis—establishes how the proceeds of the Charter County and Regional Transportation Surtax will be distributed to newly created municipalities.

Barcode 237118 by Sen. Latvala—defines “Launch Support Facilities” within the Transportation Code (ch. 334, F.S.) to allow the allocation of SIS funds to such projects without a federal funding match being necessary.

Barcode 733970 by Sen. Latvala—clarifies the definitions of the words “commercial or industrial zone,” “unzoned commercial or industrial area,” and “urban area” within ch. 479, F.S.

Barcode 328518 by Sen. Latvala— requires affirmation of compliance with traffic signal yellow light interval timing standards as part of red light camera enforcement.

Barcode 273090 by Sen. Latvala—allows FDOT to consider conservation and mitigation plans when approving vegetation management plans for removing growth obscuring billboards.

Barcode 769968 by Sen. Diaz de la Portilla—expands the items for which local option fuel tax revenues may be expended to include installation, operation, maintenance, and repair expenses for road lighting and traffic signs.

Barcode 784582 by Sen. Latvala—allows local governments regulating vehicles for hire to create a property right in the license of such vehicles.

Barcode 367484 by Sen. Margolis—allows local governments to prohibit the operation of electric personal assistive mobility devices (Segways) on sidewalks. Currently, local governments may regulate EPAMs/Segways on roads, streets, and bicycle paths.

Barcode 720910 by Sen. Latvala—clarifies FDOT representatives serve as non-voting advisers, as opposed to members, of the MPOs and allows the MPOs to appoint additional non-voting advisers.

Barcode 853702 by Sen. Margolis—clarifies the fees a rental car agency may legally impose in addition to the electronic toll in relation to collecting the toll.

Barcode 266068 by Sen. Latvala—removes Section 4 of the bill relating to Commercial Motor Vehicle operators medical certification and the penalties for non-compliance.

Barcode 603466 (as amended) by Sen Diaz de la Portilla—exempts signs promoting the official sponsor of events held in certain publicly-owned and privately-operated professional sports arenas, from the permitting requirements of ch. 479, F.S.



769968

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 2959 and 2960
insert:

Section 58. Subsection (7) of section 336.025, Florida Statutes, is amended to read:

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(7) For the purposes of this section, "transportation expenditures" means expenditures by the local government from local or state shared revenue sources, excluding expenditures of



769968

bond proceeds, for the following programs:

(a) Public transportation operations and maintenance.

(b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.

(c) Roadway and right-of-way drainage.

(d) Street lighting installation, operation, maintenance, and repair.

(e) Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.

(f) Bridge maintenance and operation.

(g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

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

And the title is amended as follows:

Delete line 224

and insert:

future expiration of the pilot programs; amending s.

336.025, F.S.; revising the definition of

"transportation expenditures" for purposes of

specified provisions that restrict the use of local

option fuel tax funds by counties and municipalities;



629586

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 294 and 295
insert:

Section 2. Paragraph (d) of subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the



629586

12 levy. Each enactment shall specify the types of counties
13 authorized to levy; the rate or rates which may be imposed; the
14 maximum length of time the surtax may be imposed, if any; the
15 procedure which must be followed to secure voter approval, if
16 required; the purpose for which the proceeds may be expended;
17 and such other requirements as the Legislature may provide.
18 Taxable transactions and administrative procedures shall be as
19 provided in s. 212.054.

20 (1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
21 SURTAX.—

22 (d) Proceeds from the surtax shall be applied to as many or
23 as few of the uses enumerated below in whatever combination the
24 county commission deems appropriate:

25 1. Deposited by the county in the trust fund and shall be
26 used for the purposes of development, construction, equipment,
27 maintenance, operation, supportive services, including a
28 countywide bus system, on-demand transportation services, and
29 related costs of a fixed guideway rapid transit system;

30 2. Remitted by the governing body of the county to an
31 expressway, transit, or transportation authority created by law
32 to be used, at the discretion of such authority, for the
33 development, construction, operation, or maintenance of roads or
34 bridges in the county, for the operation and maintenance of a
35 bus system, for the operation and maintenance of on-demand
36 transportation services, for the payment of principal and
37 interest on existing bonds issued for the construction of such
38 roads or bridges, and, upon approval by the county commission,
39 such proceeds may be pledged for bonds issued to refinance
40 existing bonds or new bonds issued for the construction of such



629586

roads or bridges;

3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose



629586

authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements as necessary for the sole purpose of including ~~no~~ less than every 5 years in order to include any municipalities that have been created during the immediately preceding year, provided that any funds distributed to a new municipality must come from funds otherwise retained and used by the charter county, must be on a pro rata basis with the allocation of funds to the previously existing municipalities, and must not reduce the percentage allocation to the previously existing municipalities ~~since the prior interlocal agreements were executed.~~ Notwithstanding the foregoing, the first revision of interlocal agreements pursuant to this subparagraph shall include any municipality that has been created since the surtax was adopted by the charter county. Any charter county that seeks to terminate or substantially modify the distribution of funds to municipalities may do so only pursuant to approval by a majority vote of the electorate of the county.

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

And the title is amended as follows:

Delete line 10

and insert:

systems in the state; amending s. 212.055, F.S.;
requiring counties to revise, as necessary, any
interlocal agreements entered into with municipalities
for the distribution of proceeds of the discretionary
sales surcharge in order that newly participating



629586

99 municipalities may receive a share of the
100 distribution; specifying conditions by which a
101 municipality may receive a distribution of the sales
102 surcharge; amending s. 286.011, F.S.;



237118

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Amendment

Between lines 633 and 634
insert:

(33) "Launch support facilities" mean facilities that are located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, flight safety functions, and payload operations, control, and processing, as defined in 15 U.S.C. chapter 84, s. 5802, Commercial Space Competitiveness.



733970

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1825 - 1829
and insert:

Section 34. Subsections (4), (26), and (27) of section 479.01, Florida Statutes, are amended to read:

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

(4) "Commercial or industrial zone" means a parcel of land designated predominately for commercial or industrial uses under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter



733970

163. If a parcel is located in an area designated for multiple uses on the future land use map of a comprehensive plan and the zoning category of the land development regulations does not clearly designate that parcel for a specific use, the area will be considered an unzoned commercial or industrial area if it meets the criteria of subsection (26).

(26) "Unzoned commercial or industrial area" means an area ~~a parcel~~ of land designated by the future land use map of the comprehensive plan for multiple uses that include commercial or industrial uses but are not specifically designated for commercial or industrial uses under the land development regulations, in which three or more separate and distinct conforming industrial or commercial activities are located.

(a) These activities must satisfy the following criteria:

1. At least one of the commercial or industrial activities must be located on the same side of the highway and within 800 feet of the sign location;

2. The commercial or industrial activities must be within 660 feet from the nearest edge of the right-of-way; and

3. The commercial industrial activities must be within 1,600 feet of each other.

Distances specified in this paragraph must be measured from the nearest outer edge of the primary building or primary building complex when the individual units of the complex are connected by covered walkways.

(b) ~~Certain activities, including, but not limited to,~~ The following are, ~~may not be so recognized as~~ commercial or industrial activities:



733970

1. Signs.

2. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

3. Transient or temporary activities.

4. Activities not visible from the main-traveled way.

5. Activities conducted more than 660 feet from the nearest edge of the right-of-way.

6. Activities conducted in a building principally used as a residence.

7. Railroad tracks and minor sidings.

8. Communication towers.

(27) "Urban area" has the same meaning as defined in s. 334.03(28) ~~s. 334.03(29)~~.

Section 35. Subsection (7) of section 479.02, Florida Statutes, is amended to read:

479.02 Duties of the department.—It shall be the duty of the department to:

(7) Adopt such rules as ~~it deems~~ necessary to administer or proper for the administration of this chapter, ~~including rules which identify activities that may not be recognized as industrial or commercial activities for purposes of determination of an area as an unzoned commercial or industrial area.~~

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

And the title is amended as follows:

Delete lines 86 - 88



733970

and insert:

316.515, 336.01, 338.222, 341.8225, 479.07, and
479.261, F.S.; conforming cross-references to changes
made by the act; amending s. 479.01, F.S.; redefining
the terms "commercial or industrial zone" and "unzoned
commercial or industrial area"; correcting a cross-
reference; amending s. 479.02, F.S.; deleting obsolete
provisions; amending s. 310.002, F.S.;



273090

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Amendment

Delete lines 2773 - 2774
and insert:

condition of such vegetation, and, where appropriate, may
require a vegetation management plan to consider conservation
and mitigation, or contribution to a plan of mitigation, for the
cutting or removal of such vegetation. The department may
approve ~~shall include~~ plantings that ~~which~~ will allow reasonable



720910

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 962 and 963
insert:

Section 19. Paragraph (a) of subsection (4) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(4) APPORTIONMENT.—

(a) The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the



720910

applicable M.P.O. among the various governmental entities within the area. At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local government serving on an M.P.O. shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members who may vote at any M.P.O. meeting that an alternate member attends in place of a regular member. The method shall be set forth as a part of the interlocal agreement describing the M.P.O.'s membership or in the M.P.O.'s operating procedures and bylaws. The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting advisers to members ~~of~~ the M.P.O. governing board. Additional nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint nonvoting representatives of various multimodal forms of transportation not otherwise represented by voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations located within the jurisdictional boundaries of the M.P.O. upon the request of the aforesaid major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but shall not have a vote and shall not be members of the governing board. The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and



720910

reapportion it as necessary to comply with subsection (3).

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

And the title is amended as follows:

Delete line 57

and insert:

payment of commercial rental tax; amending s. 339.175,
F.S.; providing that representatives of the Department
of Transportation shall serve as nonvoting advisers to
a Metropolitan Planning Organization; authorizing the
appointment of additional nonvoting advisers; amending
s. 339.62,



367484

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 2959 and 2960
insert:

Section 58. Subsection (5) of section 316.2068, Florida Statutes, is amended to read:

316.2068 Electric personal assistive mobility devices; regulations.—

(5) A county or municipality may prohibit the operation of electric personal assistive mobility devices on any road, street, sidewalk, or bicycle path under its jurisdiction if the



367484

governing body of the county or municipality determines that
such a prohibition is necessary in the interest of safety.

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

And the title is amended as follows:

Delete line 224

and insert:

future expiration of the pilot program; authorizing
local governments to prohibit the operation of
electric personal assistive mobility devices on
sidewalks; providing an



853702

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 2959 and 2960
insert:

Section 58. (1) A rental car company, third party vendor, or other entity may not impose any fee, fine, surcharge, cost, penalty, or other charge in additional to the actual cost of an electronic toll, unless required by law and except as provided in this section. However, a rental car company, third party vendor, or other entity may:

(a) Charge a reasonable daily or weekly amount in addition



853702

to the cost of tolls if the fee automatically begins to apply
when a driver goes through the first electronic toll; or

(b) Offer a reasonable, all-inclusive daily or weekly fee
plan that includes the cost of all tolls and all administrative
fees, fines, surcharges, costs, penalties, or other charges.

(2) If a rental car company, third party vendor, or other
entity offers an all-inclusive fee plan and the renter does not
choose that plan, such entity may charge an additional fee that
does not exceed \$2.50 per day or \$10 per week, in addition to
the electronic toll charges.

(3) This section does not apply to the collection of
additional fees by toll agencies, expressway authorities, or the
Florida Turnpike or the collection of additional fees related to
delinquent toll accounts by toll agencies or collection
agencies.

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

And the title is amended as follows:

Delete line 224

and insert:

future expiration of the pilot program; regulating the
fees that rental car companies may charge relating to
the collection of electronic tolls; providing limits
and exceptions; providing an



266068

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 357 - 369.

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

And the title is amended as follows:

Delete lines 18 - 22

and insert:

s. 334.03, F.S.; revising and



328518

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Substitute for Amendment (119684) (with title amendment)

Delete lines 1914 - 1921
and insert:

(3) An affirmation indicating compliance with s. 316.075(3) must accompany the notice of violation and a traffic citation. Such certificate is admissible in any proceeding to enforce this section and raises a rebuttable presumption that the traffic control signal device meets the requirements of s. 316.075(3).



328518

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

And the title is amended as follows:

Delete lines 95 - 97

and insert:

devices; amending s. 316.0083, F.S.; requiring an
affirmation of compliance to accompany a traffic citation which
meets specified



784582

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Latvala) recommended the following:

Senate Substitute for Amendment (272824) (with title amendment)

Between lines 2959 and 2960
insert:

Section 58. (1) As used in this section, the term:

(a) "License" includes any certificate, permit, medallion, or other evidence that authorizes a person to operate a public vehicle for hire within the geographic boundaries of a governmental unit.

(b) "Governmental unit" includes a county, municipality,



784582

special district, commission, or other unit of state or local government.

(2) Any governmental unit that is authorized to regulate the operation of public vehicles for hire within its geographic boundaries may adopt ordinances, rules, regulations, orders, or other acts that create a private property right or interest in a license to operate a public vehicle for hire within the geographic boundaries of the governmental unit.

(3) Upon creation of a private property right or interest in a license to operate, a public vehicle for hire license holder shall have the right to pledge, assign, sublease, sell, or otherwise transfer the license, except as provided otherwise by ordinances, rules, regulations, orders, or other acts of the local governmental unit. A private property right or interest in a license to operate a public vehicle for hire may be transferred by operation of intestate succession or devise, except as provided otherwise by ordinances, rules, regulations, orders, or other acts of the local governmental unit. The ownership, transfer and operation of a public vehicle for hire license shall be in compliance with the governmental unit's local ordinances, rules, regulations, and orders regarding ownership, transfer, and operation of public vehicle for hires.

(4) Any governmental unit that is authorized to regulate the operation of public vehicle for hire and other for-hire transportation within its geographic boundaries may request and receive criminal history record information for the purpose of screening applicants for licenses and for-hire vehicle driver's licenses and pay a fee for any such record. Such record information may include a national criminal history records



784582

check with the Federal Bureau of Investigation. The fingerprints
may be submitted by the governmental unit to the Department of
Law Enforcement for state processing, and the department shall
forward them to the Federal Bureau of Investigation for a
national criminal history records check. All costs associated
with transmittal and processing shall be borne by the
governmental unit, the employer, or the person subject to the
background check. The department shall invoice the governmental
unit for the fingerprints submitted each month. The governmental
unit shall screen background results to determine if an
applicant meets its licensure requirements.

(5) This section does not preempt or modify any ordinance
creating a property right or interest in a vehicle for public
hire license created by a governmental unit before July 1, 2011,
or any amendment to an ordinance creating a property right or
interest after 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 line 224

and insert:

future expiration of the pilot program; providing
definitions; authorizing governmental units that
regulate the operation of vehicles for public hire to
create a private property right in the license to
operate a vehicle for public hire; providing for the
transfer of such property right; authorizing
governmental units that regulate the operation of
vehicles for public hire to request and receive



784582

70 criminal history record information for the purpose of
71 screening applicants; providing applicability;
72 providing an



603466

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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The Committee on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 2924 and 2925
insert:

(18) Signs that promote the official sponsor of an event, sports team, exhibition, or facility in connection with the operation of a publicly owned and privately operated professional sport and entertainment venue fronting on a federal aid primary highway shall be exempt from the requirement that a permit be obtained under the provisions of this chapter. This provision shall be null and void if the Federal Government



603466

notifies the department in writing that such application will
adversely affect the allocation of Federal funds to the
department.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 2908

and insert:

Section 56. Subsections (16), (17), and (18) are added to
section

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

And the title is amended as follows:

Delete line 220

and insert:

permit requirements; exempting certain signs promoting
sponsors of events at certain professional sport and
entertainment venues from permit requirements;
creating s. 479.263, F.S.;



138472

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (17) of section 120.80, Florida
Statutes, is created to read:

120.80 Exceptions and special requirements; agencies.—

(17) DEPARTMENT OF FINANCIAL SERVICES.—Notwithstanding ss.
120.569, 120.57, and 120.60, if an applicant for licensure as an
agent or adjuster pursuant to the Florida Insurance Code has
been convicted of, or pled guilty or nolo contendere to, a
felony, the disqualifying periods have been met, and the
department has denied the application pursuant to s. 626.207(6),



138472

the division shall have final order authority.

Section 2. Subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) ~~No~~ Compensation is not ~~shall be~~ allowed for the first 7 days of the disability, except for benefits provided under ~~for~~ ~~in~~ s. 440.13. However, if the injury results in disability of more than 21 days, compensation shall be allowed from the commencement of the disability.

(a) All weekly compensation payments, except for the first payment, shall be paid by check or, if authorized by the employee, on a prepaid card pursuant to paragraph (b) or deposited directly into the employee's account at a financial institution. As used in this subsection, the term "financial institution" means a financial institution as defined in s. 655.005(1) ~~(h)~~.

(b) Upon receipt of authorization by the employee as provided in paragraph (a), a carrier may use a prepaid card to deliver compensation payments to an employee if the employee:

1. Has at least one means of accessing his or her entire compensation payment once per week without incurring fees;
2. Has the ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and
3. Is provided with terms and conditions of the prepaid card program, including a description of any fees that may be assessed.

(c) Each carrier shall keep a record of all payments made



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43 under this subsection and the time and manner of such payments,
44 and shall furnish these records, or a report based on these
45 records, to the Division of Insurance Fraud and the Division of
46 Workers' Compensation upon request.

47 (d) The department may adopt rules to administer this
48 subsection.

49 Section 3. Paragraph (a) of subsection (1) of section
50 440.20, Florida Statutes, is amended to read:

51 440.20 Time for payment of compensation and medical bills;
52 penalties for late payment.—

53 (1)(a) Unless the carrier ~~it~~ denies compensability or
54 entitlement to benefits, the carrier shall pay compensation
55 directly to the employee as required by ss. 440.14, 440.15, and
56 440.16, in accordance with the obligations set forth in those
57 ~~such~~ sections. Upon receipt of the employee's authorization as
58 provided in s. 440.12(1) ~~If authorized by the employee,~~ the
59 carrier's obligation to pay compensation directly to the
60 employee is satisfied when the carrier directly deposits, by
61 electronic transfer or other means, compensation into the
62 employee's account at a financial institution or onto a prepaid
63 card in accordance with s. 440.12(1). As used in this paragraph,
64 the term "financial institution" means a financial institution
65 as defined in s. 655.005(1) ~~(h)~~. Compensation by direct deposit
66 or through the use of a prepaid card is considered paid on the
67 date the funds become available for withdrawal by the employee.

68 Section 4. Subsection (8) of section 624.402, Florida
69 Statutes, is amended to read:

70 624.402 Exceptions, certificate of authority required.—A
71 certificate of authority shall not be required of an insurer



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with respect to:

(8) An insurer domiciled outside the United States covering only persons who, at the time of issuance or renewal, are nonresidents of the United States.

(a) In order to qualify for this exemption, the insurer:

1. Must register with the office via a letter of notification upon commencing business from this state.

2. Must provide the following information to the office annually by March 1:

a. The name of the insurer; the insurer's country of domicile; the address of the insurer's principal office and office in this state; the names of the owners of the insurer and their percentage of ownership; the names of the officers and directors of the insurer; the name, e-mail, and telephone number of a contact person for the insurer; and the number of individuals who are employed by the insurer or its affiliates in this state;

b. The type of products offered by the insurer;

c. A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile; and

d. A copy of the filings required by the applicable regulatory body of the insurer's domicile.

3. Or any affiliated person as defined in s. 624.04 under common ownership or control with the insurer, may not solicit, sell, or accept an application for any insurance policy or contract to be delivered or issued for delivery to any individual other than a nonresident.

(b) All policies or certificates delivered to nonresidents



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in this state must include the following statement in a contrasting color and at least 10-point type: "The policy providing your coverage and the insurer providing this policy have not been approved by the Florida Office of Insurance Regulation."

(c) If the insurer ceases to do business from this state, the insurer must agree to provide written notification to the office within 30 days after cessation.

(d) Subject to the limitations contained in this subsection, services, including those listed in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

(e) An alien insurer transacting insurance in this state without complying with this subsection is in violation of this chapter and subject to the penalties under s. 624.15.

(f) An insurer that holds a certificate of authority in this state may issue and deliver policies to nonresidents at temporary or secondary addresses in this state, along with a notice that the policy form and rate is not subject to the approval of the Office of Insurance Regulation.

(g) The term "nonresident" means an individual who resides in and maintains a physical place of domicile in a country other than the United States, which he or she recognizes as and intends to maintain as his or her permanent home. The term does not include an unauthorized immigrant present in the United States. Notwithstanding any other provision of law, it is conclusively presumed that an individual is a resident of the United States if such individual:

1. Has had his or her principal place of domicile in the



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United States for 180 days or more in the 365 days before
issuance or renewal the policy;

2. Has registered to vote in any state;

3. Has made a statement of domicile in any state; or

4. Has filed for homestead tax exemption on property in any
state.

~~(a) Life insurance policies or annuity contracts issued by
an insurer domiciled outside the United States covering only
persons who, at the time of issuance, are not residents of the
United States and are not nonresidents illegally residing in the
United States, provided:~~

~~1. The insurer must currently be an authorized insurer in
its country of domicile as to the kind or kinds of insurance
proposed to be offered and must have been such an insurer for
not fewer than the immediately preceding 3 years, or must be the
wholly owned subsidiary of such authorized insurer or must be
the wholly owned subsidiary of an already eligible authorized
insurer as to the kind or kinds of insurance proposed for a
period of not fewer than the immediately preceding 3 years.
However, the office may waive the 3-year requirement if the
insurer has operated successfully for a period of at least the
immediately preceding year and has capital and surplus of not
less than \$25 million.~~

~~2. Before the office may grant eligibility, the requesting
insurer shall furnish the office with a duly authenticated copy
of its current annual financial statement, in English, and with
all monetary values therein expressed in United States dollars,
at an exchange rate then current and shown in the statement, in
the case of statements originally made in the currencies of~~



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~~other countries, and with such additional information relative to the insurer as the office may request.~~

~~3. The insurer must have and maintain surplus as to policyholders of not less than \$15 million. Any such surplus as to policyholders shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625; however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625.~~

~~4. The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.~~

~~5. To maintain eligibility, the insurer shall furnish the office within the time period specified in s. 624.424(1)(a) a duly authenticated copy of its current annual and quarterly financial statements, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then-current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.~~

~~6. An insurer receiving eligibility under this subsection shall agree to make its books and records pertaining to its operations in this state available for inspection during normal business hours upon request of the office.~~

~~7. The insurer shall provide to the applicant for the~~



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~~policy or contract a copy of the most recent quarterly financial statements of the insurer providing, in clear and conspicuous language:~~

~~a. The date of organization of the insurer.~~

~~b. The identity of and rating assigned by each recognized insurance company rating organization that has rated the insurer or, if applicable, that the insurer is unrated.~~

~~c. That the insurer does not hold a certificate of authority issued in this state and that the office does not exercise regulatory oversight over the insurer.~~

~~d. The identity and address of the regulatory authority exercising oversight of the insurer.~~

~~This paragraph does not impose upon the office any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer, and the status of eligibility, if granted by the office, indicates only that the insurer appears to be financially sound and to have satisfactory claims practices and that the office has no credible evidence to the contrary.~~

~~(b) If at any time the office has reason to believe that an insurer issuing policies or contracts pursuant to this subsection is insolvent or is in unsound financial condition, does not make reasonable prompt payment of benefits, or is no longer eligible under the conditions specified in this subsection, the office may conduct an examination or investigation in accordance with s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of such examination or investigation warrant, may withdraw the eligibility of the~~



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~~insurer to issue policies or contracts pursuant to this subsection without having a certificate of authority issued by the office.~~

~~(c) This subsection does not provide an exception to the agent licensure requirements of chapter 626. Any insurer issuing policies or contracts pursuant to this subsection shall appoint the agents that the insurer uses to sell such policies or contracts as provided in chapter 626.~~

~~(d) An insurer issuing policies or contracts pursuant to this subsection is subject to part IX of chapter 626, Unfair Insurance Trade Practices, and the office may take such actions against the insurer for a violation as are provided in that part.~~

~~(e) Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509.~~

~~(f) Applications for life insurance coverage offered under this subsection must contain, in contrasting color and not less than 12-point type, the following statement on the same page as the applicant's signature:~~

~~This policy is primarily governed by the laws of a foreign country. As a result, all of the rating and underwriting laws applicable to policies filed in this state do not apply to this coverage, which may result in your premiums being higher than would be permissible under a Florida-approved policy. Any purchase of individual life insurance should be considered carefully, as future medical conditions may~~



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~~make it impossible to qualify for another individual
life policy. If the insurer issuing your policy
becomes insolvent, this policy is not covered by the
Florida Life and Health Insurance Guaranty
Association. For information concerning individual
life coverage under a Florida-approved policy, consult
your agent or the Florida Department of Financial
Services.~~

~~(g) All life insurance policies and annuity contracts
issued pursuant to this subsection must contain on the first
page of the policy or contract, in contrasting color and not
less than 10-point type, the following statement:~~

~~The benefits of the policy providing your coverage are
governed primarily by the law of a country other than
the United States.~~

~~(h) All single-premium life insurance policies and single-
premium annuity contracts issued to persons who are not
residents of the United States and are not nonresidents
illegally residing in the United States pursuant to this
subsection shall be subject to the provisions of chapter 896.~~

Section 5. Effective upon becoming a law, section 626.207,
Florida Statutes, is amended to read:

626.207 ~~Department rulemaking authority; waiting periods
for applicants;~~ Penalties against licensees.—

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

(a) "Financial services business" means any financial



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activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.

(b) "First-degree felony" and "capital felony" include all felonies designated as such by state law, as well as any felony so designated in the jurisdiction in which the plea is entered or judgment is rendered.

~~(1) The department shall adopt rules establishing specific waiting periods for applicants to become eligible for licensure following denial, suspension, or revocation pursuant to s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of the waiting periods is to provide sufficient time to demonstrate reformation of character and rehabilitation. The waiting periods shall vary based on the type of conduct and the length of time since the conduct occurred and shall also be based on the probability that the propensity to commit illegal conduct has been overcome. The waiting periods may be adjusted based on aggravating and mitigating factors established by rule and consistent with this purpose.~~

(2) An applicant who commits a first-degree felony; a capital felony; a felony involving money laundering, fraud, or embezzlement; or a felony directly related to a financial services business is permanently barred from applying for a license under this part. This bar applies to convictions, guilty pleas, or nolo contendere pleas, regardless of adjudication, by an applicant, officer, director, majority owner, partner, manager, or other person who manages or controls an applicant.



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(3) For all other crimes not included in subsection (2), the department shall adopt rules establishing the process and application of disqualifying periods:

(a) A 15-year disqualifying period for all felonies involving moral turpitude that are not specifically included in the permanent bar in subsection (2).

(b) A 7-year disqualifying period for all felonies to which the permanent bar in subsection (2) and the 15 year disqualifying period in paragraph (a) do not apply.

(c) A 7-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The department shall adopt rules providing for additional disqualifying periods due to the commitment of multiple crimes and other factors reasonably related to the applicant's criminal history. The rules shall provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 7 years and may not mitigate the disqualifying periods in paragraphs (3) (b) and (c).

(5) For purposes of this section, the disqualifying periods begin upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence, including payment of fines, restitution, and court costs, for the crime for which the disqualifying period applies.

(6) After the disqualifying period has been met, the burden is on the applicant to demonstrate that the applicant has been rehabilitated, does not pose a risk to the insurance buying public, is fit and trustworthy to engage in the business of insurance pursuant to s. 626.611(7), and is otherwise qualified



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for licensure. Hearings shall be conducted in accordance with s.
120.80(17).

(7)~~(2)~~ The department shall adopt rules establishing
specific penalties against licensees in accordance with ss.
626.641 and 626.651 for violations of s. 626.611, s. 626.621, s.
626.8437, s. 626.844, s. 626.935, s. 634.181, s. 634.191, s.
634.320, s. 634.321, s. 634.422, s. 634.423, s. 642.041, or s.
642.043. The purpose of the revocation or suspension is to
provide a sufficient penalty to deter future violations of the
Florida Insurance Code. The imposition of a revocation or the
length of suspension shall be based on the type of conduct and
the probability that the propensity to commit further illegal
conduct has been overcome at the time of eligibility for
relicensure. The ~~revocation or the~~ length of suspension may be
adjusted based on aggravating or mitigating factors, established
by rule and consistent with this purpose.

(8) The provisions of s. 112.011 do not apply to applicants
for licensure under the Florida Insurance Code, including, but
not limited to agents, agencies, adjusters, adjusting firms,
customer representatives, or managing general agents.

Section 6. Paragraphs (a) and (b) of subsection (1),
paragraphs (a) and (b) of subsection (2), and subsection (4) of
section 627.4133, Florida Statutes, are amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal
premium.—

(1) Except as provided in subsection (2):

(a) An insurer issuing a policy providing coverage for
workers' compensation and employer's liability insurance,
property, casualty, except mortgage guaranty, surety, or marine



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insurance, other than motor vehicle insurance subject to s. 627.728, shall give the first-named ~~named~~ insured at least 45 days' advance written notice of nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice must ~~shall~~ state the reason or reasons ~~as to~~ why the policy is not to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium before ~~prior to~~ the expiration date of the policy ~~to be renewed~~.

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the first-named ~~named~~ insured written notice of cancellation or termination other than nonrenewal at least 45 days before ~~prior to~~ the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. ~~If when~~ cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must ~~therefor shall~~ be given. As used in this subparagraph and s. 440.42(3), the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance



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coverage. The term "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. ~~and~~ If the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full. ~~and~~

2. ~~If~~ When such cancellation or termination occurs during the first 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation must ~~therefor shall~~ be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

After the policy has been in effect for 90 days, ~~no~~ such policy may not ~~shall~~ be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after ~~of~~ the date of effectuation of coverage, or a substantial change in the risk covered by the



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policy or when the cancellation is for all insureds under such policies for a given class of insureds. This subsection does not apply to individually rated risks having a policy term of less than 90 days.

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(a) The insurer shall give the first-named ~~named~~ insured at least 45 days' advance written notice of the renewal premium.

(b) The insurer shall give the first-named ~~named~~ insured written notice of nonrenewal, cancellation, or termination at least 100 days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination. However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30. The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

1. The insurer shall give the first-named ~~named~~ insured written notice of nonrenewal, cancellation, or termination at least 180 days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination for a first-named ~~named~~ insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately before ~~prior to~~ the date of the written notice.



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2. ~~If~~ When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must ~~therefor shall~~ be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. ~~and~~ If the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full.

3. ~~If~~ When such cancellation or termination occurs during the first 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason for



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cancellation must ~~therefor shall~~ be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

4. The requirement for providing written notice of nonrenewal by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before ~~prior to~~ the effective date of nonrenewal:

a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.

b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement or renewal coverage to the policyholder.

After the policy has been in effect for 90 days, the policy may ~~shall~~ not be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if ~~when~~ the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.



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(4) Notwithstanding ~~the provisions of~~ s. 440.42(3), if cancellation of a policy providing coverage for workers' compensation and employer's liability insurance is requested in writing by the insured, such cancellation is ~~shall be~~ effective on the date requested by the insured, or if no date is specified, cancellation is effective as of the date of the written request ~~the carrier sends the notice of cancellation to the insured.~~ The carrier is not required to send notice of cancellation to the insured if the cancellation is requested in writing. Any retroactive assumption of coverage and liabilities under a policy providing workers' compensation and employer's liability insurance may not exceed 21 days.

Section 7. Subsection (3) is added to section 627.4137, Florida Statutes, to read:

627.4137 Disclosure of certain information required.—

(3) Any request made to a self-insured corporation pursuant to this section shall be sent by certified mail to the registered agent of the disclosing entity.

Section 8. Section 627.442, Florida Statutes, is amended to read:

627.442 Insurance contracts.—

(1) A person who requires a workers' compensation insurance policy pursuant to a construction contract may not reject a workers' compensation insurance policy issued by a self-insurance fund that is subject to part V of chapter 631 based upon the self-insurance fund not being rated by a nationally recognized insurance rating service.

(2) Notwithstanding s. 440.381(3), premium audits are not required for workers' compensation or property and casualty



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coverages, except as provided by the insurance policy, by an order of the office, or at least every 2 years if requested by the employer.

Section 9. Subsection (2) of section 627.7277, Florida Statutes, is amended to read:

627.7277 Notice of renewal premium.—

(2) An insurer shall mail or deliver to the first-named insured ~~its policyholder~~ at least 30 days' advance written notice of the renewal premium for the policy.

Section 10. Paragraph (a) of subsection (3), paragraphs (a) and (d) of subsection (4), and subsections (5) and (6) of section 627.728, Florida Statutes, are amended to read:

627.728 Cancellations; nonrenewals.—

(3)(a) ~~No~~ Notice of cancellation of a policy to which this section applies is not ~~shall be~~ effective unless mailed or delivered by the insurer to the first-named ~~named~~ insured and to the first-named ~~named~~ insured's insurance agent at least 45 days before ~~prior to~~ the effective date of cancellation, except that, if ~~when~~ cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason for ~~cancellation must~~ ~~therefor shall~~ be given. A ~~No~~ notice of cancellation is not ~~of a policy to which this section applies~~ ~~shall be~~ effective unless the ~~reason or~~ reasons for cancellation accompany the notice ~~of cancellation~~.

(4)(a) An ~~No~~ insurer must ~~shall fail to~~ renew a policy unless it mails or delivers to the first-named ~~named~~ insured, at the address shown in the policy, and to the first-named ~~named~~ insured's insurance agent at her or his business address, at least 45 days' advance notice of its intention not to renew; and



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the reasons for refusal to renew must accompany such notice.

This subsection does not apply:

1. If the insurer has manifested its willingness to renew;
- or
2. In case of nonpayment of premium.

Notwithstanding the failure of an insurer to comply with this subsection, the policy terminates ~~shall terminate~~ on the effective date of any other automobile liability insurance policy procured by the insured with respect to any automobile designated in both policies. Unless a written explanation for refusal to renew accompanies the notice of intention not to renew, the policy remains ~~shall remain~~ in full force and effect.

(d) Instead of canceling or nonrenewing a policy, an insurer may, upon expiration of the policy term, transfer a policy to another insurer under the same ownership or management as the transferring insurer, by giving the first-named ~~named~~ insured at least 45 days' advance notice of its intent to transfer the policy and of the premium and the specific reasons for any increase in the premium.

(5) United States postal proof of mailing or certified or registered mailing of notice of cancellation, of intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management, to the first-named ~~named~~ insured at the address shown in the policy is ~~shall be~~ sufficient proof of notice.

(6) ~~If~~ When a policy is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy to



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which subsection (4) applies, the insurer shall notify the first-named ~~named~~ insured of her or his possible eligibility for insurance through the Automobile Joint Underwriting Association. Such notice must ~~shall~~ accompany or be included in the notice of cancellation or the notice of intent not to renew and ~~shall~~ state that the ~~such~~ notice of availability of the Automobile Joint Underwriting Association is given pursuant to this section.

Section 11. Section 627.7281, Florida Statutes, is amended to read:

627.7281 Cancellation notice.—An insurer issuing a policy of motor vehicle insurance not covered under the cancellation provisions of s. 627.728 shall give the first-named ~~named~~ insured notice of cancellation at least 45 days before ~~prior to~~ the effective date of cancellation, except that if, ~~when~~ cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason for cancellation must ~~therefor shall~~ be given. As used in this section, the term "policy" does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

Section 12. Section 634.1711, Florida Statutes, is created to read:

634.1711 Premium payable.—Notwithstanding s. 634.1815 and s. 634.282(6), (7), and (13), a consumer may purchase a service agreement for a premium amount negotiated with the salesperson. The service agreement company is responsible for establishing minimum premium rates to ensure its solvency under this part. Other than the premium rates, no other terms or conditions of



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the service agreement may be revised, amended, or changed by the salesperson.

Section 13. Section 634.403, Florida Statutes, is amended to read:

634.403 License required; exemptions.—

(1) No person in this state shall provide or offer to provide service warranties to residents of this state unless authorized ~~therefor~~ under a subsisting license issued by the office. The service warranty association shall pay to the office a license fee of \$200 for such license for each license year, or part thereof, the license is in force.

(2) An insurer, while authorized to transact property or casualty insurance in this state, may also transact a service warranty business without additional qualifications or authority, but is ~~shall be~~ otherwise subject to the applicable provisions of this part.

(3) The office may, pursuant to s. 120.569, ~~in its discretion and~~ without advance notice and hearing, issue an immediate final order to cease and desist to any person or entity which violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the public health, safety, and welfare of the residents of this state.

(4) Any person that is an affiliate of a domestic insurer as defined in chapter 624 is exempt from application of this part if the person does not issue, or market or cause to be marketed, service warranties to residents of this state and does not administer service warranties that were originally issued to residents of this state. The domestic insurer or its wholly



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owned Florida licensed insurer must be the direct obligor of all service warranties issued by such affiliate or must issue a contractual liability insurance policy to such affiliate that meets the conditions described in s. 634.406(3). If the office ~~of Insurance Regulation~~ determines, after notice and opportunity for a hearing, that a person's intentional business practices do not comply with any of the exemption requirements of this subsection, the person is ~~shall be~~ subject to this part.

(5) A person is exempt from licensure under this section if it complies with the following:

(a) The service warranties are sold only to persons who are not residents of this state and the person does not issue, market, or cause to be marketed service warranties to residents of this state and does not administer service warranties that were originally issued to residents of this state.

(b) The person submits a letter of notification to the office upon the start of business from this state and annually by March 1, which provides the following information:

1. The type of products offered and a statement certifying that the products are not regulated in the state in which it is transacting business or that the person is licensed in the state in which it is transacting business.

2. The name of the person; the state of domicile; the home address and Florida address of the person; the names of the owners and their percentage of ownership; the names of the officers and directors; the name, e-mail, and telephone number of a contact person; the states in which it is transacting business; and how many individuals are employed in this state.

(c) If the person ceases to do business from this state, it



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provides written notification to the office within 30 days after
cessation.

(6)~~(5)~~ Any person who provides, offers to provide, or holds
oneself out as providing or offering to provide a service
warranty to residents of in this state ~~or from this state~~
without holding a subsisting license commits, in addition to any
other violation, a misdemeanor of the first degree, punishable
as provided in s. 775.082 or s. 775.083.

Section 11. Except as otherwise expressly provided in this
act and except for this section, which shall take effect upon
this act becoming law, 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 insurance; amending s. 120.80,
F.S.; allowing the Division of Administrative Hearings
to have final order authority with respect to certain
license applicants; amending ss. 440.12 and 440.20,
F.S.; authorizing the payment of workers' compensation
benefits through the use of a prepaid card; providing
requirements; amending s. 624.402, F.S.; revising
provisions relating to certain insurers serving
nonresidents domiciled outside the United States who
are exempt from requirements to obtain a certificate
of authority; amending s. 626.207, F.S., relating to
penalties; providing definitions; barring persons



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convicted of certain crimes from licensure as an insurance agent; revising provisions relating to disqualifying periods for persons convicted of other crimes; providing an exemption from the limitation against state employment for persons convicted of certain crimes; amending s. 627.4133, F.S.; changing the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in situations involving the nonrenewal, renewal premium, cancellation, or termination of workers' compensation, employer liability, or certain property and casualty insurance coverage; specifying the effective date for the cancellation of a policy requested in writing by the insured; amending s. 627.4137, F.S.; requiring a claimant's request about insurance coverage to be appropriately served upon the disclosing entity; amending s. 627.442, F.S.; providing that premium audits for workers' compensation or property and casualty coverages are not required; providing exceptions; amending s. 627.7277, F.S.; making a conforming change that specifies the "first-named insured" as the person who is to receive notification of a renewal premium; amending s. 627.728, F.S.; changing the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in certain situations involving the cancellation or nonrenewal of motor vehicle insurance coverage; making a conforming change that specifies the "first-named



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insured's insurance agent" as a person who is to
receive certain notifications relating to motor
vehicle insurance coverage; amending s. 627.7281,
F.S.; making a conforming change that specifies the
"first-named insured" as the person who is to receive
notification of cancellation of motor vehicle
insurance coverage; creating s. 634.1711, F.S.;
allowing a consumer to purchase a service agreement
for a premium negotiated with the salesperson;
authorizing the service agreement company to establish
the premium rate; amending s. 634.403, F.S.; exempting
certain persons from service warranty licensure
requirements under certain circumstances; 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 1252

INTRODUCER: Senator Smith

SUBJECT: Persons Designated to Receive Insurer Notification

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Favorable
2.	Frederick	Meyer, C.	BC	Pre-meeting
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill revises the policyholder notification requirements for an insurer in transactions involving the nonrenewal, renewal, or cancellation of workers compensation, employer liability, commercial liability, motor vehicle, or other property and casualty insurance coverage. Specifically, the bill changes the designated person or persons an insurer is required to notify from the “named insured” to the “first-named insured” in transactions involving the nonrenewal, renewal, or cancellation of such personal and commercial property and casualty insurance (i.e., workers’ compensation, employer liability, motor vehicle, or specified property and casualty insurance coverage).

This bill substantially amends following sections of the Florida Statutes: 627.4133, 627.7277, 627.728, and 627.7281.

II. Present Situation:

Generally, the “named insured” is the person or persons listed by name on the policy's declaration page. Although the named insured is commonly one person, for a partnership, corporation, or other entity with insurable interests, multiple named insureds may be included. In regards to personal property or motor vehicle coverage, the named insured is commonly one or more individuals (husband and wife, parent and child, etc).

The “first-named insured” is the first named insured listed on the policy declarations. This insured acts as the legal agent for all named insureds in initiating cancellation, requesting policy changes, reporting notices of loss, accepting any return premiums, or other administrative functions. The first-named insured may also be responsible for payment of the premiums.

For purposes of commercial coverage, generally all named insureds on a policy are related by common ownership or a common business venture. Therefore, multiple named insureds may exist and would be included on the policy. Often, the named insureds are located at the same address, resulting in the insurer mailing multiple copies of the same notice to the same address.

Usually, lenders are added as loss payees with the attached endorsement rather than as named insureds. Status as a loss payee under the attached endorsement entitles the lender to receive notice from the insurer as a loss payee.

The insurance code contains specific policyholder notification requirements for cancellations, renewals, and nonrenewals. These provisions require notification to the named insured or the policyholder. According to the insurance industry, until recently, the Office of Insurance Regulation (OIR) had interpreted the “named insured” to be “first-named insured” for purpose of notice requirements for most lines of commercial insurance. Because of this change of notification to the named insured, the OIR approved revisions to standard forms used in the commercial market related to notification requirements. As a result, all named insureds of personal and commercial policies will receive cancellation and nonrenewal notices.

III. Effect of Proposed Changes:

Section 1 amends s. 627.4133, F.S., relating to workers’ compensation and employer’s liability insurance, property, casualty, except for mortgage guaranty, surety, marine insurance, and motor vehicle, to require the “first-named insured” rather than the “named insured” to receive notice of nonrenewal or renewal premium, as well as cancellation or termination of coverage.

The bill also requires an insurer to provide notice to the “first-named insured” rather than the “named insured” with respect to the nonrenewal or renewal, as well as cancellation or termination of any personal lines or commercial property insurance policy.

Sections 2 through 4 amend ss. 627.7277, 627.728, and 627.7281, F.S., relating to motor vehicle insurance coverage, to require an insurer to provide notice of the nonrenewal, renewal, and cancellation to the “first-named insured” instead of the “named insured” or policyholder.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will reduce administrative costs associated with notifications by providing notice only to the “first-named insured” rather than all “named insureds.” This change is anticipated to reduce administrative costs associated with mailing multiple notices to all named insureds of a policy.

C. Government Sector Impact:

The Office of Insurance Regulation will be required to approve any revised forms or notices needed to implement the bill. However, the costs 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.)

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Siplin) recommended the following:

Senate Amendment (with title amendment)

Between lines 298 and 299

insert:

Section 9. Section 1010.77, Florida Statutes, is repealed.

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

And the title is amended as follows:

Delete line 41

and insert:

procedures, and recordkeeping of the council;

repealing s. 1010.77, F.S., relating to the Food and

Nutrition Services Trust Fund;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Siplin) recommended the following:

Senate Amendment (with title amendment)

Delete line 299

and insert:

Section 9. This section shall take effect upon this act becoming a law and, within 30 days thereafter, the Department of Education, in consultation with the Department of Agriculture and Consumer Services, shall develop and submit to the United States Department of Agriculture a request for a waiver required to transfer administration of the school food service and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services. Upon receipt of the United States Department of Agriculture's approval or denial



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of the request for a waiver, the Department of Education shall immediately notify in writing the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the decision of the United States Department of Agriculture. The notification shall include a copy of the United States Department of Agriculture's approval or denial of the request for a waiver.

Section 10. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2012, if the United States Department of Agriculture approves the request for a waiver, pursuant to section 9 of this act, on or before November 1, 2011.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete line 42
and insert:

requiring the Department of Education, in consultation with the Department of Agriculture and Consumer Services, to develop and submit a request for a waiver to the United States Department of Agriculture to transfer administration of the school food service and nutrition programs; requiring the Department of Education to notify the Governor and the Legislature regarding the decision of the United States Department of Agriculture; providing for contingent effect based upon federal approval of a request for a waiver; 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: CS/SB 1312

INTRODUCER: Agriculture Committee and Senators Siplin and Gaetz

SUBJECT: School Nutrition Programs

DATE: April 13, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Akhavein	Spalla	AG	Fav/CS
2. Blizzard	DeLoach	BGA	Favorable
3. Blizzard	Meyer, C.	BC	Pre-meeting
4. _____	_____	RC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates the “Healthy Schools for Healthy Lives Act.” It provides for a type two transfer of the administration of school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). It provides for the administration of the U.S. Department of Agriculture child food and nutrition programs by the DACS. It also creates the Healthy Schools for Healthy Lives Council within the DACS.

This bill transfers 45 full-time equivalent positions and an estimated \$810 million in federal funds and \$16.8 million in general revenue from the DOE to the DACS for the administration of the school food and nutrition programs.

This bill substantially amends section 1003.453, Florida Statutes. The bill substantially amends, transfers, and renumbers the following sections of the Florida Statutes: 1006.06 to 570.981; 1006.0606 to 570.982; and 1010.77, F.S. to 570.983.

The bill creates section 570.98, Florida Statutes. The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Both the federal and state governments have adopted policies for local school districts to operate school nutrition programs.¹ Federal regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b)) provide for the programs to be administered by a state's educational agency. This is the case in all but two of the 50 states.² Currently, the administration of school food and nutrition programs is divided between the DOE and the DACS. For instance, the School Lunch, Breakfast, and Summer Programs are administered by the DOE, while the commodity Food Distribution program, Disaster Feeding program, and the Emergency Food Assistance Program (EFAP) are managed by the DACS. In addition, the Marketing Division within the DACS administers the Fresh from Florida Kids and Xtreme Cuisine programs.

Florida Department of Education

The DOE is responsible for the administration, review, and evaluation of seven U.S. Department of Agriculture (USDA) funded child nutrition programs. During the 2009-2010 fiscal year, the following programs generated \$745 million in reimbursements to program sponsors, which include all of Florida's 67 public school districts, 78 charter schools, 3 university schools, 49 private schools, and 49 residential facilities.

National School Lunch, School Breakfast, and After School Snack Programs – \$718.6 Million in Reimbursements

The National School Lunch Program (NSLP) and School Breakfast Program provide non-profit school lunch programs with reimbursement for nutritious meals served to school children. Participating schools may also receive USDA commodity food through an agreement with the DACS. Section 1006.06, F.S., requires Florida public school districts to offer the breakfast program in all elementary public schools. Reimbursement is based on student income eligibility.

The After School Snack Program provides a snack to students who are served in an afterschool educational or enrichment program that is provided at the end of the school day. The school district must operate the NSLP before the After School Snack Program can be offered.

Special Milk Program – \$31,295 in Reimbursements

The Special Milk Program provides milk to children in schools, child care institutions, and eligible camps that do not participate in other federal child nutrition meal service programs. The program reimburses schools and institutions for the milk they serve. Schools in the NSLP or School Breakfast Program may also participate in the Special Milk Program to provide milk to children in half-day pre-kindergarten and kindergarten programs through which children do not have access to the school meal programs.

¹ The National School Lunch Act, as amended (42 U.S.C. 1751-1769), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773) and s. 1006.06, F.S.

² Letter from the U.S. Department of Agriculture (USDA) to the Commissioner of Education dated March 4, 2011. On file with the committee.

Summer Food Service Program – \$22.7 Million in Reimbursements

The Summer Food Service Program provides reimbursement for sponsors to serve free meals to low-income children at participating sites during the summer months when schools are normally closed. The reimbursement rates for the Summer Food Service Program are slightly higher than the National School Lunch Program. Children who are 18 years of age or younger, or over 18 when determined to be mentally or physically handicapped, are eligible for the program. Sponsors of this program include school districts, community-based organizations, and county governments.

Seamless Summer Option – \$1.8 Million in Reimbursements

School districts participating in the NSLP or School Breakfast Program are eligible to apply for the Seamless Summer Option to serve free meals to low-income children, 18 years old and under. This option reduces paperwork and administrative burdens, and reimbursement rates are the same as with NSLP and School Breakfast Program. Sponsors of this program are school districts.

Fresh Fruit and Vegetable Program – \$2.7 Million in Reimbursements

The Fresh Fruit and Vegetable Program (FFVP) provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. The FFVP currently operates in 26 districts and 133 schools throughout Florida.³ The allocation for each school is between \$50 and \$75 per student. National allocations have not yet been released; however, Florida anticipates receiving approximately \$6 million for the 2011-2012 FFVP. Unlike the other child nutrition programs, which are reimbursed by meals served, FFVP sponsors are reimbursed for operating and administrative costs in addition to the funds received for the purchase of fruits and vegetables.

DOE Administration of Child Nutrition Programs

The DOE employs 45 staff with an administrative budget of \$6.5 million for the 2010-2011 fiscal year, to administer the school and child nutrition programs for the following sponsors.

- 248 NSLP sponsors, including 3,578 breakfast sites, 3,651 lunch sites, and 1,655 snack sites;
- 135 Summer Food Service Program and Seamless Summer Option sponsors;
- 18 Special Milk Program sponsors; and
- 133 elementary schools participating in the 2010-2011 FFVP.

Administrative services provided by the DOE include:

- Maintaining a web-based computer application to process \$745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports;
- Providing sponsor training and technical assistance in child nutrition, food safety, and administrative services for all sponsors;

³ *Id.*

- Conducting on-site monitoring and administrative reviews of program administration and meal services for all sponsors;
- Evaluating and providing nutrient analysis of breakfast and lunch menus for all sponsors; and
- Providing outreach in the state to attract potential sponsors for the Summer Food Service Program and increase participation in the breakfast program.

To provide the services listed above effectively, DOE works with Florida Atlantic University to administer two grants as follows.

- \$700,000 to deliver on-site training in a variety of areas, including producing and maintaining appropriate food service records, food preparation and safety, preparing and serving fresh fruits and vegetables, and the production of training videos.
- \$900,000 to observe and evaluate the scope of difficulties related to compliance; provide technical assistance to individual sponsors; provide technical assistance to companies that contract to deliver food products and services; assist sponsors with completing paperwork and taking the steps necessary to achieve and maintain regulatory compliance related to Provision 2;⁴ and provide the maintenance and technical support of the DOE's financial software, used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.

Other DOE Initiatives

The DOE established the Farm to School (F2S) Alliance to combat childhood obesity and meet the Healthier US School Challenge criteria, which is a statewide training initiative for school food service professionals on how to prepare and serve meals that comply with the 2005 Dietary Guidelines for Americans. The DOE provides outreach and information to approximately 800 small farmers, their families, and the communities they serve, on how to participate in child nutrition programs and form business relationships with schools. In addition, the DOE provides guidance and training to Florida school food service directors, their staff, and parent-teacher organizations regarding the benefits of using locally grown products, procurement of local produce, and the use of local products in the NSLP to meet the Healthier US School Challenge menu criteria.

The DOE works to facilitate interagency coordination between the USDA, Florida Department of Health, Florida Department of Children and Families, Florida Coordinated School Health Partnership, Coordinated School Health Initiatives, the Florida Food and Nutrition Advisory Council, and various other entities.

Integration into the Curriculum and Classroom

Nutrition education is provided through collaboration with the Office of Healthy Schools (OHS) within the DOE. The DOE's school food and nutrition programs partner with the OHS to assess and respond to the nutrition education and resource needs of school districts across the state. The OHS is partially funded with DOE school food and child nutrition administrative expense funds

⁴Provision 2 is a program in schools with a high proportion of students who are eligible for free and reduced-price meals that allows all students to receive free meals.

and employs a program director and nutrition coordinator. Through this partnership, the DOE integrates nutrition education into core subject areas like language arts and science. Examples of initiatives from this collaboration include:

- Participation in Celebrate Literacy Week: The OHS works in partnership with the Just Read, Florida! Office to promote literacy throughout the state by raising awareness of the nutrition-related programs and projects offered by the DOE, including the importance of school breakfast and school gardens. In January 2011, volunteers across 28 school districts and 1,100 classrooms read “Our Super Garden: Learning the Power of Healthy Eating by Eating What We Grow” by Anne Nagro.
- Seed Folks kits: In February 2011, the OHS, in partnership with the DOE’s Language Arts Coordinator, Just Read, Florida!, and the Florida Department of Health’s Comprehensive Cancer Control Program, provided Seed Folks kits, containing lesson plans and activities challenging language arts benchmarks, to middle school students.
- Gardening for Grades Regional Trainings: Through a partnership with the DOE’s Science Coordinator, the OHS has collaborated with the Florida Agriculture in the Classroom Program to serve science teachers through nine regional Gardening for Grades training sessions in the spring of 2011. Gardening for Grades is a program funded by specialty crop grants, awarded by the DACS.
- Foods of the Month Kits: In March 2011, the OHS provided approximately 550 nutrition education resources specifically designed for the school cafeteria through the Foods of the Month (FOM) kits. FOM kits help schools enhance the nutrition education programming and improve dietary offerings in school meals by using the cafeteria as a learning laboratory.
- Healthy School District Trainings: Five regional Healthy School District Trainings will be conducted in March 2011, using the Coordinated School Health approach to provide district teams with the tools necessary to improve the health and wellness of their district’s students and staff through Wellness Policy Committees and School Health Advisory Committees (SHACs).

The Department of Agriculture and Consumer Services

The DACS administers the commodity program portion of the National School Lunch Program and the Summer Food Service Program. Section 6(e) of the Richard B. Russell National School Lunch Act (NSLA), requires that no less than twelve percent of the federal support received by schools pursuant to the NSLA each year must be in the form of USDA food (commodities). Every year, the DACS receives an allocation from the USDA based on the number of meals served the previous year. As the state agency responsible for ordering the commodities for the schools, the DACS provides information to the schools on which foods the USDA intends to acquire, determines from the schools how much, if any, of each of the commodities available they would like to requisition, and orders the foods. The USDA is responsible for procuring and purchasing these commodities. During the 2010-2011 school year, the DACS provided over 69 million pounds of USDA food, valued at approximately \$55.5 million, to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional \$4.4 million in fresh fruits and vegetables was also provided. During the 2011-2012 school year, the DACS will provide over 75 million pounds of USDA food, valued at over \$66 million, in addition to another \$3.1 million in fresh fruits and vegetables to participating Florida schools.

The DACS developed and maintains the Florida Farm to School Program website to bring schools and farmers together to determine each other's needs and how to best meet them. As a founding member of the Farm to School Alliance, the DACS participates and provides input at F2S meetings. For the past three years, the DACS has participated in various panel presentations and exhibitions promoting the consumption of fresh produce at the Florida Small Farms and Alternative Enterprises conferences.

The DACS has been an active participant in the Florida School Nutrition Association annual conference. In addition to conducting workshops on the administration of the USDA foods, the DACS, in conjunction with the U.S. Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce in schools and Florida fresh fruits and vegetables in particular.

Research suggests that taste preferences and eating habits are fully developed by the time a child is three years old. In keeping with the DACS' mission of providing healthy nutrition to children at an early stage, the DACS has developed the Fresh From Florida Kids Program. The program is designated to help parents develop healthy eating habits in their children who are just beginning to eat solid food and beyond.

The DACS also introduces children to good nutrition through the Xtreme Cuisine Program. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to the variety of fresh, nutritious foods available in Florida.

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-035

The OPPAGA reviewed Florida's school nutrition programs in January 2009. In the report, *No Changes Are Necessary to the State's Organization of School Nutrition Programs*, the OPPAGA found:

- The current structure aligns key program activities with the core missions of state agencies.
- There is no compelling reason to change the current structure of Florida's school nutrition programs.
- Changing the structure would not produce identifiable cost savings or other substantial benefits.
- Transferring programs and functions from one agency to another would likely result in short-term disruptions in services to school districts.

School Nutrition Program Transfers Experienced in Other States

Federal regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b)) provide for the NSLP to be administered by a state's educational agency. This is the case in all but two of the 50 states. In Texas and New Jersey, it was the desire to seek alternate agencies to administer the program. In 34 states, the commodity food program, which makes agricultural commodities available to sponsors, is administered by the education agency. The

⁵ <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=09-03>

administration of the NSLP by an agency other than the state education agency requires a waiver by the Secretary of the USDA. USDA staff has been contacted for information regarding a potential waiver. At this time, it is unknown if a waiver would be approved or if a transfer could be accomplished by the bill's effective date of July 1, 2011.⁶

Officials in Texas and New Jersey indicate that consolidating the federal programs into their agriculture departments had two primary benefits. First, it improved coordination between the various programs. Second, it increased program visibility and administrative support by functioning within a smaller agency, rather than as a no-curriculum program within the larger state education agency.⁷ Texas and New Jersey officials also indicate that the primary disadvantage of consolidation was that it created transitional issues during the transfer. For example, when consolidation was being discussed, several education department staff became concerned about the future of their positions. Another challenge to consolidation is that it could create either data sharing or duplicate data reporting issues.⁸

III. Effect of Proposed Changes:

The bill transfers the administration of the National School Lunch Program and related food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).

The bill makes conforming changes to other sections of law to reflect the administration of these food and nutrition programs by the DACS. In particular, the DACS is required to administer all school food and nutrition programs, to cooperate with the federal government and its agencies and instrumentalities to receive the benefit of federal financial allotments, and to act as an agent of or contract with the federal government, another state agency, or any county or municipal government for the administration of the school food and nutrition programs.

The bill also requires the DACs to provide on its website a link to the nutritional content of foods and beverages.

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.

⁶ Department of Education legislative bill analysis, March 1, 2011, on file with the committee.

⁷ Letter from the United States Department of Agriculture (USDA) to the Commissioner of Education dated March 4, 2011. On file with the committee.

⁸ *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill transfers 45 full-time equivalent positions and approximately \$810 million in federal funds to the DACS from the DOE for the administration of the school and child nutrition programs. In addition, the DACS will receive an estimated \$16.8 million in general revenue for the School Lunch Program state match. These funds will be included in the type two transfer from the DOE.

Department of Education

The DOE will no longer receive indirect funds derived from assessments on federal grants based on the current cost rate agreement with the U.S. Department of Education. Indirect earnings are used to support management activities throughout the department, including purchasing, accounting, human resources, grants management, and legal services. Per the DOE, \$631,410 was attributed to indirect earnings from the school food and nutrition programs in Fiscal Year 2009-2010.

Department of Agriculture and Consumer Services⁹

The DACS estimates costs of nonrecurring expenditures in the amount of \$108,400 for data circuit requirements and telephone and network wiring in order to implement the provisions in this bill. The DACS will absorb these costs through existing resources.

The administration of the NSLP by an agency other than the state education agency requires a waiver by the secretary of the USDA. If the state does not receive a waiver from the USDA, the USDA will not recognize the state law.

VI. Technical Deficiencies:

None.

⁹ Department of Agriculture Fiscal Note, March 10, 2011, on file with the committee.

VII. Related Issues:

The DOE has raised concerns with the transfer, as follows:¹⁰

- Loss of funding will affect the integration of nutrition education into the classroom. Reading child nutrition books in the classroom, Seed Folks kits containing lesson plans, gardening training sessions, and using the cafeteria as a training laboratory would be severely curtailed or eliminated.
- As with any change, there will be a disruption in services that DOE currently provides. For example, the distribution of monthly direct certification information of students who are eligible for free or reduced price meals because of eligibility for the Supplemental Nutrition Assistance Program through the Department of Children and Families will require changes in multiple agencies. All memorandums of understanding and grants will need to be revised and updated to reflect the transfer. The Dietetic Internship Program will require a recertification by the Commission on Accreditation for Dietetics Education and amended contracts with the various entities that provide instruction to the interns. The coordination with the Florida School Choice Program to increase the number of charter schools sponsoring NSLP would be affected.
- Transfer of these programs will create a financial cost to the State Administrative Fund for program operation to physically move the program from DOE to DACS. A physical program move could result in additional facilities renovation expenses to provide needed offices and technical support for the program. A relocation would likely result in short-term disruptions in services to school districts and additional workload relative to the moving process. Millions of dollars of program reimbursements could be delayed, causing fiscal concerns to sponsors. It is possible the program could remain housed in the Turlington Building, which would seem to negate any fiscal or policy benefit to transferring the program.
- Indirect earnings revenue is derived from assessments on federal grants based on the DOE's current approved Indirect Cost Rate Agreement with the United States Department of Education, dated May 5, 2010, for the period July 1, 2010, through June 30, 2013. The assessment is a percentage of total direct expenditures excluding capital expenditures, flow-through appropriations, and unallowable costs. Indirect earnings are used to support management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management, and legal services. The DOE will lose \$631,410 attributed to indirect earnings from school and child nutrition programs in the 2009-2010 fiscal year.
- The federal government has not approved regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b) providing for the NSLP to be administered by the state educational agency. This is the case in all but two of the 50 states. Texas and New Jersey sought and received alternative administration. In 34 states, the commodity food program, which makes agricultural commodities available to sponsors, is administered by the education agency. The administration of the NSLP by an agency other than the state education agency requires a waiver by the Secretary of the USDA. USDA staff has been contacted for information regarding a potential waiver. At this time, it is unknown if a waiver would be approved or if a transfer could be accomplished by the bill's effective date of July 1, 2011.

¹⁰ Department of Education legislative bill analysis, March 1, 2011, on file with the committee.

- On October 1, 1997, the Child and Adult Care Food Program (CACFP) was split and transferred from DOE. Chapter 97-260, Laws of Florida, transferred the Child Care Food Program (CCFP) from DOE to the Department of Health (DOH). The Adult Care Food Program (ACFP) was transferred from FDOE to the Department Elder Affairs (DOEA) as a result of a type two transfer under s. 20.06(2) F.S. As a result of the transfer of ACFP to DOEA, it was realized that ACFP, when separated from the Child Care Food Program, could not earn sufficient state agency expenditure funds to administer the program. Therefore, on July 23, 1998, a cooperative agreement was established between DOE and DOEA to transfer funds from DOE to DOEA in the amount determined to be needed by DOEA to operate the State Administrative Expense Plan in excess of the amount determined by formula to operate ACFP. This agreement was established as temporary assistance until ACFP program generated sufficient funding to independently administer the program. The ACFP was not able to generate sufficient USDA funding. Therefore, it has obtained \$200,000 in recurring general revenue to subsidize the administrative cost to operate ACFP. Currently, all states with the exception of Illinois and Florida operate ACFP and CCFP within the same agency, which is predominately the education agency.

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 Agriculture Committee on March 28, 2011:

The Committee Substitute adds a section to create the Healthy Schools for Healthy Living Council within the Department of Agriculture and Consumer Services.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (k) of subsection (2) of section
627.062, Florida Statutes, is amended, and paragraph (l) is
added to that subsection, to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(k)1. A residential property ~~An~~ insurer may make a separate
filing limited solely to an adjustment of its rates for
reinsurance, the cost of financing products used as a
replacement for reinsurance, ~~or~~ financing costs incurred in the



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purchase of reinsurance, ~~or financing products to replace or finance the payment of the amount covered by the Temporary Increase in Coverage Limits (TICL) portion of the Florida Hurricane Catastrophe Fund including replacement reinsurance for the TICL reductions made pursuant to s. 215.555(17)(c); the actual cost paid due to the application of the TICL premium factor pursuant to s. 215.555(17)(f);~~ and the actual cost paid due to the application of the cash build-up factor pursuant to s. 215.555(5)(b) if the insurer:

a. Elects to purchase financing products such as a liquidity instrument or line of credit, in which case the cost included in ~~the~~ filing for the liquidity instrument or line of credit may not result in a premium increase exceeding 3 percent for any individual policyholder. All costs contained in the filing may not result in an overall premium increase of more than 15 ~~40~~ percent for any individual policyholder.

b. Includes in the filing a copy of all of its reinsurance, liquidity instrument, or line of credit contracts; proof of the billing or payment for the contracts; and the calculation upon which the proposed rate change is based demonstrating ~~demonstrates~~ that the costs meet the criteria of this section and ~~are not loaded for expenses or profit for the insurer making the filing.~~

~~c. Includes no other changes to its rates in the filing.~~

~~d. Has not implemented a rate increase within the 6 months immediately preceding the filing.~~

~~e. Does not file for a rate increase under any other paragraph within 6 months after making a filing under this paragraph.~~



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43 ~~c.f.~~ That purchases reinsurance or financing products from
44 an affiliated company ~~in compliance with this paragraph~~ does so
45 only if the costs for such reinsurance or financing products are
46 charged at or below charges made for comparable coverage by
47 nonaffiliated reinsurers or financial entities making such
48 coverage or financing products available in this state. For the
49 purposes of this subparagraph, the term "affiliated company"
50 means an entity that owns, or whose ultimate parent company
51 owns, directly or indirectly, more than 50 percent of the
52 outstanding voting securities of the residential property
53 insurer.

54 2. An insurer may ~~only~~ make only one filing per ~~in any~~ 12-
55 month period under this paragraph.

56 3. An insurer that elects to implement a rate change under
57 this paragraph must file its rate filing with the office at
58 least 45 days before the effective date of the rate change.
59 After an insurer submits a complete filing that meets all of the
60 requirements of this paragraph, the office has 45 days after the
61 date of the filing to review the rate filing and determine if
62 the rate is excessive, inadequate, or unfairly discriminatory.

63 (1)1. On or after January 1, 2012, an insurer complying
64 with s. 627.7031 may use a rate for residential property
65 insurance when providing residential coverage, as described in
66 s. 627.4025, different from the otherwise applicable filed rate
67 as provided in this paragraph.

68 2. Policies subject to this paragraph may not be counted in
69 the calculation under s. 627.171(2).

70 3. Such rates shall be filed with the office as a separate
71 filing. The initial rates used by an insurer under this



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paragraph may not provide for rates that represent more than a
15 percent statewide average rate increase over the most
recently filed and approved rate. A rate filing under this
paragraph submitted in any year after the implementation of such
initial rates may not provide for rates that represent more than
a 15 percent statewide average rate increase in a year over the
rates in effect under this paragraph at the time of the filing.
A rate filing under this paragraph may not provide for a
percentage rate increase as to any individual policyholder that
exceeds two times the statewide average rate increase provided
for in the filing.

4. This paragraph does not affect the authority of the
office to disapprove a rate as inadequate or to disapprove a
rate filing for charging any insured or applicant a higher
premium solely because of the insured's or applicant's race,
religion, marital status, sex, or national origin. Upon finding
that an insurer has used any such factor in charging an insured
or applicant a higher premium, the office may direct the insurer
to make a new filing for a new rate that does not use such
factor.

The provisions of this subsection shall not apply to workers'
compensation and employer's liability insurance and to motor
vehicle insurance.

Section 2. Effective January 1, 2015, paragraph (1) of
subsection (2) of section 627.062, Florida Statutes, as created
by this act, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:



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101 (1)1. On or after January 1, 2012, an insurer complying
102 with the requirements of s. 627.7031 may use a rate for
103 residential property insurance when providing residential
104 coverage, as described in s. 627.4025, different from the
105 otherwise applicable filed rate as provided in this paragraph.

106 2. Policies subject to this paragraph may not be counted in
107 the calculation under s. 627.171(2).

108 3. Such rates shall be filed with the office as a separate
109 filing. The initial rates used by an insurer under this
110 paragraph may not provide for rates that represent more than a
111 15 percent statewide average rate increase over the most
112 recently filed and approved rate. A rate filing under this
113 paragraph submitted in any year after the implementation of such
114 initial rates may not provide for rates that represent more than
115 a 15 percent statewide average rate increase in a year over the
116 rates in effect under this paragraph at the time of the filing.
117 A rate filing under this paragraph may not provide for a
118 percentage rate increase as to any individual policyholder that
119 exceeds two times the statewide average rate increase provided
120 for in the filing.

121 4.a. A filing under this paragraph must include a statement
122 that the insurer has in place, or intends to have in place as of
123 the effective date of the rates, a combination of surplus,
124 Florida Hurricane Catastrophe Fund coverage, reinsurance, and
125 reinsurance equivalents sufficient to cover the insurer's 100-
126 year probable maximum loss as described in s. 627.7031.

127 b. No later than the last day of July of the year in which
128 the rates are in effect, the insurer must provide its
129 certification to the office demonstrating that it has in fact in



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place a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum loss as described in s. 627.7031.

c. If the insurer fails to maintain the required combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents, the subject rate filing under this paragraph is void and shall be replaced by the insurer's rates in effect under this paragraph at the time of the filing, retroactive to the effective date of the subject rate filing under this paragraph. In such circumstances, the office shall order the insurer to return to each insured the difference between the premium calculated according to the rate filing under this paragraph and the premium under the rates in effect under this paragraph at the time of the subject filing, which may, in the discretion of the insurer, be in the form of a refund or a credit. This sub-subparagraph does not preclude the insurer from making another filing under this paragraph, but such filing may not take effect before June 1 of the following year.

5.4. This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a rate filing for charging any insured or applicant a higher premium solely because of the insured's or applicant's race, color, creed, marital status, sex, or national origin. Upon finding that an insurer has used any such factor in charging an insured or applicant a higher premium, the office may direct the insurer to make a new filing for a new rate that does not use such factor.



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The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

Section 3. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The plan of operation of the corporation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which forms must be approved by the office prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property



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insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. that contain more restrictive coverage.

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2) (a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance



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217 agreement, may not be altered by the inability of the other
218 party to the agreement to pay its specified percentage of
219 hurricane losses. Eligible risks that are provided hurricane
220 coverage through a quota share primary insurance arrangement
221 must be provided policy forms that set forth the obligations of
222 the corporation and authorized insurer under the arrangement,
223 clearly specify the percentages of quota share primary insurance
224 provided by the corporation and authorized insurer, and
225 conspicuously and clearly state that neither the authorized
226 insurer nor the corporation may be held responsible beyond its
227 specified percentage of coverage of hurricane losses.

228 (II) "Eligible risks" means personal lines residential and
229 commercial lines residential risks that meet the underwriting
230 criteria of the corporation and are located in areas that were
231 eligible for coverage by the Florida Windstorm Underwriting
232 Association on January 1, 2002.

233 b. The corporation may enter into quota share primary
234 insurance agreements with authorized insurers at corporation
235 coverage levels of 90 percent and 50 percent.

236 c. If the corporation determines that additional coverage
237 levels are necessary to maximize participation in quota share
238 primary insurance agreements by authorized insurers, the
239 corporation may establish additional coverage levels. However,
240 the corporation's quota share primary insurance coverage level
241 may not exceed 90 percent.

242 d. Any quota share primary insurance agreement entered into
243 between an authorized insurer and the corporation must provide
244 for a uniform specified percentage of coverage of hurricane
245 losses, by county or territory as set forth by the corporation



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board, for all eligible risks of the authorized insurer covered under the quota share primary insurance agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of quota share agreements, pricing of quota share agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under



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the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer shall be voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2., in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized



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to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board of governors are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one



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member of the board for a 2-year term and one member for a 3-year term. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida



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Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, with regard to a policyholder of the corporation or a policyholder removed from the corporation



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through an assumption agreement until the end of the assumption period, the policyholder remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual



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agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, with regard to a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of



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the assumption period, the policyholder remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation



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policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison shall be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss



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payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the high-risk account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant shall be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be



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uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the corporation. The notice shall also specify that acceptance of corporation coverage creates a conclusive presumption that the



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applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the high-risk account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the high-risk account in 2006 or thereafter may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds pursuant to s. 627.3512, but the regular assessment must be paid in full within 12 months after being levied by the corporation.



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A limited apportionment company shall collect from its policyholders any emergency assessment imposed under subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide, by July 1, 2007, a premium payment plan option to its policyholders which allows at a minimum for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built prior to 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19. As of January 1, 2012, must require that the agent



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623 obtain from an applicant for coverage from the corporation an
624 acknowledgement signed by the applicant, which includes, at a
625 minimum, the following statement:

626
627 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT
628 LIABILITY:

629
630 1. AS A POLICYHOLDER OF CITIZENS PROPERTY
631 INSURANCE CORPORATION, I UNDERSTAND THAT IF THE
632 CORPORATION SUSTAINS A DEFICIT AS A RESULT OF
633 HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY
634 COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
635 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF
636 THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH
637 AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS
638 IMPOSED BY THE FLORIDA LEGISLATURE.

639 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO
640 EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS
641 POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A
642 DIFFERENT AMOUNT AS IMPOSED BY THE STATE LEGISLATURE.

643 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY
644 INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL
645 FAITH AND CREDIT OF THE STATE OF FLORIDA.

646
647 a. The corporation shall maintain, in electronic format or
648 otherwise, a copy of the applicant's signed acknowledgement and
649 provide a copy of the statement to the policyholder as part of
650 the first renewal after the effective date of this sub-
651 subparagraph.



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b. The signed acknowledgement form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

Section 4. Section 627.7031, Florida Statutes, is created to read:

627.7031 Residential property insurance option.—

(1) An insurer holding a certificate of authority to write property insurance in this state may offer or renew residential property insurance policies at rates established in accordance with s. 627.062(2)(1), subject to all of the requirements and prohibitions of this section.

(2) An insurer offering or renewing policies at rates established in accordance with s. 627.062(2)(1) may not purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option under s. 215.555(17).

(3) Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(1) or before the effective date of a renewal policy at rates established in accordance with s. 627.062(2)(1), the applicant or insured must be given the following notice, printed in at least 12-point boldfaced type:

THE RATE FOR THIS POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE. A RESIDENTIAL PROPERTY POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE



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FROM THIS INSURER, ANOTHER INSURER, OR CITIZENS
PROPERTY INSURANCE CORPORATION. PLEASE DISCUSS YOUR
POLICY OPTIONS WITH AN INSURANCE AGENT WHO CAN PROVIDE
A CITIZENS QUOTE. YOU MAY WISH TO VIEW THE OFFICE OF
INSURANCE REGULATION'S WEBSITE AT
WWW.SHOPANDCOMPARERATES.COM FOR MORE INFORMATION ABOUT
CHOICES AVAILABLE TO YOU.

For policies renewed at a rate established in accordance with s.
627.062(2)(1), the notice must be furnished in writing at the
same time as the renewal notice on a document separate from the
renewal notice, but may be included within the same mailing as
the renewal notice.

(4) Before the effective date of a newly issued policy at
rates established in accordance with s. 627.062(2)(1) or before
the effective date of the first renewal at rates established in
accordance with s. 627.062(2)(1) of a policy originally issued
before the effective date of this section, the applicant or
insured must:

(a) Be provided or offered, for comparison purposes, an
estimate of the premium for a policy from Citizens Property
Insurance Corporation reflecting substantially similar
coverages, limits, and deductibles to the extent available.

(b) Provide the insurer or agent with a signed copy of the
following acknowledgment form, which must be retained by the
insurer or agent for at least 3 years. If the acknowledgment
form is signed by the insured or if the insured remits payment
in the amount of the rate established in accordance with s.
627.062(2)(1) after being mailed, otherwise provided, or offered



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the comparison specified in paragraph (a), an insurer renewing a policy at such rate shall be deemed to comply with this section, and it is presumed that the insured has been informed and understands the information contained in the comparison and acknowledgment forms:

ACKNOWLEDGMENT:

1. I HAVE REVIEWED THE REQUIRED DISCLOSURES AND THE REQUIRED PREMIUM COMPARISON.

2. I UNDERSTAND THAT THE RATE FOR THIS RESIDENTIAL PROPERTY INSURANCE POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE.

3. I UNDERSTAND THAT A RESIDENTIAL PROPERTY INSURANCE POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE FROM CITIZENS PROPERTY INSURANCE CORPORATION.

4. I UNDERSTAND THAT THE FLORIDA OFFICE OF INSURANCE REGULATION'S WEBSITE WWW.SHOPANDCOMPARERATES.COM CONTAINS RESIDENTIAL PROPERTY INSURANCE RATE COMPARISON INFORMATION.

(5) The following types of residential property insurance policies are not eligible for rates established in accordance with s. 627.062(2)(1) and are not subject to the other provisions of this section:

(a) Residential property insurance policies that exclude coverage for the perils of windstorm or hurricane.



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(b) Residential property insurance policies subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the office relating to rates or premiums for policies removed from Citizens Property Insurance Corporation.

Section 5. Effective January 1, 2015, section 627.7031, Florida Statutes, as created by this act, is amended to read:

627.7031 Residential property insurance option.—

(1) An insurer holding a certificate of authority to write property insurance in this state may offer or renew residential property insurance policies at rates established in accordance with s. 627.062(2)(1), subject to all of the requirements and prohibitions of this section.

(2) An insurer may offer or renew policies at rates established in accordance with s. 627.062(2)(1) only if the insurer has in place a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum loss. The insurer shall determine its probable maximum loss using one or more models that meet the standards of the Florida Commission on Hurricane Loss Projection Methodology.

(3)~~(2)~~ An insurer offering or renewing policies at rates established in accordance with s. 627.062(2)(1) may not purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option under s. 215.555(17).

(4)~~(3)~~ (a) Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(1) or before the effective date of a renewal policy at rates



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established in accordance with s. 627.062(2)(1), the applicant or insured must be given the following notice, printed in at least 12-point boldfaced type:

THE RATE FOR THIS POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE. A RESIDENTIAL PROPERTY POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE FROM THIS INSURER, ANOTHER INSURER, OR CITIZENS PROPERTY INSURANCE CORPORATION. PLEASE DISCUSS YOUR POLICY OPTIONS WITH AN INSURANCE AGENT WHO CAN PROVIDE A CITIZENS QUOTE. YOU MAY WISH TO VIEW THE OFFICE OF INSURANCE REGULATION'S WEBSITE AT WWW.SHOPANDCOMPARERATES.COM FOR MORE INFORMATION ABOUT CHOICES AVAILABLE TO YOU.

(b) For policies renewed at a rate established in accordance with s. 627.062(2)(1), the notice described in paragraph (a) must be furnished in writing at the same time as the renewal notice on a document separate from the renewal notice, but may be contained within the same mailing as the renewal notice.

~~(5)~~⁽⁴⁾ Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(1) or before the effective date of the first renewal at rates established in accordance with s. 627.062(2)(1) of a policy originally issued before the effective date of this section, the applicant or insured must:



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(a) Be provided or offered, for comparison purposes, an estimate of the premium for a policy from Citizens Property Insurance Corporation reflecting substantially similar coverages, limits, and deductibles to the extent available.

(b) Provide the insurer or agent with a signed copy of the following acknowledgment form, which must be retained by the insurer or agent for at least 3 years. If the acknowledgment form is signed by the insured or if the insured remits payment in the amount of the rate established in accordance with s. 627.062(2)(1) after being mailed, otherwise provided, or offered the comparison specified in paragraph (a), an insurer renewing a policy at such rate shall be deemed to comply with this section, and it is presumed that the insured has been informed and understands the information contained in the comparison and acknowledgment forms:

ACKNOWLEDGMENT:

1. I HAVE REVIEWED THE REQUIRED DISCLOSURES AND THE REQUIRED PREMIUM COMPARISON.

2. I UNDERSTAND THAT THE RATE FOR THIS RESIDENTIAL PROPERTY INSURANCE POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE.

3. I UNDERSTAND THAT A RESIDENTIAL PROPERTY INSURANCE POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE FROM CITIZENS PROPERTY INSURANCE CORPORATION.

4. I UNDERSTAND THAT THE FLORIDA OFFICE OF



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INSURANCE REGULATION'S WEBSITE

WWW.SHOPANDCOMPARERATES.COM CONTAINS RESIDENTIAL
PROPERTY INSURANCE RATE COMPARISON INFORMATION.

~~(6)~~⁽⁵⁾ The following types of residential property
insurance policies are not eligible for rates established in
accordance with s. 627.062(2)(1) and are not subject to the
other provisions of this section:

(a) Residential property insurance policies that exclude
coverage for the perils of windstorm or hurricane.

(b) Residential property insurance policies subject to a
consent decree, agreement, understanding, or other arrangement
between the insurer and the office relating to rates or premiums
for policies removed from Citizens Property Insurance
Corporation.

Section 6. 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 residential property insurance;
amending s. 627.062, F.S.; revising costs to be
included in a rate filing; revising the overall
premium increase for a rate filing; revising the
information that must be included in a rate filing
relating to reinsurance; deleting a provision



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prohibiting an insurer from implementing a rate increase within 6 months before it makes certain rate filings; deleting a provision prohibiting an insurer from filing for a rate increase within 6 months after it makes certain rate filings; authorizing an insurer to use a rate for residential property insurance that differs from its otherwise filed rate after a specified date under certain circumstances; requiring such rates to be filed with the Office of Insurance Regulation; specifying the maximum difference between rates; limiting the percentage rate increase as to any individual policyholder; preserving the authority of the office to disapprove a rate for inadequacy or discrimination; providing a future revision that requires the inclusion of a statement in certain rate filings relating to the insurer's current or future ability to cover a specified probable maximum loss, requires certification by an insurer relating to the insurer's ability to actually cover a specified probable maximum loss, voids certain rates if an insurer fails to maintain sufficient funds or coverages to cover a specified probable maximum loss, and requires refunds and credits to insureds if an insurer fails to maintain sufficient funds or coverages to cover a specified probable maximum loss; amending s. 627.351, F.S.; requiring insurance agents to obtain a signed acknowledgment from an applicant for coverage and certain policyholders relating to surcharges and assessments potentially being imposed



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under a Citizens Property Insurance Corporation policy; requiring Citizens Property Insurance Corporation to maintain signed acknowledgments; specifying that a signed acknowledgment creates an evidentiary presumption relating to an insured's liability for surcharges and assessments; creating s. 627.7031, F.S.; specifying circumstances under which an insurer may offer or renew residential property insurance policies subject to the amendments to s. 627.062, F.S., contained in this act; prohibiting such insurers from procuring coverage under the temporary increase in coverage limits option; requiring specific notices to applicant or insured; requiring Citizens Property Insurance Corporation premium estimates and signed acknowledgments; specifying ineligible types of policies; providing a future revision requiring an insurer to have certain resources to cover a specified probable maximum loss in order to offer or renew policies at certain rates; 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 1330

INTRODUCER: Senator Hays

SUBJECT: Residential Property Insurance

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Favorable
2.	Betta	Meyer, C.	BC	Pre-meeting
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill authorizes insurers to use an alternative rate for residential property insurance from the rate approved by the Office of Insurance Regulation (OIR). The alternative rate may not be more than 15 percent above the statewide average rate of the company's most recently approved standard rate filing. Rate increases for individual policyholders cannot exceed double the proposed alternative rate. The OIR may deny the alternative rate if it is inadequate or it proposes a higher premium based on the policyholder's race, color, creed, marital status, sex, or national origin. The bill places requirements on insurers seeking to use an alternate rate. The insurer may not purchase Temporary Increase in Coverage Limits (TICL) coverage from the Florida Hurricane Catastrophe Fund (Cat Fund). Effective January 1, 2015, insurers must have the ability to cover its 100-year probable maximum loss (PML) due to a hurricane.

The insurance agent must obtain a signed form acknowledging that the applicant for Citizens Property Insurance Corporation (Citizens) coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill.

This bill substantially amends sections 627.062 and 627.351, Florida Statutes.

The bill creates section 627.7031, Florida Statutes.

II. Present Situation:

“Property insurance”¹ includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- *Personal lines residential coverage*: homeowners’, mobile home owners’, dwelling, tenants’, condominium unit owners’, cooperative unit owner’s and similar policies.
- *Commercial lines residential coverage*: coverage provided by a condominium association, cooperative association, apartment building and similar policies.
- *Commercial nonresidential coverage*: coverage provided by commercial business policies.

Generally, residential property insurance covers a policyholder’s residence, providing reimbursement due to damages sustained by the residence, including windstorm damage. Section 627.4025, F.S., defines “residential coverage” as personal lines residential coverage and commercial lines residential coverage.

Rate Regulation for Property, Casualty, and Surety Insurance

The primary purpose of Part I of ch. 627, F.S., known as the Rating Law, is to ensure that property, casualty, and surety insurance rates are not excessive, inadequate, or unfairly discriminatory and that these standards apply to every property insurance rate.

Section 627.0645, F.S., requires every property insurance company to make a rate filing, which contains the insurer’s proposed rates, with the office each year. The office reviews the rate filing and either approves or disapproves the proposed rates. If an insurer does not want to change its rates one year, instead of a rate filing the insurer may file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.

¹ Section 624.604, F.S., defines property insurance as insurance on real or personal property of every kind and interest, whether on land, water, or in the air, against loss or damage for any and all hazards and against loss or damage.

- Other relevant factors impacting frequency and severity of claims or expenses.

Excess Rates

Section 627.171, F.S., permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

Citizens Property Insurance Corporation (Citizens or corporation)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.² It is not a private insurance company.³ Citizens' book of business is divided into three separate accounts:⁴

- **Personal Lines Account (PLA)** – Multiperil Policies⁵
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies covering damage to property from windstorm and from other perils.
- **Commercial Lines Account (CLA)** – Multiperil Policies
Consists of condominium association, apartment building, and homeowners' association policies covering damage to property from windstorm and from other perils.
- **High-Risk Account (HRA)** – Wind-only⁶ and Multiperil Policies
Consists of personal lines wind-only policies, commercial residential wind-only policies, and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and, therefore, has separate calculations of surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account.⁷

In the event Citizens incurs a deficit (its obligations to pay claims exceed its capital plus reinsurance recoveries) it may levy assessments on most of Florida's property and casualty

² Voluntary admitted market refers to insurers licensed to transact insurance in Florida.

³ s. 627.351(6)(a)1., F.S.

⁴ s. 627.351(6)(b)2., F.S.

⁵ A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

⁶ A wind-only policy provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

⁷ s. 627.351(6)(b)2.b., F.S.

insurance policyholders in a specific sequence set by statute.⁸ The three Citizens' accounts calculate deficits and resulting assessment needs independently.

*Citizens Policyholder Surcharges*⁹

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

*Regular Assessments*¹⁰

Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.¹¹ Property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens is usually able to collect regular assessment funds within 30 days after levy.

*Emergency Assessments*¹²

Upon the exhaustion of the Citizens' policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to rectify a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.¹³ Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Conclusive Presumptions

A statutory presumption is conclusive if it prevents a party from proving or disproving the presumed fact. Conclusive presumptions can raise constitutional due process concerns but are permissible in some circumstances. The constitutionality of a conclusive presumption under the due process clause is measured by determining (1) whether the concern of the Legislature was

⁸ s. 627.351(6)(b)3.a., d., and i., F.S.

⁹ s. 627.351(6)(b)3.i., F.S.

¹⁰ s. 627.351(6)(b)3.a. and b., F.S.

¹¹ The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

¹² s. 627.351(6)(b)3.d., F.S.

¹³ This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. See s. 627.351(6)(b)3.f., F.S.

reasonably aroused by the possibility of an abuse which it legitimately desired to avoid; (2) whether there was a reasonable basis for a conclusion that the statute would protect against its occurrence; and (3) whether the expense and other difficulties of individual determinations justify the inherent imprecision of a conclusive presumption.¹⁴ Florida insurance statutes contain conclusive presumptions related to selection or rejection of homeowner's law and ordinance coverage,¹⁵ a motor vehicle insurance policyholder's election to purchase uninsured motorist coverage at lower limits than the insured's bodily injury coverage,¹⁶ the assessment liability of the policyholders of a worker's compensation self insurance fund,¹⁷ informed consent of HIV and AIDS testing for insurance purposes,¹⁸ and the possibility that a Citizens Property Insurance Corporation policy could be replaced by a policy from an authorized insurer that does not provide identical coverage.¹⁹

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 627.062(2)(l), F.S., to authorize insurers to sell residential property insurance policies at an alternative rate that is different than the rate approved by the OIR pursuant to the requirements of the Rating Law. The alternative rate is subject to the following requirements:

- *A 15 Percent Maximum Statewide Rate Increase* – The alternative rate may create a statewide average rate increase of up to 15 percent above the company's most recently approved standard rate filing. Subsequent expedited rate filings may create a statewide average rate increase of up to 15 percent above the previous year's approved expedited rate filing. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.
- *A Maximum Individual Policyholder Rate Increase of 2 Times the Statewide Increase* – The alternative rate may create a percentage rate increase for an individual policyholder of up to 2 times the statewide average rate increase provided for in the filing. For example, if the rate filing proposes a statewide 14 percent rate increase, the rate increase applicable to an individual policyholder cannot exceed 28 percent.

The alternative rate filing process does not alter the insurer's responsibility to file all materials that are required under the rating law and administrative rule. However, the rate filing will be subject to only a limited review by the OIR. Under current law, a rate shall not be excessive, inadequate, or unfairly discriminatory. The bill instead utilizes the following rate standard:

- *Excessive Rates* – The authorization of a 15 percent rate increase implicitly prevents the office from denying the rate as excessive unless the proposed alternative rate causes more than a 15 percent statewide rate increase or an increase to an individual policyholder that is more than double the statewide average increase.

¹⁴ Hall v. Recchi America, Inc., 671 So.2d 197, 200 (Fla 1st DCA 1996)

¹⁵ Section 627.7011(2), F.S.

¹⁶ Section 627.727(1), F.S.

¹⁷ Section 440.585, F.S.

¹⁸ Section 627.429, F.S.

¹⁹ Section 627.351(6)(c)11., F.S.

- *Inadequate Rates* – The OIR may disapprove the alternative rate if it is inadequate. The office’s authority to deny an inadequate rate is not altered in the alternative rate review process.
- *Unfairly Discriminatory Rates* – The alternative rate review process limits the prohibition against “unfairly discriminatory” rates in s. 627.062(2)(b), F.S. Under current law, a determination that a rate is “unfairly discriminatory” is based on an actuarial determination that the rate does not bear a reasonable relationship to the expected loss and expense experience of a risk or group of risks or fails to account for a risk management program. Under the alternative rate-filing process, the examination of whether a rate is “unfairly discriminatory” is altered and uses a different standard. The alternative rate is unfairly discriminatory and must be disapproved if it proposes a higher premium based on the policyholder’s race, color, creed, marital status, sex, or national origin. The OIR may direct the insurer to submit a new rate filing that does use the prohibited factor.

Other statutory provisions related to the alternative rate filing process include:

- *Separate Rate Filing* – The rate must be filed with the OIR as a separate filing.
- *Excess Rate Calculation Inapplicable* – Policies which are subject to this rate provision are not counted in the calculation of excess rates under s. 627.171, F.S.
- *Insurer Must Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, the insurer must include with the expedited filing a statement that the insurer has (or intends to have) the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The insurer must subsequently provide a certification to the OIR by July 31st that it can cover the 100-year PML. If the insurer fails to maintain resources sufficient to cover the 100-year PML, the expedited rate filing is void and shall be replaced by the insurer’s rates that were effective when the expedited rate was filed. The insurer must give the policyholder a refund or premium discount in the amount of excess premium collected to pursuant to the voided rate.

Section 3 amends s. 627.736(6)(c), F.S., relating to statutory standards for the Citizen’s Property Insurance Corporation plan of operation, to require that the insurance agent obtain a signed form acknowledging that the applicant for Citizens coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill. The acknowledgment form states that the policyholder understands that:

- Citizens policyholders are subject to Citizens policyholder surcharges if the corporation sustains a deficit.
- The policyholder surcharges could be as high as 15 percent of premium in each of three Citizens accounts, or a different amount established by the Legislature.
- The policyholder may be subject to emergency assessments to the same extent as policyholders of other insurance companies.

Citizens must maintain a signed copy of the acknowledgement form. A signed acknowledgment form creates a conclusive presumption the policyholder understood and accepted the surcharge and assessment liability placed on Citizens policyholders.

Sections 4 and 5 create s. 627.7031, F.S., to provide requirements for using the expedited residential property insurance rate filing option. Insurers may write residential property insurance policies at rates approved pursuant to the expedited rate filing process, subject to the following requirements:

- *No Cat Fund TICL Coverage* – The insurer may not purchase TICL coverage from the Cat Fund.
- *Disclosure That the Policy is not Subject to Full Rate Regulation* – Insurers must provide new applicants and current insureds prior to policy renewal with written notice that: (1) the rate for the policy is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (2) Coverage subject to full rate regulation may be otherwise available from private market insurers or Citizens; (3) the insured should discuss policy options with an agent who can provide a Citizens quote; and (4) the OIR’s website at www.shopandcomparerates.com has more information about insurance choices that are available.
- *Provide Applicants and Current Policyholders with a Citizens Premium Estimate* – An applicant or current policyholder must be provided a Citizens premium estimate for similar coverage prior to the effective date of the new policy or, if the policy existed prior to this bill becoming law, prior to the first renewal that uses a rate approved via the expedited rate filing process.
- *Written Acknowledgement of Disclosures* – The applicant or insured must sign a written acknowledgment that: (1) The insured has reviewed the required disclosures and premium comparison; (2) The insured understands that the rate is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (3) The insured understands that residential property insurance policies subject to full rate regulation may be available through Citizens; and (4) The insured understands that the OIR website www.shopandcomparerates.com contains residential property insurance rate comparison information.
- *The Insurance Policy Cannot Exclude Hurricane Coverage* – Policies that exclude hurricane or windstorm coverage cannot charge rates approved via the expedited rate filing process.
- *Citizens Take-Out Policies Not Eligible if Subject to Rate Arrangement* – A rate approved via the expedited rate filing process may not be applied to policies removed from Citizens by a private carrier if the policy is subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the OIR relating to rates or policy premiums.
- *Insurer Must Be Able to Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, in order to sell policies using rates approved by the expedited rate filing process, the insurer must have the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The probable maximum loss must be determined using a hurricane model approved by the Florida Commission on Hurricane Loss Projection Methodology.

Section 6 provides that the bill is effective upon becoming a law, except as otherwise provided. Sections 2 and 5 of the bill are effective January 1, 2015.

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:

Property insurance policies with rates different than an insurer's filed rates are likely to have higher premiums than the insurer's previously filed rate. Some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer. However, some insurers may actually choose to implement an alternative rate that is lower than its actuarially indicated rate in order to take advantage of the expedited rate review process created by the bill. The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase and if such increases make the premiums for a policy higher than a comparable policy from Citizens, then some policyholders may opt to cancel their existing property policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated.

The bill may incentivize insurance companies in the private market to write multi-peril policies²⁰ currently written by Citizens. If insurers determine it is advantageous for their

²⁰ A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

company to write these policies at rates different than their filed rates, then these companies will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer.

The bill may also incentivize insurance companies in the private market to assume the wind coverage on wind-only policies²¹ currently written by Citizens. If insurers charge rates different than their filed rates and determine it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies could be written by the private market. The policyholder would have to choose to move from Citizens to the private market insurer.

C. Government Sector Impact:

The Office of Insurance Regulation indicates that implementation of the provisions of this bill will not result in a fiscal impact to the office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

²¹ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability is available in a separate policy.

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 2010

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: Faith and Character-Based Correctional Programs

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	Sneed	Meyer, C.	BC	Pre-meeting
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends s. 944.803, F.S., which governs faith-based programs in correctional institutions. Significant changes include:

- Reflecting current practice by adding references to “character-based programs” and “secular institutions.”
- Removing the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release.
- Clearly making the statute applicable to all faith and character-based programs, not just dormitory-based programs.
- Expressing legislative encouragement for the department to phase-out dormitory-based programs in favor of faith and character-based institutions.
- Eliminating the statutory preference for admitting inmates who have a substance abuse issue.
- Providing that peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, must be allowed at faith and character-based institutions in the state correctional system when appropriate.

This bill substantially amends section 944.803 of the Florida Statutes.

II. Present Situation:

References to faith-based programs in correctional institutions first appeared in the Florida Statutes in 1997. Chapter 97-78, Laws of Florida, created s. 944.803, F.S., and expressed legislative intent for public and private correctional institutions to operate religious and chaplaincy programs with the help of volunteers from faith-based institutions in the community. In addition, it required the department to conduct a study of the effectiveness of faith-based programs, including those in other jurisdictions, and to make recommendations for improvement of current programs. In 1999, the department opened its first faith-based dormitory in cooperation with Kairos Horizon at Tomoka Correctional Institution. Several other faith-based dormitories were opened around the state beginning in 2000.

In 2001, the Legislature substantially amended s. 944.803, F.S., to require the department to have six additional faith-based dormitory programs fully operational by June 1, 2002.¹ In 2003, Lawtey Correctional Institution became the first faith-based institution. The department currently has faith and character-based programs at 11 institutions:²

Location	Capacity	Gender	Date Became Faith and Character Based Dormitory or Institution
<i>Dormitories</i>			
Tomoka C.I. (F Dorm)	132	Male	November 1999
Polk C.I. (A Dorm)	128	Male	November 2001
Lowell C.I. (A Dorm)	32	Female	January 2002
Gulf – Annex (J Dorm)	128	Male	January 2002
Everglades C.I. (B Dorm)	128	Male	February 2002
Lancaster C.I. (I Dorm)	37	Male over 21	January 2003
Union C.I. (J Dorm)	96	Male over 50	February 2003
<i>Total Dormitories</i>	681		
<i>Prisons</i>			
Lawtey C.I.	835	Male	December 2003
Hillsborough C.I.	292	Female	April 2004
Wakulla C.I.	1,756	Male	November 2005
Glades C.I.	1,424	Male	March 2009
<i>Total Prison</i>	4,307		
TOTAL CAPACITY	4,988		

¹ Section 13, Chapter 2001-110, Laws of Florida.

² Department of Corrections Analysis of Senate Bill 2010, p. 2.

The 2001 amendments to s. 944.803, F.S., established requirements for faith-based dormitory programs that are still in effect:³

- Programs must be a joint effort between the department and faith-based service groups in the community.
- An inmate's faith orientation (or lack thereof) must not be considered in making admission decisions.
- There must not be an attempt to convert an inmate toward a particular faith or religious preference.
- Programs must emphasize the importance of personal responsibility, meaningful work, education, substance-abuse treatment, and peer support.
- Participation must be voluntary.
- Priority must be given to inmates with substance abuse issues.
- State funds must be used toward the goals of criminal rehabilitation, successful reintegration of offenders into the community, and reduction of recidivism, not toward religious indoctrination.
- At least 80 percent of inmates participating in the program must be within 36 months of release.⁴

Chapter 2001-110, Laws of Florida, also required the department to assign a chaplain and a full-time clerical support person for each dormitory to implement and monitor the program and to strengthen volunteer participation and support. In addition, it required assignment of chaplains to community correctional centers. Due to a lack of appropriations, these conditions have not been fulfilled in recent years.

The department refers to institution-based programs as Faith and Character-Based Institutions (FCBI) and dormitory-based programs as Faith-Based/Self Improvement Dormitories (FB/SID). Programming is similar for both FCBI programs and FB/SID programs, except that FB/SID programming is more intensive. Programs are run by volunteers and allow inmates to participate in both religious and secular programming. Inmates can take classes on topics such as writing, marriage and parenting, money management, interview and job skills, computer literacy, personal faith, and a variety of religious and secular topics.⁵

FB/SID programs invite secular and religious charitable organizations to mentor inmates and offer programming designed to transform inmates inwardly. There are separate faith and secular-

³ The department has interpreted these requirements to apply only to dormitory-based programs. This is a reasonable interpretation because the statute is not clear on the point and there were no institution-wide programs at the time the requirements were established. In any event, the department reports that its requirements for institution-wide programs are basically the same as these statutory requirements except for the 80%/36 month restriction.

⁴ The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) has recommended that this requirement be removed or, in the alternative, that it be clarified that the requirement applies to the total population of all FCB dormitories and not to individual dormitories. See OPPAGA Report No. 09-38 (October 2009), "Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest," p. 7.

⁵ Department of Corrections Analysis of Senate Bill 2010, p. 3.

based dormitories. Faith-based dormitory programs build upon the inmate's personal faith, while self-improvement dormitory programs take a secular approach.⁶

The only statutory eligibility requirement is that the inmate must enter the program voluntarily. However, the department has established procedures requiring that an inmate entering the program must:

- Not have received a disciplinary report that resulted in disciplinary confinement during the previous 90 days;
- Be in general population housing status;
- Not be in work-release, reception or transit status; and
- Fit within the institutional profile.⁷

Of course, placement in a program is also dependent upon the availability of space. As of November 29, 2010, there were 471 inmates on the state-wide waiting list for faith-based dormitories, 452 inmates for self improvement dormitories, and 6,785 inmates for FBCIs.⁸

An inmate can be housed in an FCBI until completion of his or her sentence (or permanently if sentenced to life) unless he or she commits a serious infraction.

Effectiveness of Faith and Character-Based Programs

OPPAGA's 2009 review of faith and character-based programs found that institution-wide programs had a positive effect on inmate institutional adjustment and security, and a positive but modest effect on reducing recidivism. Dormitory-based programs also had a positive effect on institutional adjustment and security, but had no effect on recidivism.⁹

III. Effect of Proposed Changes:

This bill amends s. 944.803, F.S., as follows:

- It reflects the department's current practice by changing references to "faith-based programs" and "religious programs" to "faith- and character-based programs," and adding references to "secular institutions" in the community to existing references to faith-based institutions.
- It deletes the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release. This implements an OPPAGA recommendation and the department indicates that it will have a positive impact on the department due to the flexibility that it allows.¹⁰
- It clearly makes the statute applicable to all faith and character-based programs, not just dormitory-based programs.

⁶ Faith-Based/Self Improvement Dormitories. The Department of Corrections. <http://www.dc.state.fl.us/oth/faith/dorms.html>, last viewed on March 30, 2011.

⁷ *Id.*

⁸ Department of Corrections Faith- and Character-Based Initiative, November 2010 Update, <http://www.dc.state.fl.us/oth/faith/stats.html>, last viewed on March 30, 2011.

⁹ OPPAGA Report No. 09-38, *supra*, pages 3-6. See also Department of Corrections Analysis of Senate Bill 2010, pages 3-4.

¹⁰ Department of Corrections Analysis of Senate Bill 2010, p. 4.

- It provides for allowing peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, at faith and character-based institutions in the state correctional system when appropriate. It appears that this would include any private faith and character-based institutions that may be established in the future.
- It provides legislative intent encouraging phasing out dormitory-based programs in favor of faith and character-based institutions.
- It deletes the statutory preference for admitting inmates who have a substance abuse issue.
- It deletes the requirement that a chaplain and support staff be assigned to each dormitory program, and that a chaplain be assigned to each community corrections center. This requirement has not been met in recent years due to lack of funding.
- It deletes a fulfilled requirement in the 2001 legislation to establish six new faith-based programs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Bill 2018 also amends s. 944.803, F.S., but is limited to elimination of the requirement that 80 percent of inmates in a faith-based dormitory program be within 36 months of their release date.

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

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

CS by Criminal Justice on April 4, 2011:

- Provides that peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, must be allowed at faith and character-based institutions in the state correctional system when appropriate.
- Providing legislative intent encouraging the department to phase-out dormitory-based programs in favor of faith and character-based institutions.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 35 and 36

insert:

Section 1. Subsection (11) of section 215.5595, Florida Statutes, is amended to read:

215.5595 Insurance Capital Build-Up Incentive Program.—

(11) For a surplus note issued under this section before January 1, 2011, the insurer may request that the board renegotiate terms of the note as provided in this subsection. The request must be submitted to the board by January 1, 2012. If the insurer agrees to accelerate the payment period of the note by at least 5 years, the board shall agree to exempt the



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insurer from the premium-to-surplus ratios required under
paragraph (2)(d). If the insurer requesting the renegotiation
agrees to an acceleration of the payment period of less than 5
years, the board may, after consultation with the Office of
Insurance Regulation, agree to an appropriate revision of the
premium-to-surplus ratios for the remaining term of the note.
However, the revised ratios may not be lower than a minimum
writing ratio of net premium to surplus of at least 1 to 1, and
alternatively, a minimum writing ratio of gross premium to
surplus of at least 3 to 1. ~~On January 15, 2009, the State Board~~
~~of Administration shall transfer to Citizens Property Insurance~~
~~Corporation any funds that have not been committed or reserved~~
~~for insurers approved to receive such funds under the program,~~
~~from the funds that were transferred from Citizens Property~~
~~Insurance Corporation in 2008-2009 for such purposes.~~

Section 2. Paragraph (d) of subsection (8) of section
624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(8)

(d) An insurer may not use the same accountant or partner
of an accounting firm responsible for preparing the report
required by this subsection for more than 5 ~~7~~ consecutive years.
Following this period, the insurer may not use such accountant
or partner for ~~a period of~~ 5 ~~2~~ years, but may use another
accountant or partner of the same firm. An insurer may request
the office to waive this prohibition based upon an unusual
hardship to the insurer and a determination that the accountant
is exercising independent judgment that is not unduly influenced
by the insurer considering such factors as the number of



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partners, expertise of the partners or the number of insurance clients of the accounting firm; the premium volume of the insurer; and the number of jurisdictions in which the insurer transacts business.

Section 3. Paragraph (e) of subsection (3) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(3)

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the commissioner may allow credit, but only if the assuming insurer holds surplus in excess of \$250 ~~\$100~~ million and has a secure financial strength rating from at least two ~~nationally recognized~~ statistical rating organizations deemed acceptable by the commissioner as having experience and expertise in rating insurers doing business in this state, including, but not limited to, Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the commissioner shall consider ~~the following~~:

1. The domiciliary regulatory jurisdiction of the assuming insurer.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer.

3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or



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other public financial statements filed in accordance with generally accepted accounting principles.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.

6. The history of performance by reinsurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.

8. Any other matters deemed relevant by the commissioner. The commissioner shall give appropriate consideration to insurer group ratings that may have been issued. ~~The commissioner may,~~ In lieu of granting full credit under this subsection, the commissioner may reduce the amount required to be held in trust under paragraph (c).

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to insurer insolvency; amending s. 215.5595, F.S.; authorizing a residential property insurer to renegotiate a note issued by the Insurance Capital Build-Up Program under certain circumstances; amending s. 624.424, F.S.; revising the time limitations on an insurer's use of the same accountant for preparing its annual statement; amending s. 624.610, F.S.; specifying rating organizations to



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101 assess certain insurers providing reinsurance;
102 amending s.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 106 and 107

insert:

Section 4. Section 631.400, Florida Statutes, is created to read:

631.400 Rehabilitation of title insurer.—

(1) After the entry of an order of rehabilitation, the receiver shall review the condition of the insurer and file a plan of rehabilitation with the court for approval. The plan must provide:

(a) That policies on real property in this state issued by a title insurer in rehabilitation remain in force, unless the



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14 receiver determines that the assessment capacity provided by
15 this section is insufficient to pay claims in the ordinary
16 course of business.

17 (b) That policies on real property located outside this
18 state may be canceled on a date specified by the receiver and
19 approved by the court if the state where the property is located
20 does not have statutory provisions to pay future losses on such
21 policies.

22 (c) A claims filing deadline for policies on real property
23 located outside this state which are canceled under paragraph
24 (b).

25 (d) A proposed percentage of the remaining estate assets to
26 fund out-of-state claims where policies have been canceled, with
27 any unused funds returned to the general assets of the estate.

28 (e) A proposed percentage of the remaining estate assets to
29 fund out-of-state claims where policies remain in force.

30 (f) That the funds allocated to pay claims on policies
31 located outside this state be based on the pro rata share of
32 premiums written in each state over each of the 5 calendar years
33 before the date of an order of rehabilitation.

34 (2) As a condition of doing business in this state, each
35 title insurer is liable for an assessment to pay all unpaid
36 title insurance claims and expenses for administering and
37 settling the unpaid claims on real property in this state for
38 any title insurer that is ordered into rehabilitation.

39 (3) If requested by the receiver, the office shall order an
40 assessment on an annual basis in an amount the receiver deems
41 sufficient for the payment of known claims, loss adjustment
42 expenses, and the cost of administering the rehabilitation



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43 expenses. The receiver shall consider the remaining assets of
44 the insurer in receivership when making a request for an
45 assessment order. Annual assessments may continue until no more
46 policies of the title insurer in rehabilitation are in force or
47 the potential future liability has been satisfied. The office
48 may exempt or limit the assessment of a title insurer if such
49 assessment would result in a reduction to surplus as to
50 policyholders below the minimum required to maintain the
51 insurer's certificate of authority in any state.

52 (4) Assessments must be based on the total of direct title
53 insurance premiums written in this state as reported to the
54 office for the most recent calendar year. Each title insurer
55 doing business in this state shall be assessed on a pro rata
56 share basis of the total direct title insurance premiums written
57 in this state.

58 (5) Assessments shall be paid to the receiver within 90
59 days after notice of the assessment or pursuant to a quarterly
60 installment plan approved by the receiver. An insurer that
61 elects to pay an assessment on an installment plan must also pay
62 a financing charge as determined by the receiver.

63 (6) The office shall order an emergency assessment if
64 requested by the receiver. The total of any emergency
65 assessment, when added to any annual assessment in a single
66 calendar year, may not exceed the limitation in subsection (7).

67 (7) A title insurer is not required to pay an assessment in
68 any year which exceeds 3 percent of the insurer's surplus to
69 policyholders as of the end of the previous calendar year or
70 more than 10 percent of the insurer's surplus to policyholders
71 over any consecutive 5-year period. The 10 percent limitation



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shall be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years.

(8) Assessments and emergency assessments ordered by the office are assets of the estate and subject to s. 631.154.

(9) In an effort to keep in force policies on real property located in this state issued by the title insurer in rehabilitation, the receiver may use the proceeds of an assessment to acquire reinsurance or otherwise provide for the assumption of policy obligations by another insurer.

(10) The receiver shall make available information regarding unpaid claims on a quarterly basis.

(11) A title insurer in rehabilitation may not be released from rehabilitation until all of the assessed insurers have recovered the amount assessed through surcharges collected pursuant to s. 631.401 or payments from the insurer in rehabilitation.

(12) A title insurer in rehabilitation for which an assessment has been ordered under this section may not issue any new policies until it is released from rehabilitation and receives approval from the office to resume issuing policies.

(13) In carrying out its duties under this section and ss. 631.401 and 631.402, the receiver may contract with a not-for-profit entity or guaranty fund that has experience in adjusting and paying the claims of insolvent insurers in this state.

Section 5. Section 631.401, Florida Statutes, is created to read:

631.401 Recovery of assessments and assumed policy obligations.-

(1) Upon making an assessment pursuant to s. 631.400, the



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101 office shall order a surcharge on each title insurance policy
102 thereafter issued insuring an interest in real property in this
103 state. The office shall set the per transaction surcharge in an
104 amount estimated to generate sufficient funds to recover the
105 amount assessed within 7 years. The amount of the surcharge may
106 not exceed \$25 per transaction for each impaired title insurer.
107 If additional surcharges are needed due to additional title
108 insurers becoming impaired, the office shall order an increase
109 in the amount of the surcharge to reflect the aggregate amount
110 of surcharges needed.

111 (2) The party responsible for payment of the title
112 insurance premium, unless otherwise agreed to by the parties, is
113 responsible for the payment of the surcharge. A surcharge is not
114 due or owing on any policy of insurance issued at the
115 simultaneous issue rate. For all other purposes, the surcharge
116 is considered a governmental assessment to be separately stated
117 on any settlement statement. The surcharge is not subject to
118 premium tax or reserve requirements under chapter 625.

119 (3) Title insurers doing business in this state who wrote
120 no premiums in the prior calendar year shall collect the same
121 per transaction surcharge as provided in s. 631.401. The
122 surcharge collected shall be paid to the receiver within 60 days
123 after receipt from the title agent or agency.

124 (4) Each title insurance agent, agency, or direct title
125 operation shall collect the surcharge as to each title insurance
126 policy written and remit the surcharges, along with the policies
127 and premiums, within 60 days to the title insurer on which the
128 policy was written.

129 (5) A title insurer may not retain more in surcharges for



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an ordered assessment than the amount of assessment paid by that title insurer.

(6) Each title insurer collecting surcharges shall promptly notify the office when it has collected surcharges equal to the amount of the assessment paid pursuant to s. 631.400. The office shall notify all companies, including those collecting surcharges as required under subsection (3), to cease collecting surcharges when notified that all assessments have been recovered.

(7) In conjunction with filing each quarterly financial statement, each title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period. Any surcharges collected in excess of the amount assessed shall be paid to the Insurance Regulatory Trust Fund.

Section 6. Section 631.402, Florida Statutes, is created to read:

631.402 Receivership of foreign title insurer.—

(1) After a foreign title insurer with policies in this state is placed into receivership by its domiciliary state, the Department of Financial Services may apply to the court for an order appointing the department as ancillary receiver for the purpose of making an assessment pursuant to s. 631.400. The receiver may use the proceeds of the assessment to pay claims, acquire reinsurance, or otherwise provide for the assumption of policy obligations in this state by another insurer.

(2) If the assets located in this state are insufficient to pay the administrative costs of the ancillary receivership, the receiver may request additional funds under s. 631.141(7)(b).



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Between lines 184 and 185

insert:

Section 8. Section 627.7865, Florida Statutes, is repealed.

Section 9. Paragraph (b) of subsection (2) of section
627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(2) In adopting premium rates, the commission must give due
consideration to the following:

(b) A reasonable margin for underwriting profit and
contingencies, including contingent liability ~~under s. 627.7865,~~
sufficient to allow title insurers, agents, and agencies to earn
a rate of return on their capital that will attract and retain
adequate capital investment in the title insurance business and
maintain an efficient title insurance delivery system.

Section 10. Paragraph (d) of subsection (6) of section
701.041, Florida Statutes, is amended to read:

701.041 Title insurer; mortgage release certificate.—

(6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE AGENT.—

(d) Liability of a title insurer pursuant to this section
shall be considered to be a title insurance claim on real
property in this state ~~pursuant to s. 627.7865.~~

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

And the title is amended as follows:

Delete line 15

and insert:

providing records; creating s. 631.400, F.S.;

requiring receivers of title insurers in

rehabilitation to file a plan for rehabilitation with



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the court; requiring the plan to provide that title insurance policies on real property in this state remain in force under certain circumstances; requiring a plan to authorize cancellation of title insurance policies on real property in other states under certain circumstances; requiring the plan to allocate a percentage of estate assets to pay claims on certain in-state and out-of-state policies; providing a methodology for the allocation of funds to pay claims on out-of-state policies; providing procedures and requirements for the imposition and payment of assessments by title insurers relating to the rehabilitation of other title insurers; providing a methodology for determining assessment amounts; providing exemptions and limitations relating to assessments otherwise payable by a title insurer under certain circumstances; authorizing a receiver of a title insurer in rehabilitation to use assessment proceeds for certain purposes relating to policy obligations; requiring the receiver to make available certain information quarterly; barring a title insurer's release from rehabilitation until the recovery of assessments by contributing title insurers; prohibiting the release of insurers in rehabilitation and the issuance of new policies under certain circumstances; creating s. 631.401, F.S.; providing procedures, requirements, and criteria relating to the recovery of assessments by contributing title insurers through surcharges on



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policies; specifying that surcharges are governmental assets and are to be separately stated on any settlement statement; prohibiting an insurer from retaining surcharges in excess of the assessments paid; providing for payment of excess surcharges to the Insurance Regulatory Trust Fund; creating s. 631.402, F.S.; providing procedures and requirements relating to foreign title insurers placed in receivership; amending s. 631.54, F.S.; revising

Delete line 32

and insert:

date; repealing s. 627.7865, F.S., relating to assessments against title insurers; amending ss. 627.782 and 701.041, F.S.; conforming cross-references; providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 1568

INTRODUCER: Banking and Insurance Committee and Senator Montford

SUBJECT: Insurer Insolvency

DATE: April 11, 2011

REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill includes the following provisions.

- Allows the Department of Financial Services (department) to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- Requires that the Insurance Regulation Trust Fund within the department cover all unreimbursed costs to the department when opening ancillary delinquency proceedings for the purposes of obtaining records.
- Further clarifies the department's power to obtain records from third-party administrators.
- Provides for the State Risk Management Trust Fund¹ to cover employees, officers, and agents at the department for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by the department while acting as a receiver.

¹The State Risk Management Trust Fund provides the self-insurance pool for payment of workers' compensation claims, general liability claims, automotive liability claims, federal civil rights claims and court awarded attorney's fees. The revenues for this fund are premiums paid by state agencies from the agency's special appropriation category for risk management insurance.

- Makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.
- Amends qualifications of FIGA and FWCIGA board members representing, or employed by, an insurer in receivership.

This bill substantially amends the following sections of the Florida Statutes: 631.152, 631.391, 631.54, 631.56, 631.904, and 631.912.

The bill creates section 631.2715, Florida Statutes.

II. Present Situation:

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law specifies that insurance companies are exempted from federal bankruptcy jurisdiction and are instead subject to state laws regarding receivership.² Insurers are "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in the department is responsible for rehabilitating or liquidating insurance companies. Section 631.152, F.S., allows for the department to be named as an ancillary receiver for a delinquency proceeding of a non-Florida domiciled insurance company.

Typically, insurers are put into liquidation when the company is or is about to become insolvent;³ whereas, insurers are placed into rehabilitation⁴ for numerous reasons, one of which is that the insurer is impaired or failed to comply with an order of the office to address an impairment of capital or surplus or both. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

Under Florida law s. 631.271(1)(d), F.S., debts owed to the federal government by an insurer in receivership are to be paid after: all of the receiver's costs and expenses of administration are paid; all of the expenses of a guaranty association or foreign guaranty association in handling claims are paid; all claims under policies for losses incurred, including third-party claims are paid; and all claims are paid under nonassessable policies for unearned premiums or premium refunds. However, under 31 U.S.C. s. 3713(b), "a representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government." As a result s. 631.271(1)(d), F.S., could expose employees, officers and agents at the department to personal liabilities owed to the federal government while performing their duties as receiver.

Section 631.391, F.S., requires officers and employees of an insurance company cooperate with the department when the department is acting as receiver of that company. Many insurance companies utilize third-party administrators (TPA) to handle some of their administrative functions such as claims processing. Given that a TPA is a separate entity apart from the insurance

² U.S.C. s. 109(b)(2).

³ Section 631.061, F.S.

⁴ Section 631.051, F.S.

company, some argue the department lacks the legal authority to impose costs and fees to any TPA that refuses to furnish records of an insurance company the TPA had provided services for.

Guaranty Associations

In Florida, five insurance guaranty funds have been established to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a nonprofit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

Covered Claims

Florida's associations provide coverage for policies written to employees within Florida. Some states' guaranty associations do not provide coverage if the company in that state has a large deductible policy, unless the policyholder (employer) is insolvent.⁵ When the guaranty association of another state denies coverage, the injured worker (claimant) could possibly look to other states where the employer may also does business. Many national companies have locations in all fifty states including Florida. As a result of other states associations denying claims, Florida's guaranty associations could potentially end up paying claims to injured workers in other states.

Florida Insurance Guaranty Association (FIGA)

Part II of ch. 631, F.S., governs FIGA, which operates under a board of directors as a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state. When a property and casualty insurance company becomes insolvent, FIGA is required by law to assume the claims of the insurer and pay the claims of the company's policyholders. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is \$300,000, but special limits apply to damages relating to the structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional \$200,000, for a total of \$500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or \$100,000 multiplied by the number of units in the association. In addition to any deductible in the insurance policy, all claims are subject to a \$100 FIGA deductible.

⁵ Missouri Law 375.772 2(c)j - Any amount that constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of three hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if, as of the deadline set forth for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor under 11 U.S.C. Section 701, et seq.;

FIGA is divided into three accounts: auto liability, auto physical damage, and all other property and casualty insurance other than workers' compensation.⁶ This "all other" account includes property insurance (such as claims resulting from hurricane-related insolvencies), personal liability, commercial liability, commercial multi-peril, professional liability, and all other types of property and casualty insurance other than automobile and workers' compensation.

Funding is provided by assessments against authorized insurers, as needed for the payment of covered claims and costs of administration. The maximum annual assessment against each insurer is 2 percent of the insurer's net direct written premiums in the state in the prior year, for the types of insurance in each account. FIGA may also impose annual emergency assessments on insurers of up to 2 percent of written premium if necessary to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

Insurers pay the assessment to FIGA and submit a rate filing with the Office of Insurance Regulation (office) to recoup the assessment from their policyholders.⁷ Pursuant to s. 631.64, F.S., the rates and premiums charged for insurance policies may include amounts sufficient to recoup a sum equal to the amounts paid to FIGA by the member insurer, less any amounts returned to the member insurer by FIGA, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Section 631.56, F.S., establish requirements for selecting members to the FIGA board. The board shall consist of not less than five or more than nine members. Each board member serves for a 4 -year term and may be reappointed. The department approves and appoints each member recommended by the member insurers (all companies writing licensed business in that state). In the event the department finds a candidate does not meet the qualifications for service on the board, the department shall request the member insurers to recommend another candidate. Vacancies on the board are filled for the remaining term and are handled in the same manner as initial appointments. Currently members on the board representing an insurer in receivership are not required to step down.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The FWCIGA pays workers' compensation claims of insolvent insurers and group self-insurance funds authorized in Florida, as well as unearned premium claims. FWCIGA does not have a coverage limit for workers' compensation claims of insolvent insurers. When FWCIGA was created, the responsibility for handling insolvent workers' compensation claims was transferred from FIGA to FWCIGA. However, claims under the employer's liability part of a workers' compensation insurance policy continue to be covered by FIGA. According to representatives of FIGA, FIGA experiences difficulties in the administration of employer liability claims if FIGA is required to assess workers' compensation carriers for a portion of their workers' compensation premium. A workers' compensation insurance policy is divided into Part A and Part B. Part A provides workers' compensation coverage to cover medical expenses, lost income wages,

⁶Section 631.55, F.S.

⁷Section 631.57(3)(a), F.S.

rehabilitation costs and, if needed, death benefits for employees who sustain an injury or illness as a result of their employment. Part B provides employer's liability coverage to cover the employer in the event the injured employee elects not to accept the coverage offered under Part A of the policy. In such case, the employee exercises his or her right to sue the employer and part B defends and protects the employer's interests.

Section 631.912, F.S., establishes requirements for selecting members to the FWCIGA board. The board shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613, F.S., and 1 of whom is designated by the Chief Financial Officer (CFO). The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department, and 3 persons selected by the self-insurance funds. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The CFO may remove any board member for cause. Each board member shall serve for a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining term and in the same manner by which the original appointment was made. Currently members on the board who have material relationships with or are employed by an insurer in receivership are not required to step down.

III. Effect of Proposed Changes:

By allowing the department to be named as an ancillary receiver, for the purposes of obtaining records, the bill will allow the department the legal grounds to seek records from third party administrators of insurance companies in other states. Allowing any unpaid cost to be covered by the Insurance Regulation Trust Fund will provide the department the proper resources needed to obtain records needed by the associations.

By extending coverage of the State Risk Management Trust Fund to protect the department employees, the bill provides state employees personal protection against actions brought by the federal government while they are performing the department's duties as the receiver of an insolvent insurance company.

The bill provides the department the authority to seek costs and fees of third party administrators who refuse to turn over records. This provision should aid the department in its efforts to obtain records on behalf of the associations.

The bill provides that a claim will not be covered by FIGA or FWCIGA if that claim had already been rejected by another state's guaranty fund. This provision will protect the associations and Florida policyholders from having to pay claims for workers of companies domiciled in other states.

The bill requires that a board member of FIGA or FWCIGA must immediately step down if the company the member represents goes into receivership.

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:

Third-party administrators could be responsible to pay costs and fees for failing to turn over records to the department.

C. Government Sector Impact:

Department employees will be covered by the State Risk Management Trust Fund for potential liability to the federal government while performing their duties as receiver of an insolvent insurance company.

If an insurer does not have the funds to reimburse the department for costs incurred for the purposes of obtaining records, there could be an indeterminate cost to the Insurance Regulation 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.)

CS by Banking and Insurance on March 22, 2011

The Committee Substitute:

- Allows the department to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- Provides the Insurance Regulation Trust Fund shall cover all unreimbursed costs to the department when opening ancillary delinquency proceedings for the purposes of obtaining records.
- Provides the department, rather than the associations, the authority to seek costs and fees of third party administrators who refuse to turn over records.
- Removes the retroactive language from the bill.

B. Amendments:

None.



353118

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete lines 227 - 230

and insert:

4. Any major structure, as defined in s. 161.54(6)(a), for which a permit for new construction or substantial improvement, as defined in s. 161.54, is applied for, on or after June 1, 2012, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053, or within the Coastal Barrier Resources System, 16 U.S.C. ss. 3501-3510.



173824

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete lines 583 - 584.



686040

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 741
and insert:
July 1, 2012. Upon receiving the report, the board shall



744572

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 826
and insert:
subparagraph 9. ~~8.~~ Notwithstanding these limitations, but still
subject to s. 627.3517, an



610816

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 889

and insert:

Notwithstanding these limitations, but still subject to s.
627.3517, an application for coverage



706004

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete lines 1431 - 1492

and insert:

d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation,



706004

take-out, or keep-out plan and then comply with all of the corporation's requirements for such plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office must determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of \$50 million on a company or pooled basis;

(B) Maintains an A.M. Best Financial Strength Rating of "A- " or better;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides similar policy coverage.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).



706004

(III) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation must remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Department of Financial Services, Bureau of Collateral Securities. The surplus lines insurer shall submit to the office with the initial deposit an accounting of the policies assumed and the amount of unearned premium for such policies along with a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days following each calendar quarter, attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and shall submit additional funds if the special deposit is insufficient to cover the unearned premium on assumed policies, or may receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court with jurisdiction over the insolvency.

(IV) Surplus lines brokers representing a surplus lines



706004

insurer on a take-out program must obtain confirmation, in written or e-mail form, from each producing agent in advance stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an admitted carrier, the offer of coverage from the admitted carrier shall be given priority by the corporation.

4. The plan must ~~shall~~ provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. If ~~In the event~~ an assessment against an assessable insurer is deferred in whole or in part, the amount ~~by which such assessment is~~ deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. ~~Effective July 1, 2007,~~ In order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer



706004

101 and not by the corporation, even if the corporation continues to
102 service the policies. This subparagraph applies to policies of
103 the corporation and not policies taken out, assumed, or removed
104 from any other entity.



110816

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Hays) recommended the following:

Senate Amendment to Amendment (706004)

Delete line 58

and insert:

or shall receive a return of funds within 60 days if the special



751012

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Joyner) recommended the following:

Senate Amendment

Delete line 1519
and insert:
corporation.~~+~~ In any such action, the corporation is ~~shall~~

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 1714

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Citizens Property Insurance Corporation

DATE: April 11, 2011

REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill makes the following changes relating to Citizens Property Insurance Corporation (Citizens), the not-for-profit, tax-exempt governmental entity that provides property insurance coverage to those unable to find coverage in the voluntary admitted market in Florida.

Eligibility Requirements

- Applicants for Citizens personal lines residential (homeowners) coverage or commercial lines residential coverage are ineligible to obtain such coverage if the premium for coverage from an authorized insurer is within 25 percent of the Citizens premium. As of January 1, 2015, such applicants are ineligible for Citizens coverage upon receiving an offer of private market coverage at any approved rate.
- As of 2012, all structures with a replacement value of \$1 million or more are ineligible for Citizens.
- As of 2014, residential structures in the Personal Lines Account with a replacement value of \$750,000 or more are ineligible for coverage.
- As of 2016, residential structures in the Personal Lines Account with a replacement value of \$500,000 or more are ineligible for coverage.

- A Citizens applicant or policyholder must maintain a separate flood insurance policy that has coverage limits for the building and contents equal to those provided under the Corporations' policy, subject to the maximum limits available under the National Flood Insurance Program if the property is located in a Special Flood Hazard Area as defined by the National Flood Insurance Program (NFIP).
- Citizens must cease issuing new commercial nonresidential insurance policies.
- Structures that obtain a construction permit on or after June 1, 2011, that are located seaward of the coastal construction control line shall be ineligible for Citizens coverage.

Citizens Rates

- Citizens must implement a rate increase of up to 20 percent by territory and 25 percent for any single policy each year for each residential line of business it writes. The mandatory rate increase expires January 1, 2015. The limitation on rate increases does not apply to sinkhole coverage or costs incurred through the purchase of private reinsurance.
- Citizens must develop its rates using an industry expense equalization factor.
- Citizens is prohibited from reducing rates.
- Citizens may impose a premium surcharge on residential structures located within the wind-borne debris region that do not have opening protections.

Citizens Coverage

- Citizens may not offer or renew HO-3 homeowners policies as of December 31, 2012. Instead, Citizens must offer a policy similar to what is available in the private insurance market under an HO-3 (homeowners), HO-4 (renters), or HO-6 (condominium) policy.
- Citizens must offer sinkhole coverage. Policies covering sinkhole that are effective on or after February 1, 2012, will not provide coverage to appurtenant structures.
- Payments for sinkhole loss tendered by Citizens must be dedicated entirely to repairing the structure or remediating of the land.
- Citizens policies issued or renewed on or after February 1, 2012, will not cover screened enclosures.
- Citizens policies issued or renewed on or after February 1, 2013, will not cover detached structures.
- Citizens policies issued or renewed on or after February 1, 2013, will not cover specified items of personal property.

Citizens Surcharges and Assessments

- Citizens must levy the full amount of the Citizens policyholder surcharge before levying a regular assessment.
- Citizens policyholders must pay emergency assessments that are 1.5 times the emergency assessment levied on insureds in the private insurance market.
- As of January 1, 2012, an agent seeking to place coverage with Citizens must obtain the applicant's signature on a written disclosure of liability to surcharges and assessments.

Public Adjusters

- Prohibits policyholders from engaging the services of a public adjuster with respect to any claim incurred under a policy issued by Citizens until the policyholder has received an offer on the claim from Citizens.
- Limits public adjuster compensation on Citizens claims to a reasonably hourly rate, not to exceed 5 percent of the additional amount secured by the policyholder in excess of the Citizens offer.

Other Provisions

- Clarifies existing law that Citizens is not subject to bad faith liability.
- Exempts Citizens from liability to pay attorney's fees pursuant to s. 627.428, F.S.
- Deletes requirements that Citizens reduce the boundaries of the high-risk area.
- Discontinues the statutory authorization for insurers to provide multi-policy discounts when a homeowner's policy is insured by Citizens or taken out from Citizens by a different insurer.
- Authorizes eligible surplus lines carriers to take part in any depopulation, take-out, or keep-out program adopted by Citizens.
- Citizens must enact recommendations by an independent third-party consultant on the relative costs and benefits of outsourcing Citizens policy issuance and service functions to private servicing carriers or similar entities.
- Repeals the Citizens quota-share insurance program.
- Provides conflict of interest procedures for Citizens board members.

The bill is effective upon becoming a law.

This bill substantially amends the following sections of the Florida Statutes: 627.0655, 627.351(6), and 627.3511(4).

II. Present Situation:**Citizens Property Insurance Corporation**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹ It is a governmental entity and not a private insurance company.² Created in 2002 by the Florida Legislature, Citizens combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The merger allowed Citizens to become exempt from federal income taxes, resulting in millions of dollars in annual savings, as well as additional administrative and economic efficiencies.

¹ Admitted market means insurance companies licensed to transact insurance in Florida.

² Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

Citizens operates under the direction of an 8-member Board of Governors³ and offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵ In its most recent monthly report,⁶ Citizens reported the following data as of February 28, 2011:

- Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
 - 854,701 Policies in Force
 - \$194,695,466,632 Total Exposure
 - \$1,330,029,554 In Force Premium
- Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.
 - 8,377 Policies in Force
 - \$42,309,533,919 Total Exposure
 - \$213,883,613 In Force Premium
- High-Risk Account (HRA): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the HRA.
 - 445,779 Policies in Force
 - \$229,169,417,342 Total Exposure
 - \$1,141,058,109 In Force Premium
- Total All Accounts Combined:
 - 1,308,857 Policies in Force
 - \$466,174,417,893 Total Exposure
 - \$2,684,971,276 In Force Premium

Citizens financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, its policyholder surcharges, and regular and emergency assessments. With the estimated income from 2011, Citizens will have an accumulated surplus of approximately \$5.4 billion. Citizens has approximately \$6.3 billion in mandatory layer reinsurance from the FHCF. Citizens has additional pre-event liquidity of \$2.9 billion. Aggregately, for 2011 Citizens has a claims paying capacity of \$14.672 billion.

Citizens' probable maximum loss (PML) from a 1-in-100 year event is \$22.2 billion. In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceed its capital plus reinsurance

³ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ Section 627.351(6)(b)2b., F.S

⁶ See <https://www.citizensfla.com/about/corpfinancials.cfm>; last visited March 26, 2011.

recoveries), it may levy regular assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute as follows:⁷

- Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.
- If the Citizens' surcharge is insufficient to cure the deficit for any individual account, Citizens can require an assessment against insurers (which may be recouped from their policyholders through a rate filing process) of up to 6 percent of premium for most lines of property and casualty insurance, or 6 percent of the deficit, whichever is greater. This assessment may also be levied per account for a maximum total assessment of 18 percent; however, this assessment is not levied against Citizens' policyholders.
- Require any remaining deficit to be funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, including Citizens' policies, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater. This assessment may be levied per account for a total maximum assessment of 30 percent per policy.

Citizens Rates

Until 2010, Citizens rates had been frozen by statute⁸ at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound.⁹ Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Sinkhole Experience

Insurers, including Citizens, offering property insurance to homeowners in Florida have been required to offer coverage for damages resulting from sinkholes since 1981.¹⁰ Under current law, insurers must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents. Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs. Property insurers must also provide coverage for catastrophic ground cover collapse.¹¹ According to a data call issued by the Office of Insurance Regulation (OIR) in 2010, 66 percent of Florida's sinkhole claims were filed in three counties, Hernando, Pasco and Hillsborough.

⁷ Section 627.351(6)(b)3.a., d., and i., F.S.

⁸ Section 627.351(6)(n)4., F.S.

⁹ Ch. 2009-87; s.10, L.O.F.

¹⁰ Ch. 81-280, L.O.F.

¹¹ Catastrophic ground cover collapse refers to damage from an abrupt ground collapse for which the property is condemned.

The largest writer of sinkhole coverage in Florida is Citizens, and its market share of the sinkhole coverage is even higher in the three counties of greatest activity (Hernando, Pasco and Hillsborough). The rate that Citizens is authorized to charge for sinkhole coverage is far below that which would be necessary to cover the sinkhole losses it incurs, particularly in Hernando, Pasco and Hillsborough. Some examples of Citizens' sinkhole rate deficiency are as follows: In 2009, sinkhole losses¹² from Hernando were almost seven times the premium that was collected to cover those losses. The total premium in Hernando to cover sinkhole losses was \$5.9 million, but the losses in Hernando were \$40.5 million.

In fact, sinkhole losses from Hernando alone were nearly twice the amount of the entire statewide premium. The total premium collected statewide for the sinkhole endorsement in 2009 was \$22.2 million, while in Hernando sinkholes losses were \$40.5 million. Pure premium is the term used to describe the amount that all policyholders with the sinkhole endorsement would need to pay to cover the sinkhole losses (with no profit or indirect costs added). The statewide sinkhole pure premium was \$295, while the sinkhole premium that Citizens was allowed to collect to cover sinkholes averaged only \$73. The pure premium for Hernando sinkhole losses was \$5,300, but the average premium was only \$775 for this coverage.

The high cost of sinkhole losses is a result the combination of the two primary components of total losses: claims frequency and claims severity. Claims frequency is commonly measured as a percentage: the ratio of the number of claims compared to the number of policyholders in a given period. Citizens' statewide claims frequency more than doubled from two-tenths of a percent in 2005 to almost one-half percent in 2009. In Hernando, Citizens' claims frequency in 2009 was six times what it was in 2005, going from approximately one percent in 2005 to almost seven percent in 2009. This means that for every 100 policyholders purchasing coverage in 2009, seven policyholders filed a claim.

The extraordinary rise in the claims frequency ratio resulted from the fact that the actual number of claims continues to rise, even while the number of policyholders selecting to purchase the coverage is declining. Sinkhole coverage became an optional endorsement in 2007 (although ground cover collapse remains a mandatory coverage), and a significant number of policyholders began to drop the sinkhole coverage. As a result of this substantial reduction in the number of people choosing to pay for sinkhole coverage, the problems of the increasing number of claims is magnified by the fact that there are fewer policyholders (and therefore less total collected premium) over which to spread the increasing losses. Citizens data shows:

- The percent of Citizens' statewide policies with sinkhole coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009.
- In Hernando County, the percent of Citizens' policies with sinkhole coverage fell from 100 percent in 2006 to 37 percent in 2009.
- In Pasco County, the percent of Citizens' policies with sinkhole coverage fell from 100 percent in 2006 to 22 percent 2009.

¹² As used here, "losses" refers to indemnity costs for both open and closed claims, plus loss adjustment expenses (LAE). A loss adjustment expense (LAE) is the direct cost associated with investigating, administering, defending, or paying an insurance claim.

Notwithstanding the substantial reduction in the number of policyholders choosing sinkhole coverage, there has still been a rise in the number of sinkhole claims being filed. Citizens' data shows:

- Statewide, the number of sinkhole claims more than doubled between 2005 and 2009, rising from 660 in 2005 to 1404 in 2009.
- In Hernando County, the number of sinkhole claims more than quadrupled, rising from 113 in 2005 to 520 in 2009.

The other primary component driving the sinkhole losses is the average claim severity. The average severity is the average amount of cost that Citizens incurred (indemnity plus LAE) for all claims for which a payment was made. Citizens' average annual claim severity between 2005 and 2009 averaged \$130,191, with a range from \$91,717 (2009) to \$155,286 (2007). In 2005, the average claim severity actually exceeded the average coverage limit for the structure.

Bad Faith Claims

Bad faith liability is premised on the concept that an insurer that handles a claim should act in good faith towards its insured and "has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business."¹³ Florida recognizes two bad faith causes of actions against insurers: first party bad faith and third party bad faith. Florida first recognized Third-party bad faith at common law in 1938.¹⁴ Third-party bad faith protects an insured from the insurer failing to settle a claim brought by a third party in good faith and exposing the insured to a judgment in excess of policy limits. Florida courts refused to recognize a first-party bad faith tort until it was established by the Legislature in 1982 with the enactment of section 624.155, Florida Statutes, the Civil Remedy statute.

Section 624.155, Florida Statutes permits any person to bring a civil action against an insurer when the insurer commits certain acts or the insured is damaged by statutory violations¹⁵ of the insurer. Specifically, the insurer may bring the claim when the insurer does not attempt to settle a claim in good faith when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward the insured and with due regard to the interests of the insured. A claim may also be brought if the insurer makes claims payments without identifying the coverage under which the payment is made or attempts to influence settlements under one portion of the insurance policy by refusing to promptly resolve a claim it should settle under another portion of the policy.

The insurer is not liable for bad faith liability until the Plaintiff obtains an adjudication in its favor at trial or on appeal, at which point insurer liability for bad faith, costs and reasonable attorney's fees attaches. The insured must prove that the insurer committed bad faith in order to obtain recovery. In order to bring an action under s. 624.155, F.S., the Plaintiff must provide the authorized insurer and the Department of Financial Services 60-days written notice of the violation. The notice must detail the statutory provisions the insurer is alleged to have violated,

¹³ *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So.2d 783 (Fla. 1980)

¹⁴ See *Auto. Mut. Indem. Co. v. Shaw*, 134 Fla. 815, 184 So. 852 (1938).

¹⁵ Violations giving rise to a statutory bad faith claim are s. 626.9541(1)(i), (o), or (x), F.S.; s. 626.9551, F.S.; s. 626.9705, F.S.; s. 626.9706, F.S.; s. 626.9707, F.S.; or s. 627.7283, F.S.

the facts and circumstances giving rise to the violation, reference to insurance policy language relevant to the violation. No action for bad faith may be brought if the insurer pays the requested damages or corrects the circumstances giving rise to the violation within 60 days.

Citizens Property Insurance Corporation has generally been considered to be immune from statutory bad faith liability based upon its sovereign immunity from suit in s. 627.351(6)(s)1., F.S. The courts have noted that the statute creates exemptions from Citizens' grant of immunity, but that an action for bad faith is not one of the exceptions.¹⁶ However, a recent decision of the First District Court of Appeals refused to reverse a trial court determination that Citizens is subject to bad faith liability based on the exceptions to Citizens' immunity for willful torts and a breach of the insurance contract.¹⁷

Surplus Lines Insurance Coverage – Background

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR) pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,¹⁸ are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.¹⁹ Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.²⁰

Surplus lines insurers are regulated by the state, but do not have to obtain a COA and are not required to adhere to the other requirements mentioned above. Surplus lines insurance is an alternative type of insurance coverage for consumers to buy property-liability insurance from unauthorized (non-admitted) insurers when consumers are unable to purchase the coverage they need from admitted insurers. Surplus lines insurance is coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an "eligible" insurer²¹ under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.²² Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.²³ Likewise, a surplus

¹⁶ *Citizens Prop. Ins. Co. v. Garfinkel*, 25 So.3d 62 (Fla. 5th DCA 2009).

¹⁷ *Citizens Prop. Ins. Co. v. San Perdido Ass'n, Inc.*, 46 So.3d 1051 (Fla 1st DCA 2010).

¹⁸ An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.

¹⁹ The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

²⁰ For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.

²¹ An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.

²² See s. 626.914(4), F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.

²³ Section 626.916(1)(b), F.S.

lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.²⁴

The surplus lines law contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the OIR. For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than \$15 million and have been licensed in its state or country of domicile for at least three years.²⁵

Historically, surplus lines insurers have never been held subject to Florida's regulation of rates, forms, or other requirements under ch. 627, F.S., as are admitted insurers.²⁶ This is true of the regulatory treatment of surplus lines insurers in other states across the country. The different regulatory treatment is due to the unique nature of surplus lines insurance because it covers consumer needs arising from emerging technologies, new business practices, or changing legal environments which require a quick response that is often difficult for admitted insurers to provide, according to representatives with the Florida Surplus Lines Office.

III. Effect of Proposed Changes:

This bill amends s. 627.0655, F.S., to eliminate the ability of insurers to offer a multi-line insurance discounts for insurance policies placed with Citizens or a "take out" policy from Citizens that is assumed by a different carrier. The current authority to offer multi-line discounts on Citizens policies and "take out" policies serviced by the same agent will be unavailable for policies issued or renewed after January 1, 2013. The change is intended to create an additional incentive for private market insurers to write property insurance and for agents to attempt to place property insurance with private market carriers.

The bill amends s. 627.351(6), F.S., governing Citizens Property Insurance Corporation, in the following areas.

Revision of Legislative Intent Language

The bill revises Citizens intent language primarily by deleting language that the Legislature intends for Citizens to provide affordable coverage.

Citizens Eligibility – Prohibitions on Higher Value Structures

Citizens will cease writing coverage for:

²⁴ Section 626.916(1)(c), F.S.

²⁵ Section 626.918, F.S.

²⁶ See *Affidavits In Support of Intervenor-Plaintiff Essex Insurance Company's Amended Motion for Summary Judgment* by Steve Parton, Office of Insurance Regulation, General Counsel, and Belinda Miller, Office of Insurance Regulation, Deputy Commissioner for Property and Casualty Insurance, filed in *Howard v. Choice Hotels International, Inc.*, Case No. CA06-680-55 (Fla. 7th Cir. Tr. Ct. 2008).

- Structures with a dwelling replacement cost of \$1 million or more or a single condominium unit with a combined dwelling and contents replacement cost of \$1 million or more on January 1, 2012.
- Structures in the personal lines account with a dwelling replacement cost of \$750,000 or more or a single condominium unit with a combined dwelling and contents replacement cost of \$750,000 or more on January 1, 2014.
- Structures in the personal lines account with a dwelling replacement cost of \$500,000 or more or a single condominium unit with a combined dwelling and contents replacement cost of \$500,000 or more on January 1, 2016.

Essentially, the bill creates a two-tiered prohibition on Citizens coverage. As of 2012, all structures with a replacement value of \$1 million or more will be ineligible for Citizens, while residential structures in the Personal Lines Account will have more stringent prohibitions beginning in 2014. A risk that becomes ineligible for Citizens coverage but is insured by a Citizens policy will continue to be insured through the end of the policy term. For instance, if a structure is valued at \$1 million and has a Citizens policy that terminates June 1, 2012, will continue to be insured by Citizens for the full term of the policy, but will not be renewed.

Citizens Eligibility – Offers of Coverage from Authorized Private Market Insurers

The bill revises the eligibility criteria for obtaining a Citizens policy for personal lines residential risks and commercial lines residential risks. For personal lines residential policies (homeowners), if the new policy will be effective before January 1, 2015, the applicant is ineligible to obtain such coverage from Citizens if the premium for coverage from an authorized insurer is within 25 percent of the Citizens premium. For example, if a consumer applies for coverage with Citizens and the Citizens premium is \$1,000, the policyholder is eligible for Citizens coverage only if the applicant cannot obtain private market insurance for at a premium of \$1,250 or less. For new policies effective on January 1, 2015, and thereafter, a risk is ineligible for Citizens coverage if it has an offer of coverage that includes wind coverage from a private market insurer at the insurer's approved rate.

For commercial lines residential policies, if the new policy will be effective before January 1, 2015, the applicant is ineligible to obtain such coverage from Citizens if the premium for coverage from an authorized insurer is within 25 percent of the Citizens premium. A renewal policy is not eligible for citizens if it has a private market offer of coverage, including wind, at the private market insurer's approved rate.

Citizens Eligibility – Offers of Coverage from Surplus Lines Insurers

The bill requires Citizens to issue policies that make a policyholder ineligible for Citizens coverage upon receipt of an offer of coverage from a surplus lines insurer. Under current law, if an authorized private-market insurer offers to cover a risk insured by Citizens at the insurer's approved rates, the risk is not eligible for Citizens except as otherwise provided in the Citizens statute. Under the bill, current Citizens policyholder and new Citizens applicants are ineligible for Citizens coverage upon receipt of an offer of coverage from an authorized insurer that does not exceed the Citizens premium by more than 25 percent.

The bill also authorizes eligible surplus lines carriers to take part in any depopulation, take-out, or keep-out program adopted by Citizens. To qualify for participation, the surplus lines carrier must obtain approval from the OIR for its depopulation, take-out, or keep-out plan and comply with Citizens for all Citizens requirements that are applicable to admitted insurers. The OIR must also determine that the surplus lines insurer is financially viable by verifying it has a surplus of \$50 million on a company or pooled basis; maintains surplus, reserves and reinsurance sufficient to cover two 200-year probable maximum hurricane losses in a single hurricane season; and maintains an A.M. Best Financial Strength rating of “A-” or better.

The policy offered by the surplus lines carrier must provide similar coverage to the Citizens policy and outline any substantial differences in coverage between the existing policy and the proposed surplus lines policy. The surplus lines carrier must also notify the policyholder that surplus lines policies are not covered by the Florida Insurance Guaranty Association.

Citizens Eligibility – Requirement to Purchase National Flood Insurance Program Coverage

If property is located in the Special Flood Hazard Area as defined by the National Flood Insurance Program (NFIP), a Citizens applicant or policyholder must maintain a separate flood insurance policy that has coverage limits for the building and contents equal to those provided under the Corporations’ policy, subject to the maximum limits available under the National Flood Insurance Program. The requirement does not apply to tenants or condominium unit owners above the ground floor, a Citizens policy that excludes wind and hail coverage, a risk not eligible for flood coverage under the NFIP, or a mobile home located more than 2 miles from open water (ocean, gulf, bay, river, or the intracoastal waterway). The requirement to maintain flood insurance applies to new Citizens policies issued on or after January 1, 2012 and policies renewed on or after January 1, 2013.

Citizens Eligibility – Cessation of New Commercial Nonresidential Policies

Citizens will cease accepting applications and issuing new policies for commercial nonresidential insurance once the bill becomes law. Current commercial nonresidential policies will remain in effect.

Citizens Eligibility – Cessation of Coverage for New Structures within Coastal Construction Control Line

Structures that obtain a construction permit on or after June 1, 2011, that are located seaward of the coastal construction control line shall be ineligible for Citizens coverage.

Citizens Rates

The bill provides a statement of legislative intent that Citizens coverage be actuarially determined and not competitive with rates in the admitted voluntary market. Citizens rates should be those of a residual market mechanism that provides insurance only when it cannot be procured in the voluntary market. A Citizens rate filing made on or after July 1, 2011 must conform to the following requirements:

- *Mandatory Rate Increase* – Citizens must implement a rate increase each year for each residential line of business it writes of up to 20 percent by territory and 25 percent for any single policy. The mandatory rate increase expires January 1, 2015, and does not apply to rates for sinkhole coverage or costs for the purchase of private reinsurance. Under current law, Citizens must implement a yearly rate increase that does not exceed 10 percent for any single policyholder.
- *Annual Rate Filing* – Citizens must file its recommended rates with the Office of Insurance Regulation at least annually.
- *Industry Expense Equalization Factor* – Citizens must develop its rates using an industry expense equalization factor. The factor is designed to include within Citizens' rates standard insurance industry ratemaking expense provisions. The factor must include:
 - a catastrophe risk load;
 - a provision for taxes;
 - a market provision for reinsurance costs; and
 - an industry expense provision for general expenses, acquisition expenses, and commissions.
- *OIR Establishment of Rates* – The OIR must consider the recommended rates and issue a final order establishing the rates within 45 days after they are filed. Citizens may not pursue an administrative challenge or judicial review of the OIR's final order.
- *Prohibition Against Reducing Rates* – Citizens is prohibited from reducing rates.
- *Surcharge on Structures Without Opening Protection* – Effective October 1, 2011, Citizens may impose a premium surcharge on residential structures located within the wind-borne debris region that do not have opening protections (i.e. shutters) that are required by the Florida Building Code. The surcharge is not subject to any restrictions contained in the Citizens statute or the Rating Law (s. 627.062, F.S.).

The bill deletes the requirement that the public hurricane loss projection model must serve as the minimum benchmark for determining the windstorm portion of Citizens' rates. The bill also deletes provisions related to the current 10 percent mandatory rate increase, including a provision that sunsets the mandatory rate increase once Citizens has implemented actuarially sound rates for any line of business.

Citizens Coverage – Elimination of HO-3 Homeowners Policies

Citizens will not offer or renew HO-3 homeowners policies as of December 31, 2012. Instead, Citizens must offer a policy similar to what is available in the private insurance market under an HO-3, HO-4, or HO-6 policy. The prohibition on HO-3 coverage will result in Citizens using policy forms that provide coverage for fewer perils.

The HO-3 policy is an “all perils” homeowners policy that provides coverage to the structure for damage caused by any peril that is not specifically excluded from coverage and provides broad “named perils” coverage for damage to personal property. The HO-4 policy is a tenant’s (renter’s) insurance policy that provides “named peril” coverage for the personal property of tenants. The HO-6 policy is a condominium unit owner’s policy that provides broad “named peril” coverage for personal property and building components in which the policyholder has an insurable interest.

If Citizens replaces the HO-3 policy with a “named perils” policy form, it will make it more difficult for policyholders to prove they have sustained a covered loss. One of the key differences between an “all perils” policy and a “named perils” deals with which party has the burden of proof regarding whether the loss was caused by a covered peril. When property is insured by an all perils policy, the insurer has the burden of proof to show that the cause of damage was a peril that is excluded by the policy. However, when property is insured by a “named perils” policy, the policyholder has the burden of proving that the cause of damage was a peril for which the policy provides coverage.

Citizens Coverage – Sinkholes

The bill requires Citizens to offer sinkhole coverage. New or renewal Citizens policies effective on or after February 1, 2012, that insure sinkholes will not include coverage for losses directly or indirectly caused by sinkhole activity to appurtenant structures (attached structures), driveways, sidewalks, decks, or patios. Citizens may provide notice of the change to current policies by including a notice of coverage change with the policy renewal. Any payment for sinkhole loss tendered by Citizens must be dedicated entirely to repairing the structure or remediation of the land, regardless of whether to payment is made pursuant to the contract, mediation, neutral evaluation, appraisal, arbitration, settlement or litigation.

Citizens Coverage – Cessation of Coverage for Screen Enclosures, Detached Structures, and Specified Items of Personal Property.

All Citizens policies issued or renewed on or after February 1, 2012, will not provide coverage for attached or detached screen enclosures. Personal residential policies that are new or renewed on or after February 1, 2013, will not provide coverage for detached structures that are separated from the dwelling. Coverage will not be provided for a structure connected to the dwelling by a fence, utility line, or similar connection.

Personal residential policies effective on or after February 1, 2013, will not provide coverage for the following items of personal property: watercraft, trailers, jewelry, furs, firearms, silverware, business property on premises, business property away from premises, or grave markers.

Citizens Deficit Assessments – Citizens Policyholder Surcharge

Citizens is prohibited from levying a regular assessment for a particular year’s deficit until it has first levied the full amount of the Citizens policyholder surcharge (up to 15 percent of premium for each of the three Citizens accounts). The policyholder surcharge must be paid upon renewal, cancellation or termination of the policy. New Citizens policies issued within 12 months after the

levy of the surcharge or the period of time necessary to collect the surcharge must also require payment of the policyholder surcharge.

Citizens Deficit Assessments – Emergency Assessments

The bill requires Citizens policyholders to pay Citizens emergency assessments that are 1.5 times the emergency assessment levied on subject lines of business in the private insurance market.

Citizens Deficit Assessments - Notice of Surcharge and Assessment Liability

As of January 1, 2012, an agent seeking to place coverage with Citizens must obtain a the applicant's signature on a written acknowledgement form notifying the applicant of the potential liability for surcharges and assessments placed on Citizens policyholders. If the acknowledgement form states that the policyholder understands that:

- If Citizens sustains a deficit, the policyholder could be subject to surcharges as high as 45 percent of premium.
- The policyholder is subject to emergency assessments to the same extent as policyholders of other insurance companies, or a different amount as imposed by the Legislature.
- Citizens is not supported by the full faith and credit of the state.

Citizens must maintain a copy of the signed acknowledgment form and send a copy to the policyholder upon the first renewal. The signed acknowledgment form creates a conclusive presumption the policyholder understood and accepted his or her potential surcharge and assessment liability.

Exemption from Bad Faith Liability and Extracontractual Damages

The bill clarifies existing law that Citizens is not liable for any claim for bad faith liability and that the Citizens statute and other provisions of law do not create a cause of action for bad faith or a claim for extracontractual damages. The bill states that the exemption from bad faith liability is part of the immunity from liability granted to the corporation and its agents, employees, board members, committee members and the OIR for actions taken by them in the performance of their duties or responsibilities under the Citizens statute. The bad faith exemption is premised on the fact that Citizens is a governmental entity that serves a public purpose.

Exemption from Attorney's Fee Liability

The bill also exempts Citizens from liability to pay the attorney's fees of policyholders and beneficiaries in legal actions that allege a breach of contract or seek payment of policy benefits. Under current law, Citizens is subject to pay attorney's fees pursuant to s. 627.428, F.S.

Public Adjuster Prohibition

Policyholders are prohibited from engaging the services of a public adjuster with respect to any claim incurred under a policy issued by Citizens until Citizens has tendered an offer on the claim. The public adjuster's fee must be based on a reasonable hourly rate and may not be based on a

contingency basis based upon a percentage of the claim amount. The public adjuster's total fee may not exceed 5 percent of the additional amount paid to the policyholder in excess of the Citizens offer on the claim. The limitation on retaining a public adjuster is a condition of coverage and made in recognition of Citizens' status as a government entity.

Agents – Eligibility for Appointment

Effective January 1, 2012, an insurance agent may only be appointed to be a licensed agent for Citizens if the agent holds an appointment with an authorized insurer that is actually writing personal lines residential property coverage in the state. Section 626.015(3), F.S., defines an "appointment" as authority given by an insurer or employer to a licensee to transact insurance or adjust claims on its behalf. Current law only requires that the agent have an appointment with a private market insurer that is currently writing coverage at the time of the agent's appointment with Citizens. Under the bill, an licensed Citizens agent can no longer represent it if the private market company that appointed the agent stops actively writing property coverage in Florida.

Agents – Grounds for Termination

Citizens must immediately terminate an agent's appointment to represent it if the Department of Financial Services determines that the agent violated s. 626.9541(1)(h), F.S. Section 626.9541(1)(h), F.S., prohibits unlawful rebates and defines such acts as an unfair insurance trade practice.

Citizens Governance – Outsourcing of Citizens Policy Issuance and Service Functions

The Citizens board of directors must commission an independent third-party consultant with expertise in insurance company management to issue a report that makes recommendations on the relative costs and benefits of outsourcing Citizens policy issuance and service functions to private servicing carriers or similar entities in the private market. The consultant must consider how other residual markets outsource appropriate functions or use servicing carriers. The report must be completed by February 1, 2012.

The board must develop a plan to implement the report and submit the plan to the Financial Services Commission. The commission has 30 days to review the plan and make any revisions. If the Commission approves the plan, the Citizens board of directors must begin implementing it by January 1, 2013.

Citizens Governance – Market Accountability Advisory Committee

The bill expands the function of the Market Accountability Advisory Committee to include providing advice in issues regarding agent appointments and compensation. Accordingly, the committee will include issues relating to producer compensation and agency agreements within the report it provides during each Citizens board meeting. The bill also clarifies that members of the committee are must be appointed for a 3-year term, but are not required to serve the entire term.

Citizens Governance – Conflict of Interest Procedures for Citizens Board Members

The bill provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

Repeal of Requirement to Reduce Citizens High-Risk Area

Risks located within Citizens' high-risk area are eligible for wind-only coverage from the corporation. The bill deletes the requirement that the Citizens board of directors annually report to the Legislature the reduction or increase in the 100-year probable maximum loss attributable to the combined PML of wind-only coverage and the Citizens quota-share program, when compared to the 100-year PML for the Florida Windstorm Underwriting Association as of February 2001 (the benchmark PML). The bill also deletes requirements that Citizens reduce the boundaries of the high-risk area. As of December 1, 2010, current law requires the Citizens board of directors to reduce the boundaries of the high-risk to the extent necessary to reduce the probably maximum loss attributable to wind-only coverages and the quota-share program to 25 percent below the benchmark PML. As of February 1, 2015, the high risk area boundaries must be further reduced to create a 50 percent PML reduction below the benchmark PML.

Repeal of the Citizens Quota Share Program

The bill deletes statutory authorization for Citizens to enter into quota share primary insurance agreements, as defined in s. 627.4025(2)(a), F.S., to provide hurricane coverage for risks eligible for coverage in the Citizens high-risk account. Quota share insurance is an agreement between Citizens and a private market insurer to provide insurance coverage in specified percentages.

Section 1 amends s. 627.0655, F.S., to eliminate the ability of insurers to offer multi-line insurance discounts for insurance placed with Citizens or a "take out" policy from Citizens that is assumed by a different carrier after January 1, 2013.

Section 2 amends s. 627.351 (6), F.S., to make technical conforming changes related to the statutory changes in the bill.

Section 3 amends s. 627.3511(4), F.S., to make technical and conforming changes related to the statutory changes in the bill.

Section 4 provides that this act is effective upon becoming a law.

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 change is intended to create an additional incentive for private market insurers to write property insurance and for agents to attempt to place property insurance with private market carriers.

Citizens policyholders will be subject to a yearly rate increase of no more than 20% per territory and 25% per policy, not including rate increases attributable to sinkhole coverage or the purchase of private reinsurance. The requirement that Citizens use an industry expense equalization factor will also increase Citizens rates. The rate-increase requirements are intended to return Citizens to its original intended purpose as the property insurer of last resort. The rate increases should also improve the ability of Citizens to pay catastrophe claims out of its surplus and accelerate the depopulation of its policies into the private insurance market.

Citizens policyholders will be subject to emergency assessments levied by Citizens that are 1.5 times the emergency assessment levied on policyholder in the private market. The provision ensures that Citizens policyholders will face greater liability for such assessments than other policyholders.

Citizens policies coverage will generally be more restrictive under the bill. Citizens is prohibited from issuing a standard HO-3 policy that provides coverage for “all-perils” that are not specifically excluded from the policy. The bill also eliminates personal residential coverage for detached structures, specified items personal property, and screened enclosures, appurtenant structures, sidewalks, and patios.

All structures with a value of \$1 million or more will be ineligible for Citizens coverage beginning in 2012. Policyholders in the personal lines account will be ineligible for

Citizens coverage in 2014 if the structure has a value of \$750,000 or more. In 2016, structures valued at \$500,000 or more are ineligible. The owners of these properties will be forced to obtain coverage from the admitted insurance market or a largely unregulated surplus lines insurance carrier.

The prohibition on million dollar structures will also affect Citizens policyholders owning residences valued at over \$1 million who complied with s. 627.736(a)5., F.S., which requires owners of \$750,000 homes in the wind-borne debris region to purchase opening protections (i.e. shutters) in order to remain eligible as of January 1, 2009. Such policyholders will now be ineligible for Citizens if the residence is valued at \$1 million or more. Policyholders for structures that in the wind borne debris region for Citizens that do not have opening protections installed will be subject to a surcharge.

Insureds located within a Special Flood Hazard Area as defined by the National Flood Insurance Program will be required to maintain a separate flood insurance policy as a condition of Citizens coverage. Such insureds will have additional protection from flood damage, which is excluded under the Citizens policy, but will have to incur additional cost.

Citizens cannot insure new structures seaward of the coastal construction control line that are permitted after June 1, 2011. This should discourage development of beachfront properties that are extremely vulnerable to hurricane loss.

Business owners who cannot procure commercial property insurance coverage in the admitted private insurance market will be ineligible to obtain such coverage from Citizens. This will likely necessitate the purchase of insurance from a nonadmitted surplus lines insurance carrier.

Authorization of surplus lines carriers to take part in Citizens depopulation programs may help reduce the number of policies in Citizens and reduce its liability for losses due to a catastrophic event. However, policyholders of surplus lines carriers will not be afforded protection in the event the surplus lines carrier is insolvent because the Florida Insurance Guaranty Association does not cover surplus lines policies.

Citizens must provide sinkhole coverage under the bill, which will ensure that such coverage is available in the private market. Citizens, however, will only provide benefits for sinkhole losses if such monies are used to repair the structure and remediate the sinkhole. This requirement should help eliminate frivolous sinkhole claims from policyholders who are seeking a cash payout rather than the means to repair their properties.

C. Government Sector Impact:

Citizens Property Insurance Corporation estimates that implementation of the provisions of this bill will result in an additional \$210 million in premiums collected. There are also costs associated with implementing the coverage changes. Citizens will likely incur

expenses in replacing its current HO-3 homeowners' insurance policy with an alternative policy form that is similar to coverage available in the private market.

Citizens may benefit from outsourcing its policy issuance and service functions to private servicing carriers or similar entities if the private market can effectively perform these functions at a lower cost.

Clarification of Citizens existing exemption from bad faith liability will help ensure that the courts do not apply the civil remedy statute or common law bad faith liability to claims handled by Citizens.

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 29, 2011

The committee substitute contains the following changes:

- Discontinues the statutory authorization for companies to give a multi-policy discount for a homeowner's policy that is insured by Citizens or taken out of Citizens by a different carrier.
- Prohibits a policyholder from hiring a public adjuster until Citizens has tendered an offer of a claim.
- Places limits on public adjuster compensation for claims under a Citizens policy.
- Prohibits Citizens from insuring structures seaward of the coastal construction control line that are permitted after June 1, 2011.
- Specifies that Citizens will not cover detached structures separated from the dwelling.
- Specifies that Citizens will not cover certain items of personal property.
- Requires Citizens to offer sinkhole coverage.
- Prohibits Citizens from making payments for sinkhole loss unless the funds are used to repair the structure and remediate sinkhole conditions.
- Specifies that Citizens is not liable for attorney's fees under s. 627.428, F.S.
- Authorizes surplus lines insurers to participate in Citizens depopulation, take-out, and keep-out programs.
- Authorizes Citizens to levy a surcharge on personal lines residential properties located within the wind-borne debris region that lack opening protections.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the 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.....	☒	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

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.

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

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).



970022

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 762 and 763

insert:

(d) Receive consent from a student's parent or guardian
before placing the student in an on-site virtual instruction
course in the traditional classroom.

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

And the title is amended as follows:

Delete lines 89 - 90

and insert:

parents and students about student rights, to post



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14 certain information on the district's website, and to
15 receive consent from a student's parent or guardian
16 before placing the student in an on-site virtual
17 instruction course in the traditional classroom;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1002.321, Florida Statutes, is created
to read:

1002.321 Digital learning.—

(1) DIGITAL LEARNING NOW.—There is created the “Digital
Learning Now Act.”

(2) ELEMENTS OF HIGH-QUALITY DIGITAL LEARNING.—The
Legislature finds that each student should have access to a
high-quality digital learning environment that provides:

(a) Access to digital learning.



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14 (b) Access to high-quality digital content and online
15 courses.

16 (c) Education that is customized to the needs of the
17 student using digital content.

18 (d) A means for the student to demonstrate competency in
19 completed coursework.

20 (e) High-quality digital content, instructional materials,
21 and online and blended learning courses.

22 (f) High-quality digital instruction and teachers.

23 (g) Content and instruction that are evaluated on the
24 metric of student learning.

25 (h) The use of funding as an incentive for performance,
26 options, and innovation.

27 (i) Infrastructure that supports digital learning.

28 (j) Online administration of state assessments.

29 (3) DIGITAL PREPARATION.—Each student must graduate from
30 high school having taken at least one online course, as provided
31 in s. 1003.428.

32 (4) CUSTOMIZED AND ACCELERATED LEARNING.—A school district
33 must establish multiple opportunities for student participation
34 in part-time and full-time kindergarten through grade 12 virtual
35 instruction. Options include, but are not limited to:

36 (a) School district operated part-time or full-time virtual
37 instruction programs under s. 1002.45(1) (b) for kindergarten
38 through grade 12 students enrolled in the school district. A
39 full-time program shall operate under its own Master School
40 Identification Number.

41 (b) Florida Virtual School instructional services
42 authorized under s. 1002.37.



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43 (c) Blended learning instruction provided by charter
44 schools authorized under s. 1002.33.

45 (d) Full-time virtual charter school instruction authorized
46 under s. 1002.33.

47 (e) Courses delivered in the traditional school setting by
48 personnel providing direct instruction through a virtual
49 environment or through a blended virtual and physical environment
50 pursuant to s. 1003.498.

51 (f) Virtual courses offered in the course code directory to
52 students within the school district or to students in other
53 school districts throughout the state pursuant to s. 1003.498.

54 Section 2. Subsection (1), paragraph (a) of subsection (6),
55 subsection (7), and paragraph (a) of subsection (20) of section
56 1002.33, Florida Statutes, are amended, and paragraph (f) is
57 added to subsection (17) of that section, to read:

58 1002.33 Charter schools.—

59 (1) AUTHORIZATION.—Charter schools shall be part of the
60 state's program of public education. All charter schools in
61 Florida are public schools. A charter school may be formed by
62 creating a new school or converting an existing public school to
63 charter status. A charter school may operate a virtual charter
64 school pursuant to s. 1002.45(1)(d) to provide full-time online
65 instruction to eligible students, pursuant to s. 1002.455, in
66 kindergarten through grade 12. A charter school must amend its
67 charter or submit a new application pursuant to subsection (6)
68 to become a virtual charter school. A virtual charter school is
69 subject to the requirements of this section; however, virtual
70 charter schools are exempt from subsections (18) and (19),
71 subparagraphs (20)(a)2.-5. and paragraph (20)(c), and s.



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72 1003.03. A public school may not use the term charter in its
73 name unless it has been approved under this section.

74 (6) APPLICATION PROCESS AND REVIEW.—Charter school
75 applications are subject to the following requirements:

76 (a) A person or entity wishing to open a charter school
77 shall prepare and submit an application on a model application
78 form prepared by the Department of Education which:

79 1. Demonstrates how the school will use the guiding
80 principles and meet the statutorily defined purpose of a charter
81 school.

82 2. Provides a detailed curriculum plan that illustrates how
83 students will be provided services to attain the Sunshine State
84 Standards.

85 3. Contains goals and objectives for improving student
86 learning and measuring that improvement. These goals and
87 objectives must indicate how much academic improvement students
88 are expected to show each year, how success will be evaluated,
89 and the specific results to be attained through instruction.

90 4. Describes the reading curriculum and differentiated
91 strategies that will be used for students reading at grade level
92 or higher and a separate curriculum and strategies for students
93 who are reading below grade level. A sponsor shall deny a
94 charter if the school does not propose a reading curriculum that
95 is consistent with effective teaching strategies that are
96 grounded in scientifically based reading research.

97 5. Contains an annual financial plan for each year
98 requested by the charter for operation of the school for up to 5
99 years. This plan must contain anticipated fund balances based on
100 revenue projections, a spending plan based on projected revenues



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and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Documents that the applicant has participated in the training required in subparagraph (f)2. A sponsor may require an applicant to provide additional information as an addendum to the charter school application described in this paragraph.

7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board ~~body~~ of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies



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for reading must be consistent with the Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students of a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active Florida state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.



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b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.43.

6. A method for resolving conflicts between the governing board ~~body~~ of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct.

8. The ways by which the school will achieve a



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racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been



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made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being



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converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b)1. A charter may be renewed provided that a program review demonstrates that the criteria in paragraph (a) have been successfully accomplished and that none of the grounds for nonrenewal established by paragraph (8)(a) has been documented. In order to facilitate long-term financing for charter school construction, charter schools operating for a minimum of 3 years and demonstrating exemplary academic programming and fiscal



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management are eligible for a 15-year charter renewal. Such long-term charter is subject to annual review and may be terminated during the term of the charter.

2. The 15-year charter renewal that may be granted pursuant to subparagraph 1. shall be granted to a charter school that has received a school grade of "A" or "B" pursuant to s. 1008.34 in 3 of the past 4 years and is not in a state of financial emergency or deficit position as defined by this section. Such long-term charter is subject to annual review and may be terminated during the term of the charter pursuant to subsection (8).

(c) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school governing board and the approval of both parties to the agreement.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(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



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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 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.



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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 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.

6. The sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided under subparagraph (a)1. and for the school district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are



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required to access electronic and digital instructional materials.

Section 3. Paragraph (a) of subsection (3) of section 1002.37, Florida Statutes, is amended, and subsections (8), (9), (10), and (11) are added to that section, to read:

1002.37 The Florida Virtual School.—

(3) Funding for the Florida Virtual School shall be provided as follows:

(a) 1. For a student in grades 9 through 12, a "full-time equivalent student" for the Florida Virtual School is one student who has successfully completed six full-credit courses ~~credits~~ that shall count toward the minimum number of credits required for high school graduation. A student who completes fewer less than six full-credit courses is credits shall be a ~~fraction of a full-time equivalent student. Half-credit course completions shall be included in determining a full-time equivalent student. Credit completed by a student in excess of the minimum required for that student for high school graduation is not eligible for funding.~~

2. For a student in kindergarten through grade 8, a "full-time equivalent student" is one student who has successfully completed six courses or the prescribed level of content that counts toward promotion to the next grade. A student who completes fewer than six courses or the prescribed level of content shall be a fraction of a full-time equivalent student.

3. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be



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adjusted after the student completes the end-of-course
assessment. However, no adjustment shall be made for home
education program students who choose not to take an end-of-
course assessment.

For purposes of this paragraph, the calculation of "full-time
equivalent student" shall be as prescribed in s.
1011.61(1)(c)1.b.(V).

(8)(a) The Florida Virtual School may provide full-time
instruction for students in kindergarten through grade 12 and
part-time instruction for students in grades 4 through 12. Part-
time instruction for grades 4 and 5 may be provided only to
public school students taking grade 6 through grade 8 courses.

(b) For students receiving part-time instruction in grades
4 and 5 and students receiving full-time instruction in
kindergarten through grade 12 from the Florida Virtual School,
the combined total of all FTE reported by both the school
district and the Florida Virtual School may not exceed 1.0 FTE.

(9) Elementary school principals must notify all parents of
students who score level 4 or level 5 on FCAT Reading or FCAT
Mathematics of the option for the student to take accelerated
courses through the Florida Virtual School.

(10)(a) Public school students receiving full-time
instruction in kindergarten through grade 12 by the Florida
Virtual School must take all statewide assessments required
pursuant to s. 1008.22.

(b) Public school students receiving part-time instruction
by the Florida Virtual School in courses requiring statewide
end-of-course assessments must take all statewide end-of-course



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assessments required pursuant to s. 1008.22(3)(c)2.

(c) All statewide assessments must be taken within the school district in which the student resides. School districts must provide the student with access to the district's testing facilities.

(11) The Florida Virtual School shall receive a school grade pursuant to s. 1008.34 for students receiving full-time instruction.

Section 4. Subsections (1), (2) and (3), paragraph (a) of subsection (4), subsections (5), (6), and (7), paragraphs (a) and (d) of subsection (8), and subsection (11) of section 1002.45, Florida Statutes, are amended to read:

1002.45 ~~School district~~ Virtual instruction programs.—

(1) PROGRAM.—

(a) For purposes of this section, the term:

1. "Approved provider" means a provider that is approved by the Department of Education under subsection (2), the Florida Virtual School, a franchise of the Florida Virtual School, or a community college.

2. "Virtual instruction program" means a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both, ~~and in which a Florida-certified teacher under chapter 1012 is responsible for at least:~~

~~a. Fifty percent of the direct instruction to students in kindergarten through grade 5; or~~

~~b. Eighty percent of the direct instruction to students in grades 6 through 12.~~



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(b) ~~Beginning with the 2009-2010 school year,~~ Each school district shall provide all enrolled public school eligible students within its boundaries multiple opportunities for participation ~~the option of participating~~ in part-time and full-time a virtual instruction program options. Each school district must provide at least three virtual instruction options and provide parents with timely written notification of an open enrollment period for full-time students of at least 90 days that ends no later than 30 days prior to the first day of the school year. The purpose of the program is to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. A school district virtual instruction ~~The~~ program shall provide the following ~~be~~:

1. Full-time virtual instruction for students enrolled in kindergarten through grade 12.

2. ~~Full-time or~~ Part-time virtual instruction for students enrolled in grades 9 through 12 courses that are measured pursuant to subparagraph (8)(a)2.

3. Full-time or part-time virtual instruction for students ~~who are~~ enrolled in dropout prevention and academic intervention programs under s. 1003.53, Department of Juvenile Justice education programs under s. 1003.52, core-curricula courses to meet class size requirements under s. 1003.03, or community colleges under this section.

(c) To provide students with the option of participating in virtual instruction programs as required by paragraph (b), a school district may:

1. Contract with the Florida Virtual School or establish a



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franchise of the Florida Virtual School for the provision of a program under paragraph (b). Using this option is subject to the requirements of this section and s. 1011.61(1)(c)1.b.(III) and (IV).

2. Contract with an approved provider under subsection (2) for the provision of a full-time program under subparagraph (b)1. or subparagraph (b)3. or a ~~full-time~~ or part-time program under subparagraph (b)2. or subparagraph (b)3.

3. Enter into an agreement with other ~~another~~ school districts ~~district~~ to allow the participation of its students in an approved virtual instruction program provided by the other school district. The agreement must indicate a process for the transfer of funds required by paragraph (7)(b).

4. Establish district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under paragraph (b) for students enrolled in the school district. A full-time program shall operate under its own Master School Identification Number.

5. Enter into an agreement with a virtual charter school authorized by the school district pursuant to s. 1002.33.

Contracts under subparagraph 1. or subparagraph 2. may include multidistrict contractual arrangements that may be executed by a regional consortium for its member districts. A multidistrict contractual arrangement or an agreement under subparagraph 3. is not subject to s. 1001.42(4)(d) and does not require the participating school districts to be contiguous. These arrangements may be used to fulfill the requirements of paragraph (b).



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(d) A virtual charter school may provide full-time virtual instruction for students in kindergarten through grade 12 if the virtual charter school has a charter approved pursuant to s. 1002.33 authorizing full-time virtual instruction. A virtual charter school may:

1. Contract with the Florida Virtual School.
2. Contract with an approved provider under subsection (2).
3. Enter into an ~~a joint~~ agreement with ~~the~~ school districts to allow the participation of its students ~~district in which it is located for the charter school's students to participate in a the school district's~~ virtual instruction program. The agreement must indicate a process for reporting of student enrollment and the transfer of funds required by paragraph (7) (f).

(e) Each school district shall:

1. Provide to the department by October 1, 2011, and by each October 1 thereafter, a copy of each contract and the amounts paid per unweighted full-time equivalent student for services procured pursuant to subparagraphs (c)1. and 2.
2. Expend the difference in funds provided for a student participating in the school district virtual instruction program pursuant to subsection (7) and the price paid for contracted services procured pursuant to subparagraphs (c)1. and 2. for the district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are required to access electronic and digital instructional materials.
3. At the end of each fiscal year, but no later than September 1, report to the department an itemized listing of the technological tools purchased with these funds.



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(2) PROVIDER QUALIFICATIONS.—

(a) The department shall annually publish online ~~provide~~
~~school districts with~~ a list of providers approved to offer
virtual instruction programs. To be approved by the department,
a provider must document that it:

1. Is nonsectarian in its programs, admission policies,
employment practices, and operations;

2. Complies with the antidiscrimination provisions of s.
1000.05;

3. Locates an administrative office or offices in this
state, requires its administrative staff to be state residents,
requires all instructional staff to be Florida-certified
teachers under chapter 1012, and conducts background screenings
for all employees or contracted personnel, as required by s.
1012.32, using state and national criminal history records;

4. Possesses prior, successful experience offering online
courses to elementary, middle, or high school students as
demonstrated by quantified student learning gains in each
subject area and grade level provided for consideration as an
instructional program option;

5. Is accredited by a regional accrediting association as
defined by State Board of Education rule; ~~the Southern~~
~~Association of Colleges and Schools Council on Accreditation and~~
~~School Improvement, the North Central Association Commission on~~
~~Accreditation and School Improvement, the Middle States~~
~~Association of Colleges and Schools Commission on Elementary~~
~~Schools and Commission on Secondary Schools, the New England~~
~~Association of Schools and Colleges, the Northwest Association~~
~~of Accredited Schools, the Western Association of Schools and~~



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~~Colleges, or the Commission on International and Trans-Regional Accreditation; and~~

6. Ensures instructional and curricular quality through a detailed curriculum and student performance accountability plan that addresses every subject and grade level it intends to provide through contract with the school district, including:

a. Courses and programs that meet the standards of the International Association for K-12 Online Learning and the Southern Regional Education Board.

b. Instructional content and services that align with, and measure student attainment of, student proficiency in the Next Generation Sunshine State Standards.

c. Mechanisms that determine and ensure that a student has satisfied requirements for grade level promotion and high school graduation with a standard diploma, as appropriate;

7. Publishes for the general public, in accordance with disclosure requirements adopted in rule by the State Board of Education, as part of its application as a provider and in all contracts negotiated pursuant to this section:

a. Information and data about the curriculum of each full-time and part-time program.

b. School policies and procedures.

c. Certification status and physical location of all administrative and instructional personnel.

d. Hours and times of availability of instructional personnel.

e. Student-teacher ratios.

f. Student completion and promotion rates.

g. Student, educator, and school performance accountability



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outcomes; and

~~8.6.~~ If the provider is a community college, employs instructors who meet the certification requirements for instructional staff under chapter 1012.

(b) An approved provider shall retain its approved status for a period of 3 years after the date of the department's approval under paragraph (a) as long as the provider continues to comply with all requirements of this section. However, each provider approved by the department for the 2011-2012 school year must reapply for approval to provide a part-time program for students in grades 9 through 12.

(3) ~~SCHOOL-DISTRICT~~ VIRTUAL INSTRUCTION PROGRAM REQUIREMENTS.—Each ~~school-district~~ virtual instruction program under this section must:

(a) Align virtual course curriculum and course content to the Sunshine State Standards under s. 1003.41.

(b) Offer instruction that is designed to enable a student to gain proficiency in each virtually delivered course of study.

(c) Provide each student enrolled in the program with all the necessary instructional materials.

(d) Provide, ~~when appropriate,~~ each full-time student enrolled in the program who qualifies for free or reduced-price school lunches under the National School Lunch Act or is on the direct certification list and who does not have a computer or Internet access in his or her home with:

1. All equipment necessary for participants in the school district virtual instruction program, including, but not limited to, a computer, computer monitor, and printer, if a printer is necessary to participate in the program; and



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2. Access to or reimbursement for all Internet services necessary for online delivery of instruction.

(e) Not require tuition or student registration fees.

(4) CONTRACT REQUIREMENTS.—Each contract with an approved provider must at minimum:

(a) Set forth a detailed curriculum plan that illustrates how students will be provided services and be measured for attainment of to attain proficiency in the Next Generation Sunshine State Standards for each grade level and subject.

(5) STUDENT ELIGIBILITY.—A student may enroll in a virtual instruction program provided by the school district or by a virtual charter school operated in the district in which he or she resides if the student meets eligibility requirements for virtual instruction pursuant to s. 1002.455. ~~at least one of the following conditions:~~

~~(a) The student has spent the prior school year in attendance at a public school in this state and was enrolled and reported by a public school district for funding during the preceding October and February for purposes of the Florida Education Finance Program surveys.~~

~~(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to the parent's permanent change of station orders.~~

~~(c) The student was enrolled during the prior school year in a school district virtual instruction program under this section or a K-8 Virtual School Program under s. 1002.415.~~

~~(d) The student has a sibling who is currently enrolled in~~



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~~a school district virtual instruction program and that sibling
was enrolled in such program at the end of the prior school
year.~~

(6) STUDENT PARTICIPATION REQUIREMENTS.—Each student
enrolled in a ~~school district~~ virtual instruction program or
virtual charter school must:

(a) Comply with the compulsory attendance requirements of
s. 1003.21. Student attendance must be verified by the school
district.

(b) Take state assessment tests within the school district
in which such student resides, which must provide the student
with access to the district's testing facilities.

(7) VIRTUAL INSTRUCTION PROGRAM AND VIRTUAL CHARTER SCHOOL
FUNDING.—

(a) Students enrolled in a virtual instruction program or a
virtual charter school shall be funded through the Florida
Education Finance Program as provided in the General
Appropriations Act. However, such funds may not be provided for
the purpose of fulfilling the class size requirements in ss.
1003.03 and 1011.685.

(b) For purposes of a ~~school district~~ virtual instruction
program or a virtual charter school, "full-time equivalent
student" has the same meaning as provided in s.
1011.61(1)(c)1.b.(III) or (IV).

(c) A "full-time equivalent student" for a student enrolled
part-time in a grade 6 through 12 program has the same meaning
as provided in s. 1011.61(1)(c)1.b.(IV).

(d) A student may not be reported as more than 1.0 full-
time equivalent student in any given school year.



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(e) The reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(f) ~~(b)~~ The school district in which the student resides shall report full-time equivalent students for a the school district virtual instruction program or a virtual charter school to the department in a manner prescribed by the department, and funding shall be provided through the Florida Education Finance Program. Funds received by the school district of residence for a student in a virtual instruction program provided by another school district under this section shall be transferred to the school district providing the virtual instruction program.

(g) ~~(e)~~ A community college provider may not report students who are served in a school district virtual instruction program for funding under the Community College Program Fund.

(8) ASSESSMENT AND ACCOUNTABILITY.—

(a) Each approved provider contracted under this section must:

1. Participate in the statewide assessment program under s. 1008.22 and in the state's education performance accountability system under s. 1008.31.

2. Receive a school grade under s. 1008.34 or a school improvement rating under s. 1008.341, as applicable. The school grade or school improvement rating received by each approved provider shall be based upon the aggregated assessment scores of all students served by the provider statewide. The department shall publish the school grade or school improvement rating received by each approved provider on its Internet website. The



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department shall develop an evaluation method for providers of part-time programs which includes the percentage of students making learning gains, the percentage of students successfully passing any required end-of-course assessment, the percentage of students taking Advanced Placement examinations, and the percentage of students scoring 3 or higher on an Advanced Placement examination.

(d) An approved provider's contract must be terminated if the provider receives a school grade of "D" or "F" under s. 1008.34 or a school improvement rating of "Declining" under s. 1008.341 for 2 years during any consecutive 4-year period or has violated any qualification requirement pursuant to subsection (2). A provider that has a contract terminated under this paragraph may not be an approved provider for a period of at least 1 year after the date upon which the contract was terminated and until the department determines that the provider is in compliance with subsection (2) and has corrected each cause of the provider's low performance.

(11) RULES.—The State Board of Education shall adopt rules necessary to administer this section, including rules that prescribe disclosure requirements under subsection (2) and school district reporting requirements under subsection (7).

Section 5. Section 1002.455, Florida Statutes, is created to read:

1002.455 Student eligibility for K-12 virtual instruction.—

(1) A student may enroll in virtual instruction in the school district in which he or she resides if the student meets at least one of the following conditions:

(a) The student has spent the prior school year in



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attendance at a public school in the state and was enrolled and reported by a public school district for funding during October and February for purposes of the Florida Education Finance Program surveys;

(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to the parent's permanent change of station orders;

(c) The student was enrolled during the prior school year in a virtual instruction program under s. 1002.45 or a K-8 Virtual School Program under s. 1002.415;

(d) The student has a sibling who is currently enrolled in a school district virtual instruction program and that sibling was enrolled in such program at the end of the prior school year; or

(e) The student is eligible to enter kindergarten or first grade.

(2) The virtual instruction options for which this eligibility section applies include:

(a) School district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under s. 1002.45(1)(b) for students enrolled in the school district.

(b) Full-time virtual charter school instruction authorized under s. 1002.33.

(c) Courses delivered in the traditional school setting by personnel providing direct instruction through a virtual environment or through a blended virtual and physical environment pursuant to s. 1003.498 and as authorized pursuant to s.



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1002.321(4)(f).

(d) Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state pursuant to s. 1003.498.

Section 6. Paragraph (c) is added to subsection (2) of section 1003.428, Florida Statutes, to read:

1003.428 General requirements for high school graduation; revised.—

(2) The 24 credits may be earned through applied, integrated, and combined courses approved by the Department of Education. The 24 credits shall be distributed as follows:

(c) Beginning with students entering grade 9 in the 2011-2012 school year, at least one course within the 24 credits required in this subsection must be completed through online learning. However, an online course taken during grades 6 through 8 fulfills this requirement. This requirement shall be met through an online course offered by the Florida Virtual School, an online course offered by the high school, or an online dual enrollment course offered pursuant to a district interinstitutional articulation agreement pursuant to s. 1007.235. A student who is enrolled in a full-time or part-time virtual instruction program under s. 1002.45 meets this requirement.

Section 7. Section 1003.498, Florida Statutes, is created to read:

1003.498 School district virtual course offerings.—

(1) School districts may deliver courses in the traditional school setting by personnel certified pursuant to s. 1012.55 who provide direct instruction through a virtual environment or



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though a blended virtual and physical environment.

(2) School districts may offer virtual courses for students enrolled in the school district. These courses must be identified in the course code directory. Students who meet the eligibility requirements of s. 1002.455 may participate in these virtual course offerings.

(a) Any eligible student who is enrolled in a public school district may register and enroll in an online course offered by his or her school district.

(b) Any eligible student who is enrolled in a public school district may register and enroll in an online course offered by any other district in the state, except as limited by the following:

1. A student may not enroll in courses offered through virtual instruction programs provided pursuant to s. 1002.45.

2. A student may not enroll in a virtual course offered by another school district if:

a. The course is offered online by the school district in which the student resides; or

b. The course is offered in the school in which the student is enrolled. However, a student may enroll in an online course offered by another school district if the school in which the student is enrolled offers the course but the student is unable to schedule the course in his or her school.

3. The district in which the student completes the course shall report the student's completion in that course for funding pursuant to s. 1011.61(1)(c)b.(VI) and the home district shall not report the student for funding for that course.



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For purposes of this paragraph, the combined total of all school district reported FTE may not be reported as more than 1.0 full-time equivalent student in any given school year. The Department of Education shall establish procedures to enable interdistrict coordination for the delivery and funding of this online option.

Section 8. Paragraph (g) 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:

(g) Beginning with the 2014-2015 school year, all statewide end-of-course assessments shall be administered online. Study
~~the cost and student achievement impact of secondary end-of-course assessments, including web-based and performance formats, and report to the Legislature prior to implementation.~~

Section 9. Paragraph (c) of subsection (1) of section



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1011.61, Florida Statutes, is amended to read:

1011.61 Definitions.—Notwithstanding the provisions of s. 1000.21, the following terms are defined as follows for the purposes of the Florida Education Finance Program:

(1) A “full-time equivalent student” in each program of the district is defined in terms of full-time students and part-time students as follows:

(c)1. A “full-time equivalent student” is:

a. A full-time student in any one of the programs listed in s. 1011.62(1)(c); or

b. A combination of full-time or part-time students in any one of the programs listed in s. 1011.62(1)(c) which is the equivalent of one full-time student based on the following calculations:

(I) A full-time student, except a postsecondary or adult student or a senior high school student enrolled in adult education when such courses are required for high school graduation, in a combination of programs listed in s. 1011.62(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours per school year for which he or she is a member, divided by the appropriate number of hours set forth in subparagraph (a)1. or subparagraph (a)2. The difference between that fraction or sum of fractions and the maximum value as set forth in subsection (4) for each full-time student is presumed to be the balance of the student’s time not spent in such special education programs and shall be recorded as time in the appropriate basic program.

(II) A prekindergarten handicapped student shall meet the



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requirements specified for kindergarten students.

(III) A full-time equivalent student for students in kindergarten through grade 5 in a ~~school district~~ virtual instruction program under s. 1002.45 or a virtual charter school under s. 1002.33 shall consist of a student who has successfully completed a basic program listed in s. 1011.62(1)(c)1.a. or b., and who is promoted to a higher grade level.

(IV) A full-time equivalent student for students in grades 6 through 12 in a ~~school district~~ virtual instruction program under s. 1002.45(1)(b)1., and 2., or 3. or a virtual charter school under s. 1002.33 shall consist of six full credit completions in programs listed in s. 1011.62(1)(c)1.b. or c. and 3. Credit completions may ~~can~~ be a combination of full-credit courses or half-credit courses ~~either full credits or half credits~~. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(V) A Florida Virtual School full-time equivalent student shall consist of six full credit completions or the prescribed level of content that counts toward promotion to the next grade in the programs listed in s. 1011.62(1)(c)1.a. and b. for kindergarten ~~grades 6~~ through grade 8 and the programs listed in s. 1011.62(1)(c)1.c. for grades 9 through 12. Credit completions may ~~can~~ be a combination of full-credit courses or half-credit courses ~~either full credits or half credits~~. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the



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reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(VI) Each successfully completed full-credit course earned through an online course delivered by a district other than the one in which the student resides shall be calculated as 1/6 FTE.

(VII) ~~(VI)~~ Each successfully completed credit earned under the alternative high school course credit requirements authorized in s. 1002.375, which is not reported as a portion of the 900 net hours of instruction pursuant to subparagraph (1)(a)1., shall be calculated as 1/6 FTE.

2. A student in membership in a program scheduled for more or less than 180 school days or the equivalent on an hourly basis as specified by rules of the State Board of Education is a fraction of a full-time equivalent membership equal to the number of instructional hours in membership divided by the appropriate number of hours set forth in subparagraph (a)1.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days is limited to students enrolled in juvenile justice education programs and the Florida Virtual School.

The department shall determine and implement an equitable method of equivalent funding for experimental schools and for schools operating under emergency conditions, which schools have been approved by the department to operate for less than the minimum school day.

Section 10. Section 1012.57, Florida Statutes, is amended



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to read:

1012.57 Certification of adjunct educators.—

(1) Notwithstanding the provisions of ss. 1012.32, 1012.55, and 1012.56, or any other provision of law or rule to the contrary, district school boards shall adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who fulfills the requirements of s. 1012.56(2)(a)-(f) and (10) and who has expertise in the subject area to be taught. An applicant shall be considered to have expertise in the subject area to be taught if the applicant demonstrates sufficient subject area mastery through passage of a subject area test. The adjunct teaching certificate shall be used for part-time teaching positions.

(2) The Legislature intends that this section ~~intent of this provision is to~~ allow school districts to tap the wealth of talent and expertise represented in Florida's citizens who may wish to teach part-time in a Florida public school by permitting school districts to issue adjunct certificates to qualified applicants.

(3) Adjunct certificateholders should be used as a strategy to enhance the diversity of course offerings offered to all students. School districts may use the expertise of individuals in the state who wish to provide online instruction to students by issuing adjunct certificates to qualified applicants ~~reduce the teacher shortage; thus, adjunct certificateholders should supplement a school's instructional staff, not supplant it. Each school principal shall assign an experienced peer mentor to assist the adjunct teaching certificateholder during the certificateholder's first year of teaching, and an adjunct~~



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~~certificateholder may participate in a district's new teacher training program. District school boards shall provide the adjunct teaching certificateholder an orientation in classroom management prior to assigning the certificateholder to a school.~~

(4) Each adjunct teaching certificate is valid through the term of the annual contract between the educator and the school district. Additional annual certifications and annual contracts may be awarded by the district at the district's discretion but only for 5 school years and is renewable if the applicant is rated effective or highly effective under s. 1012.34 ~~has received satisfactory performance evaluations during each year of teaching under adjunct teaching certification.~~

(5)~~(2)~~ Individuals who are certified and employed under this section shall have the same rights and protection of laws as teachers certified under s. 1012.56.

Section 11. By December 1, 2011, the Department of Education shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies and explains the best methods and strategies by which the department can assist district school boards in acquiring digital learning at the most reasonable prices possible and provides a plan under which district school boards may voluntarily pool their bids for such purchases. The report shall identify criteria that will enable district school boards to differentiate between the level of service and pricing based upon factors such as the level of student support, the frequency of teacher-student communications, instructional accountability standards, and academic integrity. The report shall also include ways to increase student access to digital learning, including



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identification and analysis of the best methods and strategies
for implementing part-time virtual education in kindergarten
through grade 5.

Section 12. 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 digital learning; creating s.
1002.321, F.S.; creating the "Digital Learning Now
Act"; providing legislative findings related to the
elements to be included in high-quality digital
learning; providing digital preparation requirements;
providing for customized and accelerated learning;
amending s. 1002.33, F.S.; authorizing the
establishment of virtual charter schools; providing
application requirements for establishment of a
virtual charter school; authorizing a charter school
to implement blended learning courses; providing
funding for a virtual charter school; establishing
administrative fees for a virtual charter school;
amending s. 1002.37, F.S.; redefining the term "full-
time equivalent student" as it applies to the Florida
Virtual School; providing instruction, funding,
assessment, and accountability requirements; amending
s. 1002.45, F.S.; requiring school districts to
provide all public school students the opportunity to



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participate in virtual instruction programs; requiring school districts to provide full-time and part-time virtual instruction program options; authorizing a school district to enter into an agreement with a charter virtual school to provide virtual instruction to district students; authorizing virtual charter school contracts; providing additional provider qualifications relating to curriculum, student performance accountability, and disclosure; revising student eligibility requirements; providing funding and accountability requirements; creating s. 1002.455, F.S.; establishing student eligibility requirements for virtual instruction; amending s. 1003.428, F.S.; requiring at least one course required for high school graduation to be completed through online learning; creating s. 1003.498, F.S.; authorizing school districts to offer virtual courses and blended learning courses; amending s. 1008.22, F.S.; requiring all statewide end-of-course assessments to be administrated online by the 2014-2015 school year; amending s. 1011.61, F.S.; redefining the term "full-time equivalent student" for purposes of virtual instruction; amending s. 1012.57, F.S.; authorizing school districts to issue adjunct teaching certificates to individuals to provide online instruction; revising requirements for adjunct teaching certificateholders; providing for annual contracts; requiring the Department of Education to submit a report to the Governor and the Legislature



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1058 relating to school district offering of, and student
1059 access to, digital learning; providing an effective
1060 date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the 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.

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 education¹¹ 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

<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

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 #51 and 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.

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 be 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.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the 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.....	☒	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.



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LEGISLATIVE ACTION

Senate

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House

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



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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~~



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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:



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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-subparagraph. Beginning with the 2011-2012 school year, all



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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



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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



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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



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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



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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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565 school students who earned high school credit in
566 Algebra I take the Algebra I end-of-course assessment
567 during the 2010-2011 school year; providing effective
568 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.

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/CS/SB 1618

INTRODUCER: Judiciary Committee, Rules Subcommittee on Ethics and Elections, and Senator Diaz de la Portilla

SUBJECT: Elections

DATE: April 13, 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	Fav/CS
4. Pigott	Meyer, C.	BC	Pre-meeting
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill 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 elects³ 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:

This bill 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.

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 a modest increase to the General Revenue Fund depending on the number and extent of administrative fines collected, which are indeterminate at this time.

The bill does not have a fiscal impact to the Division of Administrative Hearings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS/CS by Judiciary on April 12, 2011:

The committee substitute clarifies that if a person alleged to have committed a violation does not elect to have an administrative hearing conducted by an administrative law judge, then he or she is still entitled to a hearing before the Florida Elections Commission.

CS by Ethics and Elections on March 21, 2011:

The committee substitute 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.



978794

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Lynn) recommended the following:

Senate Amendment (with title amendment)

Delete lines 21 - 45

and insert:

(1) The Department of Children and Family Services shall require a drug test consistent with s. 112.0455 to randomly screen individuals who apply for temporary assistance for needy families (TANF). The cost of drug testing shall be the responsibility of the individual.

(a) Individuals who are subject to the requirements of this section include any parent or caretaker relative who is included in the cash assistance group, including individuals who may be exempt from work activity requirements due to the age of the



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youngest child or who may be excepted from work activity requirements under s. 414.065(4).

(b) An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (2)(j).

(2) The department shall:

(a) Provide notice of random drug testing to each individual at the time of application. The notice must advise the individual that drug testing may be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. The individual shall be advised that the drug testing may be avoided if the individual does not apply for TANF benefits. Dependent children under the age of 18 are exempt from the drug testing.

(b) Require that for two-parent families, both parents must comply with the drug testing if the parents are randomly chosen to undergo the testing.

(c) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative in accordance with s. 414.095(14)(c) must comply with the drug testing if the teen parent is randomly chosen to undergo the testing.

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

And the title is amended as follows:

Delete lines 3 - 5
and insert:



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43 Families Program; creating s. 414.145, F.S.; requiring
44 the Department of Children and Family Services to
45 perform a random drug test on individuals who apply
46 for



860258

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Lynn) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 40
and insert:
the time of application. The notice must advise the individual
that drug testing will be conducted as a condition for receiving
TANF benefits and that the individual must bear the cost of
testing. If the individual tests negative for controlled
substances, the department shall reimburse the individual for
the cost of the testing. The individual shall be advised that
the required drug

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



860258

14 And the title is amended as follows:
15 Delete lines 7 - 8
16 and insert:
17 Families Program; making individuals responsible for
18 bearing the cost of drug testing; requiring the
19 department to reimburse individuals for the cost of
20 drug testing if the test results are negative;
21 requiring certain

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 14, 2011

REVISED: 4/14/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Carpenter	Hansen	BHA	Fav/1 amendment
3.	Carpenter	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill 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

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

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:

**Barcode 206806 by Budget Subcommittee on Health and Human Services
Appropriations on April 13, 2011:**

- Provides that individuals who test positive for drugs may reapply for cash assistance after six months with documentation of successful completion of a substance abuse treatment program licensed by the Department of Children and Family Services;
- Requires individuals reapplying for cash assistance benefits to pass an initial drug test after the successful completion of a treatment program; and
- Requires that teen parents who are not required to live with a parent, legal guardian or other adult caretaker relative must comply with the drug-testing requirement.

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



206806

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2011	.	
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	.	

The Committee on Budget Subcommittee on Health and Human Services Appropriations (Oelrich) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 71
and insert:

(b) An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (2)(j).

(2) The department shall:

(a) Provide notice of drug testing to each individual at the time of application. The notice must advise the individual



206806

13 that drug testing will be conducted as a condition for receiving
14 TANF benefits and that the individual must bear the cost of
15 testing. The individual shall be advised that the required drug
16 testing may be avoided if the individual does not apply for TANF
17 benefits. Dependent children under the age of 18 are exempt from
18 the drug-testing requirement.

19 (b) Require that for two-parent families, both parents must
20 comply with the drug-testing requirement.

21 (c) Require that any teen parent who is not required to
22 live with a parent, legal guardian, or other adult caretaker
23 relative in accordance with s. 414.095(14)(c) must comply with
24 the drug-testing requirement.

25 (d) Advise each individual to be tested, before the test is
26 conducted, that he or she may, but is not required to, advise
27 the agent administering the test of any prescription or over-
28 the-counter medication he or she is taking.

29 (e) Require each individual to be tested to sign a written
30 acknowledgment that he or she has received and understood the
31 notice and advice provided under paragraphs (a) and (d).

32 (f) Assure each individual being tested a reasonable degree
33 of dignity while producing and submitting a sample for drug
34 testing, consistent with the state's need to ensure the
35 reliability of the sample.

36 (g) Specify circumstances under which an individual who
37 fails a drug test has the right to take one or more additional
38 tests.

39 (h) Inform an individual who tests positive for a
40 controlled substance and is deemed ineligible for TANF benefits
41 that the individual may reapply for those benefits 1 year after



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the date of the positive drug test unless the individual meets the requirements of paragraph (j). If the individual tests positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test unless the individual meets the requirements of paragraph (j).

(i) Provide any individual who tests positive with a list of licensed substance abuse treatment providers that are available in the area in which he or she resides, that meet the requirements of s. 397.401, and that are licensed by the department. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(j) Provide a procedure whereby an individual who tests positive under this section and is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual documents successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department. An individual who has met the requirements of this paragraph and reapplies for TANF benefits must also pass an initial drug test and meet the requirements of subsection (1). Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (1). The cost of any drug testing and substance abuse treatment provided under this section is the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (1) may reapply for benefits under this paragraph only once.



206806

===== 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:

abuse programs; providing conditions for an individual
to reapply for Temporary Assistance for Needy Families
benefits; providing that, if a parent is deemed



125572

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2011	.	
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	.	
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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



596146

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2011	.	
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The Committee on Budget (Flores) recommended the following:

Senate Substitute for Amendment (125572)

Delete line 41
and insert:
funding organization. For the information identified in
subparagraph 3., the department shall first request the
taxpayer's consent to the release of the information, and shall
withhold the information pertaining to a taxpayer that objects
to the release of the information. The information may be used
by the



291624

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Lynn) recommended the following:

Senate Amendment

Delete lines 39 - 41
and insert:
period. For the information identified in subparagraphs 1., 2.,
and 4., the department must provide such information within 45
days after a request by an eligible nonprofit scholarship-
funding organization. For the information identified in
subparagraph 3., the department shall first request the
taxpayer's consent to the release of the information and grant
the taxpayer a 45-day notice period to object to the release of
the information. Information pertaining to a taxpayer that
objects to the release of the information may not be released.



291624

14 After the 45-day notice period, the department shall release the
15 information relating to any taxpayer that did not object. The
16 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.....	☒	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 Act⁴ 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

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 Businesses²⁴
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 2007-2008²⁸	
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 2008-2009³¹	
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 2009-2010³⁴	
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 2010-2011³⁷	
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 2011-2012³⁸	
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.

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 confidentiality 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: 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.

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

³ 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: 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 report¹ 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.



969686

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 45 - 46

and insert:

(c) A neurologist;

(d) A developmental or behavioral pediatrician; or

(e) A clinical social worker or mental health counselor

licensed under chapter 491.

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 100

INTRODUCER: Banking and Insurance Committee and Senator Ring

SUBJECT: Autism

DATE: April 11, 2011

REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill requires a licensed physician, other than one providing emergency services and care, to screen a minor for autism spectrum disorder (ASD) when the parent or legal guardian of the minor believes the minor exhibits symptoms of ASD and notifies the physician. Based on a determination by the physician of medical necessity or lack thereof, the physician must refer the minor for additional ASD screening or inform the parent or legal guardian of other available ASD screening options.

The bill requires health insurers and health maintenance organizations (HMOs) to provide coverage for "direct patient access," as defined in the bill, to an appropriate specialist for screening for or evaluation or diagnosis of ASD. The bill mandates that health insurance policies and HMO contracts provide coverage for a minimum of three visits per policy year for that purpose.

This bill has a potential significant fiscal impact on state funds. The Division of State Group Insurance within the Department of Management Services (DMS) evaluated the fiscal impact of the bill on the State Group Health Insurance Program. The DMS advises that because the bill requires coverage for direct patient access and a minimum of three visits per policy year for

autism spectrum screenings (in addition to the non-specialist opinion of the primary care physician), the bill could result in marginally higher cost if medically unnecessary repetition of valid screenings occurs. The DMS solicited comments from the five HMOs that are part of the program and two of the five indicated that the bill would have a fiscal impact. HMO 1 noted the impact as indeterminate and HMO 2 estimates the fiscal impact as \$4.00 per member per month or \$741,946 in Fiscal Year 2011-12.

The bill substantially amends the following sections of the Florida Statutes: 627.6686 and 641.31098.

The bill creates the following section of the Florida Statutes: 381.986.

II. Present Situation:

What is Autism?

Autism is a term used to describe a group of complex developmental disabilities that many researchers believe are the result of a neurological disorder that affects the functioning of the brain. Individuals with autism often have problems communicating with others through spoken language and nonverbal communication. The early signs of autism usually appear in the form of developmental delays before a child turns 3 years old.¹

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

The various forms of autism are referred to as the autism spectrum disorders, meaning that autism can be manifested in a wide variety of combinations, from mild to severe. Thus, many different behaviors can indicate that a person should be diagnosed as autistic.

According to the National Institute of Mental Health (NIMH),² the pervasive developmental disorders, or ASDs, range from a severe form, called autistic disorder, to a milder form, Asperger's syndrome.³ If a child has symptoms of either of these disorders, but does not meet the specific criteria for either, the diagnosis is called pervasive developmental disorder not otherwise

¹ Centers for Disease Control and Prevention website, Found at: <<http://www.cdc.gov/ncbddd/autism/signs.html>> (Last visited on March 17, 2011).

² Department of Health and Human Services, National Institute of Mental Health. *Autism Spectrum Disorders: Pervasive Developmental Disorders*. Printed 2004 Reprinted 2008. Found at: <<http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf>> (Last visited on March 17, 2011).

³ The NIMH states that children with Asperger's syndrome are similar to high-functioning children with autism in that their language and intelligence remain intact. Like autistic children, persons with Asperger's syndrome have repetitive behaviors, severe social problems, and clumsy movements. The symptoms of Asperger's syndrome usually appear later in childhood than those of autism.

specified (PDD-NOS). Other rare, severe disorders that are included in the autism spectrum are Rett syndrome⁴ and childhood disintegrative disorder.⁵

The NIMH states that all children with an ASD demonstrate deficits in:

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

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

⁴ The NIMH provides the following explanation of Rett syndrome: Rett syndrome is relatively rare, affecting almost exclusively females, one out of 10,000 to 15,000. After a period of normal development, sometime between 6 and 18 months, autism-like symptoms begin to appear. The little girl's mental and social development regresses—she no longer responds to her parents and pulls away from any social contact. If she has been talking, she stops; she cannot control her feet; she wrings her hands. Some of the problems associated with Rett syndrome can be treated. Physical, occupational, and speech therapy can help with problems of coordination, movement, and speech.

⁵ The NIMH provides the following explanation of childhood disintegrative disorder: Very few children who have an ASD diagnosis meet the criteria for childhood disintegrative disorder (CDD). An estimate based on four surveys of ASD found fewer than two children per 100,000 with an ASD could be classified as having CDD. This suggests that CDD is a very rare form of ASD. It has a strong male preponderance. Symptoms may appear by age 2, but the average age of onset is between 3 and 4 years. Until this time, the child has age-appropriate skills in communication and social relationships. The long period of normal development before regression helps differentiate CDD from Rett syndrome. The loss of such skills as vocabulary is more dramatic in CDD than they are in classical autism. The diagnosis requires extensive and pronounced losses involving motor, language, and social skills. CDD is also accompanied by loss of bowel and bladder control and oftentimes seizures and a very low IQ.

The Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association, is the primary system used to classify and diagnose mental disorders. The 4th edition of the DSM was released in 1994. On February 10, 2010, the American Psychiatric Association released its draft criteria for the fifth edition of the DSM on its website.⁶ The draft DSM-5 includes collapsing all autism related diagnoses into one single category, “autism spectrum disorder” that would incorporate autistic disorder, Asperger’s syndrome, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified. The final DSM-5 is not scheduled for release until May 2013.

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

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

The law requires certain insurance coverage for diagnostic screening, intervention, and treatment of autism spectrum disorder for eligible individuals and defines an eligible individual as:

. . .an individual under 18 years of age or an individual 18 years of age or older who is in high school who has been diagnosed as having a developmental disability at 8 years of age or younger.⁷

Diagnosis of Autism Spectrum Disorders

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

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

The diagnosis of an ASD is a two-stage process. The first stage involves developmental screening during “well child” check-ups. These screening tests are used solely for identifying

⁶ Proposed Draft Revisions to DSM Disorders and Criteria. Found at: <<http://www.dsm5.org/Pages/Default.aspx>> (Last visited on March 17, 2011).

⁷ ss. 627.6686(2)(c) and 641.31098(2)(c), F.S.

⁸ Centers for Disease Control and Prevention website. Found at: <<http://www.cdc.gov/ncbddd/autism/screening.html>> (Last visited on March 17, 2011).

⁹ Centers for Disease Control and Prevention website. Found at <<http://www.cdc.gov/ncbddd/autism/screening.html>> (Last visited on March 17, 2011).

children with developmental disabilities. Additional screening may be needed if a child is at high risk¹⁰ for an ASD or if the symptoms warrant it.¹¹

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

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

Treatment Approaches

Much of the scientific and clinical evidence indicates that early treatment of autism during preschool years (ages 3 to 5) often yields positive results in mitigating the effects of ASDs. According to the National Institute of Neurological Disorders and Stroke (NINDS), therapies for autism are designed to remedy specific symptoms.¹³ Educational and behavioral interventions are highly-structured and usually aimed at the development of skills such as language and social skills. Medication may be prescribed to reduce self-injurious behavior or other behavioral symptoms of autism. Early intervention is important for children because children learn most rapidly when they are very young. If begun early enough, such intervention has a chance of favorably influencing brain development. In a 2001 report, the Commission on Behavioral and Social Sciences and Education recommended that treatment “services begin as soon as a child is suspected of having an autistic spectrum disorder. Those services should include a minimum of 25 hours a week, 12 months a year, in which the child is engaged in systematically planned, and developmentally appropriate educational activity toward identified objectives.”¹⁴

The Center for Autism and Related Disabilities provided the following information concerning the application of speech-language therapy, occupational therapy, and physical therapy for individuals with autism:

¹⁰ The CDC considers a child with a sibling or parent with an ASD to be at high risk.

¹¹ Centers for Disease Control and Prevention website, Found at <<http://www.cdc.gov/ncbddd/autism/screening.html>> (Last visited on March 17, 2011).

¹² Centers for Disease Control and Prevention website, Found at <<http://www.cdc.gov/ncbddd/autism/screening.html>> (Last visited on March 17, 2011).

¹³ National Institutes of Health, National Institute of Neurological Disorders and Stroke, Autism Information Page. Found at: <http://www.ninds.nih.gov/disorders/autism/autism.htm#Is_there_any_treatment> (Last visited on March 18, 2011).

¹⁴ Commission on Behavioral and Social Sciences and Education, *Educating Children with Autism* 6, 2001. Found at: <http://www.nap.edu/openbook.php?record_id=10017&page=66> (Last visited on March 18, 2011).

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

According to the NIMH, a number of treatment approaches have evolved in the decades since autism was first identified. These approaches include developmental, behaviorist, and nonstandard. Developmental approaches provide consistency and structure along with appropriate levels of stimulation.

Behaviorist training approaches are based on rewarding individuals for a certain type of behavior. Dr. Ivar Lovaas pioneered the use of behaviorist methods for children with autism more than 25 years ago. Lovaas therapy involves time-intensive, highly structured, repetitive sequences in which a child is given a command and rewarded each time he responds correctly. Using this approach for up to 40 hours a week, some children may be brought to the point of near-normal behavior. Others are much less responsive to the treatment. However, some researchers and therapists believe that less intensive treatments, particularly those begun early in a child's life, may provide the same level of efficacy.

Health Insurance Coverage for Autism Spectrum Disorders in Florida

In 2008, the Legislature passed CS/CS/SB 2654, which included the *Steven A. Geller Autism Coverage Act* and the *Window of Opportunity Act*.¹⁵

The Window of Opportunity Act required the Office of Insurance Regulation (OIR) to convene a workgroup of stakeholders by August 31, 2008, to negotiate a compact for a binding agreement among the participants relating to insurance coverage and access to services for persons with developmental disabilities. The law required the compact to include coverage for behavioral analysis and behavior assistant services, speech therapy, physical therapy, and occupational therapy when medically necessary; policies and procedures for notifying policy holders of the amount, scope, and developmental disability conditions covered. In addition, the compact was to provide penalties for documented cases of denial of claims for medically necessary services due to the presence of a developmental disability. The law also required the compact to provide proposals for new product lines that may be offered in conjunction with traditional health insurance to provide a more appropriate means of spreading risk, financing costs, and accessing favorable prices.

In September 2008, the OIR convened the Developmental Disabilities Compact Workgroup to develop the compact required in law. A compact was developed by the workgroup and adopted

¹⁵ See ch. 2008-30, L.O.F.

on December 17, 2008.¹⁶ Insurers and HMOs that sign onto the compact agreement must provide coverage for developmental disabilities as specified in the compact for all plans issued or renewed after January 1, 2010. The OIR reports that Total Health Choice is the only health insurer that has signed onto the autism compact.¹⁷

All insurers and HMOs that did not sign the Developmental Disabilities Compact Workgroup by April 1, 2009, are subject to the requirements of the Steven A. Gellar Autism Act. The Act requires insurers, including the state group insurance plan, to provide coverage for well-baby and child screening for diagnosing the presence of autism and to cover the treatment of autism through applied behavioral analysis and assistant services, physical therapy, speech therapy, and occupational therapy.¹⁸ The autism disorders covered in the law are: autistic disorder, Asperger's syndrome, and pervasive developmental disorder not otherwise specified. The insurance coverage is limited to \$36,000 annually with a \$200,000 total lifetime benefit. Beginning January 1, 2011, the coverage maximum increases with inflation.

State Group Health Insurance Program

The Division of State Group Health Insurance of the Department of Management Services (DMS) offers health insurance benefits for state and political subdivision employees.¹⁹ On January 1, 2010, the DMS implemented the requirements of the Steven A. Geller Autism Coverage Act, which requires comprehensive coverage for the screening, diagnosis, and treatment of autism spectrum disorder. The DMS required to cover well-baby and child screening for diagnosing the presence of autism and to cover the treatment of autism through applied behavior analysis and assistant services, physical therapy, speech therapy and occupational therapy. The disorders covered are autistic disorder, Asperger's syndrome and pervasive developmental disorder not otherwise specified. Children under age 18 or in high school are covered.

III. Effect of Proposed Changes:

Section 1 creates s. 381.986, F.S., to require a licensed physician to screen a minor for ASD, in accordance with the American Academy of Pediatrics' guidelines,²⁰ when the parent or legal guardian of the minor believes the minor exhibits symptoms of ASD and notifies the physician. If the physician determines that a referral to a specialist is medically necessary, he or she must refer the minor to an appropriate specialist to determine whether the minor meets diagnostic criteria for ASD. If the physician determines that a referral to a specialist is not medically necessary, the physician must inform the parent or guardian that he or she can self-refer to an

¹⁶ Developmental Disabilities Compact. Found at: <<http://www.floir.com/pdf/DDCProposal-A.pdf>> (Last visited on March 18, 2011).

¹⁷ Florida Department of Financial Services Library. Found at: http://www.myfloridacfo.com/consumers/insurancelibrary/index.htm#insurance/1_and_h/health_coverages/health_coverage_-_autism_and_developmental_disabilities.htm (last visited on March 18, 2011).

¹⁸ ss. 627.6686 and 641.31098, F.S.

¹⁹ See s. 110.123(3)(b), F.S.

²⁰ Greenspan et. al., "Guidelines for Early Identification, Screening, and Clinical Management of Children With Autism Spectrum Disorders," *Pediatrics: Official Journal of the American Academy of Pediatrics*, April 2008, vol. 121, no. 4, p. 828.

appropriate specialist in autism. The bill exempts physicians providing emergency services and care²¹ from this requirement.

An “appropriate specialist” is defined in the bill as a qualified professional who is experienced in the evaluation of autism spectrum disorder, is licensed in this state, and has training in validated diagnostic tools. The term includes, but is not limited to:

- A psychologist;
- A psychiatrist;
- A neurologist; or
- A developmental or behavioral pediatrician.

Sections 2 and 3 amends ss. 627.6686 and 641.31098, F.S., to mandate that health insurance policies and HMO contracts provide coverage for direct patient access to an appropriate specialist, as defined by the bill in s. 381.986, F.S, (see above) for a minimum of three visits per policy year for screening, evaluation, or diagnosis of ASD.

The bill defines “direct patient access” as the ability of an insured to obtain services from a contracted provider without a referral or other authorization before receiving services.

Section 4 provides an effective date for the bill 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.

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.

²¹ See s. 395.1041, F.S.

B. Private Sector Impact:

The bill may increase the total number and cost of claims incurred by insurers and HMOs for evaluations because more minors may be referred for ASD screening or visit specialists under the direct patient access provision. If so, the bill may cause health insurance costs to increase by an indeterminate amount.

C. Government Sector Impact:**Division of State Group Insurance/Department of Management Services**

The Division of State Group Insurance within the Department of Management Services (DMS) evaluated the fiscal impact of the bill on the State Group Health Insurance Program. The DMS advises that because the bill requires coverage for direct patient access and a minimum of three visits per policy year for autism spectrum screenings (in addition to the non-specialist opinion of the primary care physician), the bill could result in marginally higher cost if medically unnecessary repetition of valid screenings occurs.

The DMS solicited comments from the five HMOs that are part of the program and two of the five indicated that the bill would have a fiscal impact. HMO 1 noted the impact as indeterminate and HMO 2 estimates the fiscal impact as \$4.00 per member per month. The estimated fiscal impact for the two HMOs is provided below.

HMO	FY 2011-12	FY 2012-13	FY 2013-14
HMO 1	Indeterminate	Indeterminate	Indeterminate
HMO 2	\$741,936	\$769,584	\$795,744

Department of Health

The Department of Health has provided the following fiscal analysis:

- The bill could result in additional families seeking ASD screening from the Early Steps Program, which would increase the program's screening costs.
- The bill could increase the number children in the program who need early intervention services, which could result in further increased costs and in the inability of the Early Steps Program to ensure that appropriate early intervention services are available to eligible children.
- The exact fiscal impact is indeterminate.

VI. Technical Deficiencies:

Section 1 defines the term "appropriate specialist," in part, with the phrase "has training in validated diagnostic tools." However, the term "validated diagnostic tools" is defined neither in the bill nor in existing Florida law, leaving ambiguous the standard(s) by which a diagnostic tool may be considered "validated."

VII. Related Issues:

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal mandating health coverage to submit to the Agency for Health Care Administration and the appropriate legislative committees having jurisdiction a report assessing the social and financial impacts of the proposed coverage. The Senate Committee on Health Regulation has not received a report analyzing the mandated coverage for direct patient access to an appropriate specialist for a minimum of three visits per policy year as created by the bill.

VIII. Additional Information:

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

CS by Banking and Insurance on March 29, 2011:

The CS provides technical and conforming changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 394.492, Florida
Statutes, is amended to read:

394.492 Definitions.—As used in ss. 394.490-394.497, the
term:

(4) "Child or adolescent at risk of emotional disturbance"
means a person under 18 years of age who has an increased
likelihood of becoming emotionally disturbed because of risk
factors that include, but are not limited to:

(a) Being homeless.



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(b) Having a family history of mental illness.
(c) Being physically or sexually abused or neglected.
(d) Abusing alcohol or other substances.
(e) Being infected with human immunodeficiency virus (HIV).
(f) Having a chronic and serious physical illness.
(g) Having been exposed to domestic violence.
(h) Having multiple out-of-home placements.
(i) Being 9 years of age or younger at the time of referral
for a delinquent act.

Section 2. Section 985.02, Florida Statutes, is amended to
read:

985.02 Legislative intent for the juvenile justice system.—

(1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
the Legislature that the children of this state be provided with
the following protections:

- (a) Protection from abuse, neglect, and exploitation.
- (b) A permanent and stable home.
- (c) A safe and nurturing environment which will preserve a
sense of personal dignity and integrity.
- (d) Adequate nutrition, shelter, and clothing.
- (e) Effective treatment to address physical, social, and
emotional needs, regardless of geographical location.
- (f) Equal opportunity and access to quality and effective
education, which will meet the individual needs of each child,
and to recreation and other community resources to develop
individual abilities.
- (g) Access to preventive services.
- (h) An independent, trained advocate when intervention is
necessary, and a skilled guardian or caretaker in a safe



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environment when alternative placement is necessary.

(i) Gender-specific programming and gender-specific program models and services that comprehensively address the needs of a targeted gender group.

(2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that children in the care of the state's dependency and delinquency systems need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency and delinquency systems must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems. It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency and delinquency systems, which will be fully implemented and utilized as resources permit.

(3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

(a) Develop and implement effective methods of preventing and reducing acts of delinquency, with a focus on maintaining and strengthening the family as a whole so that children may remain in their homes or communities.



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(b) Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, ~~and~~ deep-end commitment, and secure detention.

(c) Provide well-trained personnel, high-quality services, and cost-effective programs within the juvenile justice system.

(d) Increase the capacity of local governments and public and private agencies to conduct rehabilitative treatment programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

The Legislature intends that detention care, in addition to providing secure and safe custody, will promote the health and well-being of the children committed thereto and provide an environment that fosters their social, emotional, intellectual, and physical development.

(4) DETENTION.—

(a) The Legislature finds that there is a need for a secure placement for certain children alleged to have committed a delinquent act. The Legislature finds that detention should be used only when less restrictive interim placement alternatives prior to adjudication and disposition are not appropriate. The Legislature further finds that decisions to detain should be based in part on a prudent assessment of risk and be limited to situations where there is clear and convincing evidence that a child presents a risk of failing to appear or presents a substantial risk of inflicting bodily harm on others as



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evidenced by recent behavior; presents a history of committing a serious property offense prior to adjudication, disposition, or placement; has acted in direct or indirect contempt of court; or requests protection from imminent bodily harm.

(b) The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. Therefore, the Legislature finds that secure detention is appropriate to ensure public safety and guarantee a juvenile's appearance in court ~~provide punishment that discourages further delinquent behavior~~. The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.

~~(5) SERIOUS OR HABITUAL JUVENILE OFFENDERS. The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, A significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for~~



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~~adult offenders. Recidivism rates for each of these classes of
offenders exceed those tolerated by the Legislature and by the
citizens of this state.~~

(5)~~(6)~~ SITING OF FACILITIES.-

(a) The Legislature finds that timely siting and development of needed residential facilities for juvenile offenders is critical to the public safety of the citizens of this state and to the effective rehabilitation of juvenile offenders.

(b) It is the purpose of the Legislature to guarantee that such facilities are sited and developed within reasonable timeframes after they are legislatively authorized and appropriated.

(c) The Legislature further finds that such facilities must be located in areas of the state close to the home communities of the children they house in order to ensure the most effective rehabilitation efforts and the most intensive postrelease supervision and case management. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property.

(d) It is the intent of the Legislature that all other departments and agencies of the state shall cooperate fully with the Department of Juvenile Justice to accomplish the siting of facilities for juvenile offenders.



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The supervision, counseling, rehabilitative treatment, and punitive efforts of the juvenile justice system should avoid the inappropriate use of correctional programs and large institutions. The Legislature finds that detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition.

(6)~~(7)~~ PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—
Parents, custodians, and guardians are deemed by the state to be responsible for providing their children with sufficient support, guidance, and supervision to deter their participation in delinquent acts. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caretakers to fulfill their responsibilities are identified through the delinquency intake process and that appropriate recommendations to address those problems are considered in any judicial or nonjudicial proceeding. Nonetheless, as it is also the intent of the Legislature to preserve and strengthen the child's family ties, it is the policy of the Legislature that the emotional, legal, and financial responsibilities of the caretaker with regard to the care, custody, and support of the child continue while the child is in the physical or legal custody of the department.

(7)~~(8)~~ GENDER-SPECIFIC PROGRAMMING.—

(a) The Legislature finds that the prevention, treatment, and rehabilitation needs of youth served by the juvenile justice



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system are gender-specific.

(b) Gender-specific programming refers to unique program models and services that comprehensively address the needs of a targeted gender group. Gender-specific services require the adherence to the principle of equity to ensure that the different interests of young women and men are recognized and varying needs are met, with equality as the desired outcome. Gender-specific programming focuses on the differences between young females' and young males' roles and responsibilities, positions in society, access to and use of resources, and social codes governing behavior. Gender-specific programs increase the effectiveness of programs by making interventions more appropriate to the specific needs of young women and men and ensuring that these programs do not unknowingly create, maintain, or reinforce gender roles or relations that may be damaging.

(8) CHILDREN 9 YEARS OF AGE OR YOUNGER.—The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger should be diverted into prearrest or postarrest programs, civil citation programs, children-in-need-of-services and families-in-need-of-services programs, or other programs, as appropriate. If, based upon a needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the Department of Children and Family Services, as appropriate, to identify the most appropriate services and supports and available funding sources to meet the needs of the child.



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(9) RESTORATIVE JUSTICE.—

(a) It is the intent of the Legislature that the juvenile justice system advance the principles of restorative justice. The department shall focus on repairing the harm to victims of delinquent behavior by ensuring that the child understands the effect of his or her delinquent behavior on the victim and the community and that the child restores the losses of his or her victim.

(b) Offender accountability is one of the principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage, or injury perpetrated upon the victim and the community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others, and when the offender makes amends for the harm, loss, or damage through restitution, community service, or other appropriate repayment.

Section 3. Subsection (1) of section 985.125, Florida Statutes, is amended to read:

985.125 Prearrest or postarrest diversion programs.—

(1) A law enforcement agency, ~~or~~ school district, county, municipality, or the department, in cooperation with the state attorney, is encouraged to ~~may~~ establish a prearrest or postarrest diversion programs. Youth who are taken into custody for first-time misdemeanor offenses or offenders who are 9 years of age or younger should be given an opportunity to participate in prearrest or postarrest diversion programs ~~program~~.

Section 4. Paragraph (d) of subsection (1) of section



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985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of juvenile probation officer during intake; screenings and assessments.—

(1) The juvenile probation officer shall serve as the primary case manager for the purpose of managing, coordinating, and monitoring the services provided to the child. Each program administrator within the Department of Children and Family Services shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the assigned juvenile probation officer shall be responsible for the following:

(d) *Completing risk assessment instrument.*—The juvenile probation officer shall ensure that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court. If, upon completion of the risk assessment instrument, the child is ineligible for secure detention based on the criteria in s. 985.24(2)(e), the juvenile probation officer shall make a referral to the appropriate shelter for a child in need of services or family in need of services.

Section 5. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of secure, nonsecure, or home detention must ~~shall~~ be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;



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(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;

(c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure, nonsecure, or home detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(e) Due to a misdemeanor charge of domestic violence if the child lives in a family that has a history of family violence, as defined in s. 741.28, or if the child is a victim of abuse or neglect, as defined in s. 39.01, and the decision to place the child in secure detention care is mitigated by the history of trauma faced by the child, unless the child would otherwise be subject to secure detention based on his or her prior history.

(3) A child alleged to be dependent under chapter 39 may



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not, under any circumstances, be placed into secure detention care.

(4) A child 9 years of age or younger may not be placed into secure detention care unless the child is charged with a capital felony, a life felony, or a felony of the first degree.

(5)~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 6. Paragraphs (a) and (b) of subsection (2) of section 985.245, Florida Statutes, are amended to read:

985.245 Risk assessment instrument.—

(2) (a) The risk assessment instrument for detention care placement determinations and court orders shall be developed by the department in consultation ~~agreement~~ with representatives appointed by the following associations: the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, the Public Defenders Association, the Florida Sheriffs Association, and the Florida Association of Chiefs of Police. Each association shall appoint two individuals, one representing an urban area and one representing a rural area. The risk assessment instrument shall be effective at predicting risk and avoiding the unnecessary use of secure detention. ~~The parties involved shall evaluate and revise the risk assessment instrument as is considered necessary using the method for revision as agreed by the parties.~~

(b) The risk assessment instrument shall accurately predict a child's risk of rearrest or failure to appear in court. ~~The risk assessment instrument may take the following factors take~~



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into consideration, but need not be limited to, the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, ~~theft of a motor vehicle or possession of a stolen motor vehicle~~, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure, nonsecure, or home detention care.

Section 7. Section 985.255, Florida Statutes, is amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into ~~nonsecure or~~ home detention care or detained in secure detention care before ~~prior to~~ a detention hearing may continue to be detained by the court if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.



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(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing a felony ~~an~~ offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of



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the child's probation or conditional release supervision.
However, a child detained under this paragraph may be held only
in a consequence unit as provided in s. 985.439. If a
consequence unit is not available, the child shall be placed on
home detention with electronic monitoring.

(i) The child is detained on a judicial order for failure
to appear and has previously willfully failed to appear, after
proper notice, for an adjudicatory hearing on the same case
regardless of the results of the risk assessment instrument. A
child may be held in secure detention for up to 72 hours in
advance of the next scheduled court hearing pursuant to this
paragraph. The child's failure to keep the clerk of court and
defense counsel informed of a current and valid mailing address
where the child will receive notice to appear at court
proceedings does not provide an adequate ground for excusal of
the child's nonappearance at the hearings.

(j) The child is detained on a judicial order for failure
to appear and has previously willfully failed to appear, after
proper notice, at two or more court hearings of any nature on
the same case regardless of the results of the risk assessment
instrument. A child may be held in secure detention for up to 72
hours in advance of the next scheduled court hearing pursuant to
this paragraph. The child's failure to keep the clerk of court
and defense counsel informed of a current and valid mailing
address where the child will receive notice to appear at court
proceedings does not provide an adequate ground for excusal of
the child's nonappearance at the hearings.

(2) A child who is charged with committing a felony ~~an~~
offense of domestic violence as defined in s. 741.28 and who



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does not meet detention criteria may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

(3)(a) A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the juvenile probation officer and, based on the criteria in subsection (1), shall determine the need for continued detention. A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court.

(b) If the court orders a placement more restrictive than



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indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or in s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4).

Section 8. Subsection (1) of section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(1) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(a) Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

(b) Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, urine monitoring, and treatment of the child and release of the child from



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residential commitment into the community in a postcommitment nonresidential conditional release program. If the child is not successful in the conditional release program, the department may use the transfer procedure under subsection (3).

~~(c) Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.47.~~

~~1. Following a delinquency adjudicatory hearing under s. 985.35 and a delinquency disposition hearing under s. 985.433 that results in a commitment determination, the court shall, on its own or upon request by the state or the department, determine whether the protection of the public requires that the child be placed in a program for serious or habitual juvenile offenders and whether the particular needs of the child would be best served by a program for serious or habitual juvenile offenders as provided in s. 985.47. The determination shall be made under ss. 985.47(1) and 985.433(7).~~

~~2. Any commitment of a child to a program or facility for serious or habitual juvenile offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.~~

(c)~~(d)~~ Commit the child to the department for placement in a program or facility for juvenile sexual offenders in accordance with s. 985.48, subject to specific appropriation for such a program or facility.

1. The child may only be committed for such placement pursuant to determination that the child is a juvenile sexual offender under the criteria specified in s. 985.475.



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2. Any commitment of a juvenile sexual offender to a program or facility for juvenile sexual offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(d) Commit the child to the department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The department's mother-infant program must be licensed as a child care facility in accordance with s. 402.308, and must provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of their infants who, upon agreement of the mother, may accompany them in the program.

Section 9. Subsection (1) of section 985.45, Florida Statutes, is amended to read:

985.45 Liability and remuneration for work.—

(1) Whenever a child is required by the court to participate in any work program under this part or whenever a child volunteers to work in a specified state, county, municipal, or community service organization supervised work program or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or probation program, the child is an employee of the state for the purposes of chapter 440 liability.

Section 10. Section 985.632, Florida Statutes, is amended to read:

985.632 Program review and reporting requirements ~~Quality assurance and cost-effectiveness.~~—



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(1) LEGISLATIVE INTENT.—It is the intent of the Legislature that the department:

(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs that ~~of the department which~~ achieve desired performance levels.

(b) Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

(c) ~~(b)~~ Provide information about the cost of such programs and their differential effectiveness so that program ~~the~~ quality may ~~of such programs can~~ be compared and improvements made continually.

(d) ~~(e)~~ Provide information to aid in developing related policy issues and concerns.

(e) ~~(d)~~ Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.

(f) ~~(e)~~ Provide a basis for a system of accountability so that each youth ~~client~~ is afforded the best programs to meet his or her needs.

(g) ~~(f)~~ Improve service delivery to youth ~~clients~~.

(h) ~~(g)~~ Modify or eliminate activities that are not effective.

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

(a) "Youth" ~~"Client"~~ means any person who is being provided treatment or services by the department or by a provider under contract with the department.

(b) "Program" means any facility, service, or program for youth which is operated by the department or by a provider under contract with the department.



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565 ~~(c)-(b)~~ "Program component" means an aggregation of
566 generally related objectives which, because of their special
567 character, related workload, and interrelated output, can
568 logically be considered an entity for purposes of organization,
569 management, accounting, reporting, and budgeting.

570 ~~(c) "Program effectiveness" means the ability of the~~
571 ~~program to achieve desired client outcomes, goals, and~~
572 ~~objectives.~~

573 (d) "Program group" means a collection of programs having
574 sufficient similarity of functions, services, and population to
575 allow appropriate comparisons between programs within the group.

576 (3) COMPREHENSIVE ACCOUNTABILITY REPORT.—The department
577 shall use a standard methodology for annually measuring,
578 evaluating, and reporting program outputs and youth outcomes for
579 each program and program group. The department shall submit a
580 report to the appropriate committees of the Legislature and the
581 Governor by January 15 of each year. The department shall notify
582 the Office of Program Policy Analysis and Government
583 Accountability and each contract service provider of substantive
584 changes to the methodology. The standard methodology must:

585 (a) Define common terminology and operational definitions
586 and methods by which the performance of program outputs and
587 outcomes may be measured.

588 (b) Specify program outputs for each program and for each
589 program group within the juvenile justice continuum.

590 (c) Report cost data for each program operated or
591 contracted by the department for the fiscal year corresponding
592 to the program outputs and outcomes being reported. The
593 ~~department shall annually collect and report cost data for every~~



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~~program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

(4) PROGRAM ACCOUNTABILITY MEASURES.—

(a) ~~The department, in consultation with the Office of Economic and Demographic Research and contract service providers,~~ shall develop a cost-effectiveness model and apply the program accountability measures analysis model to each commitment program and include the results in the comprehensive accountability report. ~~Program recidivism rates shall be a component of the model. The~~ program accountability measures



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analysis cost-effectiveness model shall compare program costs to expected and actual youth recidivism rates client outcomes and program outputs. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the program accountability measure analysis cost-effectiveness model.

~~(b) The department shall rank commitment programs based on the cost-effectiveness model and shall submit a report to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year.~~

~~(b)(c)~~ Based on reports of the department on client outcomes and program outputs and on the department's most recent program accountability measures analysis cost-effectiveness rankings, the department may terminate its contract with or discontinue a commitment program ~~operated by the department or a provider~~ if the program has failed to achieve a minimum threshold of recidivism and cost-effectiveness program effectiveness. This paragraph does not preclude the department from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

~~(c)(d)~~ The department shall notify the Office of Program Policy Analysis and Government Accountability and each contract service provider of substantive changes to the program accountability measures analysis. ~~In collaboration with the Office of Economic and Demographic Research, and contract service providers, the department shall develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance-based program budgeting measures~~



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~~approved by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.~~

(d) ~~(e)~~ Contingent upon specific appropriation, the department, in consultation with the Office of Economic and Demographic Research, and contract service providers, shall:

1. Construct a profile of each commitment program which ~~that~~ uses the results of the quality assurance report required by this section, the program accountability measure analysis ~~cost-effectiveness report~~ required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, youth ~~client~~ outcomes and program outputs, provider contracts, quality assurance standards, and the program accountability measure analysis ~~cost-effectiveness model~~.

(5) QUALITY ASSURANCE.—The department shall:

(a) Establish a comprehensive quality assurance system for each program operated by the department or operated by a provider under contract with the department. Each contract entered into by the department must provide for quality assurance and include the results in the comprehensive accountability report.



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(b) Provide operational definitions of and criteria for quality assurance for each specific program component.

(c) Establish quality assurance goals and objectives for each specific program component.

(d) Establish the information and specific data elements required for the quality assurance program.

(e) Develop a quality assurance manual of specific, standardized terminology and procedures to be followed by each program.

(f) Evaluate each program operated by the department or a provider under a contract with the department and establish minimum thresholds for each program component. If a provider fails to meet the established minimum thresholds, such failure shall cause the department to cancel the provider's contract unless the provider achieves compliance with minimum thresholds within 6 months or unless there are documented extenuating circumstances. In addition, the department may not contract with the same provider for the canceled service for a period of 12 months. If a department-operated program fails to meet the established minimum thresholds, the department must take necessary and sufficient steps to ensure and document program changes to achieve compliance with the established minimum thresholds. If the department-operated program fails to achieve compliance with the established minimum thresholds within 6 months and if there are no documented extenuating circumstances, the department must notify the Executive Office of the Governor and the Legislature of the corrective action taken. Appropriate corrective action may include, but is not limited to:

1. Contracting out for the services provided in the



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program;

2. Initiating appropriate disciplinary action against all employees whose conduct or performance is deemed to have materially contributed to the program's failure to meet established minimum thresholds;

3. Redesigning the program; or

4. Realigning the program.

~~The department shall submit an annual report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than February 1 of each year. The annual report must contain, at a minimum, for each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the information contained in the report.~~

~~(6) The department shall collect and analyze available statistical data for the purpose of ongoing evaluation of all programs. The department shall provide the Legislature with necessary information and reports to enable the Legislature to make informed decisions regarding the effectiveness of, and any needed changes in, services, programs, policies, and laws.~~



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Section 11. Subsection (48) of section 985.03, Florida Statutes, is repealed.

Section 12. Subsection (56) of section 985.03, Florida Statutes, is repealed.

Section 13. Section 985.47, Florida Statutes, is repealed.

Section 14. Section 985.483, Florida Statutes, is repealed.

Section 15. Section 985.486, Florida Statutes, is repealed.

Section 16. Section 985.636, Florida Statutes, is repealed.

Section 17. Section 985.494, Florida Statutes, is amended to read:

985.494 Commitment programs for juvenile felony offenders.—

(1) Notwithstanding any other law and regardless of the child's age, a child who is adjudicated delinquent, or for whom adjudication is withheld, for an act that would be a felony if committed by an adult, shall be committed to÷

~~(a) A program for serious or habitual juvenile offenders under s. 985.47 or an intensive residential treatment program for offenders less than 13 years of age under s. 985.483, if the child has participated in an early delinquency intervention program and has completed a sheriff's training and respect program.~~

~~(b) a maximum-risk residential program, if the child has completed two different high-risk residential commitment programs participated in an early delinquency intervention program, has completed a sheriff's training and respect program, and has completed a program for serious or habitual juvenile offenders or an intensive residential treatment program for offenders less than 13 years of age. The commitment of a child to a maximum-risk residential program must be for an~~



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indeterminate period, but may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(2) In committing a child to the appropriate program, the court may consider an equivalent program of similar intensity as being comparable to a program required under subsection (1).

Section 18. Section 985.445, Florida Statutes, is repealed.

Section 19. Paragraphs (a), (b), (c), (e), and (g), of subsection (5) of section 985.0301, Florida Statutes, are amended to read:

985.0301 Jurisdiction.—

(5)(a) Notwithstanding ss. 743.07, 985.43, 985.433, 985.435, 985.439, and 985.441, and except as provided in s. ss. 985.465 ~~and 985.47~~ and paragraph (f), when the jurisdiction of any child who is alleged to have committed a delinquent act or violation of law is obtained, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child that the court had prior to the child becoming an adult.

(b) Notwithstanding ss. 743.07 and 985.455(3), ~~and except as provided in s. 985.47,~~ the term of any order placing a child in a probation program must be until the child's 19th birthday unless he or she is released by the court on the motion of an interested party or on his or her own motion.

(c) Notwithstanding ss. 743.07 and 985.455(3), ~~and except as provided in s. 985.47,~~ the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, ~~985.445,~~ 985.455, and 985.513, and except as provided in this section ~~and s. 985.47,~~ a



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child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), ~~s. 985.445~~, or s. 985.455 after becoming 21 years of age.

(e) The court may retain jurisdiction over a child committed to the department for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, or in a residential sex offender program, ~~or in a program for serious or habitual juvenile offenders as provided in s. 985.47 or s. 985.483~~ until the child reaches the age of 21. If the court exercises this jurisdiction retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, in a residential sex offender program, or the program for serious or habitual juvenile offenders. Such jurisdiction retention does not apply for other programs, other purposes, or new offenses.

(g)1. Notwithstanding ss. 743.07 and 985.455(3), a serious or habitual juvenile offender shall not be held under commitment from a court under s. 985.441(1)(c), ~~s. 985.47~~, or s. 985.565 after becoming 21 years of age. This subparagraph shall apply only for the purpose of completing the serious or habitual juvenile offender program under this chapter and shall be used solely for the purpose of treatment.

2. The court may retain jurisdiction over a child who has been placed in a program or facility for serious or habitual juvenile offenders until the child reaches the age of 21, specifically for the purpose of the child completing the



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program.

Section 20. Paragraph (b) of subsection (4) of section 985.565, Florida Statutes, is amended to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(b) *Juvenile sanctions*.—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.



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2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, ~~985.445~~, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 21. Section 985.66, Florida Statutes, is amended to read:

985.66 Juvenile justice training academies; staff development and training; ~~Juvenile Justice Standards and Training Commission~~; Juvenile Justice Training Trust Fund.—

(1) LEGISLATIVE PURPOSE.—In order to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff that will meet the needs of such persons in their discharge of duties while at the same time meeting the requirements for the American Correction Association accreditation by the Commission on Accreditation for



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Corrections, it is the purpose of the Legislature to require the department to establish, maintain, and oversee the operation of juvenile justice training academies in the state. The purpose of the Legislature in establishing staff development and training programs is to foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs; to positively impact the recidivism of children in the juvenile justice system; and to afford greater protection of the public through an improved level of services delivered by a professionally trained juvenile justice program staff to children who are alleged to be or who have been found to be delinquent.

(2) STAFF DEVELOPMENT ~~JUVENILE JUSTICE STANDARDS AND TRAINING COMMISSION.~~

~~(a) There is created under the Department of Juvenile Justice the Juvenile Justice Standards and Training Commission, hereinafter referred to as the commission. The 17-member commission shall consist of the Attorney General or designee, the Commissioner of Education or designee, a member of the juvenile court judiciary to be appointed by the Chief Justice of the Supreme Court, and 14 members to be appointed by the Secretary of Juvenile Justice as follows:~~

~~1. Seven members shall be juvenile justice professionals: a superintendent or a direct care staff member from an institution; a director from a contracted community-based program; a superintendent and a direct care staff member from a regional detention center or facility; a juvenile probation officer supervisor and a juvenile probation officer; and a director of a day treatment or conditional release program. No~~



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~~fewer than three of these members shall be contract providers.~~

~~2. Two members shall be representatives of local law enforcement agencies.~~

~~3. One member shall be an educator from the state's university and community college program of criminology, criminal justice administration, social work, psychology, sociology, or other field of study pertinent to the training of juvenile justice program staff.~~

~~4. One member shall be a member of the public.~~

~~5. One member shall be a state attorney, or assistant state attorney, who has juvenile court experience.~~

~~6. One member shall be a public defender, or assistant public defender, who has juvenile court experience.~~

~~7. One member shall be a representative of the business community.~~

~~All appointed members shall be appointed to serve terms of 2 years.~~

~~(b) The composition of the commission shall be broadly reflective of the public and shall include minorities and women. The term "minorities" as used in this paragraph means a member of a socially or economically disadvantaged group that includes blacks, Hispanics, and American Indians.~~

~~(c) The Department of Juvenile Justice shall provide the commission with staff necessary to assist the commission in the performance of its duties.~~

~~(d) The commission shall annually elect its chairperson and other officers. The commission shall hold at least four regular meetings each year at the call of the chairperson or upon the~~



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~~written request of three members of the commission. A majority of the members of the commission constitutes a quorum. Members of the commission shall serve without compensation but are entitled to be reimbursed for per diem and travel expenses as provided by s. 112.061 and these expenses shall be paid from the Juvenile Justice Training Trust Fund.~~

~~(e) The department powers, duties, and functions of the commission shall be to:~~

~~(a)1.~~ Designate the location of the training academies; develop, implement, maintain, and update the curriculum to be used in the training of juvenile justice program staff; establish timeframes for participation in and completion of training by juvenile justice program staff; develop, implement, maintain, and update job-related examinations; develop, implement, and update the types and frequencies of evaluations of the training academies; approve, modify, or disapprove the budget for the training academies, and the contractor to be selected to organize and operate the training academies and to provide the training curriculum.

~~(b)2.~~ Establish uniform minimum job-related training courses and examinations for juvenile justice program staff.

~~(c)3.~~ Consult and cooperate with the state or any political subdivision; any private entity or contractor; and with private and public universities, colleges, community colleges, and other educational institutions concerning the development of juvenile justice training and programs or courses of instruction, including, but not limited to, education and training in the areas of juvenile justice.

~~(d)4. Enter into With the approval of the department, make~~



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and ~~enter into such~~ contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as ~~the commission determines~~ are necessary in the execution of the its powers of the department or the performance of its duties.

~~5. Make recommendations to the Department of Juvenile Justice concerning any matter within the purview of this section.~~

(3) JUVENILE JUSTICE TRAINING PROGRAM.—The department ~~commission~~ shall establish a certifiable program for juvenile justice training pursuant to this section, and all department program staff and providers who deliver direct care services pursuant to contract with the department shall be required to participate in and successfully complete the department-approved ~~commission-approved~~ program of training pertinent to their areas of responsibility. Judges, state attorneys, and public defenders, law enforcement officers, and school district personnel may participate in such training program. For the juvenile justice program staff, the department ~~commission~~ shall, based on a job-task analysis:

(a) Design, implement, maintain, evaluate, and revise a basic training program, including a competency-based examination, for the purpose of providing minimum employment training qualifications for all juvenile justice personnel. All program staff of the department and providers who deliver direct-care services who are hired after October 1, 1999, must meet the following minimum requirements:

1. Be at least 19 years of age.
2. Be a high school graduate or its equivalent as



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determined by the department ~~commission~~.

3. Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after September 30, 1999, pleads guilty or nolo contendere to or is found guilty of any felony or a misdemeanor involving perjury or false statement is not eligible for employment, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subparagraph, any person who pled nolo contendere to a misdemeanor involving a false statement before October 1, 1999, and who has had such record of that plea sealed or expunged is not ineligible for employment for that reason.

4. Abide by all the provisions of s. 985.644(1) regarding fingerprinting and background investigations and other screening requirements for personnel.

5. Execute and submit to the department an affidavit-of-application form, adopted by the department, attesting to his or her compliance with subparagraphs 1.-4. The affidavit must be executed under oath and constitutes an official statement under s. 837.06. The affidavit must include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The employing agency shall retain the affidavit.

(b) Design, implement, maintain, evaluate, and revise an advanced training program, including a competency-based examination for each training course, which is intended to enhance knowledge, skills, and abilities related to job performance.



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(c) Design, implement, maintain, evaluate, and revise a career development training program, including a competency-based examination for each training course. Career development courses are intended to prepare personnel for promotion.

(d) The department ~~commission~~ is encouraged to design, implement, maintain, evaluate, and revise juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

(4) JUVENILE JUSTICE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Juvenile Justice Training Trust Fund to be used by the department ~~of Juvenile Justice~~ for the purpose of funding the development and updating of a job-task analysis of juvenile justice personnel; the development, implementation, and updating of job-related training courses and examinations; and the cost of ~~commission-approved~~ juvenile justice training courses; ~~and reimbursement for expenses as provided in s. 112.061 for members of the commission and staff.~~

(b) One dollar from every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b) and 318.18 shall be deposited into the Juvenile Justice Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget cycle or through a supplemental budget approved by the department shall revert to the trust fund.

(5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—



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The number, location, and establishment of juvenile justice training academies shall be determined by the department ~~commission~~.

(6) SCHOLARSHIPS AND STIPENDS.—

(a) By rule, the department ~~commission~~ shall establish criteria to award scholarships or stipends to qualified juvenile justice personnel who are residents of the state who want to pursue a bachelor's or associate in arts degree in juvenile justice or a related field. The department shall handle the administration of the scholarship or stipend. The Department of Education shall handle the notes issued for the payment of the scholarships or stipends. All scholarship and stipend awards shall be paid from the Juvenile Justice Training Trust Fund upon vouchers approved by the Department of Education and properly certified by the Chief Financial Officer. Prior to the award of a scholarship or stipend, the juvenile justice employee must agree in writing to practice her or his profession in juvenile justice or a related field for 1 month for each month of grant or to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period not to exceed 10 years. Repayment shall be made payable to the state for deposit into the Juvenile Justice Training Trust Fund.

(b) The department ~~commission~~ may establish the scholarship program by rule ~~and implement the program on or after July 1, 1996.~~

(7) ADOPTION OF RULES.—The department ~~commission~~ shall adopt rules as necessary to carry out the provisions of this section.



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(8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services is authorized to insure a private agency, individual, or corporation operating a state-owned training school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized herein shall be under the same general terms and conditions as the department is insured for its responsibilities under chapter 284.

~~(9) The Juvenile Justice Standards and Training Commission is terminated on June 30, 2001, and such termination shall be reviewed by the Legislature prior to that date.~~

Section 22. Subsection (8) of section 985.48, Florida Statutes, is repealed.

Section 23. Subsection (1) of section 984.14, Florida Statutes, is amended to read:

984.14 Shelter placement; hearing.—

(1) Unless ordered by the court pursuant to ~~the provisions~~ of this chapter, or upon voluntary consent to placement by the child and the child's parent, legal guardian, or custodian, a child taken into custody may ~~shall~~ not be placed in a shelter prior to a court hearing unless a determination has been made that ~~the provision of~~ appropriate and available services will not eliminate the need for placement and that such placement is required:

(a) To provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an



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agreement; or

(b) Because a parent, custodian, or guardian is unavailable to take immediate custody of the child.

Section 24. Paragraph (a) of subsection (3) of section 985.14, Florida Statutes, is amended to read:

985.14 Intake and case management system.—

(3) The intake and case management system shall facilitate consistency in the recommended placement of each child, and in the assessment, classification, and placement process, with the following purposes:

(a) An individualized, multidisciplinary assessment process that identifies the priority needs of each individual child for rehabilitation and treatment and identifies any needs of the child's parents or guardians for services that would enhance their ability to provide adequate support, guidance, and supervision for the child. This process shall begin with the detention risk assessment instrument and decision, shall include the intake preliminary screening and comprehensive assessment for substance abuse treatment services, mental health services, retardation services, literacy services, and other educational and treatment services as components, additional assessment of the child's treatment needs, and classification regarding the child's risks to the community and, ~~for a serious or habitual delinquent child, shall include the assessment for placement in a serious or habitual delinquent children program under s.~~ 985.47. The completed multidisciplinary assessment process shall result in the predisposition report.

Section 25. For the purpose of incorporating the amendment made by this act to section 984.14, Florida Statutes, in a



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reference thereto, subsection (3) of section 984.13, Florida Statutes, is reenacted to read:

984.13 Taking into custody a child alleged to be from a family in need of services or to be a child in need of services.—

(3) If the child is taken into custody by, or is delivered to, the department, the appropriate representative of the department shall review the facts and make such further inquiry as necessary to determine whether the child shall remain in custody or be released. Unless shelter is required as provided in s. 984.14(1), the department shall:

(a) Release the child to his or her parent, guardian, or legal custodian, to a responsible adult relative, to a responsible adult approved by the department, or to a department-approved family-in-need-of-services and child-in-need-of-services provider; or

(b) Authorize temporary services and treatment that would allow the child alleged to be from a family in need of services to remain at home.

Section 26. 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 juvenile justice; amending s.
394.492, F.S.; including children 9 years of age or



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younger at the time of referral for a delinquent act within the definition of those children who are eligible to receive comprehensive mental health services; amending s. 985.02, F.S.; revising legislative intent for the juvenile justice system; amending s. 985.125, F.S.; encouraging law enforcement agencies, school districts, counties, municipalities, and the Department of Juvenile Justice to establish prearrest or postarrest diversion programs and to give first-time misdemeanor offenders and offenders who are 9 years of age or younger an opportunity to participate in the programs; amending s. 985.145, F.S.; requiring a juvenile probation officer to make a referral to the appropriate shelter if the completed risk assessment instrument shows that the child is ineligible for secure detention; amending s. 985.24, F.S.; prohibiting a child alleged to have committed a delinquent act or violation of law from being placed into secure, nonsecure, or home detention care because of a misdemeanor charge of domestic violence if the child lives in a family that has a history of family violence or if the child is a victim of abuse or neglect unless the child would otherwise be subject to secure detention based on prior history; prohibiting a child 9 years of age or younger from being placed into secure detention care unless the child is charged with a capital felony, a life felony, or a felony of the first degree; amending s. 985.245, F.S.; revising the development process for the risk assessment



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instrument; revising factors to be considered in assessing a child's risk of rearrest or failure to appear; amending s. 985.255, F.S.; providing that a child may be placed in home detention care or detained in secure detention care under certain circumstances; providing that a child who is charged with committing a felony offense of domestic violence and who does not meet detention criteria may nevertheless be held in secure detention care if the court makes certain specific written findings; amending s. 985.441, F.S.; removing obsolete provisions relating to committing a child to a program or facility for serious or habitual juvenile offenders; authorizing a court to commit a female child adjudicated as delinquent to the department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents; amending s. 985.45, F.S.; providing that whenever a child is required by the court to participate in any juvenile justice work program, the child is considered an employee of the state for the purpose of workers' compensation; amending s. 985.632, F.S.; establishing legislative intent that the Department of Juvenile Justice collect and analyze available statistical data for the purpose of ongoing evaluation of all juvenile justice programs; redefining terms; requiring the department to use a standard methodology to annually measure, evaluate, and report program outputs and youth outcomes for each



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program and program group; requiring that the department submit an annual report to the appropriate committees of the Legislature and the Governor; requiring that the department notify specified parties of substantive changes to the standard methodology used in its evaluation; requiring that the department apply a program accountability measures analysis to each commitment program; deleting obsolete provisions; repealing ss. 985.03(48), 985.03(56), 985.47, 985.483, 985.486, and 985.636, F.S., relating to, respectively, legislative intent for serious or habitual juvenile offenders in the juvenile justice system, definitions of terms for a training school and the serious or habitual juvenile offender program, the serious or habitual juvenile offender program in the juvenile justice system, the intensive residential treatment program for offenders less than 13 years of age, and the designation of persons holding law enforcement certification within the Office of the Inspector General to act as law enforcement officers; amending s. 985.494, F.S.; requiring a child who is adjudicated delinquent, or for whom adjudication is withheld, to be committed to a maximum-risk residential program for an act that would be a felony if committed by an adult if the child has completed two different high-risk residential commitment programs; repealing s. 985.445, F.S., relating to cases involving grand theft of a motor vehicle committed by a child; amending ss. 985.0301, and 985.565, F.S.; conforming references to



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1261 changes made by the act; amending s. 985.66, F.S.;

1262 removing all references to the Juvenile Justice

1263 Standards and Training Commission; requiring the

1264 Department of Juvenile Justice to be responsible for

1265 staff development and training; specifying the duties

1266 and responsibilities of the department for staff

1267 development; removing obsolete provisions to conform

1268 to changes made by the act; repealing s. 985.48(8),

1269 F.S., relating to activities of the Juvenile Justice

1270 Standards and Training Commission with respect to

1271 training and treatment services for juvenile sexual

1272 offenders; amending ss. 984.14 and 985.14, F.S.;

1273 revising provisions to conform to changes made by the

1274 act; reenacting s. 914.13(3), F.S., relating to taking

1275 a child into custody allegedly from a family or a

1276 child in need of services, to incorporate the

1277 amendments made to s. 984.14, F.S., in a reference

1278 thereto; providing an effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Fasano) recommended the following:

Senate Amendment to Amendment (559888) (with title amendment)

Between lines 738 and 739
insert:

Section 11. Section 985.652, Florida Statutes, is amended
to read:

985.652 Participation of certain programs in the State Risk
Management Trust Fund.—Pursuant to s. 284.30, the Division of
Risk Management of the Department of Financial Services is
authorized to insure a private agency or, individual, ~~or~~
~~corporation operating a state-owned training school under a~~
~~contract~~ to carry out the purposes and responsibilities of any



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program of the department. The coverage authorized herein shall
be under the same general terms and conditions as the department
is insured for its responsibilities under chapter 284.

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

And the title is amended as follows:

Delete line 1239
and insert:

each commitment program; deleting obsolete provisions;
amending s. 985.652, F.S.; removing a private
corporation operating a state-owned training school
under a contract with the Department of Juvenile
Justice from insurance coverage provided by the
Division of Risk Management of the Department of
Financial Services;

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 1850

INTRODUCER: Senator Evers

SUBJECT: Juvenile Justice Reform

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Preston	Walsh	CF	Favorable
3.	Sadberry	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

I. Summary:

This bill makes changes to the juvenile justice chapter, along with conforming changes to the “Comprehensive Child and Adolescent Mental Health Services Act” in an effort to enhance services for youth in the juvenile justice system. Specifically, the bill:

- Amends the definition of “child or adolescent at risk of emotional disturbance” to include the additional risk factor of “being 9 years of age or younger at the time of referral for a delinquent act;”
- Encourages the diversion of youth nine years of age or younger who are found by a court to pose no danger to the community and are unlikely to recidivate back into supervision;
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- Adds counties, municipalities and the Department of Juvenile Justice (DJJ) to the specified entities that are encouraged to create pre-arrest or post-arrest diversion programs for youth nine years of age or younger and youth who are first time misdemeanants;
- Allows a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to be placed in a Child in need of services/Family in need of services (CINS/FINS) shelter (unless the youth is subject to secure detention because of his or her prior criminal history);
- Requires a juvenile probation officer during intake to recommend referring this type of youth to an appropriate CINS/FINS shelter;
- Prohibits a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree;

- Requires the risk assessment instrument, that should be effective at predicting risk and avoiding the unnecessary use of secure detention, to be developed by the DJJ in consultation with representatives appointed by specified associations;
- Allows for the commitment of a youth who is pregnant, or a mother with an infant, to a mother-infant program;
- Clarifies that youth participating in a work program or in community service under s. 985.45, F.S., are employees of the state for purposes of workers compensation; and
- Consolidates three currently required annual reports into one comprehensive annual report which is due to the Governor and Legislature by January 15 of each year.

This bill substantially amends the following sections of the Florida Statutes: 394.492, 985.02, 985.125, 985.145, 985.24, 985.245, 985.255, 985.441, 985.45, and 985.632.

II. Present Situation:

The mission of DJJ is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.¹ In Fiscal Year 2009-10, 75,166 youth were referred to the DJJ for delinquency offenses. Referrals are the juvenile equivalent of arrests and are the first step in the delinquency process.²

The Department of Children and Families (DCF) and DJJ are working together to improve outcomes for children and youth served by both agencies. One area of focus has become the need to divert young children from the juvenile justice system, while identifying and addressing contributing factors to their delinquency.³ An analysis by DJJ shows that DCF had contact with approximately 30 percent of the youth age nine and younger who were referred to DJJ for a delinquent act.⁴ In Fiscal Year 2009-10, there were 391 youth, ages nine and younger, that were referred to DJJ.⁵

Emotional Disturbance Risk Factors

Section 394.492(4), F.S., defines a “child or adolescent at risk of emotional disturbance” as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of certain specified risk factors. Currently, DCF uses this definition to determine which youth to serve through the Comprehensive Child and Adolescent Mental Health Services Act.

According to DCF, children deemed to be “at risk” may only be funded by general revenue or trust funds as the Community Mental Health Block Grant rules prohibit its use for the “at-risk” population. Children’s Mental Health general revenue and trust funds are limited and are used

¹ Department of Juvenile Justice website, available at: <http://www.djj.state.fl.us/AboutDJJ/index.html> (last visited March 15, 2011).

² Florida Government Accountability Report, Department of Juvenile Justice, available at: <http://www.oppaga.state.fl.us/profiles/1073/> (last visited March 15, 2011).

³ Department of Children and Families, 2009 Staff Analysis and Economic Impact, SB 2128, on file with the Children, Families, and Elder Affairs Committee.

⁴ Department of Juvenile Justice, 2010 Legislative Session Bill Analysis SB 1072, on file with the Senate Criminal Justice Committee.

⁵ Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

primarily for children and adolescents with serious emotional disturbances or emotional disturbances who are not Medicaid-eligible or who have no other available funding source.⁶

Legislative Intent

Section 985.02, F.S., sets forth the Legislature's intent for the juvenile justice system. Subsection (3) of the statute provides that it is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.⁷

Subsection (4) of the statute, relating to juvenile detention, specifies that the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior.

Subsection (5) of the statute, relating to serious or habitual juvenile offenders, provides the following:

The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders. Recidivism rates for each of these classes of offenders exceed those tolerated by the Legislature and by the citizens of this state.⁸

Diversion

Diversion uses programs that are alternatives to the formal juvenile justice system for youth who have been charged with a minor crime. These individuals share certain high-risk factors, including a first offense at age 15 or younger, poor school performance and truancy, lack of parental supervision, substance abuse problems, or gang affiliation. Diversion programs include Community Arbitration, Juvenile Alternative Services Program (JASP), Teen Court, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools. These programs employ a variety of non-judicial sanctions, including:⁹

⁶ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

⁷ Section 985.02(3), F.S.

⁸ Section 985.02(5), F.S.

⁹ Department of Juvenile Justice, Probation and Community Intervention website, available at: <http://www.djj.state.fl.us/Probation/index.html> (last visited March 15, 2011).

- Restitution (payment) to the victim(s);
- Community service hours;
- Letter of apology to the victim(s);
- Curfew;
- Forfeiture of driver's license;
- Encouragement to avoid contact with co-defendants, friends, or acquaintances who are deemed to be inappropriate associations;
- Referrals to local social service agencies; and
- Substance abuse or mental health counseling.

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program.

Intake

Section 985.14, F.S., requires the DJJ to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by DJJ through a case management system, and a child's assigned juvenile probation officer serves as the primary case manager.¹⁰

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument which establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Detention – Initial Assessment

Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.¹¹

Detention Risk Assessment Instrument

Section 985.245, F.S., requires a detention risk assessment instrument (RAI) to be developed by DJJ in agreement with representatives of various associations, including the state attorneys, public defenders, sheriffs, police chiefs, and circuit judges. All determinations and court orders regarding detention placements must be based on a risk assessment of the youth, except in the case of a youth charged with domestic violence. According to DJJ, the current (RAI) has been used since 1992, and it is in the process of being validated.¹²

¹⁰ See ss. 985.14 and 985.145, F.S.

¹¹ Section 985.24(2), F.S.

¹² Department of Juvenile Justice, 2009 Legislative Session Bill Analysis SB 2128, on file with the committee.

Continued Detention

A youth charged with domestic violence (misdemeanor or felony) may be held in secure detention (regardless of whether he or she meets detention criteria) if the court makes specific written findings that respite care is not available and it is necessary to place the youth in secure detention to protect the victim from injury.¹³ Such youth is not eligible to be placed in a CINS/FINS shelter.¹⁴

Mother/Infant Commitment Program

Section 985.441, F.S., governs the operation of juvenile commitment facilities. Currently, the DJJ operates a 20-bed mother/infant program in Miami-Dade County; however, there is no statutory provision for programs designed for pregnant girls or mothers with infants.

Women in Need of Greater Strength (WINGS) for Life was established in 2001 as a residential commitment program for females in an educational environment. On July 1, 2006, WINGS became a residential commitment treatment program for 20 pregnant or postpartum females and their babies. The mission of the WINGS for Life program is to be committed to celebrating diversity and womanhood by working to enhance the quality of life for the young woman and her child.¹⁵

The objectives of the program are to provide a structured and supervised transition from residential placement to the community and to closely monitor the youth to ensure public safety. The goal is to return these youth back into the mainstream of their communities with the skills to lead productive lives and successfully parent their children. The WINGS for Life program currently has the capacity to serve 20 women ages 14 – 19.¹⁶

Program Review and Reporting Requirements

The DJJ is required to submit to the Governor and Legislature various reports relating to program accountability, cost effectiveness, and performance measures, including the following: the Program Accountability Measures Report, a cost-effectiveness report for residential commitment programs; the Outcome Evaluation Report, a report on program outputs and outcomes; and the Quality Assurance Report, a report evaluating the internal processes in programs to determine the level of performance and the quality of services.¹⁷ The DJJ also publishes annually the Comprehensive Accountability Report (CAR).¹⁸

¹³ Section 985.255(2), F.S.

¹⁴ Section 984.14, F.S.

¹⁵ Department of Juvenile Justice, WINGS website, available at http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited March 15, 2011).

¹⁶ *Id.*

¹⁷ Section 985.632, F.S.

¹⁸ Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

III. Effect of Proposed Changes:

Section 1

Amends the definition of “Child or adolescent at risk of emotional disturbance” in s. 394.492, F.S., to include the additional risk factor of being nine years of age or younger at the time of referral for a delinquent act. According to DJJ, this change will allow those youth who qualify to receive treatment services through DCF’s community based care network.¹⁹

Section 2

The bill amends s. 985.02, F.S., relating to legislative intent language as follows. It amends subsection (3) to specify that it is the policy of the state to:

Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, deep-end commitment, and secure detention.

It replaces the language in subsection (4) specifying that secure detention “is appropriate to provide punishment that discourages further delinquent behavior” with language specifying that secure detention “is appropriate to ensure public safety and guarantee court appearance.

It deletes the legislative intent language in subsection (5) relating to serious or habitual juvenile offenders.

It also creates two new subsections. Subsection (8) provides a finding that very young children need age-appropriate services to prevent future delinquent acts. It specifically encourages the diversion of youth nine years of age or younger who are found by the court to pose no danger to the community and are unlikely to recidivate. It also requires DJJ to cooperate with DCF in providing the most appropriate mental health and substance abuse services to these youth.

The new subsection (9) creates legislative intent language on restorative justice, emphasizing the importance of focusing on repairing the damage done to the victim by the delinquent youth, making the youth realize the harm he or she caused, and restoring the victim’s loss.

Section 3

Adds counties, municipalities, and DJJ as qualified entities that may establish prearrest and postarrest diversion programs by amending s. 985.125, F.S. It also encourages the use of prearrest and postarrest diversion programs for first-time misdemeanants and youth who are nine years of age or younger.

¹⁹ *Id.*

Section 4

Amends s. 985.145, F.S., juvenile probation officer responsibilities, to require a juvenile probation officer during intake to recommend referring a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to an appropriate CINS/FINS shelter rather than secure detention (unless the youth is subject to secure detention based upon his or her prior criminal history).

Section 5

Amends s. 985.24, F.S., detention prohibitions, by prohibiting a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree. Furthermore, it prohibits a youth who is charged with misdemeanor domestic violence who also has a violent family history or who is a victim of abuse or neglect from being placed in secure detention, if the decision for such placement is mitigated by the youth's history of trauma. This prohibition does not apply if the youth is subject to secure detention because of his or her prior criminal history.

Section 6

Amends s. 985.245, F.S., the detention risk assessment instrument (RAI), to require that the RAI be developed by DJJ *in consultation with* representatives appointed by the statutorily enumerated associations. The requirement that the parties involved evaluate and revise the RAI is removed and replaced with language requiring the RAI to be effective at predicting risk and avoiding the unnecessary use of secure detention. The bill also requires the RAI to accurately predict a child's risk of rearrest or failure to appear. It also removes "theft of a motor vehicle or possession of a stolen motor vehicle" as a factor that the RAI can consider.

Section 7

Amends s. 985.255, F. S., detention criteria, to specify that a youth charged with "felony" domestic violence, rather than "domestic violence," will be placed in secure detention. This change effectively eliminates youth charged with misdemeanor domestic violence from being placed in secure detention (except in those cases where there is no family violence or abuse history or the youth's own criminal history record warrants such secure detention placement).

Section 8

Authorizes the court to commit a juvenile mother or expectant juvenile mother to the DJJ for placement in a mother-infant program, by amending s. 985.441, F.S. The mother-infant program must be licensed as a childcare facility under s. 402.308, F.S., and the DJJ must adopt rules to govern such programs.

Section 9

Clarifies that youth participating in a work program or community service under s. 985.45, F.S., are employees of the state for workers compensation purposes. This is accomplished by deleting "liability" and replacing it with "chapter 440."

Section 10

Amends s. 985.632, F.S., relating to program review, quality assurance, cost-effectiveness, and reporting requirements. The bill consolidates three currently required annual reports into one comprehensive annual report, the Comprehensive Accountability Report (CAR), which will be

due to the Governor and Legislature by January 15 of each year. The CAR will include the following information:

- Program Accountability Measures (PAM) – a cost-effectiveness report for residential commitment programs.
- Outcome Evaluation (OE) – a report on program outputs and outcomes.
- Quality Assurance (QA) – a report evaluating the internal processes in programs to determine the level of performance and the quality of the services being provided.

Section 11

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:

None.

C. Government Sector Impact:

The DJJ reports that this bill will not have a fiscal impact.²⁰

The DCF reports that the fiscal impact of the Department of Juvenile Justice referring additional children to DCF for children's mental health services is anticipated to be minimal, since children within the target population are served within the limits of available funds.²¹

²⁰ *Id.*

²¹ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

According to the Office of State Courts Administrator, the bill will not have a significant impact on judicial or court workload. The bill encourages the establishment and use of prearrest and postarrest diversion programs for first-time misdemeanants and children who are 9 years of age or younger. The increased use of prearrest and postarrest diversion programs for first-time misdemeanants and children who are 9 years of age or younger could potentially reduce the number of litigated cases and the number of court hearings in the juvenile justice system. The impact is indeterminate because the creation and use of such programs is encouraged and not mandated. Provisions of the bill may require some changes to the Florida Rules of Juvenile Procedure.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if upon findings from a needs assessment, the child is found to be in need of mental health or substance abuse treatment services, DJJ will work with DCF and the child's parent or legal guardian to identify the most appropriate services and supports and available funding sources to meet the needs of the child. These supports include Medicaid, private insurance, private pay and children's mental health funds. According to DCF, most insurance-based resources will not pay for children identified "at-risk," because they require the child to have a mental health diagnosis. This will require careful consideration of the assessment and treatment needs of these children and an understanding of funding sources by those assisting the family.²³

The provisions of the bill may result in an increase in the number of children referred from DJJ to DCF for substance abuse and mental health services. Parents or guardians who choose to pursue services for their children and seek assistance to obtain them through Children's Mental Health general revenue funds may find very limited resources.²⁴

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

²² Office of the State Courts Administrator. Judicial Impact Statement, HB 1233. March 14, 2011.

²³ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

²⁴ *Id.*



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 985.12, Florida Statutes, is amended to
read:

985.12 Civil citation.—

(1) There is established a juvenile civil citation process
for the purpose of providing an efficient and innovative
alternative to custody by the Department of Juvenile Justice for
~~of~~ children who commit nonserious delinquent acts and to ensure
swift and appropriate consequences. The department shall
encourage and assist in the implementation and improvement of



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14 civil citation programs or other similar diversion programs
15 around the state. The civil citation or similar program shall
16 ~~may~~ be established at the local level with the concurrence of
17 the chief judge of the circuit, state attorney, public defender,
18 and the head of each local law enforcement agency involved. The
19 program may be operated by an entity such as a law enforcement
20 agency, the department, a juvenile assessment center, the county
21 or municipality, or some other entity selected by the county or
22 municipality. Whichever entity is selected to operate the civil
23 citation or similar diversion program shall be done so in
24 consultation and agreement with the state attorney and local law
25 enforcement agencies. Under such a juvenile civil citation
26 program or similar diversion program, any law enforcement
27 officer, upon making contact with a juvenile who admits having
28 committed a misdemeanor, may issue a civil citation and assess
29 ~~assessing~~ not more than 50 community service hours, and ~~may~~
30 require participation in intervention services as indicated by
31 an assessment of the appropriate to identified needs of the
32 juvenile, including family counseling, urinalysis monitoring,
33 and substance abuse and mental health treatment services. A copy
34 of each citation issued under this section shall be provided to
35 the department, and the department shall enter appropriate
36 information into the juvenile offender information system. Only
37 first-time misdemeanor offenders are eligible for the civil
38 citation program or similar diversion program. At the conclusion
39 of a juvenile's civil citation program or similar diversion
40 program, the agency operating the program shall report the
41 outcome to the department. The issuance of a civil citation is
42 not considered a referral to the department.



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43 (2) The department shall develop guidelines for the civil
44 citation program which include intervention services that are
45 based upon proven civil citation programs or similar diversion
46 programs within the state.

47 ~~(3)(2)~~ Upon issuing such citation, the law enforcement
48 officer shall send a copy to the ~~county sheriff~~, state attorney,
49 the appropriate intake office of the department, or the
50 community service performance monitor designated by the
51 department, and the parent or guardian of the child, ~~and the~~
52 ~~victim.~~

53 ~~(4)(3)~~ The child shall report to the community service
54 performance monitor within 7 working days after the date of
55 issuance of the citation. The work assignment shall be
56 accomplished at a rate of not less than 5 hours per week. The
57 monitor shall advise the intake office immediately upon
58 reporting by the child to the monitor, that the child has in
59 fact reported and the expected date upon which completion of the
60 work assignment will be accomplished.

61 ~~(5)(4)~~ If the child ~~juvenile~~ fails to report timely for a
62 work assignment, complete a work assignment, or comply with
63 assigned intervention services within the prescribed time, or if
64 the juvenile commits a ~~third or~~ subsequent misdemeanor, the law
65 enforcement officer shall issue a report alleging the child has
66 committed a delinquent act, at which point a juvenile probation
67 officer shall process the original delinquent act as a referral
68 to the department and refer the report to the state attorney for
69 review ~~perform a preliminary determination as provided under s.~~
70 ~~985.145.~~

71 ~~(6)(5)~~ At the time of issuance of the citation by the law



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enforcement officer, such officer shall advise the child that the child has the option to refuse the citation and to be referred to the intake office of the department. That option may be exercised at any time before ~~prior to~~ completion of the work assignment.

Section 2. 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 juvenile civil citations; amending s. 985.12, F.S.; requiring the Department of Juvenile Justice to encourage and assist in the implementation and improvement of civil citation and similar diversion programs; requiring 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; authorizing 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; requiring the entity operating the program to do so in consultation with and agreement by the state attorney and the local law enforcement agencies; authorizing a law enforcement



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officer, upon making contact with a juvenile who admits to having committed a misdemeanor, to require participation in intervention services based upon an assessment of the needs of the juvenile; restricting eligibility of participants for the civil citation program to first-time misdemeanor offenders unless the participation is approved by the state attorney or assistant state attorney; requiring the agency operating the program to report on the outcome to the Department of Juvenile Justice at the conclusion of a youth's civil citation or similar diversion program; providing that the issuance of a civil citation is not considered a referral to the department; requiring the department to develop guidelines for the civil citation program which include intervention services that are based upon proven civil citation and similar diversion programs within the state; deleting a provision requiring that a law enforcement officer send a copy of a civil citation to the victim of the offense; requiring a juvenile probation officer to process the original delinquent act as a referral to the department in specified circumstances and to refer certain reports to the state attorney for review; providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 352

INTRODUCER: Senator Joyner

SUBJECT: Civil Citations/Minors

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sadberry	Meyer, C.	BC	Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill allows a youth who successfully completes a civil citation program to have his or her nonjudicial misdemeanor arrest record expunged. The civil citation programs provide an alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts. This expunction process is currently available to youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor under s. 943.0582, F.S.

This bill substantially amends sections 985.12 and 943.0582, Florida Statutes.

II. Present Situation:

Civil Citations

Civil citation programs are an alternative to custody by the Department of Juvenile Justice (DJJ) for youth who commit nonserious delinquent acts. The programs 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.¹ Local law enforcement agencies report information regarding civil citations to the DJJ. Civil citation records are entered into the Juvenile Justice Information System.²

¹ Department of Juvenile Justice, *2010 Legislative Session Bill Analysis* (on file with Senate Committee on Judiciary).

² Department of Juvenile Justice, *supra* note 1.

A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor. The eligibility requirements for the program may differ by county. For example, in Miami-Dade County the program is open to “[a]ll children who have committed a minor first-time misdemeanor offense.”³ In Lee County the requirement reads “[a]ll juveniles between the ages of 8-17 who do not have a previous arrest record for more than one misdemeanor or any felony crime is eligible for the Civil Citation Program.”⁴

Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁵ After issuing a citation, the law enforcement officer must send a copy to the county sheriff, state attorney, the appropriate intake office of the department, the community service performance monitor designated by the department, the parent or guardian of the youth, and the victim.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 information regarding the youth’s service hour completion and the expected completion date to the DJJ.⁷

If the youth fails to timely report for a work assignment, complete a work assignment, or comply with assigned intervention services within the prescribed time, or if the youth commits a third or subsequent misdemeanor, the law enforcement officer must issue a report alleging the youth has committed a delinquent act. 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.⁸

Expunction of Juvenile Criminal History Records

Youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor are eligible to have their arrest expunged, providing they have no other past criminal history.⁹ A nonviolent misdemeanor includes simple assault or battery when this expunction process is approved by the local state attorney. A domestic violence arrest is not eligible for expunction. This expunction does not prohibit the youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.¹⁰ The expunged record is available to law enforcement only under certain enumerated circumstances, such as when needed to determine eligibility for these programs, when a youth is

³ Miami-Dade County, *Civil Citation*, http://www.miamidade.gov/jsd/civil_citation.asp (last visited Apr. 8, 2010).

⁴ Lee County Sheriff’s Office, *Civil Citation Program*, www.swfljac.org/CivilCitationBrochure.pdf (last visited Apr. 8, 2010).

⁵ Section 985.12(1), F.S.

⁶ Section 985.12(2), F.S.

⁷ Section 985.12(3), F.S.

⁸ Section 985.12(5), F.S.

⁹ Section 985.125, F.S.

¹⁰ Section 943.0582, F.S.

seeking law enforcement employment, or when it is needed for a criminal justice investigation. Local law enforcement records are treated as if they are sealed (only available to limited entities).

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the youth turns 24 years of age (if he or she is not a serious or habitual juvenile offender or committed to a juvenile prison) or 26 years of age (if he or she is a serious or habitual juvenile offender or committed to a juvenile prison), as long as the youth is not arrested as an adult or adjudicated as an adult for a forcible felony.¹¹ This automatic expunction does not prohibit the youth from requesting a sealing or expunction under s. 943.0585 or s. 943.095, F.S., if he or she is otherwise eligible.

Criminal history records are public records under Florida law and must be disclosed unless they have been sealed or expunged or have otherwise been exempted or made confidential.¹² Fingerprints are exempt and are not disclosed by the FDLE. Juvenile criminal history information that has been compiled and maintained by the FDLE since July 1, 1996, is also considered by the department to be a public record, including felony and misdemeanor criminal history information.¹³ However, an ongoing lawsuit was filed by the Public Defender's Office in the Eleventh Judicial Circuit Court in Miami-Dade County, which challenges the department's position based upon the general confidentiality provisions for juvenile records in s. 985.04(1), F.S.¹⁴

III. Effect of Proposed Changes:

This bill allows a youth who successfully completes a civil citation program to have his or her nonjudicial misdemeanor arrest record expunged. The civil citation program provides an alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts.¹⁵ This expunction process is currently available to youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor under s. 943.0582, F.S.

The expunged record will be available to law enforcement under enumerated circumstances, such as when needed to determine eligibility for these programs, when the youth is seeking law enforcement employment, or when it is needed in a criminal justice investigation. Local law enforcement records will be treated as if they are sealed and will only be available to limited entities.

¹¹ Section 943.0515(1) and (2), F.S.

¹² Section 119.07(1), F.S.; FLA. CONST. art. I, s. 24(a).

¹³ Section 943.053(3)(a), F.S.; Chapter 96-388, Laws of Fla.

¹⁴ *G.G. v. FDLE*, Case No.: 07-00599 CA 21 (Miami-Dade Circuit Court). A copy of the complaint is available at http://www.pdmiami.com/cpr/GG_v_FDLE.pdf (last visited Apr. 8, 2010). Section 985.04(1), F.S., provides that juvenile records are confidential, subject to specified exceptions, and limits disclosure to certain enumerated entities or upon court order. Subsection (2) generally allows for the disclosure of an arrest report for a juvenile arrested for a felony or an arrest report for a juvenile found by a court to have committed three or more misdemeanor offenses.

¹⁵ Section 985.12, F.S.

The bill amends s. 943.0582, F.S., to include the same type of expunction process for youth who successfully complete a civil citation program as is currently allowed for youth completing a prearrest, postarrest, or teen court diversion program. The bill requires the applicant to submit an expunction application to the FDLE, a \$75 processing fee, and an official written statement from the state attorney. The accompanying prosecutorial statement must certify that the program was successfully completed and limited to youth arrested for a nonviolent misdemeanor who also have no other criminal history. The expunction application must be submitted no later than six months after completion of the civil citation program.

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:

An expungement applicant will be required to pay a \$75 processing fee to the Florida Department of Law Enforcement.

C. Government Sector Impact:

According to the Florida Department of Law Enforcement, there is no way to estimate the potential volume of expungement applications, which would dictate both potential revenue and additional workload.¹⁶

VI. Technical Deficiencies:

None.

¹⁶ Florida Department of Law Enforcement, *Senate Bill 2544 Analysis* (Mar. 17, 2010) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1052

INTRODUCER: Senator Altman

SUBJECT: Crisis Stabilization Units

DATE: April 12, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Callaghan	Stovall	HR	Favorable
2. Carpenter	Meyer, C.	BC	Pre-meeting
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

This bill increases the number of licensed beds permitted to be in a crisis stabilization unit (CSU) from 30 beds to 50 beds.

This bill has no direct fiscal impact on the Department of Children and Family Services.

This bill substantially amends s. 394.875, F.S.

II. Present Situation:

Crisis Stabilization Units (CSUs)

Part I of ch. 394, F.S., is the Florida Mental Health Act, also known as the Baker Act. In addition to procedural requirements for involuntary examination and voluntary and involuntary treatment of mental illness, this part provides a framework for the public mental health service delivery system.

The “front door” to the system is the public receiving facility. Receiving facilities admit persons for involuntary examination and are defined in statute as “any public or private facility designated by the Department of Children and Family Services to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment.”¹ The department is responsible for issuing a certificate of designation to a CSU as a Baker Act Receiving Facility.

¹ Section 394.455(26), F.S.

In many communities, the public receiving facility is a CSU. A CSU is defined as “a program that provides an alternative to inpatient hospitalization and that provides brief, intensive services 24-hours-a-day, 7-days-a-week, for mentally ill individuals who are in an acutely disturbed state.”² The purpose of a CSU is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client’s needs. CSUs may screen, assess, and admit for stabilization persons who present themselves to the CSU and persons who are brought in involuntarily. CSUs provide services regardless of a client’s ability to pay.³ Inpatient stays average 3 to 14 days, resulting in return to the patient’s own home or placement in a long-term mental health facility or other living arrangements.⁴

The CSUs are licensed by the Agency for Health Care Administration (AHCA),⁵ and the rules governing the operation of the CSU, including certification of the number of beds the CSU is authorized to provide, are promulgated by the Department of Children and Families.⁶ Currently, there are 54 licensed CSUs in Florida.⁷

Licensure

Facilities must meet license requirements through the submission of a completed application, required documentation, and completion of a satisfactory survey to the AHCA; this includes new facilities and reactivation of an expired license. Rule 65E-12.104, Florida Administrative Code, requires an applicant for licensure to provide the following to AHCA:

- A comprehensive outline of the program and services;
- A staffing pattern description including the name and license number of each employed licensed person;
- A table of organization of all management levels;
- A resume of the facility director or manager;
- Fiscal information;
- Proof of liability insurance coverage from an authorized insurer in an amount of no less than \$300,000 per occurrence with a minimal annual aggregate of no less than \$1 million;
- Proof of designation as, or affiliation with, a public receiving facility;
- Identification of age groups to be admitted as: adults only, or adults and minors, or minors only;
- A description of services to minors, if minors are admitted; and
- Proof of compliance with statutory requirements.

When all required information is received and acceptable, a licensure survey is scheduled. A license is issued when documentation of a successful licensure survey is complete and filed.⁸ A valid license is required before services can be provided. The annual license fee is \$96 per bed.⁹

² Section 394.67(4), F.S.

³ Section 394.875(1)(a), F.S.

⁴ Agency for Health Care Administration, *Crisis Stabilization Units*, available at: http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/crisis.shtml (Last visited on March 19, 2011).

⁵ Sections 394.875(2) and 394.879, F.S.; Rule 65E-12.104, F.A.C.

⁶ Sections 394.457(5) and 394.879, F.S.; Rules 65E-12.103-12.107, F.A.C.

⁷ Agency for Health Care Administration, *2011 Bill Analysis & Economic Impact Statement for SB 1052*, on file with the Senate Health Regulation Committee.

⁸ Agency for Health Care Administration, *Licensure Requirements*, available at: http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/crisis.shtml (Last visited on March 19, 2011).

To renew a license, the licensure application, renewal fee and supporting documents must be submitted to the AHCA 120 to 60 days prior to the expiration date. A late fee of \$50 per day, up to \$500 will be assessed for any application not received 60 days prior to expiration of the license.¹⁰

Chapter 408.803, F.S., defines “change of ownership” as an event in which the licensee sells or otherwise transfers its ownership to a different individual or entity as evidenced by a change in the federal employer identification number or the taxpayer identification number or an event in which 51 percent or more of the ownership, shares, membership, or controlling interest of a licensee is in any manner transferred or otherwise assigned. This does not apply to a licensee that is publicly traded on a recognized stock exchange. In addition, a change solely in the management company or board of directors is not a change of ownership. The licensure application, fee and supporting documents must be submitted at least 60 days prior to the date of acquisition of the CSU. Before the application can be approved, a bill of sale or other closing document signed by the buyer and the seller and showing the effective date of the transfer must be received by the AHCA.¹¹

Accreditation

A CSU may choose to be accredited and may ask the AHCA to accept their accreditation, in lieu of on-site licensure surveys, by submitting the required documentation from an approved accreditation organization. The following accreditation organizations are recognized by AHCA for mental health facilities: The Joint Commission; Council on Accreditation (COA); and Commission on Accreditation of Rehabilitation Facilities (CARF). The required documentation includes: the name of the accrediting organization, the beginning and expiration dates of the accreditation, accreditation status, type of accreditation, accreditation survey report, all responses to any compliance issues cited by the accrediting organization, and any follow up reports.¹²

Staffing

Every CSU must have at least one psychiatrist as primary medical coverage as defined in s. 394.455(24), F.S.¹³ Back-up coverage may be a physician who will consult with the psychiatrist. The psychiatrist or physician must be on call 24-hours-a-day and must make daily rounds. Counties with a the population of less than 50,000 persons may utilize a licensed physician for on-call activities and daily rounds as long as the physician has postgraduate training and experience in the diagnosis and treatment of mental and nervous disorders.¹⁴ The psychiatrist is responsible for the development of general medical policies, prescription of medications, and medical treatment of persons receiving services. Each person must be provided

⁹ Rule 65E-12.104, F.A.C.

¹⁰ Agency for Health Care Administration, *Renewal*, available at: http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/crisis.shtml (Last visited on March 19, 2011).

¹¹ Agency for Health Care Administration, *Change of Ownership*, available at: http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/crisis.shtml (Last visited on March 19, 2011).

¹² Agency for Health Care Administration, *Accreditation*, available at: http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/crisis.shtml (Last visited on March 19, 2011).

¹³ “Psychiatrist” means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. Section 394.455(24), F.S.

¹⁴ Rule 65E-12.105, F.A.C.

medical or psychiatric services as considered appropriate, and such services must be recorded by the physician or psychiatrist in the clinical record.¹⁵

Sufficient numbers and types of qualified staff are required to be on duty and available at all times to provide necessary and adequate safety and care. The program policies and procedures of the CSU must define the types and numbers of clinical and managerial staff needed to provide persons with treatment services in a safe and therapeutic environment. At least one registered nurse is required to be on duty 24-hours-a-day, 7-days-a-week.¹⁶

Each CSU is required to develop policies and procedures to ensure adequate minimum staffing. These policies must address double shifting, use of temporary registered nurses, use of regular part-time registered nurses and licensed practical nurses. Policies must ensure that nursing staff are not used in dual capacity or in ancillary areas, which compromise minimum unit staffing requirements.¹⁷

III. Effect of Proposed Changes:

This bill increases the number of licensed beds permitted to be in a CSU from 30 beds to 50 beds.

This 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 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.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

B. Private Sector Impact:

It is not know how many existing CSUs would expand bed capacity, or how many new, larger CSUs may open, since expanding bed capacity is optional.

C. Government Sector Impact:

The development of new rules, issuing certificates of designation, certifying number of beds, and developing new staffing patterns can be met within the Department of Children and Families current resources.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

¹⁸ *Supra* fn. 7.

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: SB1632

INTRODUCER: Senator Lynn

SUBJECT: Florida Industrial Development Corporation

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Favorable
2.	Cote	Meyer, C.	BC	Pre-meeting
3.				
4.				
5.				
6.				

I. Summary:

Chapter 289, F.S., approved by the Legislature in 1961, created a process by which Florida residents, businesses, and financial institutions could create a Florida Industrial Development Corporation (FIDC) with the power to issue revenue bonds for economic development projects. It appears that only two FIDCs have been created, and both have dissolved, according to the state Division of Corporations. Despite a statutory reporting requirement, there also appears to be no information about these FIDCs' activities.

SB 1632 repeals ch. 289, F.S., and deletes cross-references to it in other statutes.

The repeal of ch. 289, F.S., will not impact other industrial development revenue bond programs created for local governments and for the Office of Tourism, Trade, and Economic Development, or managed by Enterprise Florida, Inc., (EFI).

SB 1632 repeals ss. 289.011, 289.021, 289.031, 289.041, 289.051, 289.061, 289.071, 289.081, 289.091, 289.101, 289.111, 289.121, 289.131, 289.141, 289.151, 289.161, 289.171, 289.181, 289.191, and 289.201, F.S., and amends ss. 212.08, 220.08, 220.183, 220.62, 440.491, and 658.67, F.S.

II. Present Situation:

The Legislature in 1961 passed HB 1508¹ (ch. 61-177, L.O.F.) that created ch. 289, F.S., the Florida Industrial Development Corporation. The chapter established a process by which a minimum of 25 Florida “persons” (meaning individuals and businesses) could file incorporation documents with the state Division of Corporations for the purposes of issuing industrial revenue bonds. The chapter specified the powers and duties of an FIDC, which could have a duration of 50 years unless its board of directors dissolved it. Each FIDC was to make annual reports to what is now the Office of Financial Services of the state Financial Services Commission,² which also was statutorily directed to annually examine each FIDC’s financial records. The FIDCs were specifically prohibited, pursuant to s. 289.161, F.S., from pledging the credit of the state of Florida when issuing revenue bonds.

Information about how many FIDCs actually were formed, whether they issued any bonds, and if so, what types of projects were financed, is lacking. Staff of the Office of Financial Services can find no documentation that the required examinations were conducted, nor copies of any annual reports. The state Division of Corporations Sunbiz database lists two entities that may be FIDCS – the Industrial Development Corporation of Florida, created in 1961 and dissolved in 1991, and the Florida Industrial Development Corporation, created in 1979 and dissolved in 1980 – but there is no absolute certainty that these entities were created pursuant to ch. 289, F.S.

The last time any section of this chapter was amended was in 2003, to update obsolete references.

Since the creation of ch. 189, F.S., the Legislature has passed legislation facilitating the creation of other bond financing entities focused on economic development, including the Florida Development Finance Corporation, in Part IX of ch. 288, F.S., and managed by EFI, and Parts II, III and VI of ch. 159, F.S., which allows local governments and local authorities to issue revenue bonds.

III. Effect of Proposed Changes:

Section 1: Repeals all the sections in ch. 289, F.S., relating to the Florida Industrial Development Corporation. This removes the statutory provisions related to: the incorporation of an industrial development corporation; the FIDC’s special corporate powers; authorized financial transactions; membership of financial institutions; powers of stockholders and members; procedures for amending the articles of incorporation; the conduct of corporation business and affairs; requirements for saving a portion of annual earned surplus; requirements for meetings; corporate existence; dissolution; credit of the state; Federal Small Business Investment Act; tax exemptions; credits or privileges; required periodic examinations; and the \$50 annual occupational license tax for industrial development corporations.

Section 2: Amends s. 212.08, F.S., to remove a cross-reference.

¹ Sponsored by young legislators Lawton Chiles (future U.S. Senator and Florida Governor) and Don Fuqua (future U.S. Congressman)

² This commission is comprised of the Governor and Cabinet.

Section 3: Amends s. 220.183, F.S., to remove a cross-reference.

Section 4: Amends s. 220.62, F.S., to remove a cross-reference.

Section 5: Amends s. 440.491, F.S., to remove a cross-reference.

Section 6: Amends s. 658.67, F.S., to remove a cross-reference.

Section 7: Specifies 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 23 and 24

insert:

Section 1. Section 409.1757, Florida Statutes, is amended to read:

409.1757 Persons not required to be refingerprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, ~~and~~ teachers who have been fingerprinted pursuant to chapter 1012, and law enforcement officers who meet the requirements of s. 943.13, who have not been unemployed for



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more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with ~~the provisions of~~ this section and the standards for good moral character as contained in such provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall not be~~ required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to background screening; amending s. 409.1757, F.S.; adding law enforcement officers who have a good moral character to the list of professionals who are not required to be refingerprinted or rescreened; amending s.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 111 and 112

insert:

Section 2. Paragraph (e) is added to subsection (1) of section 435.04, Florida Statutes, and subsection (4) is added to that section, to read:

435.04 Level 2 screening standards.—

(1)

(e) Vendors who submit fingerprints on behalf of employers must:

1. Use technology that is compliant with systems used by the Department of Law Enforcement;



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14 2. Have the ability to communicate electronically with the
15 state agency accepting screening results from the Department of
16 Law Enforcement; and

17 3. Capture two sets of fingerprint images from each
18 individual screened. If the first set of prints are deemed
19 illegible as determined by the Department of Law Enforcement or
20 the Federal Bureau of Investigation, the vendor shall submit the
21 second set of prints after being so notified by the agency
22 requiring the screening.

23 (4) Fingerprints required for screening under this section
24 shall be retained for any person who is screened on or before
25 July 1, 2013.

26 Section 3. Subsection (6) is added to section 435.07,
27 Florida Statutes, to read:

28 435.07 Exemptions from disqualification.—Unless otherwise
29 provided by law, the provisions of this section apply to
30 exemptions from disqualification for disqualifying offenses
31 revealed pursuant to background screenings required under this
32 chapter, regardless of whether those disqualifying offenses are
33 listed in this chapter or other laws.

34 (6) Personnel of a qualified entity as described in s.
35 943.0542, who are required to be screened pursuant to s. 435.04,
36 may apply for an exemption pursuant to this chapter.

37 Section 4. Section 408.809, Florida Statutes, is amended to
38 read:

39 408.809 Background screening; prohibited offenses.—

40 (1) Level 2 background screening pursuant to chapter 435
41 must be conducted through the agency on each of the following
42 persons, who are considered employees for the purposes of



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conducting screening under chapter 435:

(a) The licensee, if an individual.

(b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.

(c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.

(d) Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.

(e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

(2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any



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such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651 satisfies the requirements of this section if the person subject to screening has not been unemployed for more than 90 days and such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency.

(3) All fingerprints must be provided in electronic format. Screening results shall be reviewed by the agency with respect



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to the offenses specified in s. 435.04 and this section, and the qualifying or disqualifying status of the person named in the request shall be maintained in a database. The qualifying or disqualifying status of the person named in the request shall be posted on a secure website for retrieval by the licensee or designated agent on the licensee's behalf.

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

(b) This chapter, if the offense was a felony.

(c) Section 409.920, relating to Medicaid provider fraud.

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 741.28, relating to domestic violence.

(f) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.

(g) Section 817.234, relating to false and fraudulent insurance claims.

(h) Section 817.505, relating to patient brokering.

(i) Section 817.568, relating to criminal use of personal identification information.

(j) Section 817.60, relating to obtaining a credit card



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through fraudulent means.

(k) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.

(l) Section 831.01, relating to forgery.

(m) Section 831.02, relating to uttering forged instruments.

(n) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.

(o) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

(p) Section 831.30, relating to fraud in obtaining medicinal drugs.

(q) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

(5) A person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in compliance with the following schedule. The agency may adopt rules to establish a schedule to stagger the implementation of the required rescreening over the 5-year period, beginning July 31, 2010, through July 31, 2015. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer,



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may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person. The rescreening schedule shall be:

(a) Individuals for whom the last screening was conducted on or before December 31, 2003, must be rescreened by July 31, 2013.

(b) Individuals for whom the last screening conducted was between January 1, 2004, and December 31, 2007, must be rescreened by July 31, 2014.

(c) Individuals for whom the last screening conducted was between January 1, 2008, through July 31, 2010, must be rescreened by July 31, 2015.

(6)~~(5)~~ The costs associated with obtaining the required screening must be borne by the licensee or the person subject to screening. Licensees may reimburse persons for these costs. The Department of Law Enforcement shall charge the agency for screening pursuant to s. 943.053(3). The agency shall establish a schedule of fees to cover the costs of screening.

(7)~~(6)~~ (a) As provided in chapter 435, the agency may grant an exemption from disqualification to a person who is subject to this section and who:

1. Does not have an active professional license or certification from the Department of Health; or

2. Has an active professional license or certification from the Department of Health but is not providing a service within the scope of that license or certification.



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(b) As provided in chapter 435, the appropriate regulatory board within the Department of Health, or the department itself if there is no board, may grant an exemption from disqualification to a person who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department and that person is providing a service within the scope of his or her licensed or certified practice.

~~(8)~~⁽⁷⁾ The agency and the Department of Health may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, chapter 435, and authorizing statutes requiring background screening and to implement and adopt criteria relating to retaining fingerprints pursuant to s. 943.05(2).

~~(9)~~⁽⁸⁾ There is no unemployment compensation or other monetary liability on the part of, and no cause of action for damages arising against, an employer that, upon notice of a disqualifying offense listed under chapter 435 or this section, terminates the person against whom the report was issued, whether or not that person has filed for an exemption with the Department of Health or the agency.

Section 5. The Department of Children and Family Services, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, and the Department of Law Enforcement shall create a statewide interagency background screening workgroup for the purpose of developing a work plan for implementing a statewide system for streamlining background screening processes and sharing of background screening information.



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(1) The interagency workgroup shall be coordinated through the Agency for Health Care Administration and shall include representatives from each of the state agencies required to create the workgroup.

(2) The interagency workgroup shall submit a work plan for implementing a streamlined background screening system to the President of the Senate and the Speaker of the House of Representatives by November 1, 2011.

(3) The interagency workgroup work plan shall, at a minimum, address the following:

(a) The feasibility of creating a single statewide database accessible by all agencies participating on the workgroup.

(b) The feasibility of co-locating or consolidating current screening processes.

(c) Standardized screening criteria.

(d) Consistent criminal history information.

(e) Centralized exemptions.

(f) State and national retention of prints.

(g) National rescreens.

(i) Responsibility for retained prints and resubmission.

(j) Access to information.

(k) Fees.

(l) Screening turnaround time.

(m) The need for cooperative agreements among agencies that may access information.

(n) Legal considerations and the need for legislative action necessary for accessing information by participating agencies.

(o) Guidelines for how the information shall be accessed,



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used, and disseminated.

(p) The organizational level at which information may be
accessed and shared.

(q) The specific information to be maintained and shared
through the system.

(r) Registration of employee information regarding the
employment status of persons screened, including date of hire
and date of separation, to facilitate notifications of arrests
and dispositions to the appropriate provider.

(s) The costs of implementing the streamlined system to the
state, employers, employees, and volunteers.

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

And the title is amended as follows:

Delete line 19
and insert:

purposes of background screening; amending s. 435.04,
F.S.; requiring vendors who submit fingerprints on
behalf of employers to meet specified criteria;
requiring that fingerprints be retained for any person
screened by a certain date; amending s. 435.07, F.S.;
providing that personnel of a qualified entity as
defined in ch. 943, F.S., may apply for an exemption
from screening; amending s. 408.809, F.S.; eliminating
a rule that requires the Agency for Health Care
Administration to stagger rescreening schedules;
providing a rescreening schedule; requiring the
establishment of a statewide interagency workgroup



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275 relating to statewide background screening procedures
276 and information sharing; providing for membership;
277 requiring the workgroup to submit a report to the
278 Legislature by a specified date; setting forth the
279 topics that, at a minimum, the workgroup must address
280 in its work plan; providing an

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 1992

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

SUBJECT: Background Screening

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Favorable
2.	Kynoch	Meyer, C.	BC	Pre-meeting
3.				
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes to background screening requirements, primarily pertaining to individuals who work with Florida's seniors. Those changes include:

- Exempting, from the definition of "direct service provider;" individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month;
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;
- Allowing the Department of Elder Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 1, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained; and
- Removing a provision relating to criminal offenses that was inadvertently applied to the DOEA.

This bill has no fiscal impact to the state.

This bill substantially amends s. 430.0402, F.S.

II. Present Situation:

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations.¹ The bill provided that a “vulnerable person” includes minors and vulnerable adults as defined in s. 415.102(26), F.S. That section defines “vulnerable adult” as an adult “whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.”² Primary changes made by the bill included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all Level 1 screening to Level 2 screening. This did not require existing employees to be rescreened until they otherwise come up for rescreening pursuant to existing law;
- Requiring all fingerprint submissions to be done electronically by August 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under the AHCA, electronic prints were required as of August 1, 2010;
- Requiring certain personnel who deal substantially with vulnerable persons and who are not presently being screened, including persons who volunteer for more than 10 hours a month, to begin Level 2 screening. This includes homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under the DOEA;
- Adding additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening;
- Authorizing agencies to request the retention of fingerprints by the FDLE. The bill also provided for rulemaking and related implementation provisions for retention of fingerprints;
- Providing that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and
- Rewriting all screening provisions for clarity and consistency.³

To implement these new requirements, the DOEA adopted an emergency rule which required that all persons who come into direct contact with individuals receiving services provided through the department, whether as employee or volunteer, must undergo a Level 2 background

¹ See Chapter 2010-114, L.O.F.

² *Id.*

³ *Id.*

screening prior to employment or volunteerism.⁴ Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).⁵ The department did not make additional funds available to its service providers for this purpose, and most providers have passed this cost on to their prospective employees and volunteers.

It has been reported that the expansion of Level 2 background screening on volunteers and Area Agency and service provider staff resulting from the 2010 legislation has dramatically impacted these types of service providers. These individuals would include Aging Resource Center staff and Meals on Wheels program volunteers who do not enter a senior's home.

The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. If this trend continues, and the program continues to lose volunteers or is unable to recruit new volunteers, frail, homebound seniors will not receive needed meals and their nutrition will suffer.

- Many service provider agencies have relationships with churches whose volunteers deliver several hundred meals during the holiday season. Under the new background screening requirements, these churches and civic organizations were unable to continue providing volunteers for holiday meal delivery; and
- Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteer labor. It is feared that programs and activities will be curtailed or lost entirely if the volunteer force is further diminished.

The provisions of the 2010 legislation are also impacting the Home Care for the Elderly (HCE) caregivers. Many HCE caregivers are family members. These family members receive a small monthly stipend of \$106 to help care for a frail, aging family member at home, and many of these caregivers have been providing this care for years. The stipend is used to pay for a number of things, including, but not limited to, incontinence products, nutritional supplements, respite care, etc. The new Level 2 background screening requirement is applicable to these family members/caregivers as well.⁶

III. Effect of Proposed Changes:

The bill makes the following changes to the law related to background screening:

- Exempting, from the definition of “direct service provider;” individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month;
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care

⁴ See Rule 58ER10-1, F.A.C., effective August 1, 2010.

⁵ *Criminal History Record Checks/Background Checks Fact Sheet* January 4, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited March 3, 2011).

⁶ Meeting with representatives from the Area Agencies on Aging and the Community Care for the Elderly program. November 18, 2010.

Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;

- Allowing the Department of Elder Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 1, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained; and
- Removing a provision relating to criminal offenses that was inadvertently applied to the DOEA.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24

plus \$6.25 for hard copy fingerprints).⁷ By decreasing the number of persons subject to screening, there will be less of a financial impact on employers and employees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

⁷Criminal History Record Checks / Background Checks Fact Sheet January 4, 2011. Available at: <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>. (Last visited March 3, 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 746

INTRODUCER: Criminal Justice Committee and Senator Altman

SUBJECT: Open House Parties

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young	Imhof	RI	Favorable
2.	Dugger	Cannon	CJ	Fav/CS
3.	Sadberry	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends s. 856.015, F.S., to enhance the penalty against a person violating, for a second or subsequent time, the prohibition against knowingly hosting an open house party where alcohol or drugs are possessed or consumed by a minor without having taken reasonable steps to prevent such possession or consumption. The penalty increases from a second degree misdemeanor (punishable by up to 60 days in jail and/or a fine not exceeding \$500) to a first degree misdemeanor (punishable by up to one year in jail and/or a fine not exceeding \$1,000).

The bill further amends s. 856.015, F.S., to provide that when there is a violation of the open house party law that causes or contributes to causing serious bodily injury or death to a minor, or when a minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party, it is a misdemeanor of the first degree.

The bill provides a July 1, 2011 effective date.

This bill substantially amends section 856.015, of the Florida Statutes:

II. Present Situation:

Section 856.15, F.S., provides that it is a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at the residence if that person has knowledge that alcohol or drugs are being possessed or consumed by a minor and the person fails to take reasonable steps to prevent the possession or consumption.

A second degree misdemeanor is punishable as provided under s. 775.082, F.S., or s. 775.083, F.S. Section 775.082, F.S., provides that a second degree misdemeanor is punishable by incarceration for not longer than 60 days in jail.¹ Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than \$500.²

Section 856.015(1), F.S., defines the following terms:

- “Open house party” means a social gathering at a residence;
- “Control” means the authority or ability to regulate, direct, or dominate;
- “Residence” means a home, apartment, condominium or other dwelling unit;
- “Minor” means a person not legally permitted by reason of age to possess alcoholic beverages; and
- “Person” means anyone 18 years of age or older.

It is unlawful for any person younger than 21 years of age to possess alcoholic beverages in the state of Florida.³ This means that the penalties for holding an open house party where persons under the age of 21 possess or consume an alcoholic beverage applies to any person 18 years of age or older.

Section 856.015(3), F.S., provides an exemption for the use of alcoholic beverages at legally protected religious ceremonies or observances.

The prohibition requires the person in control of the residence have actual knowledge that a minor is in possession of or consuming an alcoholic beverage or drugs. Actual knowledge is defined as “direct and clear knowledge.”⁴ As a result, it is not enough that the person in control of the residence should have known of the possession or consumption, but instead must have “direct and clear” knowledge of the possession or consumption by a minor.

Further, the statute provides that the person in control of the residence must take reasonable steps to prevent the possession or consumption by a minor of an alcoholic beverage or drugs. This includes reasonable steps once the person has actual knowledge that a minor possesses or is consuming an alcoholic beverage or drugs. The Florida Supreme Court discussed this provision and held that the “adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof.”⁵

¹ See s. 775.082(4)(b), F.S.

² See s. 775.083(1)(e), F.S.

³ Section 562.111, F.S.

⁴ Black's Law Dictionary (9th ed. 2009), knowledge (actual knowledge).

⁵ See *State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).

Currently, s. 856.015, F.S., does not address the liability of a person in control of an open house party after a person leaves the open house party and causes death or serious bodily injury due to the possession or consumption of alcoholic beverages.

“Serious bodily injury” is defined by s. 316.1933(1)(b), F.S., to mean “an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

III. Effect of Proposed Changes:

The bill amends subsection (4) of s. 856.015, F.S., to provide that a person who violates the prohibition for a second or subsequent time by knowingly hosting an open house party where minors possess or consume an alcoholic beverage or drugs and does not take reasonable steps to stop or prevent the action, is guilty of a misdemeanor of the first degree (punishable by up to one year in jail and/or a fine that does not exceed \$1,000⁶).

The bill also creates subsection (5) in s. 856.015, F.S., to provide that when there is a violation of the open house party law that causes or contributes to causing serious bodily injury or death to a minor, or when a minor causes or contributes to causing serious bodily injury or death to another as a result of the minor’s consumption of alcohol or drugs at the open house party, it is a misdemeanor of the first degree.

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.

⁶ See s. 775.082(4)(a) and s. 775.083(1)(d), F.S.

C. Government Sector Impact:

There could be an indeterminate fiscal impact upon jails as a result of the enhanced misdemeanor penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on April 4, 2011:

Provides that when there is a violation of the open house party law that causes or contributes to causing serious bodily injury or death to a minor, or when a minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party, it is a misdemeanor of the first degree.

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 888

INTRODUCER: Communications, Energy, and Public Utilities Committee; Judiciary Committee; and
Senator Dean

SUBJECT: Offense of Sexting

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/1 amendment
2.	Boland	Maclure	JU	Fav/CS
3.	Wiehle	Carter	CU	Fav/CS
4.	Sadberry	Meyer, C.	BC	Pre-meeting
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

“Sexting” is a term that describes the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. The bill creates a new offense that applies to minors who engage in sexting that involves knowingly using a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person that depicts nudity and is harmful to minors. A minor who commits this act is subject to penalties that begin with a noncriminal violation for the first offense and escalate with subsequent offenses. Under the only laws that are currently available for prosecution of acts that are covered by this bill, such acts could be prosecuted as a felony and result in the minor having to register as a sexual offender and be subject to residency restriction laws.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of sexual materials depicting minors. Some of these laws address photographs or videos that do not rise to the level of child pornography, which is statutorily defined as “any image depicting a minor engaged in sexual conduct.”¹ Section 847.001(16), F.S., defines “sexual conduct” as:

[A]ctual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”²

Sexual Performance by a Child

Section 827.071(5), F.S., provides that it is a third-degree felony for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The statute specifies that the possession of each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials

Section 847.011(1)(a), F.S., provides that it is a first-degree misdemeanor for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute, or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute, specified obscene items, including pictures, photographs, and images. However, s. 847.011(1)(c), F.S., provides that it is a third-degree felony if the violation of s. 847.011(1)(a) or (2), F.S., is based on materials that depict a minor³ engaged in any act or conduct that is harmful to minors.⁴

Section 847.011(2), F.S., provides that it is a second-degree misdemeanor for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell, etc., such items.

¹ See ss. 775.0847(1)(b) and 847.001(3), F.S.

² “Sexual conduct” is defined identically in ss. 775.0847 and 827.071, F.S. It has a more limited definition in s. 365.161, F.S., which relates to obscene or indecent communications made by a telephone that describe certain sexual acts.

³ The term “minor” is defined as “any person under the age of 18 years.” Section 847.001(8), F.S.

⁴ The term “harmful to minors” is defined in s. 847.001(6), F.S. For a more detailed definition, see the “Effect of Proposed Changes” section of this bill analysis.

Protection of Minors

Section 847.0133, F.S., provides that it is a third-degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene⁵ material to a minor. “Material” includes pictures, photographs, and images.

Computer Pornography

Section 847.0135(2), F.S., provides that it is a third-degree felony for a person to:

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography

Section 847.0137(2), F.S., provides that any person in this state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or another jurisdiction commits a third-degree felony.

Transmission of Material Harmful to Minors

Section 847.0138(2), F.S., provides that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known or believed by the defendant to be a minor commits a third-degree felony.

Both minors and adults can be charged with any of the offenses described above.

Sexting

“Sexting” is a recently coined term that combines the words “sex” and “texting.”⁶ It is used to describe the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. As the name suggests, “sext” messages are most commonly sent by a cell phone text message. Media reports and other studies indicate that sexting is a growing trend among teenagers. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20 percent of teens (ages 13-19) and 33 percent of young adults (ages 20-26) had sent

⁵ Section 847.001(10), F.S., defines the term “obscene” as the status of material which the average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother’s breastfeeding of her baby is not under any circumstance “obscene.”

⁶ Stacey Garfinkle, Sex + Texting = Sexting, *The Washington Post*, Dec. 10, 2008, available at <http://voices.washingtonpost.com/parenting/2008/12/sexting.html> (last visited March 7, 2011).

nude or semi-nude photographs of themselves electronically.⁷ Additionally, 39 percent of teens and 59 percent of young adults had sent sexually explicit text messages.⁸

There is no Florida law that specifically addresses sexting. Under current law, a person who knowingly sends certain sexually explicit images of a minor to another person, or a person who knowingly receives such images, could be charged with any number of different offenses that relate to sexual material depicting minors. For example, in 2007, 18-year-old Phillip Alpert was arrested and charged with transmitting child pornography (among other things) after he sent a nude photo of his 16-year-old girlfriend to her friends and family after they had an argument. In total, Alpert was charged with 72 offenses, sentenced to five years of probation, and was required to register as a sexual offender.⁹

Similarly, in other jurisdictions, some law enforcement officers and district attorneys have begun prosecuting teens who “sext” under laws generally reserved for producers and distributors of child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with “provocative” images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a five-week after school program and probation.¹⁰ Similar incidents have occurred in other states, e.g., Massachusetts, Ohio, and Iowa.¹¹

As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors. For example, in 2009, Vermont and Utah passed laws that downgraded the penalties for minors and first-time perpetrators of sexting.¹² A Utah statute that generally makes it a crime to distribute pornography in the state (not specifying child pornography) now sets differing punishments for the same offense based on the age of the offender.¹³ If the offense is committed by someone over the age of 18, then the offense is a third-degree felony; if the offense is committed by someone 16 or 17 years of age, then the offense is a class A misdemeanor; and if the offense is committed by someone under the age of 16, then the offense is a class B misdemeanor.¹⁴

III. Effect of Proposed Changes:

The bill creates a new offense that applies to “sexting” *by a minor*. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the

⁷ National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech: Results from a Survey of Teens and Young Adults, 1, available at http://www.thenationalcampaign.org/sextech/PDF/SexTech_Summary.pdf (last visited March 7, 2011).

⁸ *Id.*

⁹ Vicki Mabrey and David Perozzi, ‘Sexting’: Should Child Pornography Laws Apply?, *ABC NEWS* (Apr. 1, 2010), available at <http://abcnews.go.com/Nightline/phillip-alpert-sexting-teen-child-porn/story?id=10252790> (last March 2, 2011); Deborah Feyerick and Sheila Steffen, ‘Sexting’ lands teen on sex offender list, *CNN* (Apr. 8, 2009), available at <http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html> (last visited March 7, 2011).

¹⁰ Amanda Lenhart, Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging, *Pew Research Ctr.*, 3 (Dec. 15, 2009), available at http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited March 7, 2011).

¹¹ *Id.*; see also Mabrey and Perozzi, *supra* note 9.

¹² Lenhart, *supra* note 10, at 3.

¹³ UTAH CODE ANN. s. 76-10-1204.

¹⁴ *Id.*

same conduct under existing law. Also, a conviction of sexting would not result in the requirement to register as a sexual offender or to comply with existing residency restriction laws or other laws that apply to persons who are convicted of certain sexual offenses.

Sexting occurs when a minor knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), F.S., and is harmful to minors, as defined in s. 847.0016, F.S.

The term “nudity” is defined in s. 847.001(9), F.S., to mean:

[T]he showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding.

Section 847.001(6), F.S., defines “harmful to minors” to mean:

[A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to a prurient, shameful, or morbid interest;
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother’s breastfeeding of her baby is not under any circumstance “harmful to minors.”

The transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.

The bill provides the following graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. The court may also order the minor to participate in suitable training or instruction¹⁵ in lieu of, or in addition to, the community service or fine.
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a first-degree misdemeanor. A first-degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than \$1,000.¹⁶

¹⁵ The bill does not define “suitable training or instruction,” and it is unclear what type of training or instruction is anticipated under the bill.

¹⁶ *Id.*

- A sexting violation that occurs after being found to have committed a first-degree misdemeanor violation for sexting is an unranked third-degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than \$5,000.¹⁷ However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.¹⁸
- Senate Bill 888 is substantially similar to a bill that passed the Senate last year (CS/SB 2560). According to an analysis prepared by the Florida Department of Law Enforcement (FDLE) on CS/SB 2560, because the first sexting violation is a noncriminal violation, the minor will not have an FDLE record. Therefore, if the offenses occur in different jurisdictions, prosecutors may be unaware of a previous noncriminal violation, and the minor may not be charged with the proper offense.¹⁹

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

The bill provides that it will take effect 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.

¹⁷ *Id.*

¹⁸ “Unranked” is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third-degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third-degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

¹⁹ Florida Department of Law Enforcement, Senate Bill 2560 Relating to Sexting (Mar. 17, 2010) (on file with the Senate Committee on Criminal Justice).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of criminal legislation, estimates that the bill will have an insignificant prison bed impact.²⁰ However, the bill creates new misdemeanor offenses, which could affect local jails, though the impact is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS/CS by Communications on April 4, 2011:

The committee substitute increases the penalty for subsequent offenses more quickly than the bill does.

CS by Judiciary on March 28, 2011:

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

- Changes language to make it an offense for a minor to transmit any photograph or video of any person, whereas the original bill made it an offense for a minor to transmit photographs or videos of himself or herself only;
- Removes a reference to a possession offense, as the bill does not create an offense for simple possession; and
- Changes the term being defined in the bill from “convicted” to “found to have committed.”

B. Amendments:

None.

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

²⁰ Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Conference Results*, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm>, (last visited Mar. 29, 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: SB 714

INTRODUCER: Senator Margolis

SUBJECT: Disabled Parking Permit

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	Favorable
2.	Clodfelter	Cannon	CJ	Favorable
3.	Carey	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

I. Summary:

Senate Bill 714 revises laws relating to disability parking permits. The bill:

- expands the type of officials who may waive citations for disability permit parking violations by including the parking enforcement specialist or agency that issued the citation;
- revises the requirements for renewing or replacing a long-term disabled parking permit and includes prohibitions for certain violations;
- provides for random audits of disabled parking permit holders;
- requires the Department of Highway Safety and Motor Vehicles (DHSMV or department) to develop and implement a system to allow the reporting of abuses of disabled parking permits; and
- requires the department to develop and implement a public awareness campaign regarding how such abuse burdens disabled persons.

This bill substantially amends ss. 318.18 and 320.0848, Florida Statutes. This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Section 320.0848, F.S., authorizes the department and its agents to issue disabled parking permits to persons with impaired mobility. Such permits may be issued for a period of up to 4 years to any person with a long-term mobility impairment. Similarly, persons with a temporary mobility impairment may be issued a temporary disabled parking permit for a period of up to 6 months. A fee may be charged for the permit. However, no person may be charged a fee more frequently than once every 12 months.

A person applying for a disabled parking permit must be currently certified as being legally blind or as having any of the following conditions which would render the person unable to walk 200 feet without stopping to rest:

- The inability to walk without a brace, cane, crutch, prosthetic device, or other assistive device;
- The need to permanently use a wheelchair;
- Lung disease as measured within specified limits;
- Use of portable oxygen;
- A Class III or IV heart condition; or
- A severe limitation in the ability to walk due to an arthritic, neurological, or orthopedic condition.

The certification must be made by a physician, podiatrist, optometrist, advanced registered nurse practitioner, or physician's assistant, any of which must be licensed under one of various chapters of Florida Statute. However, provisions are made to encompass certification by similarly-licensed physicians from other states, as well. The certification must include:

- The disability of the applicant;
- The certifying practitioner's name, address, and certification number;
- The eligibility criteria for the permit;
- Information concerning the penalty for falsification;
- The duration of the condition; and
- Justification for any additional placard issued.

The disabled parking permit must be a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of the placard must display the applicant's driver's license number or state identification card number along with a warning the applicant must have such identification at all times while using the parking permit. No person will be required to pay a fee for a parking permit for disabled persons more than once in a 12-month period.

Although a disabled parking permit must be renewed every four years, it does not expire under current law. The department allows for online and mail-in renewals, as well as replacements in the case of stolen or damaged permits, for persons certified as having a long-term disability. Currently, s. 320.0848, F.S., does not require persons who have a long-term disabled parking permit to apply for a renewal or a replacement permit in person or provide an additional certificate of disability.

Section 320.0848, F.S., allows for temporary disabled parking permits to be issued for the period of the disability as stated by the certifying physician, but not to exceed six months. A temporary parking permit for a disabled person must be a different color than the long-term permit (the long-term placard is blue, the temporary placard is red), and, similar to the long-term permit,

must display the permit expiration date, the state identification or driver's license number of the permit holder.

An application for a disabled parking permit is an official state document. The following statement is required to appear on each application immediately below the applicant's name and the certifying practitioner's name:

Knowingly providing false information on this application is a misdemeanor of the first degree, punishable as provided in s. 775.082, Florida Statutes, or s. 775.083, Florida Statutes. The penalty is up to 1 year in jail or a fine of \$1000, or both.

A person who fraudulently obtains or unlawfully displays a disabled parking permit (or uses an unauthorized replica) is guilty of a 2nd degree misdemeanor. The penalty is up to 60 days in jail or a fine of \$500, or both.

A law enforcement officer may confiscate the disabled parking permit from any person who fraudulently obtains or unlawfully uses such a permit, including using the permit while the owner of the permit is not being transported. A law enforcement officer may confiscate any disabled parking permit that is expired, reported as lost or stolen, or defaced, or that does not display a personal identification number. However, the permit owner may apply for a new permit immediately.

The department tracks all disabled parking permits issued since 1999, including confiscations of the permit. According to DHSMV, the department conducts some auditing to ensure that driver licenses are only issued to living persons. However, programming is not specifically tailored to audit the records of persons to whom disabled parking permits have been issued.

III. Effect of Proposed Changes:

Section 1 amends s. 318.18(6), F.S., expanding the list of officials who can waive citations for illegally parking in a disability parking space. The bill allows the parking enforcement specialist or the agency that issued a parking citation to waive citations and sign affidavits of compliance.

Section 2 amends s. 320.0848, F.S., to require holders of disabled parking permits to renew in person and provide a current certificate of disability. Persons obtaining a replacement for a disabled parking permit must appear in person to submit the required application.

Current law allows law enforcement officers to confiscate the disabled parking permit of a person who has obtained it fraudulently or uses it unlawfully. The bill also authorizes parking enforcement specialists to confiscate fraudulently obtained or unlawfully used permits.

The bill requires a person who is found guilty of unlawful use of a permit (or who enters a plea of nolo contendere to the charge) to wait four years before applying for a new disabled permit if he or she had a prior finding of guilt or plea of nolo contendere to the charge.

The bill requires DHSMV to conduct random audits of disabled parking permit holders at least every six months. As a component of this audit, the department is required to:

- review the death records maintained by the Department of Health to ensure the permit holder is not deceased;
- review the number of times the permit has been confiscated or unlawfully used;
- determine if the permit has ever been reported lost or stolen; and
- determine the current status of the permit.

The department is directed to verify, at least annually, that the owner of each disabled parking permit has not died. If a permit owner is found to be deceased, the department is directed to promptly invalidate the decedent's permit. The department is also required to develop and implement a method by which abuse can be reported by telephone hotline, submission of an online form, or by mail.

Section 3 creates an unidentified section of Chapter 320, F.S., to require DHSMV to make a public announcement and conduct a public awareness campaign regarding the abuses of disabled parking permits and the burdens inflicted on disabled persons throughout the state. The campaign is to begin within 30 days after the effective date of this act and continue for not less than six months. Its purpose is to inform the public about:

- the requirement to appear in person to renew an expired disabled parking permit or replace a lost or stolen disabled parking permit;
- the implementation of the periodic disabled parking permit audit system; and
- the new complaint process for reporting abuses of disabled parking permits.

Section 4 establishes 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:

Permit holders will bear costs related to appearing in person at a Tax Collector's office and obtaining a current certification form from their physician every four years.

C. Government Sector Impact:

DHSMV estimates approximately 60 hours of programming would be needed to implement the provisions of the bill. Any costs to implement this bill will be absorbed within existing DHSMV resources.

Local Tax Collectors offices would see an increased workload due to the requirement that permit holders appear in person when renewing their permits.

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 1524

INTRODUCER: Commerce and Tourism Committee; Communications, Energy, and Public Utilities Committee; and Senator Simmons

SUBJECT: Telecommunications

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Fav/CS
2.	Hrdlicka	Cooper	CM	Fav/CS
3.	Pigott	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill provides for the retail deregulation of wireline telecommunication services by repealing the statutes that:

- Require price regulation.
- Require companies to provide a flat-rate pricing option for basic local telecommunications service.
- Prohibit charging any price other than that in the scheduled rate tariff.
- Authorize the Public Service Commission (commission) to engage in specified consumer protection activities.
- Maintain the role of the commission in resolving wholesale disputes between service providers.

The bill substantially amends the following sections of the Florida Statutes: 364.01, 364.011, 364.012, 364.0135, 364.02, 364.04, 364.10, 364.16, 364.163, 364.183, 364.33, 364.335, 364.3375, 364.385, 364.386, 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5).

The bill repeals the following sections of the Florida Statutes: 364.025, 364.0251, 364.0252, 364.051, 364.052, 364.057, 364.058, 364.059, 364.06, 364.063, 364.07, 364.08, 364.15, 364.161, 364.162, 364.185, 364.19, 364.27, 364.337, 364.3376, 364.3381, 364.3382, 364.339, 364.345, 364.37, 364.501, 364.503, 364.506, 364.507, 364.508, 364.515, 364.516, 364.601, 364.602, 364.603, and 364.604.

II. Present Situation:

Chapter 364, F.S., provides for regulation of wireline telecommunications companies.

Local Exchange Telecommunications Service

Section 364.02, F.S., defines “basic local telecommunications service,” or basic service, as voice-grade, single-line, flat-rate residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual-tone multi-frequency dialing, and access to the following: emergency services, such as “911,” all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company,¹ the term includes any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995. “Nonbasic service” is defined as any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement, or a network access service. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.

Universal Service

Section 364.025, F.S., provides for universal service, defined as “an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas.” To provide this level of service, each local exchange telecommunications company was required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company’s service territory until January 1, 2009. This “carrier-of-last-resort” obligation has now expired by the terms of the statute.

Price Regulation of Local Exchange Telecommunications Companies

Section 364.051, F.S., provides for price regulation of local exchange telecommunications companies.

¹ Section 364.02(8), F.S., defines the term “local exchange telecommunications company” to mean any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995. Basically, this means all wireline telephone companies certificated, or authorized to act in this state, prior to deregulation.

Basic Service

The statute requires a flat-rate pricing option for basic local telecommunications service. A company may, with 30 days' notice, adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent, upon specified conditions being met. These conditions are: 1) if it is determined that the level of competition justifies the elimination of price caps in an exchange served by a company with less than 3 million basic local telecommunications service access lines in service, or 2) at the end of 5 years for any company. If any company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature for that elimination.

In addition to this method for increasing prices, any company that believes circumstances have changed substantially enough to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase. The commission may grant the petition only after a compelling showing of changed circumstances.

Nonbasic service

Each company may set or change the rate for each of its nonbasic services on one day's notice. The price increase for any nonbasic service category cannot not exceed 6 percent within a 12-month period until there is another entity providing local telecommunications service in that exchange area; at that time, the price for any nonbasic service category may be increased in an amount not to exceed 10 percent within a 12-month period, and the rate is presumptively valid. However, the price for any service that was treated as basic service before July 1, 2009, cannot be increased by more than the amount allowed for basic service.

The statute also provides the commission with continuing regulatory oversight of nonbasic services for purposes of preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The price charged to a consumer for a nonbasic service must cover the direct costs of providing the service.

Small Local Exchange Telecommunications Companies

Section 364.052, F.S., provides for regulation of small local exchange telecommunications companies, defined as a local exchange telecommunications company certified by the commission prior to July 1, 1995, which had fewer than 100,000 access lines in service on that date. The statute requires the commission to adopt streamlined procedures for regulating these companies that minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters. The commission is authorized to establish only those procedures that are cost-justified and are in the public interest, so that universal service may be promoted.

These companies remain under rate of return regulation. However, the statute provides that a company may, at any time after January 1, 1996, elect to be subject to the price regulation provided in s. 364.051, F.S.

Any competitive local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. However, if a small local exchange telecommunications company elects to be subject to price regulation, or if it provides cable television programming services, a certificated competitive local exchange company may provide services within the territory of the electing company.

Connection of Lines and Number Portability

Section 364.16, F.S., relating to connection of lines and number portability, authorizes the commission to require line connections and transfer of telecommunications service when it finds that such connections between any two or more local exchange telecommunications companies can reasonably be made and efficient service obtained and that such connections are necessary.

Each competitive local exchange telecommunications company must provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting access and interconnection at nondiscriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the commission to determine the prices or terms. Each local exchange telecommunications company must provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162, F.S.

The statute also requires that temporary means of achieving telephone number portability be established no later than January 1, 1996. Each local exchange service provider must make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards.

Certificate of Necessity

Section 364.33, F.S., relating to certificates of necessity, provides that, with certain exceptions, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior commission approval. Section 364.335, F.S., relating to application for a certificate of necessity, requires each applicant for a certificate to do the following.

- Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for.

- File with the commission schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service.
- File the application fee required by the commission in an amount not to exceed \$500.
- Submit an affidavit that the applicant has given proper notice of its application.

If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the commission may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

Deregulation

Deregulation of the wireline telecommunications industry began in Florida in 1995. At that time, wireline voice communication services were only being offered by the incumbent local exchange companies. New providers could enter the market by three methods: a purchase and resale of a portion of an incumbent's systems and services; a lease of some of these systems; or construction of their own systems. With deregulation, various statutory protections were enacted for consumers and new market entrants, including requirements for a universal service fund, the carrier-of-last-resort obligation of each incumbent, and a rate structure that encourages competition while protecting all parties. As the market developed, changes were made to these and other statutes to provide further encouragement for competition and to continue or expand protections.

In spite of these changes, little competition developed until improvements in technology allowed the transmission of different types of communications services (voice, video, and data) on one delivery system. As these technologies converged, service providers began to offer bundled services, providing all three types of communications services to a customer on one network, with one contract and one price. This became the standard industry practice for providers that had traditionally provided only one form of communication service, either voice, video (cable), or data (Internet). With this convergence, additional statutory changes became necessary, notably further deregulation of wireline voice communication and changes to its rate structure, the creation of a state system for obtaining a franchise for video services to replace local franchises, and the deletion or repeal of provisions that became obsolete or unnecessary.

III. Effect of Proposed Changes:

Section 1 names the act the "Regulatory Reform Act."

Section 2 amends s. 364.01, F.S., to delete language directing the Public Service Commission to exercise its exclusive jurisdiction to:

- Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.
- Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

- Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.
- Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.
- Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.
- Eliminate any rules or regulations which will delay or impair the transition to competition.
- Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
- Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.
- Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

Section 3 amends s. 364.011, F.S., which provides exclusions for certain telecommunications services from commission jurisdiction. The bill adds to the list of exempt services both basic services and nonbasic services, including comparable services offered by any telecommunications company.

Section 4 amends s. 364.012, F.S., to change the term local exchange carrier to local exchange telecommunications company, presumably to distinguish telecommunications companies from other voice service providers.

Section 5 amends s. 364.0135, F.S., to create a definition for the term “sustainable adoption” of broadband services, meaning the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

Section 6 amends s. 364.02, F.S., providing definitions, to:

- Delete from the list of services included in the definition of “basic local telecommunications service” the providing an alphabetical directory listing.
- Delete the definitions of the term “monopoly service.”
- Delete the existing definition of the term “VoIP” and replace it with a detailed definition of a system that enables real-time, two-way voice communications using Internet Protocol, using a broadband connection, and permitting users generally to place and receive calls on the public switched telephone network.
- Exclude from the definition of “telecommunications company” an operator services provider.

Section 7 repeals s. 364.025, F.S., relating to universal service.

Section 8 repeals s. 364.0251, F.S., which requires, as a part of deregulation, that by January 1, 1996, all companies providing local exchange telecommunications services provide information on competition to their customers in the form of a bill insert.

Section 9 repeals s. 364.0252, F.S., which requires the commission to inform consumers of their rights as customers of competitive telecommunications services and to assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company. This statute also authorizes the commission to require all telecommunications companies providing local or long distance telecommunications services to develop and provide information to customers, including informing consumers of availability of the Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

Section 10 amends s. 364.04, F.S., which requires every telecommunications company to publish its rates and tolls through electronic or physical means. The bill specifies that the commission has no jurisdiction over the content, form, or format of the schedule. The bill also provides that the section does not apply to rates, terms, and conditions established pursuant to federal law on interconnections. Finally, it provides that ch. 364, F.S., does not prohibit a telecommunications company from: contracting for different rates; offering services not included in the published schedule; or meeting competitive offerings.

Section 11 repeals s. 364.051, F.S., which provides for price regulation of local exchange telecommunications companies.

Section 12 repeals s. 364.052, F.S., which provides for regulation of small local exchange telecommunications companies.

Section 13 repeals s. 364.057, F.S., which allows the commission to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.

Section 14 repeals s. 364.058, F.S., which authorizes the commission to conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction, upon petition or its own motion. This statute also requires the commission to implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies.

Section 15 repeals s. 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.

Section 16 repeals s. 364.06, F.S., which provides that, when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and that, if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.

Section 17 repeals s. 364.063, F.S., which requires that the commission put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. This statute also requires the commission to mail, within that 20-day period, a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.

Section 18 repeals s. 364.07, F.S., which requires every telecommunications company to file with the commission a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. The statute also authorizes the commission to review and to disapprove contracts for joint provision of intrastate interexchange service.

Section 19 repeals s. 364.08, F.S., which makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time.

Section 20 amends s. 364.10, F.S., to delete an existing prohibition against undue advantage or preference. It also deletes an existing prohibition against increasing the residential basic local telecommunications service rate, as authorized by s. 364.164, F.S., of any local exchange telecommunications company customer receiving Lifeline benefits, under certain conditions. Section 364.164, F.S., was repealed in 2007.

Section 21 repeals s. 364.15, F.S., which authorizes the commission to order that repairs, improvements, changes, additions, or extensions be made in any telecommunications facility when it finds that these changes ought reasonably to be made, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for basic local telecommunications services.

Section 22 amends s. 364.16, F.S., relating to connection of lines and number portability. The bill preserves the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms. It deletes all other existing provisions on access, except to poles, and replaces them with the following provisions.

- Upon request, the commission is required to arbitrate and enforce interconnection agreements pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections.
- The commission is authorized to resolve disputes among carriers concerning violations of this chapter and under the authority conferred by federal law to resolve such disputes, including, but not limited to, federal law addressing resale of services, local interconnection, unbundling, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation.
- However, this section does not confer jurisdiction on the commission for matters that are exempt from commission jurisdiction under ss. 364.011 and 364.013, F.S.

Additionally, the bill specifically provides for competitive local exchange telecommunications companies to interconnect with local exchange telecommunications companies.

The bill prohibits a telecommunications company from knowingly delivering traffic for which terminating access service charges would otherwise apply through a local interconnection arrangement without paying the appropriate charges for the terminating access service. Any party having a substantial interest may petition the commission for an investigation of any suspected violation of this subsection. If any telecommunications company knowingly violates this subsection, the commission has jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

The commission is directed to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service which must:

- Be consistent with the Telecommunications Act of 1996.
- Provide for specific verification methodologies.
- Provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge.
- Allow for a subscriber's change to be considered valid if verification was performed consistent with commission rules.
- Provide remedies for violations of the rules.
- Allow for the imposition of other penalties available under this chapter.

The commission must resolve on an expedited basis any complaints of anticompetitive behavior concerning a local preferred carrier freeze. The telecommunications company that is asserting the existence of a local preferred carrier freeze has the burden of proving through competent evidence that the subscriber did in fact request the freeze.

Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission must determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. The commission must implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies which must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission is required to make its determination within 120 days after a petition is filed or a motion is made. The commission must adopt rules to administer these requirements.

Section 23 repeals s. 364.161, F.S., which requires each local exchange telecommunications company, upon request, to unbundle all of its network elements, the network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities, and sell those elements for resale to the extent technically and economically feasible. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 24 repeals s. 364.162, F.S., which allows a competitive local exchange telecommunications company 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. Under the bill, these provisions are addressed in s. 364.16, F.S.

Section 25 amends s. 364.163, F.S., to make conforming changes.

Section 26 amends s. 364.183, F.S., to delete existing commission authority to have access to certain types of records of a local exchange telecommunications company's affiliated companies, including its parent company, and to require a telecommunications company to file records, reports, or other data and to retain such information for a designated period of time.

Section 27 repeals s. 364.185, F.S., which authorizes the commission to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.

Section 28 repeals s. 364.19, F.S., which authorizes the commission to regulate the terms of telecommunications service contracts between telecommunications companies and their patrons through use of reasonable rules.

Section 29 repeals s. 364.27, F.S., which requires the commission to investigate all interstate rates, fares, and charges for or in relation to the transmission of messages or conversations where any act relating to the transmission of messages or conversations takes place within this state and when it appears to violate The Communications Act of 1934.

Section 30 amends s. 364.33, F.S., relating to certificates of necessity, to prohibit any person from providing telecommunications services to the public without a certificate of necessity or a certificate of authority. The bill prohibits the commission from issuing any new certificates after July 1, 2011, but provides that existing certificates remain valid. A certificate may be transferred to the holder's parent company or an affiliate or another person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

Section 31 amends s. 364.335, F.S., relating to application for a certificate of necessity, to replace provisions relating to the information an applicant is required to provide the commission with the following information requirements.

- The applicant's official name and, if different, any name under which the applicant will do business.
- The street address of the principal place of business of the applicant.
- The federal employer identification number or the Department of State's document number.
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed.

- Information demonstrating the applicant's managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

The bill requires that the commission grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure continued compliance with applicable business formation, registration, and taxation provisions of law.

The bill also deletes all current provisions relating to hearings.

Section 32 repeals s. 364.337, F.S., which provides for certification of a competitive local exchange telecommunications company prior to January 1, 1996. The statute also requires that a competitive local exchange telecommunications company provide a flat-rate pricing option for basic local telecommunications services and that the service include access to operator services, "911" services, and relay services for the hearing impaired.

Section 33 amends s. 364.3375, F.S., to delete a provision allowing a pay telephone provider to charge a rate equivalent to the local coin rate of the local exchange telecommunications company and a provision prohibiting a pay telephone provider from obtaining services from an operator service provider unless the operator service provider has obtained a certificate of public convenience and necessity.

Section 34 repeals s. 364.3376, F.S., which provides for operator services. The statute prohibits providing operator services without first obtaining a certificate of public convenience and necessity. The statute provides that all intrastate operator service providers are subject to the jurisdiction of the commission, must render services pursuant to price schedules, and must meet prescribed requirements.

Section 35 repeals s. 364.3381, F.S., which prohibits cross-subsidization, which is the sale of nonbasic telecommunications service below cost by use of subsidization from rates paid by customers of basic services.

Section 36 repeals s. 364.3382, F.S., which requires a local exchange telecommunications company to advise each residential customer of the least-cost service available to a residential customer when the customer initially requests service and to annually advise each residential customer of the price of each service option selected by that customer.

Section 37 repeals s. 364.339, F.S., which provides the commission with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

Section 38 repeals s. 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time.

The statute also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a determination by the commission that the proposed sale, assignment, or transfer is in the public interest and the approval of the commission.

Section 39 repeals s. 364.37, F.S., which authorizes the commission to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.

Section 40 amends s. 364.385, F.S., to delete all references to the effects of the original deregulation act on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.

Section 41 amends s. 364.386, F.S., to make conforming changes.

Section 42 repeals s. 364.501, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.

Section 43 repeals s. 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the commission and the Department of Legal Affairs of the Office of the Attorney General.

Sections 44 through 48 repeal ss. 364.506 through 364.516, F.S. Section 364.506, F.S., titles these sections, which make up Part II of chapter 364, the Education Facilities Infrastructure Improvement Act. Section 364.507, F.S., provides legislative findings and intent. Section 364.508, F.S., provides definitions. Section 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997. Section 364.516, F.S., provides for penalties.

Sections 49 through 52 repeal ss. 364.601 through 364.604, F.S. Section 364.601, F.S., titles these sections, which make up Part III of Chapter 364, the Telecommunications Consumer Protection Act. Section 364.602, F.S., provides definitions. Section 364.603, F.S., requires the commission to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service. Section 364.604, F.S., establishes requirements for the content of a customer's bill; provides that a customer is not liable for any charges for telecommunications or information services that the customer did not order or that were not provided; requires every billing party to provide a free blocking option to a customer to block 900 or 976 telephone calls; and prohibits a billing party from disconnecting a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid.

Sections 53 through 60 amend ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

Section 61 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:

Wireline telecommunication customers will no longer be protected by the Public Service Commission economic regulation, but may benefit from greater competition among intermodal service providers. Customers also will no longer have a statutory right to a flat-rate pricing option for basic local telecommunications service.

C. Government Sector Impact:

Section 364.336, F.S., provides for telecommunications regulatory assessment fees (RAF). Every six months, each telecommunications company licensed or operating under ch. 364, F.S., must pay to the Public Service Commission a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The commission is required to establish and assess a minimum fee in an amount up to \$1,000. The minimum amount may vary depending on the type of service provided by the telecommunications company, and must, to the extent practicable, be related to the cost of regulating that type of company.

This bill provides that the commission will no longer be engaged in economic regulation of the retail wireline telecommunications industry or in related consumer protection. As a result, the commission will have to reassess the amount of RAF collected and, consequently, a staffing reduction as follows.

	FY 11-12		FY 12-13		FY 13-14	
	FTE	TF Savings	FTE	TF Savings	FTE	TF Savings
	(11.0)		(13.0)		(13.0)	
Recurring		(\$703,659)		(\$807,378)		(\$807,378)
Nonrecurring		(\$42,296)		(\$7,796)		\$0
Total	(11.0)	(\$745,955)	(13.0)	(\$815,174)	(13.0)	(\$807,378)

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 Commerce and Tourism on March 29, 2011:

The CS makes several technical changes, including:

- Adding specificity to the exclusion of nonbasic service from PSC jurisdiction to include “comparable services”;
- Removing a reference to “pole attachment rates” as an example of a barrier to entry;
- Removing a proposed repeal to s. 364.015, F.S., which authorizes the PSC to obtain an injunction to enforce its rules and orders;
- Adding a provision to state that a competitive local exchange company can interconnect with another local company to transmit and route voice traffic between both companies regardless of the technology used and directs the PSC to give the competitive local exchange company all substantive and procedural rights available under the law; and
- Restoring language that was inadvertently deleted from the paragraph, which addressed employee personal information that is considered to be “proprietary confidential business information” and exempt from public records.

CS by Communications, Energy, and Public Utilities on March 21, 2011:

The committee substitute: retains PSC authority to recover travel costs; retains definitions relating to operator services; and retains the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms.

- 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 118

INTRODUCER: Senator Bullard

SUBJECT: Bicycle Safety

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	Favorable
2.	Erickson	Cannon	CJ	Favorable
3.	Hendon	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

I. Summary:

This bill revises safety standard requirements for bicycle helmets worn by minor riders and passengers to require the helmets to meet certain federal safety standards. The use of helmets purchased before October 1, 2011, in compliance with current statutory standards will be permitted until January 1, 2015. The bill also 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.

This bill substantially amends s. 316.2065 of the Florida Statutes.

II. Present Situation:

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.

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.

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.

III. Effect of Proposed Changes:

This bill 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.

The bill allows 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.

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:

Since the CPSC standards were established 10 years ago, the number of helmets not meeting the standards has diminished significantly. Further, the bill allows helmets purchased before the effective date to be used without penalty until 2015. This minimizes fiscal impact to individuals since these helmets likely will have been outgrown or otherwise need to be replaced.

C. Government Sector Impact:

There is a likely positive yet indeterminate fiscal impact due to a presumed reduction of public health 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.)

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: SB 996

INTRODUCER: Senator Simmons

SUBJECT: Communications Among Branches of Government

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland	Maclure	JU	Favorable
2.	Roberts	Roberts	GO	Favorable
3.	Hendon	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

I. Summary:

Generally, opinions of the Florida Supreme Court or the various district courts of appeal are published online for the public, and copies of the opinions are furnished to the parties to the litigation and to the court below. Courts sometimes issue opinions that declare statutes unconstitutional, recommend statutory changes, or find the meaning of statutes unclear. Currently, the Legislature and the Governor are not notified by the clerk of the court of such opinions, unless the Legislature or a member of the executive branch happens to be a party to that particular litigation. The bill requires that, in regard to these categories of opinions, the clerk of the respective court shall furnish a copy of the opinion to the President of the Senate, the Speaker of the House of Representatives, and the Governor within 30 days after the opinion is published by the court.

This bill creates sections 25.079 and 35.079, Florida Statutes.

II. Present Situation:

Currently, opinions issued by the Florida Supreme Court and the five district courts of appeal are available on each of the courts' websites.¹ In addition, opinions are published by various private publishing companies. While the courts routinely provide copies of the opinion to the parties to the litigation, opinions are not generally provided to nonparties.

¹ The opinions of the Florida Supreme Court are found at <http://www.floridasupremecourt.org/decisions/index.shtml>. In addition, the webpage contains links to the opinions of each of the five district courts of appeal.

Appellate court opinions sometimes declare a statute invalid. Often an executive branch agency is a party to the litigation and receives a copy of the opinion. However, a statute can be declared invalid in cases in which no government entity is a party to the litigation. For example, in *Massey v. David*, the Florida Supreme Court declared a statute unconstitutional because the statute impermissibly encroached on the rulemaking authority of the court.² The *Massey* case was a legal malpractice case between an attorney and a former client. Therefore, no government entity was involved. Likewise, courts occasionally issue opinions that recommend statutory changes or identify technical or policy problems in statutes.³ Currently, there is no policy, formal or otherwise, of notifying anyone other than the parties to the litigation and the court below of any court opinion.⁴

Previously, a section of the Florida Statutes mandated that copies of the reports of the decisions of the Supreme Court and of the district courts of appeal be distributed to the Governor, each Cabinet officer, each justice of the Supreme Court, each judge of the district courts of appeal, each circuit judge, each judge of county courts, each state attorney, each public defender, each state university and legal depository, and two copies thereof to the Attorney General. Also, the statute required that such copies be distributed to the clerks of the United States district courts in the Northern, Middle, and Southern Districts of Florida. Further, that same statute required that copies of the reports of decisions of the Supreme Court and the district courts of appeal be transmitted by mail or express to the Governor of each state and territory which sends the reports of its courts to this state.⁵ The statute, along with several related sections, was repealed in 2009.⁶

III. Effect of Proposed Changes:

This bill applies to opinions issued by the Florida Supreme Court or any Florida district court of appeal. If any such court issues an opinion declaring a statute, regulation, or government practice unconstitutional, recommending statutory or regulatory changes, or finding that the meaning of a statute is unclear, then the clerk of that court must submit a copy of the opinion to the President of the Senate, the Speaker of the House of Representatives, and the Governor within 30 days after the opinion is published by the court.

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.

² *Massey v. David*, 979 So. 2d 931 (Fla. 2008).

³ *L.A. Fitness Int'l, LLC v. Mayer*, 980 So. 2d 550, 561 (Fla. 4th DCA 2008).

⁴ Telephone conversation with the clerk's office of the Florida First District Court of Appeal (March 17, 2011).

⁵ Section 25.311, F.S. (2008).

⁶ Chapter 2009-204, s. 21, Laws of Fla. (repealing ss. 25.311, 25.321, 25.331, 25.361, and 25.381, F.S.).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that the Florida Supreme Court and the district courts of appeal must provide copies of certain opinions to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Article V, subsection 2(a), of the Florida Constitution, provides that the Florida Supreme Court “shall adopt rules for the practice and procedure” in all courts. The Florida Supreme Court has interpreted this provision to mean that the Court has the exclusive power to create rules of practice and procedure and statutes that encroach on that power, if not merely incidental to substantive legislation, are unconstitutional.⁷ If the Court were to determine that the provisions of this bill created a procedural rule, the Court could hold the statute invalid or adopt it as a rule of court.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator has released a judicial impact statement concerning this bill.⁸ The statement concluded that the bill can be anticipated to increase appellate court workload relating to the identification and selection of opinions required to be transmitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor, and with the transmission of those opinions by electronic or other means. However, the statement noted that the fiscal impact arising from this increased workload cannot be precisely quantified.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ *Massey*, 979 So. 2d at 937.

⁸ Office of the State Courts Administrator, *2011 Judicial Impact Statement for SB 996*, February 23, 2011 (on file with the Senate Committee on Judiciary).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 904

INTRODUCER: Senators Dean, Gaetz and Altman

SUBJECT: Driver's Licenses and Identification Cards

DATE: April 12, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Fleming	Carter	MS	Favorable
2. Sookhoo	Spalla	TR	Favorable
3. Carey	Meyer, C.	BC	Pre-meeting
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

This bill creates a new \$1 check-off on driver's license applications for the Disabled American Veterans. Specifically, the bill amends s. 322.08, F.S., to require driver's license applications and renewals to include a \$1 voluntary contribution to Disabled American Veterans, Department of Florida, a non-profit 501(c)(3) organization.

This bill substantially amends s. 322.08 of the Florida Statutes.

II. Present Situation:

Driver's License Check-offs

Section 322.081, F.S., provides the procedures that an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary trust fund fee and establish a corresponding voluntary check-off on a driver's license application. The check-off allows a person applying for or renewing a Florida driver's license to voluntarily contribute to one or more of the authorized voluntary trust funds during the driver's license transaction. Before the organization is eligible, it must submit the following to the Florida Department of Highway Safety and Motor Vehicles (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 the DHSMV's costs for reviewing the application and developing the check-off, if authorized. State funds may not be used to pay the application fee.

- A short- and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contribution.

Once a contribution is enacted, the 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 5-year period.¹

Prior to the 2010 legislative session, s. 322.08, F.S., authorized seven voluntary contributions while s. 322.18(19), F.S., authorized an eighth. In 2010, the Florida Legislature enacted three bills that addressed driver's license contributions:

- 2010, HB 971 (ch. 2010-223, L.O.F.) added two additional check-offs for the League Against Cancer and the State Homes for Veterans Trust Fund administered by the Florida Department of Veterans Affairs;
- 2010, HB 399 (ch. 2010-86, L.O.F.) added three additional check-offs for Senior Vision Services, The Arc of Florida, and Ronald McDonald House Charities of Tampa Bay; and
- 2010, HB 263 (ch. 2010-82, L.O.F.) added an additional check-off for Lauren's Kids, Inc.²

In addition to creating the League Against Cancer and State Homes for Veterans check-offs, ch. 2010-223, Laws of Florida, established a moratorium on new voluntary check-offs. DHSMV "may not establish any new voluntary contributions on the motor vehicle registration application form under s. 320.023, F.S., or the driver's license application form under s. 322.081, F.S., between July 1, 2010, and July 1, 2013."

An exemption to the moratorium in ch. 2010-223, L.O.F., allows those charities that were in the process of complying with s. 322.081, F.S., in 2010 to continue to seek a check-off. DHSMV has identified five charitable organizations that fall within the exemption from the moratorium. Disabled American Veterans, Department of Florida is one of these charities.³

Disabled American Veterans, Department of Florida

The Disabled American Veterans (DAV) was founded in 1920 and is dedicated to building better lives for America's disabled veterans and their families. The DAV provides assistance to disabled veterans through its 72 offices in the United States and Puerto Rico with over 270 National Service Officers. The DAV, Department of Florida's headquarters is located in Micanopy, Florida, and provides a broad range of services to disabled veterans including providing consultation on U.S. Department of Veteran Affairs benefits, compensation, and

¹ Section 322.081(4)(a), F.S.

² In addition to creating the check-off for Lauren's Kids, Inc., ch. 2010-82, Laws of Florida, streamlined the application process by eliminating s. 322.18(19), F.S., and clarifying that the check-offs required in s. 322.08(7), F.S., must appear on all license applications, including applications for renewal or replacement. This change reflects the fact that DHSMV uses a single application form for all such purposes.

³ Letter from DHSMV Executive Director Julie L. Jones to the Florida House of Representatives, Transportation and Highway Safety Subcommittee, January 14, 2011.

healthcare as well as assisting veterans in assembling evidence to support benefit claims. DAV's operations are solely supported from the collection of donations and dues.⁴

III. Effect of Proposed Changes:

This bill amends s. 322.08, F.S., to require driver's license applications and renewals to include a \$1 check-off to the Disabled American Veterans, Department of Florida, a non-profit 501(c)(3) organization.

The DHSMV has provided notice that Disabled American Veterans, Department of Florida, has complied with s. 322.081, F.S., regarding requests to establish a voluntary check-off, by submitting its letter of request, \$10,000 application fee, and approved short- and long-term marketing plans.

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:

Motorists who decide to donate would pay an additional dollar to acquire or renew a driver's license.

C. Government Sector Impact:

The bill will require programming modifications to DHSMV's Driver License and Motor Vehicle Information Systems, the cost of which will be paid from the \$10,000 application fee submitted by the Disabled American Veterans, Department of Florida. The DHSMV has found that the Disabled American Veterans check off has met the application

⁴Information summarized from: Disabled American Veterans, Department of Florida Website. *About Us*. Available at: http://www.davmembersportal.org/fl/Web_Pages/about_us.aspx (Site last accessed March 22, 2011.)

requirements and falls within the exception for the moratorium on new registration and drivers licenses check offs created by the 2010 legislature.

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 378

INTRODUCER: Rules Subcommittee on Ethics and Elections and Senator Gaetz

SUBJECT: Federal Write-In Absentee Ballot

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Fav/CS
2.	Fox	Phelps	RC	Favorable
3.	Martin	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Committee Substitute for Senate Bill 378 allows absent uniformed services or overseas electors to use the federal write-in absentee ballot (FWAB) in any federal, state, or local election involving two or more candidates. The bill maintains that the FWAB may only be used by eligible electors as a last resort, that is, when the elector has timely requested but has not received an official state absentee ballot. The bill adopts specific procedures to duplicate an FWAB when canvassed, similar to when an absentee ballot is duplicated when received physically damaged. It allows the voter to designate candidate choices by name or political party preference for each office. It requires the Department of State to adopt rules to determine voter intent on an FWAB. Finally, the bill requires that all races on each FWAB received by a county supervisor of elections by 7 p.m. on election day be canvassed, unless an elector's official absentee ballot is received by that time — in which case the official absentee ballot is counted in lieu of the FWAB.

This bill substantially amends and reenacts ss. 101.5614, 101.6952, 102.166 and 104.18 of the Florida Statutes.

II. Present Situation:

Currently, there are three different *general* election ballots that an absent uniformed services or overseas Florida voter can use for various federal, state, and local elections: the state write-in ballot, the official absentee ballot, and the federal write-in absentee ballot. The official absentee ballot is the only one that an elector can use to vote in a *primary* election.

BALLOTS

Official Florida Absentee Ballot

An absent uniformed services or overseas voter who requests¹ an ***official Florida write-in absentee ballot*** may vote in any federal, state, or local primary election or general election — including multi-candidate races, judicial retention elections, and state constitutional amendment/local referendum elections. The form of the ballot is the familiar one that voters going to the polls or voting early receive. It contains the name of offices, candidate names, political party abbreviations, and either a bubble or arrow to be filled-in by the voter to designate choices. This is by far the most commonly-used ballot.

Federal Write-In Absentee Ballot (FWAB)

Federal law provides that an absent uniformed services or overseas voter who timely requests but does not receive an official state absentee ballot may use the ***federal write-in absentee ballot (FWAB)*** to vote for *candidates* in *federal general* elections only.² Absent specific state authorization, the FWAB may not be used in primary contests or for state or local elections. Other southern states, including Arkansas, Mississippi, South Carolina, Tennessee, and neighboring Georgia,³ have authorized the use of the FWAB in certain state and local elections: Florida has not. While most military and overseas Florida voters utilize the official absentee ballot, eligible electors have used FWABs as a ballot of last resort in recent elections.⁴

In Florida, electors in federal general elections may fill in either the candidate's name or the name of a political party under headings on the FWAB designated as:

- PRESIDENT/VICE PRESIDENT
- U.S. SENATOR
- U.S. REPRESENTATIVE/DELEGATE/RESIDENT COMMISSIONER

¹ Pursuant to 101.62, F.S.

² 42 U.S.C. § 1973ff-2.

³ O.C.G.A. § 21-2-381.1 (2010).

⁴ FWABs have been received in recent elections in military-rich Escambia and Okaloosa Counties. Escambia County received 34 FWABs in the 2010 general election. Okaloosa County received 162 FWABs in 2008 and 101 FWABs in 2010. Regarding the 2010 FWABs received by Okaloosa County, 63 of the 101 were not counted because their official absentee ballot arrived after (or in some cases before) the FWAB was received. E-mail from Nanci Watkins, Executive Assistant to the Florida State Association of Supervisors of Elections to John Seay, Legislative Intern, Rules Subcommittee on Ethics & Elections (Mar. 3, 2011).

The FWAB “ADDENDUM” allows voters to designate choices in state and local candidate races. The elector must write-in the name of each office for which he or she wishes to vote, along with the corresponding candidate’s name or political party preference for the office. The form of the addendum is essentially as follows:

ADDENDUM	
Some states allow the Federal Write-In Absentee Ballot to be used by military and overseas civilian voters in elections other than general elections or for offices other than Federal offices. Consult your state section in the <i>Voting Assistance Guide</i> to determine your state’s policy. <i>If you are eligible to use this ballot to vote for offices/candidates other than those listed above</i>, please indicate in the spaces provided below, the office for which you wish to vote (for example: Governor, Attorney General, Mayor, State Senator, etc.) and the name and/or party affiliation of the candidate for whom you wish to vote.	
OFFICE	CANDIDATE’S NAME or PARTY AFFILIATION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

State Write-In Absentee Ballot

An overseas voter who states that, due to military or other contingencies that preclude normal mail delivery, he or she cannot vote an absentee ballot during the normal absentee voting period may request a “***state write-in absentee ballot***” not earlier than 180 days before a general election.⁵ The state write-in absentee ballot *may not* be used in a primary election. The state write-in ballot contains all *offices* --- federal, state, and local --- for which the elector would otherwise be entitled to vote, including judicial retention elections; the elector, however, *cannot* use the ballot to vote in state constitutional amendment or local referendum elections.

The form of the state write-in absentee ballot includes the printed name of the office to be voted, along with a corresponding line for the elector to designate a candidate’s name or political party preference for that office.⁶ The judicial retention questions are also printed on the form, including the names of the appellate justices or judges scheduled to be on the ballot for retention.

⁵ Section 101.6952(1), F.S.

⁶ See Rule 1S-2.028, FLA. ADMIN. CODE (detailing the form of the state write-in absentee ballot).

BACKGROUND

Military/Overseas Voting in Florida Elections

Florida has had a somewhat troubled past with respect to accommodating military and overseas voters, due primarily to the existence of the historical second primary election — which hindered the timely delivery of absentee ballots to overseas voters. The existence of the second primary meant that Florida had to conduct three elections in a 9-week period, with the first primary being held nine weeks prior to the general election and the second primary (or “runoff”) held five weeks prior to the general election.⁷ Many of these problems, however, have been overcome by: eliminating the second primary;⁸ mandating that official absentee ballots be provided to uniformed services and overseas voters at least 45 days before each primary and general election where requests have been received; and, providing for the electronic (e-mail) delivery of un-voted ballots, as mandated by the federal Military and Overseas Voter Empowerment (MOVE) Act.

The former election schedule prompted the federal government to sue the State of Florida in the early 1980’s. The suit alleged that Florida’s system of conducting three elections in nine weeks disenfranchised military and overseas voters by not providing sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by election day. To resolve the suit, Florida entered into a consent decree with the federal government, which ultimately required the State to count votes from such electors in the presidential preference primary and federal general election contests that are received up to 10 days after the date of the election.⁹ Florida is still bound by the terms of this consent decree, having never sought relief from the courts.

In 1989, the Legislature attempted to further accommodate absentee voting by military and overseas electors by adopting an advance ballot system.¹⁰ Under the advance ballot system, supervisors of elections mailed first primary absentee ballots to qualified overseas electors no later than 35 days before the primary.¹¹ Subsequently, the supervisors would mail *advance* ballots for the second primary and general election if the regular absentee ballots for the second primary and general election were not available 45 days before the respective elections.¹² Advance ballots for the second primary and general election could necessarily contain candidates who may have been eliminated in the prior election. In 2005, the Legislature permanently ended the second primary system but did not change the number of days in advance to send absentee ballots.¹³ Beginning in 2010, supervisors of elections were required to mail absentee ballots to

⁷ Section 100.091, F.S. (2000).

⁸ The year 2000 was the last time Florida conducted a second primary. The second primary was suspended for the 2002 and 2004 election cycles, and permanently eliminated prior to the 2006 cycle.

⁹ Rule 1S-2.013, FLA. ADMIN. CODE.

¹⁰ Section 28, ch. 89-338, LAWS OF FLA.

¹¹ *Id.*

¹² *Id.*

¹³ In 2005, the ballot schedule was revised to require supervisors of elections to mail absentee ballots to overseas voters no later than 35 days before the primary or general election. Section 16, ch. 2005-286, LAWS OF FLA. In 2007, the Legislature again revised the ballot schedule to require absentee ballots to overseas voters to be mailed no later than 35 days prior to a primary election and no later than 45 days prior to a general election. Section 30, ch. 2007-30, LAWS OF FLA.

absent uniformed services and overseas electors no later than 45 days before each election.¹⁴ The 45-day period currently required under Florida law is in compliance with the federal Military and Overseas Voter Empowerment (MOVE) Act.¹⁵

On a related note, there were numerous legal challenges to the validity of overseas military ballots in Florida during the 2000 presidential election.¹⁶ In response, the 2001 Legislature created the state write-in absentee ballot system. Overseas voters who anticipate that they will not be able to vote an absentee ballot during the regular absentee ballot voting period may request a state write-in absentee ballot. A date line was also added to the absentee ballot return envelope, and a presumption was created in law that absentee ballots received from overseas electors were mailed on the date stated on the envelope — regardless of the absence of a postmark or a postmark which is dated later than the date of election.¹⁷

Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).¹⁸ The Act created an emergency back-up ballot, the Federal Write-In Absentee Ballot (FWAB), which can be cast by voters who make timely application for but do not receive an official absentee ballot.¹⁹ The Act covers citizens who are members of the Armed Forces and Merchant Marine, and their spouses and dependents, and citizens residing outside of the United States. Members of the Armed Forces and Merchant Marine and their spouses and dependents are allowed to vote absentee while away from their place of voting residence, wherever stationed, either within or outside the United States. Other U.S. citizens residing outside of the United States and its territories may vote in the state where they last resided prior to leaving the United States.

In addition, UOCAVA requires states to accept and canvass an FWAB from an absent military or overseas voter provided:

- The voter is absent from his or her voter residence (overseas voters must submit their ballots from outside the U.S.);
- The voter applied for an official state absentee ballot early enough so the request is received by the appropriate local election official not later than the state deadline²⁰ or 30 days before an election, whichever is later; and,
- The state has not received the requested official state absentee ballot from the voter by the requisite deadline under State law.²¹

¹⁴ Section 101.62(4)(a), F.S. *See also* Section 7, ch. 2010-167, LAWS OF FLA.

¹⁵ The MOVE Act requires ballots for uniformed services and overseas citizen voters be sent at least 45 days prior to a general election for federal office. Pub. L. 111-84; 42 U.S.C. § 1971.

¹⁶ *See e.g., Congress Muzzling the Military*, FLORIDA TIMES-UNION, Dec. 13, 2000, at B6. Many of the challenges of the ballot validity stemmed from the fact that many ballots lacked a postmark. Florida law required that ballots mailed by absent qualified electors overseas were considered valid *only* if the ballot were mailed with an APO, FPO, or foreign postmark. *See also Bush v. Hillsborough County Canvassing Bd.*, 123 F.Supp.2d 1305 (N.D. Fla. 2000).

¹⁷ Section 101.6952(2), F.S.

¹⁸ Pub. L. 99-410.

¹⁹ 42 U.S.C. § 1973ff-2.

²⁰ Florida law requires supervisors to send absentee ballots to UOCAVA voters from whom they have received a request at least 45 days before the election. Section 101.62(4)(a), F.S.

UOCAVA also allows overseas electors who have submitted an FWAB and later receive an official absentee ballot to submit the official absentee ballot.²² The FWAB is also required to clearly state that an overseas elector who submits an FWAB and later receives and submits an absentee ballot must make every reasonable effort to inform the appropriate election official that the elector has submitted more than one ballot.²³

III. Effect of Proposed Changes:

The CS expands use of the FWAB by absent uniformed services and overseas voters to state and local elections involving two or more candidates.

Specifically, the CS:

- Authorizes an eligible elector to use the FWAB to cast a vote in any federal election and any state or local election involving two or more candidates.²⁴
- Authorizes an eligible elector to use the FWAB *only* as a ballot of last resort under the same limitations as apply in federal races; an elector must have made timely application for an official state absentee ballot²⁵ and not received it.
- Allows the elector to designate a candidate choice by writing the candidate's name or, in many elections,²⁶ the name of a political party.
- Clarifies that, in many cases, a candidate designation of "Independent" shall be ascribed to the candidate in the race who has registered to run with no party affiliation (NPA), provided there is only one such candidate.
- Requires supervisors to canvass all races on each FWAB received by 7:00 p.m. on election day, unless the supervisor has also received an official absentee ballot from an elector to substitute for the FWAB by that time — in which case the FWAB shall be invalid and the official absentee ballot is canvassed.
- Establishes specific procedures for duplicating an FWAB to be canvassed, mirroring the current procedures for duplicating a ripped, torn, or otherwise damaged official absentee ballot that cannot be processed by the voting equipment.
- Requires the Department of State to adopt specific rules to prescribe what constitutes a "clear indication on the ballot that the voter has made a definite choice" on the FWAB, such that local canvassing boards will use the same rules for duplicating ballots at the front-end of the canvassing process as will be used later in the case of a manual recount. The rules must be consistent with other ballots for certified voting systems, to the extent practicable. The rules must include, but are not limited to, addressing the following

²¹ 42 U.S.C. § 1973ff-2(b).

²² 42 U.S.C. § 1973ff-2(d).

²³ *Id.*

²⁴ The FWAB is not designed to accommodate choices in issue elections such as constitutional amendments and referendums or judicial retention elections, both of which are foreign to the federal electoral system.

²⁵ Application must have been made such that it would have been received by a supervisor of elections at least 30 days before the election. 42 U.S.C. § 1973ff-2(b); *see also*, VOTER'S DECLARATION/AFFIRMATION - FEDERAL WRITE-IN ABSENTEE BALLOT (FWAB) (Affirmation #5), at <http://www.fvap.gov/resources/media/fwab.pdf>.

²⁶ Excludes primary, special primary, and nonpartisan elections.

issues: opposing candidates who have the same or similar names; the use of marks, symbols, or language to indicate that the same political party designation applies to all listed offices; designating a qualified candidate for the wrong office; and, the appropriate lines or spaces for designating a candidate choice.

- Mirrors UOCAVA's provision allowing an elector who submits an FWAB and later receives an official absentee ballot to also submit the official absentee ballot, and encourages the elector to make every reasonable effort to inform the appropriate supervisor of elections that they have submitted more than one ballot.
- Removes criminal penalties for electors who have cast more than one ballot in an election in the limited circumstance of an elector who has submitted an FWAB and later received and submitted an official absentee ballot, to conform.
- 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Rules Subcommittee on Ethics and Elections on March 7, 2011:

The CS fleshes out and incorporates into Florida's electoral voting scheme the concept found in the original bill — expanding the use of the Federal Write-In Absentee Ballot to state and local races. Specifically, the CS differs from the original bill in that it: authorizes using FWABs for state and local candidate races (no issue or retention elections); limits FWAB use as a ballot of last resort, as under federal law; requires supervisors of elections to canvass all FWABs in their possession by 7 p.m. on election day, unless an elector's official absentee ballot has been received by that time; adopts specific procedures to duplicate an FWAB when canvassed; requires the Department of State to adopt rules to determine voter intent on an FWAB; encourages electors who have submitted an FWAB and later receive and submit an official absentee ballot to make every reasonable effort to inform the appropriate supervisor of elections that they have submitted more than one ballot; and, removes criminal penalties for casting more than one ballot under such circumstances, to conform.

- 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	Favovrable
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.

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.



825530

LEGISLATIVE ACTION

Senate

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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.



825530

(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



825530

43
44

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



134104

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 237 and 238
insert:

(5) An employer is exempt from the requirements of
subsection (1) if the employer, on or after July 1, 2012, hires:

(a) Any temporary nonimmigrant alien who is authorized to
work in agricultural employment in the United States under 8
U.S.C. ss. 1101(a)(15)(H)(ii)(a) and 1184(c); or

(b) Any temporary nonimmigrant alien who is authorized to
perform other temporary service or labor under 8 U.S.C. s.
1101(a)(15)(H)(ii)(b).



134104

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

And the title is amended as follows:

Delete line 25

and insert:

under certain conditions; providing that an employer
is exempt from verifying the employment eligibility of
certain temporary nonimmigrant aliens who are hired on
or after a specified date; providing legislative
intent

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.....	☒	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 Immigration¹

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 States⁵ 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

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:

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

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

[VC100000b92ca60aRCRD&vgnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD](http://www.dhs.gov/e-verify/VC100000b92ca60aRCRD&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, 2010³¹

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

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/mgmt/rpts/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

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

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 crime⁵² 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

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_advactivitiesched.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.