

**SB 156 by Negron (CO-INTRODUCERS) Benacquisto, Clemens, Evers, Brandes, Hukill, Abruzzo, Bradley, Bean;** (Identical to H 0061) Motor Vehicle License Taxes

942224	D	S	RCS	AP, Negron	Delete everything after	03/13 05:23 PM
727944	AA	S	RCS	AP, Negron	In title, delete L.244:	03/13 05:23 PM

**CS/CS/SB 846 by CA, EE, Latvala;** (Compare to H 0655) Governmental Ethics

927154	A	S	RCS	AP, Lee, Latvala	Before L.99:	03/13 04:53 PM
292784	A	S	RCS	AP, Latvala	Delete L.486 - 488:	03/13 04:53 PM
261230	A	S	RCS	AP, Latvala	btw L.488 - 489:	03/13 04:53 PM
699846	A	S	RCS	AP, Latvala	Delete L.489 - 531:	03/13 04:53 PM

**SPB 7086 by AP;** Internal Revenue Code

**CS/SB 102 by TR, Diaz de la Portilla (CO-INTRODUCERS) Garcia, Evers;** (Similar to H 0055) Drivers Leaving the Scene of a Crash

479484	A	S	RCS	AP, Benacquisto	Delete L.118 - 126:	03/13 05:00 PM
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**CS/SB 218 by TR, Grimsley;** (Similar to H 0259) Transportation

252134	A	S	RCS	AP, Grimsley	btw L.33 - 34:	03/13 05:29 PM
182532	A	S	WD	AP, Grimsley	btw L.33 - 34:	03/12 03:56 PM
128248	A	S	RCS	AP, Latvala	btw L.123 - 124:	03/13 05:29 PM
813366	A	S	WD	AP, Grimsley	btw L.123 - 124:	03/12 03:55 PM
243762	A	S	RCS	AP, Grimsley	btw L.123 - 124:	03/13 05:29 PM
891306	A	S	WD	AP, Grimsley	Delete L.308:	03/12 03:56 PM

**CS/SB 230 by TR, Simmons;** (Similar to CS/H 0311) Orlando-Orange County Expressway Authority

337450	A	S	RCS	AP, Gardiner	Delete L.159 - 346:	03/13 05:02 PM
474374	A	S	RCS	AP, Gardiner	btw L.1030 - 1031:	03/13 05:02 PM
281474	A	S	RCS	AP, Gardiner	Delete L.1159 - 1205:	03/13 05:02 PM

**CS/CS/SB 272 by CA, CU, Simpson;** (Identical to H 1321) Water and Wastewater Utilities

312734	D	S	RCS	AP, Galvano	Delete everything after	03/13 05:19 PM
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**CS/SB 326 by JU, Thompson;** (Similar to H 0227) Victims of Wrongful Incarceration

**SB 384 by Bradley;** (Compare to H 7035) Juvenile Sentencing

543868	PCS	S	RCS	AP		03/13 05:34 PM
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**CS/SB 450 by AG, Clemens (CO-INTRODUCERS) Sobel;** (Identical to H 1191) Telephone Solicitation

269442	A	S	RCS	AP, Smith	btw L.69 - 70:	03/13 04:56 PM
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**CS/SB 708 by BI, Bean;** (Similar to H 0759) Insurance Claims

850798	A	S	RCS	AP, Bean	Delete L.246 - 286.	03/13 05:16 PM
622240	A	S	RCS	AP, Bean	Delete L.409 - 436:	03/13 05:16 PM
797434	A	S	RS	AP, Bean	Delete L.501 - 508:	03/13 05:16 PM
608348	SA	S	RCS	AP, Bean	Delete L.501 - 508:	03/13 05:16 PM

**SB 732 by Galvano;** Stanley G. Tate Florida Prepaid College Program

**SB 928 by GO;** (Compare to 1ST ENG/H 7073) State Technology

290876	PCS	S	FAV	AP			03/13 05:38 PM
388256	PCS:A	S	RCS	AP, Ring	Delete L.79 - 529:		03/13 05:38 PM
693796	PCS:A	S	RCS	AP, Ring	Delete L.987 - 1189:		03/13 05:38 PM
696398	PCS:A	S	RCS	AP, Ring	Delete L.1618 - 1695:		03/13 05:38 PM

**SB 1648 by GO;** (Similar to H 1151) Public Records and Meetings

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS**  
**Senator Negrón, Chair**  
**Senator Benacquisto, Vice Chair**

**MEETING DATE:** Thursday, March 13, 2014  
**TIME:** 1:00 —3:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Negrón, Chair; Senator Benacquisto, Vice Chair; Senators Bean, Bradley, Galvano, Gardiner, Grimsley, Hays, Hukill, Joyner, Latvala, Lee, Margolis, Montford, Richter, Ring, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 156</b> Negrón (Identical H 61)	Motor Vehicle License Taxes; Reducing the service charge imposed on an application for an original or duplicate license plate, or transfer of specified registration stickers or certificates; reducing a fee collected for a motor vehicle registration; reducing surcharges imposed on a license tax; reenacting and amending provisions relating to special vehicle license plates for the Governor and federal and state legislators, etc.  TR 10/09/2013 Favorable ATD 01/09/2014 Favorable AP 03/13/2014 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development			
2	<b>CS/CS/SB 846</b> Community Affairs / Ethics and Elections / Latvala (Compare H 655, S 606)	Governmental Ethics; Specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to members of the executive council of the Florida Clerks of Court Operations Corporation; requiring an officer required to participate in annual ethics training to certify participation on his or her full and public disclosure of financial interests; specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to certain officers associated with the divisions of Enterprise Florida, Inc., etc.  EE 02/17/2014 Fav/CS CA 03/05/2014 Fav/CS AP 03/13/2014 Fav/CS	Fav/CS Yeas 18 Nays 0
Consideration of proposed committee bill:			
3	<b>SPB 7086</b>	Internal Revenue Code; Adopting the 2014 version of the code, etc.	Submitted as Committee Bill Yeas 18 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, March 13, 2014, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 102</b> Transportation / Diaz de la Portilla (Similar H 55, CS/H 183)	Drivers Leaving the Scene of a Crash; Creating the "Aaron Cohen Life Protection Act"; requiring the driver of a vehicle involved in a crash that results in serious bodily injury to a person to immediately stop the vehicle and remain at the scene of the crash; providing that a person commits a felony of the second degree if he or she fails to stop the vehicle and remain at the scene of the crash until specified requirements are fulfilled; requiring the court to revoke for at least 3 years the driver license of a person convicted of leaving the scene of a crash involving injury, serious bodily injury, or death, etc.  TR 01/09/2014 Fav/CS CJ 02/03/2014 Favorable ATD 02/19/2014 Favorable AP 03/13/2014 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development			
5	<b>CS/SB 218</b> Transportation / Grimsley (Similar H 259, Identical H 345, Compare H 1161, S 1048)	Transportation; Providing an exception for payment of certain utility work necessitated by a project on the State Highway System for municipally owned utilities or county-owned utilities located in rural areas of critical economic concern and authorizing the Department of Transportation to pay for such costs under certain circumstances; exempting from permitting certain signs placed by tourist-oriented businesses, certain farm signs placed during harvest seasons, certain acknowledgement signs on publicly funded school premises, and certain displays on specific sports facilities, etc.  TR 11/07/2013 Fav/CS CU 01/14/2014 Favorable CM 02/17/2014 Favorable AP 03/06/2014 Temporarily Postponed AP 03/13/2014 Fav/CS	Fav/CS Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, March 13, 2014, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>CS/SB 230</b> Transportation / Simmons (Similar CS/H 311)	Orlando-Orange County Expressway Authority; Renaming the Orlando-Orange County Expressway System as the "Central Florida Expressway System"; providing for the transfer of governance and control, legal rights and powers, responsibilities, terms, and obligations to the authority; extending, to 99 years from 40 years, the term of a lease-purchase agreement; limiting the authority's authority to enter into a lease-purchase agreement; removing the authority and criteria for an authority to waive payment and performance bonds for certain public works projects that are awarded pursuant to an economic development program, etc.  TR 01/09/2014 Fav/CS CA 02/04/2014 Favorable AP 03/13/2014 Fav/CS	Fav/CS Yeas 17 Nays 0
7	<b>CS/CS/SB 272</b> Community Affairs / Communications, Energy, and Public Utilities / Simpson (Identical H 1321)	Water and Wastewater Utilities; Authorizing the Florida Public Service Commission to revoke a certificate of authorization upon receipt of a petition; requiring customers to file a notice of intent with the commission before submitting a petition; providing criteria for such petition; requiring the commission to take certain steps in response to the petition; requiring the commission to consider the quality of water or wastewater service when fixing rates; authorizing the commission to impose penalties on a utility for certain failures; requiring the Department of Environmental Protection to establish secondary wastewater service standards regarding the generation of odor, noise, aerosol drift, and lighting, etc.  CU 01/14/2014 Fav/CS CA 02/04/2014 Fav/CS AP 03/13/2014 Fav/CS	Fav/CS Yeas 18 Nays 0
8	<b>CS/SB 326</b> Judiciary / Thompson (Similar H 227)	Victims of Wrongful Incarceration; Providing that a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from certain application procedures for compensation if a special prosecutor issues a nolle prosequi after reviewing the defendant's conviction; requiring the claimant to file an application with the Department of Legal Affairs within a specified time; requiring the application to include certain information and documents; providing that the claimant is entitled to compensation if all requirements are met, etc.  JU 02/11/2014 Fav/CS CJ 03/03/2014 Favorable AP 03/13/2014 Favorable RC	Favorable Yeas 18 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, March 13, 2014, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<b>A proposed committee substitute</b> for the following bill (SB 384) is available:			
9	<b>SB 384</b> Bradley (Compare H 7035)	Juvenile Sentencing; Providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense, etc.  CJ 01/08/2014 Favorable JU 02/04/2014 Favorable ACJ 03/05/2014 Fav/CS AP 03/13/2014 Fav/CS	Fav/CS Yeas 14 Nays 3
With subcommittee recommendation - Criminal and Civil Justice			
10	<b>CS/SB 450</b> Agriculture / Clemens (Identical H 1191)	Telephone Solicitation; Redefining the term "telephonic sales call"; prohibiting a telephone solicitor from transmitting certain text messages to a consumer if the consumer is on the "no sales solicitation calls" list maintained by the Department of Agriculture and Consumer Services or if the consumer has previously communicated such a request to the telephone solicitor, etc.  AG 01/13/2014 Fav/CS CU 02/18/2014 Favorable AP 03/13/2014 Fav/CS	Fav/CS Yeas 17 Nays 0
11	<b>CS/SB 708</b> Banking and Insurance / Bean (Similar H 759, Compare H 471, CS/H 565, CS/H 633, H 743, CS/S 1210, S 1260)	Insurance Claims; Adding mediators and neutral evaluators to the list of individuals or entities that the Department of Financial Services or the Office of Insurance Regulation may investigate for alleged improper conduct; providing that a claim for residential property insurance cannot be denied based on certain credit information; establishing a Claims Bill of Rights for residential property insurance policyholders; revising qualifications for mediators of personal injury claims, etc.  BI 02/11/2014 Fav/CS AP 03/06/2014 Temporarily Postponed AP 03/13/2014 Fav/CS	Fav/CS Yeas 18 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, March 13, 2014, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>SB 732</b> Galvano (Compare S 1400)	Stanley G. Tate Florida Prepaid College Program; Redefining the term "tuition differential"; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, and local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees, etc.  ED 02/18/2014 Favorable AED 03/05/2014 Favorable AP 03/13/2014 Favorable	Favorable Yeas 17 Nays 0
With subcommittee recommendation - Education			
<b>A proposed committee substitute</b> for the following bill (SB 928) is available:			
13	<b>SB 928</b> Governmental Oversight and Accountability (Compare H 7073, S 222)	State Technology; Repealing provisions relating to the Agency for Enterprise Information Technology within the Executive Office of the Governor; creating the Agency for State Technology within the Department of Management Services; providing for a state data center and the duties of the center; deleting duties for the Agency for Enterprise Information Technology, etc.  AGG 03/05/2014 Fav/CS AP 03/13/2014 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation - General Government			
14	<b>SB 1648</b> Governmental Oversight and Accountability (Similar H 1151)	Public Records and Meetings; Revising the general state policy on public records; providing that public records requests need not be in writing unless otherwise required by law; revising contract requirements between a public agency and a contractor; requiring each agency to provide training on the requirements of ch. 119, F.S.; specifying a reasonable cost of enforcement; providing that a party filing an action against certain agencies is not required to serve a copy of a pleading claiming attorney fees on the Department of Financial Services, etc.  AP 03/13/2014 Favorable	Favorable Yeas 18 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, March 13, 2014, 1:00 —3:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Committee

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BILL: CS/SB 156

INTRODUCER: Appropriations Committee; Senator Negron and others

SUBJECT: Motor Vehicle License Taxes

DATE: March 14, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Carey</u>	<u>Martin</u>	<u>ATD</u>	<u>Favorable</u>
3.	<u>Carey</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 156 reduces some of the fees required to register a motor vehicle, vessel or mobile home, and returns them to the amount required prior to September 1, 2009. The fee reductions will take effect September 1, 2014.

The Revenue Estimating Conference has not met on this bill, but staff estimates that it will have a negative cash impact of \$309.1 million to the General Revenue Fund, and \$1.9 million to the Highway Safety Operating Trust Fund in Fiscal Year 2014-2015, and a total negative recurring impact of \$394.6 million.

**II. Present Situation:**

**Motor Vehicle Registration Fees**

In 2009, the fees required for annual motor vehicle registrations and other fees related to the issuance of driver licenses, identification cards, driver license reinstatements, motor vehicle titles, and driver records were increased. The revenues received from the increased fees were deposited into the General Revenue Fund.

Section 320.03(5), F.S., provides for a fee of \$1.25 to be charged on every license registration to cover the cost of the Florida Real Time Vehicle Information System (FRVIS). The revenues from this fee are deposited in the Highway Safety Operating Trust Fund in the Department of

Highway Safety and Motor Vehicles (DHSMV) and are used primarily to fund the FRVIS system.

Section 320.04(1)(a), F.S., provides for a service charge of \$5.00 for each application of an original, duplicate or transfer of any license plate, mobile home sticker, or validation sticker, including the transfer or duplicate issuance of any registration certificate. Of the \$5.00 service charge, \$2.50 is deposited into the General Revenue Fund, and the remainder is retained by the DHSMV or the county tax collector.

Section 320.04(1)(b), F.S., provides for a service charge of \$3.00 for each license plate validation sticker, vessel decal, and mobile home sticker issued from an automated vending facility or a printer dispenser machine. The fee is payable to the DHSMV; \$1.00 is used to provide the dispenser machines and \$2.00 is deposited into the General Revenue Fund.

Section 320.06(3)(b), F.S., provides for a \$1.50 fee on each motor vehicle registration or renewal registration issued in order to treat all license plate validation stickers with retroreflection material. Of the \$1.50 fee, \$1.00 is deposited into the General Revenue Fund and 50 cents is deposited into the Highway Safety Operating Trust Fund in the DHSMV.

Section 320.072(1), F.S., provides for a fee of \$225 on the initial application for registration of automobiles, light truck, motorhomes and truck campers. Section 320.072(4), F.S., provides that 44.5 percent of that fee is deposited into the State Transportation Trust Fund, with the remaining 55.5 percent deposited into the General Revenue Fund.

Section 320.0804, F.S., provides for a \$4.00 surcharge on each annual license tax imposed under s. 320.08, F.S., (excluding mobile homes); \$2.00 is deposited into the General Revenue Fund, \$1.00 is deposited into the State Transportation Trust Fund in the Department of Transportation, and \$1.00 is deposited into the Highway Safety Operating Trust Fund in the DHSMV.

Section 320.08046, F.S., provides for a \$5.50 surcharge on each annual license tax imposed under s. 320.08, F.S., (excluding mobile homes); \$4.50 is deposited into the General Revenue Fund and \$1.00 is deposited into the Grants and Donations Trust Fund in the Department of Juvenile Justice.

Section 320.08, F.S., provides for annual license taxes on motorcycles, mopeds, automobiles, tri-vehicles, and light trucks. The annual license tax or “base tax” varies depending on the type of vehicle and or the net weight of the vehicle.

### III. Effect of Proposed Changes:

**Section 1** amends s. 320.03, F.S., to decrease from \$1.25 to 75 cents the fee imposed on a license registration to cover the costs of the Florida Real Time Vehicle Information System. The revenue from the reduced fee will be deposited into the Highway Safety Operating Trust Fund in the DHSMV. (The proposed decrease lowers the service charge to the amount that was charged prior to the 2009 increase in motor vehicle fees.)

**Section 2** amends s. 320.04, F.S., to decrease from \$5.00 to \$2.50 the service charge imposed on each application for an original issuance, duplicate issuance or transfer of any license plate, mobile home sticker or validation sticker, including the transfer or duplicate issuance of any registration certification. The revenue from the reduced service charge will be deposited into the Highway Safety Operating Trust Fund in the DHSMV, or retained by the county tax collector. (The proposed decrease lowers the service charge to the amount that was charged prior to the 2009 increase in motor vehicle fees.)

This section also decreases from \$3.00 to \$1.00 the service charge imposed on the issuance of a registration receipt for a vehicle, vessel or mobile home registration and specifies the fee be payable to and retained by the DHSMV. The revenue from the reduced service charge will be deposited into the Highway Safety Operating Trust Fund in the DHSMV. (The proposed decrease lowers the service charge to the amount that was charged prior to the 2009 increase in motor vehicle fees.)

**Section 3** amends s. 320.06, F.S., to decrease from \$1.50 to 50 cents the fee imposed on each motor vehicle registration issued for treating all license plates and validation stickers with retroflective material. The revenue from the reduced fee will be deposited into the Highway Safety Operating Trust Fund in the DHSMV. (The proposed decrease lowers the fee to the amount that was charged prior to the 2009 increase in motor vehicle fees.) This section also provides that in order to retain the efficient administration of taxes and fees imposed by Chapter 320, F.S., the 80 cents increase in the license plate replacement fee enacted by ch. 2009-71, L.O.F., is negated by the reduction of a surcharge imposed by s. 320.0804, F.S., and distributed to the Highway Safety Operating Trust Fund in the DHSMV.

**Section 4** amends s. 320.072(4), F.S., to provide an adjustment to the distribution of the \$225 initial registration fee. From the revenue, 44.5 percent will be deposited into the State Transportation Trust Fund, 14.3 percent will be deposited into the Highway Safety Operating Trust Fund in the DHSMV, and 41.2 percent will be deposited into the General Revenue Fund.

**Section 5** amends s. 320.08(1) through (3), F.S., to decrease the annual license tax on motorcycles, mopeds, automobiles, tri-vehicles, and light trucks. The annual license tax or “base tax” reduction will vary depending on the type of vehicle and or the net weight of the vehicle. (The proposed decrease lowers the surcharge to the amount that was charged prior to the 2009 increase in motor vehicle fees.)

**Section 6** amends s. 320.0804, F.S., to decrease the surcharge on each license tax imposed under s. 320.08, F.S., excluding mobile home registrations. The surcharge is decreased from \$4.00 to \$1.20, in part to negate the license plate increase of 80 cents imposed by ch. 2009-71, L.O.F. From the reduced surcharge revenue, \$1.00 will be deposited into the State Transportation Trust Fund in the Department of Transportation and 20 cents will be deposited into the Highway Safety Operating Trust Fund in the DHSMV. (The proposed decrease lowers the surcharge to 80 cents less than the amount that was charged prior to the 2009 increase in motor vehicle fees.)

**Section 7** amends s. 320.08046, F.S., to decrease the surcharge on each license tax imposed under s. 320.08, F.S., excluding mobile home registrations. The surcharge is decreased from \$5.50 to \$1.00. The revenue from the reduced surcharge will be deposited into the Grants and

Donations Trust Fund in the Department of Juvenile Justice. (The proposed decrease lowers the surcharge to the amount that was charged prior to the 2009 increase in motor vehicle fees.)

**Section 8** reenacts s. 320.0807(4), F.S., to incorporate changes made to s. 320.06, F.S.

**Section 9** creates an unnumbered section of law to provide that the revenue from biennial license taxes, fees and surcharges collected pursuant to s. 320.07, F.S., shall be distributed in accordance with the provisions of law in effect at the time they were collected. This section also clarifies that the changes to taxes, fees and surcharges made by this act do not create a right to a refund for a biennial registration collected prior to September 1, 2014.

The bill takes effect on September 1, 2014.

**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:

CS/SB 156 decreases the following motor vehicle registration fees to the amount of the fee prior to September 1, 2009.

Fee Description	Current Fee Amount	Proposed Fee Amount	Fee Reduction
GR- Registration Service Fee	\$ 5.00	\$ 2.50	\$ 2.50
Registration Receipt Fee/Decal	\$ 3.00	\$ 1.00	\$ 2.00
Material Processing /Retroreflective Fee	\$ 1.50	\$ 0.50	\$ 1.00
License Tax Surcharge - Transportation Trust Fund	\$ 4.00	\$ 1.20	\$ 2.80
License Tax Surcharge -DJJ	\$ 5.50	\$ 1.00	\$ 4.50
Real Time Vehicle Information System Fee	\$ 1.25	\$ 0.50	\$ 0.75
Motorcycle Base Tax	\$ 13.50	\$ 10.00	\$ 3.50
Moped Base Tax	\$ 6.75	\$ 5.00	\$ 1.75
Antique Motorcycle	\$ 8.50	\$ 7.50	\$ 1.00
Antique Automobile or Street Rod	\$ 10.25	\$ 7.50	\$ 2.75
Auto less than 2,500 lbs	\$ 19.50	\$ 14.50	\$ 5.00
Auto 2,500 - 3,499 lbs	\$ 30.50	\$ 22.50	\$ 8.00
Auto 3,500 or more lbs	\$ 44.00	\$ 32.50	\$ 11.50

Trucks - less than 2,000 lbs	\$ 19.50	\$ 14.50	\$ 5.00
Trucks - 2,000 - 2,999 lbs	\$ 30.50	\$ 22.50	\$ 8.00
Trucks - 3,000 to 4,999 lbs	\$ 44.00	\$ 32.50	\$ 11.50
Truck - goat	\$ 10.25	\$ 7.50	\$ 2.75
Antique Truck	\$ 10.25	\$ 7.50	\$ 2.75

The Revenue Estimating Conference has not met on this bill, but staff estimates that it will have a negative cash impact of \$309.1 million to the General Revenue Fund, and \$1.9 million to the Highway Safety Operating Trust Fund in Fiscal Year 2014-2015, and a negative recurring impact of \$394.6 million.

**B. Private Sector Impact:**

Citizens will be assessed a lower fee when registering motor vehicles, vessels and mobile homes.

**C. Government Sector Impact:**

The fee reductions in this bill require programming changes to the Department of Highway Safety and Motor Vehicle’s financial management system. The department indicates that it can absorb the workload within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 320.03, 320.04, 320.06, 320.072, 320.08, 320.0804, 320.08046, and 320.0807.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Appropriations Committee on March 13, 2014**

The Committee Substitute provides for additional fee reductions related to taxes, fees, and surcharges charged for annual motor vehicle registrations. These include a 50 cent reduction to the FRVIS fee, an 80 cent reduction to a license tax surcharge, and a reduction to the annual license “base tax” for various types and or weight classes of vehicles.

**B. Amendments:**

None.

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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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942224

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Negron) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (5) of section 320.03, Florida  
Statutes, is amended to read:

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

(5) ~~A fee of \$1.25 shall be charged,~~ In addition to the  
fees required under s. 320.08, a fee of 50 cents shall be



942224

11 charged on every license registration sold to cover the costs of  
12 the Florida Real Time Vehicle Information System. The fees  
13 collected shall be deposited ~~distributed as follows: 75 cents~~  
14 ~~into the Highway Safety Operating Trust Fund, which shall be~~  
15 ~~used to fund the Florida Real Time Vehicle Information system~~  
16 ~~and may be used to fund the general operations of the~~  
17 ~~department, and 50 cents~~ into the Highway Safety Operating Trust  
18 Fund to be used exclusively to fund the system. The ~~only use of~~  
19 ~~this latter portion of the fee~~ may only be used ~~is~~ to fund the  
20 system equipment, software, personnel associated with the  
21 maintenance and programming of the system, and networks used in  
22 the offices of the county tax collectors as agents of the  
23 department and the ancillary technology necessary to integrate  
24 the system with other tax collection systems. The department  
25 shall administer this program upon consultation with the Florida  
26 Tax Collectors, Inc., to ensure that each county tax collector's  
27 office is technologically equipped and functional for the  
28 operation of the Florida Real Time Vehicle Information System.  
29 Any ~~of the~~ designated revenue collected to support functions of  
30 the county tax collectors and not used in a given year must  
31 remain exclusively in the trust fund as a carryover to the  
32 following year.

33 Section 2. Subsection (1) of section 320.04, Florida  
34 Statutes, is amended to read:

35 320.04 Registration service charge.—

36 (1) (a) ~~There shall be~~ A service charge of \$2.50 shall be  
37 imposed on \$5 for each application that ~~which~~ is handled in  
38 connection with original issuance, duplicate issuance, or  
39 transfer of a ~~any~~ license plate, mobile home sticker, or





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40 validation sticker or with transfer or duplicate issuance of a  
41 any registration certificate. This service charge ~~Of that~~  
42 ~~amount, \$2.50 shall be deposited into the General Revenue Fund,~~  
43 ~~and the remainder~~ shall be retained by the department or by the  
44 tax collector, as the case may be, as other fees accruing to  
45 those offices.

46 (b) ~~There shall also be~~ A service charge of \$1 shall also  
47 be imposed ~~\$3~~ for the issuance of each license plate validation  
48 sticker, vessel decal, and mobile home sticker issued from an  
49 automated vending facility or printer dispenser machine. This  
50 service charge, ~~which~~ is payable to the department and. ~~Of that~~  
51 ~~amount, \$1~~ shall be used to provide for automated vending  
52 facilities or printer dispenser machines that are used to  
53 dispense such stickers and decals by each tax collector's or  
54 license tag agent's employee. ~~The remaining \$2 shall be~~  
55 ~~deposited into the General Revenue Fund.~~

56 (c) The tax collector may impose an additional service  
57 charge of up to ~~not more than~~ 50 cents on any transaction  
58 specified in paragraph (a) or paragraph (b), or on any  
59 transaction specified in s. 319.32(2) (a) or s. 328.48 if such  
60 transaction occurs at a ~~any~~ tax collector's branch office.

61 Section 3. Paragraph (b) of subsection (1) and paragraph  
62 (b) of subsection (3) of section 320.06, Florida Statutes, are  
63 amended to read:

64 320.06 Registration certificates, license plates, and  
65 validation stickers generally.—

66 (1)

67 (b)1. Registration license plates bearing a graphic symbol  
68 and the alphanumeric system of identification shall be issued



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69 for a 10-year period. At the end of the ~~that~~ 10-year period,  
70 upon renewal, the plate shall be replaced. The department shall  
71 extend the scheduled license plate replacement date from a 6-  
72 year period to a 10-year period. The fee for such replacement is  
73 \$28, \$2.80 of which shall be paid each year before the plate is  
74 replaced, to be credited toward ~~towards~~ the next \$28 replacement  
75 fee. The fees shall be deposited into the Highway Safety  
76 Operating Trust Fund. A credit or refund may not be given for  
77 any prior years' payments of the ~~such~~ prorated replacement fee  
78 if the plate is replaced or surrendered before the end of the  
79 10-year period, except that a credit may be given if a  
80 registrant is required by the department to replace a license  
81 plate under s. 320.08056(8) (a). With each license plate, a  
82 validation sticker shall be issued showing the owner's birth  
83 month, license plate number, and the year of expiration or the  
84 appropriate renewal period if the owner is not a natural person.  
85 The validation sticker shall be placed on the upper right corner  
86 of the license plate. The ~~Such~~ license plate and validation  
87 sticker shall be issued based on the applicant's appropriate  
88 renewal period. The registration period is 12 months, the  
89 extended registration period is 24 months, and all expirations  
90 occur based on the applicant's appropriate registration period.  
91 A vehicle that has ~~with~~ an apportioned registration shall be  
92 issued an annual license plate and a cab card that denote the  
93 declared gross vehicle weight for each apportioned jurisdiction  
94 in which the vehicle is authorized to operate.

95 2. In order to retain the efficient administration of the  
96 taxes and fees imposed by this chapter, the 80 cent fee increase  
97 in the replacement fee imposed by chapter 2009-71, Laws of



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98 Florida, is negated as provided in s. 320.0804.

99 (3)

100 (b) An additional fee of 50 cents ~~\$1.50~~ shall be collected  
101 on each motor vehicle registration or motor vehicle renewal  
102 registration issued in this state in order for all license  
103 plates and validation stickers to be fully treated with  
104 retroreflection material. The fee ~~Of that amount, \$1 shall be~~  
105 ~~deposited into the General Revenue Fund and 50 cents~~ shall be  
106 deposited into the Highway Safety Operating Trust Fund.

107 Section 4. Subsection (4) of section 320.072, Florida  
108 Statutes, is amended to read:

109 320.072 Additional fee imposed on certain motor vehicle  
110 registration transactions.-

111 (4) A tax collector or other authorized agent of the  
112 department shall promptly remit ~~44.5 percent~~ of all moneys  
113 collected pursuant to this section, less any refunds granted  
114 pursuant to subsection (3), to the department. The department  
115 shall deposit 44.5 percent of such moneys ~~to be deposited~~ into  
116 the State Transportation Trust Fund, 14.3 percent. ~~the remaining~~  
117 ~~55.5 percent shall be deposited~~ into the Highway Safety  
118 Operating Trust Fund, and 41.2 percent into the General Revenue  
119 Fund.

120 Section 5. Subsections (1), (2), and (3) of section 320.08,  
121 Florida Statutes, are amended to read:

122 320.08 License taxes.-Except as otherwise provided herein,  
123 there are hereby levied and imposed annual license taxes for the  
124 operation of motor vehicles, mopeds, motorized bicycles as  
125 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,  
126 and mobile homes, as defined in s. 320.01, which shall be paid



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127 to and collected by the department or its agent upon the  
128 registration or renewal of registration of the following:

129 (1) MOTORCYCLES AND MOPEDS.—

130 (a) Any motorcycle: \$10 ~~\$13.50~~ flat, ~~of which \$3.50 shall~~  
131 ~~be deposited into the General Revenue Fund.~~

132 (b) Any moped: \$5 ~~\$6.75~~ flat, ~~of which \$1.75 shall be~~  
133 ~~deposited into the General Revenue Fund.~~

134 (c) Upon registration of a any motorcycle, motor-driven  
135 cycle, or moped, ~~there shall be paid~~ in addition to the license  
136 taxes specified in this subsection, a nonrefundable motorcycle  
137 safety education fee in the amount of \$2.50 shall be paid. The  
138 proceeds of such additional fee shall be deposited in the  
139 Highway Safety Operating Trust Fund to fund a motorcycle driver  
140 improvement program implemented pursuant to s. 322.025, the  
141 Florida Motorcycle Safety Education Program established in s.  
142 322.0255, or the general operations of the department.

143 (d) An ancient or antique motorcycle: \$7.50 ~~\$8.50~~ flat, of  
144 which \$2.50 ~~\$3.50~~ shall be deposited into the General Revenue  
145 Fund.

146 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

147 (a) An ancient or antique automobile, as defined in s.  
148 320.086, or a street rod, as defined in s. 320.0863: \$7.50  
149 ~~\$10.25~~ flat, ~~of which \$2.75 shall be deposited into the General~~  
150 ~~Revenue Fund.~~

151 (b) Net weight of less than 2,500 pounds: \$14.50 ~~\$19.50~~  
152 ~~flat, of which \$5 shall be deposited into the General Revenue~~  
153 ~~Fund.~~

154 (c) Net weight of 2,500 pounds or more, but less than 3,500  
155 pounds: \$22.50 ~~\$30.50~~ flat, ~~of which \$8 shall be deposited into~~



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156 ~~the General Revenue Fund.~~

157 (d) Net weight of 3,500 pounds or more: \$32.50 ~~\$44 flat, of~~  
158 ~~which \$11.50 shall be deposited into the General Revenue Fund.~~

159 (3) TRUCKS.—

160 (a) Net weight of less than 2,000 pounds: \$14.50 ~~\$19.50~~  
161 ~~flat, of which \$5 shall be deposited into the General Revenue~~  
162 ~~Fund.~~

163 (b) Net weight of 2,000 pounds or more, but not more than  
164 3,000 pounds: \$22.50 ~~\$30.50 flat, of which \$8 shall be deposited~~  
165 ~~into the General Revenue Fund.~~

166 (c) Net weight more than 3,000 pounds, but not more than  
167 5,000 pounds: \$32.50 ~~\$44 flat, of which \$11.50 shall be~~  
168 ~~deposited into the General Revenue Fund.~~

169 (d) A truck defined as a "goat," or ~~any~~ other vehicle if  
170 used in the field by a farmer or in the woods for the purpose of  
171 harvesting a crop, including naval stores, during such  
172 harvesting operations, and which is not principally operated  
173 upon the roads of the state: \$7.50 ~~\$10.25 flat, of which \$2.75~~  
174 ~~shall be deposited into the General Revenue Fund. The term A~~  
175 "goat" means ~~is~~ a motor vehicle designed, constructed, and used  
176 principally for the transportation of citrus fruit within citrus  
177 groves or for the transportation of crops on farms, and which  
178 can also be used for ~~the~~ hauling ~~of~~ associated equipment or  
179 supplies, including required sanitary equipment, and the towing  
180 of farm trailers.

181 (e) An ancient or antique truck, as defined in s. 320.086:  
182 \$7.50 ~~\$10.25 flat, of which \$2.75 shall be deposited into the~~  
183 ~~General Revenue Fund.~~

184 Section 6. Section 320.0804, Florida Statutes, is amended



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185 to read:

186       320.0804 Surchage on license tax; ~~trust funds.~~ A surcharge  
187 of \$2, shall be ~~There is hereby levied and imposed~~ on each  
188 license tax imposed under s. 320.08, except those set forth in  
189 s. 320.08(11), ~~a surcharge in the amount of \$4,~~ which shall be  
190 collected in the same manner as the license tax. This surcharge  
191 shall be further reduced to \$1.20 on September 1, 2014, in order  
192 to negate the license plate increase of 80 cents imposed by  
193 chapter 2009-71, Laws of Florida. Of this amount, \$1 shall be  
194 deposited into the State Transportation Trust Fund, and 20 cents  
195 ~~\$1~~ shall be deposited into the Highway Safety Operating Trust  
196 Fund, ~~and \$2 shall be deposited into the General Revenue Fund.~~

197       Section 7. Section 320.08046, Florida Statutes, is amended  
198 to read:

199       320.08046 Juvenile programs surcharge on license tax. ~~A~~  
200 surcharge of \$1 shall be imposed ~~There is levied~~ on each license  
201 tax imposed under s. 320.08, except those set forth in s.  
202 320.08(11), ~~a surcharge in the amount of \$5.50,~~ which shall be  
203 collected in the same manner as the license tax and. ~~Of the~~  
204 ~~proceeds of each license tax surcharge, \$4.50 shall be deposited~~  
205 ~~into the General Revenue Fund and \$1 shall be deposited into the~~  
206 Grants and Donations Trust Fund in the Department of Juvenile  
207 Justice to fund the juvenile crime prevention programs and the  
208 community juvenile justice partnership grants program.

209       Section 8. For the purpose of incorporating the amendment  
210 made by this act to section 320.06, Florida Statutes, in a  
211 reference thereto, subsection (4) of section 320.0807, Florida  
212 Statutes, is reenacted and amended to read:

213       320.0807 Special license plates for Governor and federal



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214 and state legislators.-

215 (4) License plates purchased under subsection (1),  
216 subsection (2), or subsection (3) shall be replaced by the  
217 department at no cost, other than the fees required under ~~by~~ ss.  
218 320.04 and 320.06(3)(b), when the person to whom the plates have  
219 been issued leaves the elective office with respect to which the  
220 license plates were issued. Within 30 days after leaving office,  
221 the person to whom the license plates have been issued must  
222 apply ~~shall make application~~ to the department for a replacement  
223 license plate. The person may return the prestige license plates  
224 to the department or ~~may~~ retain the plates as souvenirs. Upon  
225 receipt of the replacement license plate, the person may not  
226 ~~continue to~~ display on any vehicle the prestige license plate or  
227 plates issued with respect to his or her former office.

228 Section 9. (1) The disposition of the biennial license  
229 taxes, fees, and surcharges collected pursuant to s. 320.07,  
230 Florida Statutes, shall occur in accordance with the provisions  
231 of chapter 320, Florida Statutes, in effect at the time the  
232 taxes, fees, and surcharges are collected.

233 (2) The amendments made by this act do not create a right  
234 to a refund of any taxes, fees, or surcharges collected before  
235 September 1, 2014, for a biennial registration pursuant to s.  
236 320.07, Florida Statutes.

237 Section 11. This act shall take effect September 1, 2014.

238  
239 ===== T I T L E A M E N D M E N T =====

240 And the title is amended as follows:

241 Delete everything before the enacting clause  
242 and insert:



942224

243                                   A bill to be entitled  
244           An act relating to motor vehicle license taxes;  
245           amending s. 320.03, F.S.; reducing the amount of the  
246           additional registration fee used to fund the Florida  
247           Real Time Vehicle Information System; amending s.  
248           320.04, F.S.; reducing the service charge imposed on  
249           an application for an original or duplicate license  
250           plate, or specified registration stickers or  
251           certificates; amending s. 320.06, F.S.; providing a  
252           cross-reference to changes made by the act; reducing  
253           the fee for treating license plates and validation  
254           stickers with retroreflection material; amending s.  
255           320.072, F.S.; redistributing the additional fee  
256           collected on certain motor vehicle registration  
257           transactions; amending s. 320.08, F.S.; reducing  
258           license taxes for motorcycles and mopeds, automobiles  
259           or tri-vehicles for private use, and trucks; amending  
260           ss. 320.0804 and 320.08046, F.S.; reducing surcharges  
261           imposed on a license tax; reenacting and amending s.  
262           320.0807(4), F.S., relating to special vehicle license  
263           plates for the Governor and federal and state  
264           legislators, to incorporate the amendment made to s.  
265           320.06, F.S., in a reference thereto; providing for  
266           the disposition of certain taxes taxes, fees and  
267           surcharges collected; prohibiting a refund of any  
268           taxes, fees, or surcharges collected before the  
269           effective date of the act; providing an effective  
270           date.





727944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Negron) recommended the following:

**Senate Amendment to Amendment (942224)**

In title, delete line 244  
and insert:  
An act relating to motor vehicle and mobile home  
taxes, fees, and surcharges;

By Senator Negron

32-00273B-14

2014156\_\_

A bill to be entitled

An act relating to motor vehicle license taxes; amending s. 320.04, F.S.; reducing the service charge imposed on an application for an original or duplicate license plate, or transfer of specified registration stickers or certificates; amending s. 320.06, F.S.; reducing a fee collected for a motor vehicle registration; amending ss. 320.0804 and 320.08046, F.S.; reducing surcharges imposed on a license tax; reenacting and amending s. 320.0807(4), F.S., relating to special vehicle license plates for the Governor and federal and state legislators, to incorporate the amendment made to s. 320.06, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 320.04, Florida Statutes, is amended to read:

320.04 Registration service charge.—

(1) (a) ~~There shall be~~ A service charge of \$2.50 shall be imposed on \$5 for each application ~~that~~ which is handled in connection with original issuance, duplicate issuance, or transfer of ~~a any~~ license plate, mobile home sticker, or validation sticker or with transfer or duplicate issuance of ~~a any~~ registration certificate. This service charge ~~Of that amount, \$2.50 shall be deposited into the General Revenue Fund, and the remainder shall be retained by the department or by the tax collector, as the case may be, as other fees accruing to~~

Page 1 of 4

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

32-00273B-14

2014156\_\_

those offices.

(b) ~~There shall also be~~ A service charge of \$1 shall also be imposed \$3 for the issuance of each license plate validation sticker, vessel decal, and mobile home sticker issued from an automated vending facility or printer dispenser machine. This service charge, which is payable to the department ~~and. Of that amount, \$1 shall be used to provide for automated vending facilities or printer dispenser machines that are used to dispense such stickers and decals by each tax collector's or license tag agent's employee. The remaining \$2 shall be deposited into the General Revenue Fund.~~

(c) The tax collector may impose an additional service charge of up to not more than 50 cents on any transaction specified in paragraph (a) or paragraph (b), or on any transaction specified in s. 319.32(2) (a) or s. 328.48 if such transaction occurs at a any tax collector's branch office.

Section 2. Paragraph (b) of subsection (3) of section 320.06, Florida Statutes, is amended to read:

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

(3)

(b) An additional fee of 50 cents ~~\$1.50~~ shall be collected on each motor vehicle registration or motor vehicle renewal registration issued in this state in order for all license plates and validation stickers to be fully treated with retroreflection material. The fee ~~Of that amount, \$1 shall be deposited into the General Revenue Fund and 50 cents shall be deposited into the Highway Safety Operating Trust Fund.~~

Section 3. Section 320.0804, Florida Statutes, is amended

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32-00273B-14

2014156\_\_

59 to read:

60 320.0804 Surcharge on license tax, ~~trust funds.~~ A surcharge  
 61 ~~of \$2 shall be~~ ~~There is hereby levied and~~ imposed on each  
 62 license tax imposed under s. 320.08, except those set forth in  
 63 s. 320.08(11), ~~a surcharge in the amount of \$4,~~ which shall be  
 64 collected in the same manner as the license tax. Of this amount,  
 65 \$1 shall be deposited into the State Transportation Trust Fund,  
 66 ~~and,~~ \$1 shall be deposited into the Highway Safety Operating  
 67 Trust Fund, ~~and \$2 shall be deposited into the General Revenue~~  
 68 ~~Fund.~~

69 Section 4. Section 320.08046, Florida Statutes, is amended  
 70 to read:

71 320.08046 Juvenile programs surcharge on license tax. ~~A~~  
 72 surcharge of \$1 shall be imposed ~~There is levied~~ on each license  
 73 tax imposed under s. 320.08, except those set forth in s.  
 74 320.08(11), ~~a surcharge in the amount of \$5.50,~~ which shall be  
 75 collected in the same manner as the license tax ~~and.~~ ~~Of the~~  
 76 ~~proceeds of each license tax surcharge, \$4.50 shall be deposited~~  
 77 ~~into the General Revenue Fund and \$1 shall be deposited into the~~  
 78 Grants and Donations Trust Fund in the Department of Juvenile  
 79 Justice to fund the juvenile crime prevention programs and the  
 80 community juvenile justice partnership grants program.

81 Section 5. For the purpose of incorporating the amendment  
 82 made by this act to section 320.06, Florida Statutes, in a  
 83 reference thereto, subsection (4) of section 320.0807, Florida  
 84 Statutes, is reenacted and amended to read:

85 320.0807 Special license plates for Governor and federal  
 86 and state legislators.-

87 (4) License plates purchased under subsection (1),

Page 3 of 4

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32-00273B-14

2014156\_\_

88 subsection (2), or subsection (3) shall be replaced by the  
 89 department at no cost, other than the fees required under ~~by~~ ss.  
 90 320.04 and 320.06(3)(b), when the person to whom the plates have  
 91 been issued leaves the elective office with respect to which the  
 92 license plates were issued. Within 30 days after leaving office,  
 93 the person to whom the license plates have been issued must  
 94 ~~apply shall make application~~ to the department for a replacement  
 95 license plate. The person may return the prestige license plates  
 96 to the department or ~~may~~ retain the plates as souvenirs. Upon  
 97 receipt of the replacement license plate, the person may not  
 98 ~~continue to~~ display on any vehicle the prestige license plate or  
 99 plates issued with respect to his or her former office.

100 Section 6. This act shall take effect September 1, 2014.

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

March 13, 2014

*Meeting Date*

Topic Motor Vehicle License Taxes

Bill Number 156  
*(if applicable)*

Name Darrick D. McGhee

Amendment Barcode 942224  
*(if applicable)*

Job Title Director of Legislative Affairs

Address 400 South Monroe Street

Phone (850) 717-9227

*Street*

Tallahassee

Florida

32399-09

E-mail darrick.mcghee@eog.myflorida.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing Executive Office of Governor Rick Scott

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

March 13, 2014

*Meeting Date*

Topic Motor Vehicle License Taxes Bill Number 156  
*(if applicable)*

Name Darrick D. McGhee Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Legislative Affairs

Address 400 South Monroe Street Phone (850) 717-9227  
*Street*

Tallahassee Florida 32399-09 E-mail darrick.mcghee@eog.myflorida.com  
*City State Zip*

Speaking:  For  Against  Information

Representing Executive Office of Governor Rick Scott

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/14

Meeting Date

Topic Tag fees

Bill Number 156  
*(if applicable)*

Name Tim Nungesser

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Director

Address 116 E. Jefferson St.

Phone 850-445-5367

Street

Tallahassee FL  
City State Zip

E-mail tim.nungesser@fl.gov

Speaking:  For  Against  Information

Representing National Federation of Independent Business

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14  
Meeting Date

Topic license taxes

Bill Number 154  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 134 S Bronough St  
Street

Phone 521-1235

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14  
Meeting Date

Topic Bill & Amendment

Bill Number 156  
(if applicable)

Name Frank Meinens

Amendment Barcode 942724  
(if applicable)

Job Title \_\_\_\_\_

Address PO Box 1633  
Street

Phone 991-0177

Tall FL 32302  
City State Zip

E-mail frank@chymail.com

Speaking:  For  Against  Information

Representing AIF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/CS/CS/SB 846

INTRODUCER: Appropriations Committee; Community Affairs Committee; Ethics and Elections Committee; and Senator Latvala

SUBJECT: Governmental Ethics

DATE: March 14, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Shettle</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/CS/SB 846 contains ethics reforms for several quasi-governmental entities. The changes will apply to:

- The Florida Clerk of Courts Operation Corporation;
- Enterprise Florida, Inc.;
- The divisions, including any corporations created to carry out its missions, of Enterprise Florida, Inc.; and
- The Florida Development Finance Corporation.

Among those changes, the bill makes clear that members of the governing bodies of those entities are subject to certain standards of conduct, anti-nepotism provisions, voting conflicts, and post-service lobbying restrictions. A two year post-service prohibition on lobbying is also applied to the executive director and members of the board of directors of the Citizens Property Insurance Corporation.

The bill prohibits local officers from lobbying, or registering to lobby the Legislature or an agency on behalf of a person or entity other than his or her political subdivision, after their current term of office.

The bill requires elected municipal officers to complete four hours of annual ethics, public records, and open meetings training.

The financial disclosure laws are amended to provide a mechanism for the Commission on Ethics (Commission) to initiate proceedings, without having first received a complaint, against a person who has failed or refused to file their annual financial disclosure form and has accrued the maximum automatic fine. If the Commission initiates a proceeding, it would determine whether the failure to file was willful and, if so, recommend to the appropriate person or governing board that the officer be removed from office. Additionally, the bill amends how the Commission collects unpaid automatic fines for failure to file annual financial disclosure by making wage garnishment possible under certain circumstances.

The bill requires certain citizen support and direct support organizations to adopt a code of ethics and specifies that certain provisions must be included in the code of ethics.

The bill also regulates those who lobby certain independent special districts by creating a statute that closely resembles the legislative lobbying provisions in section 11.045, Florida Statutes, and the executive branch lobbying provisions in section 112.3215, Florida Statutes. The bill requires lobbyists to register in a district's lobbying registration system, and provides jurisdiction to the Commission concerning complaints alleging violations of the new requirements.

The bill revises disclosure requirements with respect to voting abstention at a meeting of a governmental body. The bill authorizes a member to abstain from voting on a decision, ruling, or act in a quasi-judicial proceeding under certain circumstances.

The fiscal impact of the bill is indeterminate. See section V.

The bill has an effective date of July 1, 2014.

## **II. Present Situation:**

For purposes of this analysis, the present situation will be addressed in the Effect of Proposed Changes section below.

## **III. Effect of Proposed Changes:**

### **Local Officers**

*Present Situation:* Currently, ss. 11.045 and 112.3215, F.S. establish requirements for lobbyists that have been employed to lobby the Legislature or an agency. The statutes are silent concerning local officers.

*Effect of the Bill:* "Local Officer" is defined as a state attorney, public defender, sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county commissioner, district school board member, or superintendent of schools.

The bill prohibits local officers from lobbying, or registering to lobby the Legislature or an agency, on behalf of a person or entity other than his or her political subdivision. Local officers are not prohibited from being employed by, or contracting with, a lobbying firm if he or she does not personally represent clients before the Legislature or an agency. This prohibition does not

apply to a local officer for the duration of his or her current term of office on the effective date of the bill, but will apply to local officers beginning a new term or appointed to fill an unexpired term after the bill is effective.

## **Quasi-Governmental Entities**

### ***Florida Clerks of Court Operations Corporation***

*Present Situation:* The Florida Clerks of Court Operations Corporation (Clerks Corporation) is created as a “**public corporation**” in s. 28.35, F.S.<sup>1</sup> Membership consists of each of the Florida Clerks of Circuit Court. The Clerks Corporation is governed by an executive council which is composed of eight Clerks who are elected by the members, a designee of the President of the Florida Senate, a designee of the Speaker of the Florida House of Representatives, and a designee of the Chief Justice of the Florida Supreme Court. Clerks of the circuit court are subject to the Code of Ethics for Public Officers and Employees in part III, ch. 112, F.S., (“Code of Ethics”) in their official capacities as clerks of circuit court.

It is not clear that the members of the executive council would be subject to the Code of Ethics in that capacity.<sup>2</sup> A public corporation like the Clerks Corporation would not be an “agency” unless there is specific language to that effect. In the case of the Clerks Corporation, s. 28.35(1)(c), F.S., states:

The corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The corporation is not subject to chapter 120.

Political subdivisions are, in fact, an “agency” pursuant to s. 112.312(2), F.S. However, in the context of s. 28.35(1)(c), F.S., it appears that that phrase is used only to exempt the Corporation from corporate income tax. Moreover, if the Legislature intended to subject these types of entities to the Code of Ethics, in whole or in part, it has historically done so expressly.<sup>3</sup>

*Effect of the Bill:* The bill clarifies that members of the Clerks Corporation executive council are subject to the standards of conduct in s. 112.313, F.S., the “anti-nepotism” provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the executive council are public officers or employees. Finally, members of the executive council are prohibited from representing others for compensation before the Clerks Corporation for a period of two years after the end of their service on the executive council.<sup>4</sup>

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<sup>1</sup> Section 28.35(1)(a), F.S.

<sup>2</sup> Unless otherwise specified, the various provisions of the Code of Ethics only apply to public officers and public employees. Those provisions contemplate service to an “agency.” For purposes of the Code of Ethics, the term “agency” means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state herein; or any public school, community college, or state university. See, s. 112.312(2), F.S.

<sup>3</sup> See, for example, s. 627.351(6)(d)3., F.S.

<sup>4</sup> By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Executive Council of the Florida Clerk of Courts Operations Corporation does not appear to fit into any of

***Enterprise Florida, Inc. and its Divisions:***

*Present Situation:* Enterprise Florida, Inc.(EFI), is created in s. 288.901, F.S., as a non-profit corporation. It is expressly provided that Enterprise Florida, Inc., is “not a unit or entity of state government.” The members of the board of directors of EFI, are composed of various state officers and private individuals.<sup>5</sup>

Notwithstanding that EFI, is not a unit or entity of state government, the Legislature has provided that the members of its board are subject to the anti-nepotism provision in s. 112.3135, F.S., the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S., and the standards of conduct in s. 112.313, F.S. However, s. 288.901(1)(c), F.S., specifically exempts members of the board from the prohibition on “quid pro quo” gifts in s. 112.313(2), F.S.<sup>6</sup> Finally, members of the board who are not otherwise required to file annual financial disclosure are required to file an Annual Statement of Financial Interests pursuant to s. 112.3145, F.S.

The statutes are silent concerning application of any provisions of the Code of Ethics to the divisions of EFI authorized pursuant to s. 288.92, F.S.

*Effect of the Bill:* The bill prohibits the president, senior managers, and members of the EFI board of directors from accepting “quid pro quo” gifts as provided in s. 112.313(2), F.S. The president, senior managers, and members of the EFI board of directors would be prohibited from representing others for compensation before EFI for a period of two years after ending his or her employment with EFI or service on the EFI board of directors pursuant to s. 112.313(9), F.S.<sup>7</sup>

The officers and board members of the divisions of EFI, and corporations created to carry out its mission, would be subject to the standards of conduct in s. 112.313, F.S., the anti-nepotism provision in s. 112.3135, F.S., and the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S. As with the members of the EFI board of directors, the officers of the divisions of EFI (including corporations created to carry out its mission) are prohibited from representing others for compensation before EFI for a period of two years after the end of their service pursuant to s. 112.313(9), F.S. These ethics standards would apply to:

- Officers and members of the board of directors of the divisions of Enterprise Florida, Inc.;
- Officers and members of the board of directors of subsidiaries of Enterprise Florida, Inc.;
- Officers and members of the board of directors of corporations created to carry out the missions of Enterprise Florida, Inc.; and
- Officers and members of the board of directors of corporations that Enterprise Florida, Inc., is required to contract with by law.

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the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.” is intended to clarify that the two year lobbying prohibition therein applies to members of the Executive Council.

<sup>5</sup> Section 288.901(5)-(7), F.S.

<sup>6</sup> Section 112.313(2), F.S., prohibits solicitation or acceptance of anything of value when based upon any understanding that the officer’s vote, official action, or judgment would be influenced by the gift.

<sup>7</sup> By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. Neither the Board of Directors of Enterprise Florida nor the officers and agents of its divisions fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.,” is intended to clarify that the two year lobbying prohibition therein applies to members of the Board.

### ***Florida Development Finance Corporation***

*Present Situation:* The Florida Development Finance Corporation (FDFC) is created in s. 288.9604, F.S., to assist businesses interested in moving into Florida with obtaining financing and other economic information and services.<sup>8</sup> The FDFC is “created a public body corporate and politic” and is “constituted as a public instrumentality.” The FDFC board of directors is composed of five members selected by the Governor who were nominated by Enterprise Florida, Inc.”<sup>9</sup> The statutes are silent as to the applicability of the Code of Ethics to the members of the board of directors of the FDFC.

*Effect of the Bill:* While an argument could be made that the FDFC is subject to the entire Code of Ethics, no provision of ss. 288.9602-288.9614, F.S., clearly states that any provision of the Code of Ethics applies to the FDFC. As noted above, the Legislature has historically expressly made entities like the FDFC subject to the Code in whole or in part. The Legislature has not done so in this case. So, the bill clarifies that members of the FDFC board of directors are subject to the standards of conduct in s. 112.313, F.S., the “anti-nepotism” provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the FDFC board of directors are public officers or employees. Finally, members of the FDFC board of directors would be prohibited from representing others for compensation before the FDFC for a period of two years after the end of their service on the FDFC board of directors.<sup>10</sup>

### ***Citizens Property Insurance Corporation***

*Present Situation:* Citizens Property Insurance Corporation (Citizens) is created in s. 627.351(6), F.S., to ensure there is an orderly market for property insurance for Floridians. Pursuant to s. 627.351(6)(d)3., F.S., senior managers and members of the Citizens board of governors are subject to the Code of Ethics and are required to file annual financial disclosure pursuant to s. 112.3145, F.S.

*Effect of the Bill:* The bill subjects the executive director of Citizens to the Code of Ethics, and the financial disclosure requirement. The bill prohibits a former executive director of Citizens, or former member of the Citizens board of governors, from representing another person or entity before the corporation for a period of two years after leaving. Additionally, a former Citizens executive director, or former member of the Citizens board of governors is prohibited from having any employment or a contractual relationship for two years after retirement or termination of service to Citizens with an insurer that entered into a take-out bonus agreement with Citizens.

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<sup>8</sup> Section 288.9602, F.S.

<sup>9</sup> Section 288.9604(2), F.S.

<sup>10</sup> By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Florida Development Finance Corporation Board of Directors does not appear to fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.” is intended to clarify that the two year lobbying prohibition therein applies to members of the Board of Directors.

## **Annual Ethics Training**

*Present Situation:* Currently, constitutional officers are required to complete a minimum of four hours of ethics training annually.<sup>11</sup> The law requires training in ethics, public records, and open meetings laws. In accordance with statutory requirement, the Commission has promulgated rules specifying what provisions of Florida's ethics laws must be covered.<sup>12</sup>

*Effect of the Bill:* The bill requires elected municipal officers to complete the required ethics training. Beginning January 1, 2015, all officers subject to the training requirement must certify completion of the requirement on their annual financial disclosure forms. The bill provides that an officer who assumes office after March 31 is not subject to the ethics training requirement until the following year. However, a person who assumes office on or before March 31 is required to complete ethics training in the year in which he or she assumes office. Finally, the bill specifies that failure to affirm completion of the ethics training requirement does not constitute an immaterial, inconsequential, or de minimis error or omission. Therefore, a person who fails to indicate he or she completed the ethics training requirement does not get the opportunity to amend their form. Rather, the complaint proceedings begin immediately.

## **Financial Disclosure**

*Present Situation:* Pursuant to ss. 112.3144 and 112.3145, F.S., certain public officers are required to file financial disclosure annually. Failure to file financial disclosure results in an automatic fine of \$25 per day, up to a maximum of \$1,500. If a filer fails to pay the fine as required by law, the unpaid fine can be given to a collections agency for collection, money may be withheld from the filer's public paycheck, or the Commission, or its collection agency, can seek garnishment of the filer's private wages.

Currently, the Commission may not initiate an investigation into alleged violations of the financial disclosure laws, or any other laws, without having first received a complaint.

*Effect of the Bill:* The bill amends the financial disclosure laws by providing a mechanism for the Commission on Ethics to initiate proceedings, without having first received a complaint, against a person who has failed or refused to file their annual financial disclosure form and has accrued the maximum automatic fine. These complaints would follow the same procedure in place for any other ethics complaint made to the Commission. If the Commission initiates a proceeding, it would determine whether the failure to file was willful and, if so, enter an order recommending that the officer be removed from office. The bill also clarifies the provisions concerning complaints that allege an immaterial, inconsequential, or de minimis error or omission. The linguistic changes are not intended to affect the current process for complaints alleging an immaterial, inconsequential, or de minimis error or omission. That process, passed as part of SB 2 in 2013, requires the Commission to allow the filer a chance to amend his or her financial disclosure form if the Commission receives a complaint after August 25 alleging only an immaterial, inconsequential, or de minimis error or omission. The bill clarifies that the

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<sup>11</sup> Section 112.3142, F.S.

<sup>12</sup> Rule 34-7.025, F.A.C.

Department of State is only required to send an incumbent's financial disclosure form upon qualifying.

The bill amends the provisions that were passed as part of SB 2 in 2013 providing the Commission additional tools to collect unpaid automatic fines for failure to file annual financial disclosure. Specifically, the bill clarifies that there are two separate processes available. The first provision codifies the common law right of employers to withhold salary-related payments as it would be applicable to public officers and employees.<sup>13</sup> Under this provision, the bill authorizes withholding an amount up to the entire amount of any salary-related payment and any additional amount from the next salary-related payment necessary to pay off any remaining balance of the fine. There is an exception for current public officers and employees whose public salary is his or her primary source of income, when withholding the full amount of the fine owed would present an undue hardship. Under those circumstances, the officer or entity paying the salary-related payment would be authorized to reduce the withholding to not less than ten percent of the salary-related payment. The bill clarifies that this process is separate and distinct from the ability to garnish the wages of public officers or employees for failing to pay such fines by moving those provisions to a newly created statute.

### **Citizen Support Organizations and Direct Support Organizations**

*Present Situation:* Currently, s. 112.326, F.S., authorizes the governing body of any political subdivision, by ordinance, or agency, by rule, to impose upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.

*Effect of the Bill:* The bill requires citizen support and direct support organizations to adopt a code of ethics and specifies that certain provisions must be included in the code of ethics. Specifically, the code of ethics adopted must contain the standards of conduct in s. 112.313, F.S.<sup>14</sup> Those organizations are authorized to adopt additional or more stringent standards of conduct and disclosure requirements than are contained in the state's Code of Ethics for Public Officers and Employees. Citizen support and direct support organizations are required to conspicuously post their code of ethics on their website.

### **Independent Special Districts**

*Present Situation:* Special districts are local units of special purpose government, within limited geographical areas, which are utilized to manage, own, operate, maintain, and finance basic capital infrastructure, facilities, and services. According to the Official List of Special Districts maintained by the Department of Economic Opportunity (DEO),<sup>15</sup> there are 1,008 independent

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<sup>13</sup> See, e.g. *Atwater v. Roudebush*, 42 F.Supp. 622 (D.C. IL, 1976).

<sup>14</sup> Section 112.313, F.S., contains the major standards of conduct including, but not limited to: Solicitation and acceptance of anything of value under certain circumstances; doing business with one's own agency; misuse of public position, certain employment or contractual relationships; disclosure of certain information learned by virtue of one's public position in order to benefit oneself or others; and several other provisions.

<sup>15</sup> The Special District Information Program within the DEO serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function.

special districts and 644 dependent special districts. All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 which was enacted by the Legislature to reform and consolidate laws relating to special districts. The Act provides for the definitions, creation, operation, financial report, taxation and non-ad valorem assessments, elections and dissolution of most special districts.

Currently, no provisions of law require lobbyists to register before lobbying independent special districts. Also, no requirement exists that lobbyists disclose the identity of those who retained them or the compensation paid to the lobbyist for his or her services. Finally, no provision of law contains an outright ban on lobbyists giving anything of value to those who run or serve on boards of independent special districts.

Currently, the only applicable laws regulating what can be given to those who run or serve on boards of independent special districts are:

- The prohibition against “quid pro quo” gifts, regardless of value;<sup>16</sup>
- The prohibition against unauthorized compensation, regardless of value;<sup>17</sup> and
- The “old” gifts law, which prohibits solicitation and acceptance of gifts from certain individuals, including lobbyists, over \$100 in value.<sup>18</sup>

Section 112.3148, F.S., imposes certain disclosure requirements on the lobbyist and public officers and employees.

*Effect of the Bill:* The bill regulates those who lobby certain independent special districts by creating a statute that essentially mirrors the legislative lobbying provisions in s. 11.045, F.S., and the executive branch lobbying provisions in s. 112.3215, F.S. The bill applies to expressway authorities, port authorities, water management districts, hospital districts, children’s services districts, or independent special districts with annual revenues of \$5 million that exercise ad valorem taxing authority. Specifically, the bill will:

- Require the districts to maintain a lobbyist registration system.
- Require lobbyists of those districts to register prior to lobbying.
- Prohibit unregistered lobbyists from representing clients before districts.
- Require lobbyists to notify the district that their representation of a principal has ended.
- Authorize districts to accept the same forms that are used by lobbyists to register with the Legislature or Executive Branch.
- Require the Commission to investigate a lobbyist or principal upon receipt of a sworn complaint containing certain allegations. The findings of the investigation are to be reported to the Governor, who is authorized to enforce the Commission’s findings and recommendations.
- Authorizes districts to establish a fee of up to \$40.
- Requires moneys collected to be used for administration of the lobbyist registration system.

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<sup>16</sup> Section 112.313(2), F.S.

<sup>17</sup> Section 112.313(4), F.S.

<sup>18</sup> Section 112.3148, F.S.



## **Voting Requirements**

*Present Situation:* Currently, no member of any state, county, or municipal governmental board, commission, or agency who is present at any official meeting may abstain from voting, except when there appears to be a conflict or possible conflict of interest under the provisions of ss. 112.311, 112.313 or 112.3143, F.S.<sup>19</sup>

*Effect of the Bill:* The bill includes additional or more stringent standards of conduct and disclosure requirements, imposed by the governing body of any political subdivision pursuant to s.112.326, F.S., as additional grounds for a voting abstention due to a conflict or possible conflict of interest. If the only conflict or possible conflict arises from additional or more stringent disclosure requirements adopted pursuant to s.112.326, F.S., the member must comply with those requirements.

The bill allows a member to abstain from voting on an official decision, ruling, or act in the context of a quasi-judicial proceeding, if the abstention is to assure a fair proceeding free from potential bias or prejudice.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The bill requires elected municipal officers to complete four hours of ethics training, and certify completion of the requirement on their annual financial disclosure forms. Often the county or city attorney already provides this training for new officers. Under Article VII, section 18(a), Florida Constitution a mandate includes a general bill requiring counties or municipalities to spend funds.<sup>20</sup> While this bill requires elected municipal officers to complete ethics training, it does not expressly require a municipality to spend funds to provide the training. However, a municipality could elect to do so.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

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<sup>19</sup> Section 286.012, F.S.

<sup>20</sup> FLA. CONST. art. VII, s. 18(a).

**B. Private Sector Impact:**

Section 11 of the CS/CS/CS/SB 846, concerning lobbying special districts, may result in lobbyists having to pay a fee of up to \$40 per principal to the special district. Because the number of lobbyists vary depending on the district, and the permissive nature of the registration fee provision, the actual impact is indeterminate.

**C. Government Sector Impact:**

The bill imposes additional requirements to conduct complaint proceedings related to financial disclosure and independent special district lobbying. The number of additional proceedings that may result is indeterminate.

Section 8 of the CS/CS/CS/SB 846, concerning withholding of public salary-related payments, may result in an indeterminate number of hardship claims. The most recent agency analysis by the Department of Financial Services states that a need for additional resources is expected for reviewing and processing those hardship claims.<sup>21</sup> The fiscal impact is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.35, 112.3142, 112.3144, 112.3145, 112.31455, 288.901, 288.92, 288.9604, and 627.351.

This bill creates the following sections of the Florida Statutes: 112.31456, 112.3251, and 112.3261.

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

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

**CS/CS/CS by Appropriations on March 13, 2014:**

- Defines local officials, and prohibits them from lobbying or registering to lobby the Legislature or an agency on behalf of a person or entity other than his or her political subdivision.
- Revises disclosure requirements with respect to voting abstention at a meeting of a governmental body.

<sup>21</sup> Department of Financial Services, Analysis of CS/SB 846 dated February 27, 2014

- Authorizes a member to abstain from voting on a decision, ruling, or act in a quasi-judicial proceeding under certain circumstances.
- Provides that the president and senior managers of EFI are subject to the same requirements as the board of directors of EFI.
- Clarifies that the president, senior managers, and members of the EFI board of directors would be prohibited from representing others for compensation before EFI for a period of two years after ending his or her employment with EFI or service on the EFI board of directors.
- Requires the Commission to investigate a lobbyist or principal upon receipt of a sworn complaint containing certain allegations and report the findings of the investigation to the Governor, who is authorized to enforce the Commission's findings and recommendations.

**CS/CS by Community Affairs on March 5, 2014:**

- Narrows the scope of the lobbying restrictions imposed on independent special districts by providing applicability solely to expressway authorities, port authorities, water management districts, hospital districts, children's services districts, or independent special districts with annual revenues of \$5 million which exercise ad valorem taxing authority.
  - Those districts would be required to maintain a lobbyist registration system.
  - Lobbyists may not lobby those districts until they are registered.
  - Lobbyists are required to notify the district when their representation of a principal has ended.
  - Districts are permitted to accept the same forms used by lobbyists to register with the Legislature or Executive Branch.
  - Districts can establish a fee of up to \$40, to be used to maintain their lobbyist registration system.
  - Provisions related to quarterly compensation reports, and an expenditure ban have been removed.
- Limits the number of Form 6 financial disclosures that the Department of State is required to send to the Commission.
- Removes references to Space Florida.
- Extends the same ethics standards that apply to the Board of Enterprise Florida to other officers throughout Enterprise Florida.
- Extends the ethics standards and post service standards that apply to the members of the Board of Directors of Citizens to the Executive Director of Citizens.

**CS by Ethics and Elections on February 17, 2014:**

- Provides that the requirement to certify completion of annual ethics training on financial disclosure forms is effective January 1, 2015;
- Subjects expressway authorities and port authorities to the lobbying provisions concerning independent special districts;
- Requires moneys collected pursuant to the special district lobbying provisions to be used solely for administration of those provisions; and
- Provides that those who assume office after March 31 do not have to complete annual ethics training until the next calendar year. Those assuming office on or before

March 31 are required to complete ethics training prior to the end of the year in which they assume office.

**B. Amendments:**

None.

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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	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Lee and Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Before line 99  
insert:

Section 1. Subsection (1) of section 11.045, Florida Statutes, is amended, present subsections (2) through (9) of that section are renumbered as subsections (3) through (10), respectively, a new subsection (2) is added to that section, and present subsections (8) and (9) of that section are amended, to



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10 read:

11 11.045 Lobbying before the Legislature; registration and  
12 reporting; exemptions; penalties.—

13 (1) As used in this section, unless the context otherwise  
14 requires:

15 (a) "Committee" means the committee of each house charged  
16 by the presiding officer with responsibility for ethical conduct  
17 of lobbyists.

18 (b) "Compensation" means a payment, distribution, loan,  
19 advance, reimbursement, deposit, salary, fee, retainer, or  
20 anything of value provided or owed to a lobbying firm, directly  
21 or indirectly, by a principal for any lobbying activity.

22 (c) "Expenditure" means a payment, distribution, loan,  
23 advance, reimbursement, deposit, or anything of value made by a  
24 lobbyist or principal for the purpose of lobbying. The term does  
25 not include contributions or expenditures reported pursuant to  
26 chapter 106 or federal election law, campaign-related personal  
27 services provided without compensation by individuals  
28 volunteering their time, any other contribution or expenditure  
29 made by or to a political party or affiliated party committee,  
30 or any other contribution or expenditure made by an organization  
31 that is exempt from taxation under 26 U.S.C. s. 527 or s.  
32 501(c)(4).

33 (d) "Legislative action" means introduction, sponsorship,  
34 testimony, debate, voting, or any other official action on any  
35 measure, resolution, amendment, nomination, appointment, or  
36 report of, or any matter that may be the subject of action by,  
37 either house of the Legislature or any committee thereof.

38 (e) "Lobbying" means influencing or attempting to influence



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39 legislative action or nonaction through oral or written  
40 communication or an attempt to obtain the goodwill of a member  
41 or employee of the Legislature.

42 (f) "Lobbying firm" means any business entity, including an  
43 individual contract lobbyist, which receives or becomes entitled  
44 to receive any compensation for the purpose of lobbying, where  
45 any partner, owner, officer, or employee of the business entity  
46 is a lobbyist.

47 (g) "Lobbyist" means a person who is employed and receives  
48 payment, or who contracts for economic consideration, for the  
49 purpose of lobbying, or a person who is principally employed for  
50 governmental affairs by another person or governmental entity to  
51 lobby on behalf of that other person or governmental entity.

52 (h) "Local officer" means a state attorney, public  
53 defender, sheriff, tax collector, property appraiser, supervisor  
54 of elections, clerk of the circuit court, county commissioner,  
55 district school board member, or superintendent of schools.

56 (i) ~~(h)~~ "Office" means the Office of Legislative Services.

57 (j) ~~(i)~~ "Principal" means the person, firm, corporation, or  
58 other entity which has employed or retained a lobbyist.

59 (2) A local officer may not lobby or register to lobby the  
60 Legislature on behalf of a person or entity other than his or  
61 her political subdivision. This subsection does not prohibit a  
62 local officer from being employed by, or contracting with, a  
63 lobbying firm if he or she does not personally represent clients  
64 before the Legislature.

65 (9) ~~(8)~~ Any person required to be registered or to provide  
66 information pursuant to this section or pursuant to rules  
67 established in conformity with this section who knowingly fails



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68 to disclose any material fact required by this section or by  
69 rules established in conformity with this section, or who  
70 knowingly provides false information on any report required by  
71 this section or by rules established in conformity with this  
72 section, commits a noncriminal infraction, punishable by a fine  
73 not to exceed \$5,000. Such penalty shall be in addition to any  
74 other penalty assessed by a house of the Legislature pursuant to  
75 subsection (8) ~~(7)~~.

76 (10) ~~(9)~~ There is hereby created the Legislative Lobbyist  
77 Registration Trust Fund, to be used for the purpose of funding  
78 any office established for the administration of the  
79 registration of lobbyists lobbying the Legislature, including  
80 the payment of salaries and other expenses, and for the purpose  
81 of paying the expenses incurred by the Legislature in providing  
82 services to lobbyists. The trust fund is not subject to the  
83 service charge to general revenue provisions of chapter 215.  
84 Fees collected pursuant to rules established in accordance with  
85 subsection (3) ~~(2)~~ shall be deposited into the Legislative  
86 Lobbyist Registration Trust Fund.

87 Section 2. Subsection (1) of section 112.3215, Florida  
88 Statutes, is amended, present subsections (3) through (15) of  
89 that section are renumbered as subsections (4) through (16),  
90 respectively, a new subsection (3) is added to that section, and  
91 present subsection (11) of that section is amended, to read:

92 112.3215 Lobbying before the executive branch or the  
93 Constitution Revision Commission; registration and reporting;  
94 investigation by commission.—

95 (1) For the purposes of this section:

96 (a) "Agency" means the Governor, the Governor and Cabinet,





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97 or any department, division, bureau, board, commission, or  
98 authority of the executive branch. In addition, "agency" shall  
99 mean the Constitution Revision Commission as provided by s. 2,  
100 Art. XI of the State Constitution.

101 (b) "Agency official" or "employee" means any individual  
102 who is required by law to file full or limited public disclosure  
103 of his or her financial interests.

104 (c) "Compensation" means a payment, distribution, loan,  
105 advance, reimbursement, deposit, salary, fee, retainer, or  
106 anything of value provided or owed to a lobbying firm, directly  
107 or indirectly, by a principal for any lobbying activity.

108 (d) "Expenditure" means a payment, distribution, loan,  
109 advance, reimbursement, deposit, or anything of value made by a  
110 lobbyist or principal for the purpose of lobbying. The term  
111 "expenditure" does not include contributions or expenditures  
112 reported pursuant to chapter 106 or contributions or  
113 expenditures reported pursuant to federal election law,  
114 campaign-related personal services provided without compensation  
115 by individuals volunteering their time, any other contribution  
116 or expenditure made by or to a political party or an affiliated  
117 party committee, or any other contribution or expenditure made  
118 by an organization that is exempt from taxation under 26 U.S.C.  
119 s. 527 or s. 501(c)(4).

120 (e) "Fund" means the Executive Branch Lobby Registration  
121 Trust Fund.

122 (f) "Lobbies" means seeking, on behalf of another person,  
123 to influence an agency with respect to a decision of the agency  
124 in the area of policy or procurement or an attempt to obtain the  
125 goodwill of an agency official or employee. "Lobbies" also means



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126 influencing or attempting to influence, on behalf of another,  
127 the Constitution Revision Commission's action or nonaction  
128 through oral or written communication or an attempt to obtain  
129 the goodwill of a member or employee of the Constitution  
130 Revision Commission.

131 (g) "Lobbying firm" means a business entity, including an  
132 individual contract lobbyist, that receives or becomes entitled  
133 to receive any compensation for the purpose of lobbying, where  
134 any partner, owner, officer, or employee of the business entity  
135 is a lobbyist.

136 (h) "Lobbyist" means a person who is employed and receives  
137 payment, or who contracts for economic consideration, for the  
138 purpose of lobbying, or a person who is principally employed for  
139 governmental affairs by another person or governmental entity to  
140 lobby on behalf of that other person or governmental entity.

141 "Lobbyist" does not include a person who is:

142 1. An attorney, or any person, who represents a client in a  
143 judicial proceeding or in a formal administrative proceeding  
144 conducted pursuant to chapter 120 or any other formal hearing  
145 before an agency, board, commission, or authority of this state.

146 2. An employee of an agency or of a legislative or judicial  
147 branch entity acting in the normal course of his or her duties.

148 3. A confidential informant who is providing, or wishes to  
149 provide, confidential information to be used for law enforcement  
150 purposes.

151 4. A person who lobbies to procure a contract pursuant to  
152 chapter 287 which contract is less than the threshold for  
153 CATEGORY ONE as provided in s. 287.017.

154 (i) "Local officer" means a state attorney, public



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155 defender, sheriff, tax collector, property appraiser, supervisor  
156 of elections, clerk of the circuit court, county commissioner,  
157 district school board member, or superintendent of schools.

158 (j)~~(i)~~ "Principal" means the person, firm, corporation, or  
159 other entity which has employed or retained a lobbyist.

160 (3) A local officer may not lobby or register to lobby an  
161 agency on behalf of a person or entity other than his or her  
162 political subdivision. This subsection does not prohibit a local  
163 officer from being employed by, or contracting with, a lobbying  
164 firm if he or she does not personally represent clients before  
165 an agency.

166 (12)~~(11)~~ Any person who is required to be registered or to  
167 provide information under this section or under rules adopted  
168 pursuant to this section and who knowingly fails to disclose any  
169 material fact that is required by this section or by rules  
170 adopted pursuant to this section, or who knowingly provides  
171 false information on any report required by this section or by  
172 rules adopted pursuant to this section, commits a noncriminal  
173 infraction, punishable by a fine not to exceed \$5,000. Such  
174 penalty is in addition to any other penalty assessed by the  
175 Governor and Cabinet pursuant to subsection (11) ~~(10)~~.

176 Section 3. Subsections (3), (4), and (7) of section  
177 11.0455, Florida Statutes, are amended to read:

178 11.0455 Electronic filing of compensation reports and other  
179 information.—

180 (3) A report filed pursuant to this section must be  
181 completed and filed through the electronic filing system not  
182 later than 11:59 p.m. of the day designated in s. 11.045. A  
183 report not filed by 11:59 p.m. of the day designated is a late-



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184 filed report and is subject to the penalties under s. 11.045(4)  
185 ~~s. 11.045(3)~~.

186 (4) Each report filed pursuant to this section is deemed to  
187 meet the certification requirements of s. 11.045(4)(a)4. ~~s.~~  
188 ~~11.045(3)(a)4.~~, and as such subjects the person responsible for  
189 filing and the lobbying firm to the provisions of s. 11.045(8)  
190 and (9) ~~s. 11.045(7) and (8)~~. Persons given a secure sign-on to  
191 the electronic filing system are responsible for protecting it  
192 from disclosure and are responsible for all filings using such  
193 credentials, unless they have notified the office that their  
194 credentials have been compromised.

195 (7) Each house of the Legislature shall provide by rule  
196 that the office make all the data filed available on the  
197 Internet in an easily understood and accessible format. The  
198 Internet website must also include, but not be limited to, the  
199 names and business addresses of lobbyists, lobbying firms, and  
200 principals, the affiliations between lobbyists and principals,  
201 and the classification system designated and identified by each  
202 principal pursuant to s. 11.045(3) ~~s. 11.045(2)~~.

203 Section 4. Subsections (3), (4), and (7) of section  
204 112.32155, Florida Statutes, are amended to read:

205 112.32155 Electronic filing of compensation reports and  
206 other information.—

207 (3) A report filed pursuant to this section must be  
208 completed and filed through the electronic filing system not  
209 later than 11:59 p.m. of the day designated in s. 112.3215. A  
210 report not filed by 11:59 p.m. of the day designated is a late-  
211 filed report and is subject to the penalties under s.  
212 112.3215(6) ~~s. 112.3215(5)~~.



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213 (4) Each report filed pursuant to this section is  
214 considered to meet the certification requirements of s.  
215 112.3215(6)(a)4. ~~s. 112.3215(5)(a)4.~~ Persons given a secure  
216 sign-on to the electronic filing system are responsible for  
217 protecting it from disclosure and are responsible for all  
218 filings using such credentials, unless they have notified the  
219 commission that their credentials have been compromised.

220 (7) The commission shall make all the data filed available  
221 on the Internet in an easily understood and accessible format.  
222 The Internet website shall also include, but not be limited to,  
223 the names and business addresses of lobbyists, lobbying firms,  
224 and principals, the affiliations between lobbyists and  
225 principals, and the classification system designated and  
226 identified by each principal pursuant to s. 112.3215(4) ~~s.~~  
227 ~~112.3215(3).~~

228 Section 5. The amendments made by this act to ss. 11.045  
229 and 112.3215, Florida Statutes, do not apply to a local officer  
230 for the duration of his or her current term of office as of the  
231 effective date of this act. The amendments made by this act to  
232 ss. 11.045 and 112.3215, Florida Statutes, shall apply to a  
233 local officer beginning a new term of office or appointed to  
234 fill an unexpired term after the effective date of this act.

235  
236 ===== T I T L E A M E N D M E N T =====

237 And the title is amended as follows:

238 Delete line 2

239 and insert:

240 An act relating to governmental ethics; amending ss.  
241 11.045 and 112.3215, F.S.; defining the term "local



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242 officer"; prohibiting a local officer from registering  
243 to lobby the Legislature or an agency on behalf of  
244 another person or entity other than his or her  
245 political subdivision; authorizing a local officer to  
246 be employed by or contracted with a lobbying firm  
247 under certain circumstances; amending ss. 11.0455 and  
248 112.32155, F.S.; conforming cross-references to  
249 changes made by the act; providing for applicability;  
250 amending s.



292784

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 486 - 488

and insert:

(7) Upon receipt of a sworn complaint alleging that a lobbyist or principal has failed to register with a governmental entity or has knowingly submitted false information in a report or registration required under this section, the commission shall investigate a lobbyist or principal pursuant to the



292784

10 procedures established under s. 112.324. The commission shall  
11 provide the Governor with a report of its findings and  
12 recommendations in any investigation conducted pursuant to this  
13 subsection. The Governor is authorized to enforce the  
14 commission's findings and recommendations.

15  
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Delete lines 67 - 69

19 and insert:

20 with registration requirements; requiring the  
21 commission to investigate a lobbyist or principal upon  
22 receipt of a sworn complaint containing certain  
23 allegations; requiring the commission to provide the  
24 Governor with a report on the findings and  
25 recommendations resulting from the investigation;  
26 authorizing the Governor to enforce the commission's  
27 findings and recommendations; amending s. 288.901,  
28 F.S.; specifying





261230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 488 and 489

insert:

Section 9. Section 286.012, Florida Statutes, is amended to read:

286.012 Voting requirement at meetings of governmental bodies.—A ~~No~~ member of a ~~any~~ state, county, or municipal governmental board, commission, or agency who is present at a ~~any~~ meeting of any such body at which an official decision,



261230

11 ruling, or other official act is to be taken or adopted may not  
12 abstain from voting in regard to any such decision, ruling, or  
13 act; and a vote shall be recorded or counted for each such  
14 member present, unless ~~except when~~, with respect to any such  
15 member, there is, or appears to be, a possible conflict of  
16 interest under ~~the provisions of~~ s. 112.311, s. 112.313, ~~or~~ s.  
17 112.3143, or additional or more stringent standards of conduct,  
18 if any, adopted pursuant to s. 112.326. If there is, or appears  
19 to be, a possible conflict under s. 112.311, s. 112.313, or s.  
20 112.3143, the member shall comply with the disclosure  
21 requirements of s. 112.3143. If the only conflict or possible  
22 conflict is one arising from the additional or more stringent  
23 standards adopted pursuant to s. 112.326, the member shall  
24 comply with any disclosure requirements adopted pursuant to s.  
25 112.326. If the official decision, ruling, or act occurs in the  
26 context of a quasi-judicial proceeding, a member may abstain  
27 from voting on such matter if the abstention is to assure a fair  
28 proceeding free from potential bias or prejudice ~~In such cases,~~  
29 ~~said member shall comply with the disclosure requirements of s.~~  
30 ~~112.3143.~~

31  
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete line 69

35 and insert:

36 the commission; amending s. 286.012, F.S.; revising  
37 disclosure requirements with respect to a voting  
38 abstention at a meeting of a governmental body;  
39 authorizing a member to abstain from voting on a



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40 decision, ruling, or act in a quasi-judicial  
41 proceeding under certain circumstances; amending s.  
42 288.901, F.S.; specifying



699846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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	.	
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The Committee on Appropriations (Latvala) recommended the following:

1           **Senate Amendment (with title amendment)**

2  
3  
4           Delete lines 489 - 531

5 and insert:

6           Section 9. Paragraph (c) of subsection (1) of section  
7 288.901, Florida Statutes, is amended, and paragraph (d) is  
8 added to that subsection, to read:

9           288.901 Enterprise Florida, Inc.-



699846

10 (1) CREATION.—

11 (c) The Legislature determines that it is in the public  
12 interest that the president, senior managers, and ~~for the~~  
13 members of the board of directors of Enterprise Florida, Inc.,  
14 ~~board of directors~~ to be subject to the requirements of ss.  
15 112.313, 112.3135, and 112.3143(2), and 112.313, excluding s.  
16 112.313(2), notwithstanding the fact that the board members are  
17 not public officers or employees. For purposes of those  
18 sections, the president, senior managers, and board members  
19 shall be considered to be public officers or employees. The  
20 exemption set forth in s. 112.313(12) for advisory boards  
21 applies to the members of the Enterprise Florida, Inc., board of  
22 directors. Further, each member of the board of directors who is  
23 not otherwise required to file financial disclosures pursuant to  
24 s. 8, Art. II of the State Constitution or s. 112.3144~~7~~ shall  
25 file disclosure of financial interests pursuant to s. 112.3145.

26 (d) The president, senior managers, and members of the  
27 board of directors of Enterprise Florida, Inc., may not  
28 represent another person or entity for compensation before the  
29 corporation for a period of 2 years after ending his or her  
30 employment with the corporation or service on the board of  
31 directors.

32 Section 10. Present paragraph (b) of subsection (2) of  
33 section 288.92, Florida Statutes, is redesignated as paragraph  
34 (c), and a new paragraph (b) is added to that subsection, to  
35 read:

36 288.92 Divisions of Enterprise Florida, Inc.—

37 (2)

38 (b)1. The Legislature determines that it is in the public



39 interest that the following officers and board members be  
40 subject to ss. 112.313, 112.3135, and 112.3143(2),  
41 notwithstanding the fact that such officers and board members  
42 are not public officers or employees:

43 a. Officers and members of the board of directors of the  
44 divisions of Enterprise Florida, Inc.;

45 b. Officers and members of the board of directors of  
46 subsidiaries of Enterprise Florida, Inc.;

47 c. Officers and members of the board of directors of  
48 corporations created to carry out the missions of Enterprise  
49 Florida, Inc.; and

50 d. Officers and members of the board of directors of  
51 corporations with which a division is required by law to  
52 contract with to carry out its missions.

53 2. Such officers and members of the board of directors may  
54 not represent another person or entity for compensation before  
55 Enterprise Florida, Inc., for a period of 2 years after  
56 retirement from or termination of service to the division.

57  
58 ===== T I T L E A M E N D M E N T =====

59 And the title is amended as follows:

60 Delete lines 71 - 77

61 and insert:

62 Ethics for Public Officers and Employees to the  
63 president, senior managers, and members of the board  
64 of directors of Enterprise Florida, Inc.; prohibiting  
65 the president, senior managers, and board members from  
66 representing a person or entity before the corporation  
67 for a specified timeframe; amending s. 288.92, F.S.;



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68 specifying the applicability of certain provisions of  
69 the Code of Ethics for Public Officers and Employees  
70 to certain officers and board members associated with  
71 the divisions of Enterprise Florida, Inc.; prohibiting  
72 such officers and members from representing a person

By the Committees on Community Affairs; and Ethics and  
Elections; and Senator Latvala

578-02189A-14

2014846c2

1 A bill to be entitled  
2 An act relating to governmental ethics; amending s.  
3 28.35, F.S.; specifying the applicability of certain  
4 provisions of the Code of Ethics for Public Officers  
5 and Employees to members of the executive council of  
6 the Florida Clerks of Court Operations Corporation;  
7 amending s. 112.3142, F.S.; requiring elected  
8 municipal officers to participate in annual ethics  
9 training; providing legislative intent; amending s.  
10 112.3144, F.S.; requiring an officer required to  
11 participate in annual ethics training to certify  
12 participation on his or her full and public disclosure  
13 of financial interests; revising the conditions under  
14 which a qualifying officer forwards a full and public  
15 disclosure of financial interests to the Commission on  
16 Ethics; authorizing the Commission on Ethics to  
17 initiate an investigation and hold a public hearing  
18 without receipt of a complaint in certain  
19 circumstances; requiring the commission to enter an  
20 order recommending removal of an officer or public  
21 employee from public office or public employment in  
22 certain circumstances; prohibiting the commission from  
23 taking action on a complaint alleging certain errors  
24 or omissions on a disclosure; providing that failure  
25 to certify completion of annual ethics training on a  
26 disclosure does not constitute an immaterial,  
27 inconsequential, or de minimis error or omission;  
28 amending s. 112.3145, F.S.; requiring an officer  
29 required to participate in annual ethics training to

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30 certify participation on his or her statement of  
31 financial interests; authorizing the Commission on  
32 Ethics to initiate an investigation and hold a public  
33 hearing without receipt of a complaint in certain  
34 circumstances; requiring the commission to enter an  
35 order to remove an officer or public employee from  
36 public office or public employment in certain  
37 circumstances; prohibiting the commission from taking  
38 action on a complaint alleging certain errors or  
39 omissions on a statement; providing that failure to  
40 certify completion of annual ethics training on a  
41 statement does not constitute an immaterial,  
42 inconsequential, or de minimis error or omission;  
43 amending s. 112.31455, F.S.; authorizing the Chief  
44 Financial Officer or governing body to withhold the  
45 entire amount of a fine owed and related  
46 administrative costs from salary-related payments of  
47 certain individuals; authorizing the Chief Financial  
48 Officer or governing body to reduce the amount  
49 withheld if an individual can demonstrate a hardship;  
50 creating s. 112.31456, F.S.; authorizing the  
51 commission to seek wage garnishment of certain  
52 individuals to satisfy unpaid fines; authorizing the  
53 commission to refer unpaid fines to a collection  
54 agency; establishing a statute of limitations with  
55 respect to the collection of an unpaid fine; creating  
56 s. 112.3251, F.S.; requiring citizen support and  
57 direct-support organizations to adopt a code of  
58 ethics; establishing minimum requirements for a code

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59 of ethics; creating s. 112.3261, F.S.; defining terms;  
 60 prohibiting a person from lobbying a governmental  
 61 entity until registering; establishing registration  
 62 requirements; requiring public availability of  
 63 lobbyist registrations; establishing procedures for  
 64 termination of a lobbyist's registration; authorizing  
 65 a governmental entity to establish a registration fee;  
 66 requiring a governmental entity to monitor compliance  
 67 with registration requirements; authorizing a  
 68 governmental entity or person to file a complaint with  
 69 the commission; amending s. 288.901, F.S.; specifying  
 70 the applicability of certain provisions of the Code of  
 71 Ethics for Public Officers and Employees to members of  
 72 the Enterprise Florida, Inc., board of directors;  
 73 amending s. 288.92, F.S.; specifying the applicability  
 74 of certain provisions of the Code of Ethics for Public  
 75 Officers and Employees to certain officers associated  
 76 with the divisions of Enterprise Florida, Inc.;

77 prohibiting such officers from representing a person  
 78 or entity for compensation before Enterprise Florida,  
 79 Inc., for a specified timeframe; amending s. 288.9604,  
 80 F.S.; specifying the applicability of certain  
 81 provisions of the Code of Ethics for Public Officers  
 82 and Employees to the board of directors of the Florida  
 83 Development Finance Corporation; amending s. 627.351,  
 84 F.S.; specifying the applicability of certain  
 85 provisions of the Code of Ethics for Public Officers  
 86 and Employees to the executive director of Citizens  
 87 Property Insurance Corporation; prohibiting a former

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88 executive director, senior manager, or member of the  
 89 board of governors of the corporation from  
 90 representing another person or entity before the  
 91 corporation for a specified timeframe; prohibiting a  
 92 former executive director, senior manager, or member  
 93 of the board of governors from entering employment or  
 94 a contractual relationship for a specified timeframe  
 95 with certain insurers; providing an effective date.  
 96

97 Be It Enacted by the Legislature of the State of Florida:  
 98

99 Section 1. Paragraph (b) of subsection (1) of section  
 100 28.35, Florida Statutes, is amended to read:  
 101 28.35 Florida Clerks of Court Operations Corporation.—  
 102 (1)  
 103 (b)1. The executive council shall be composed of eight  
 104 clerks of the court elected by the clerks of the courts for a  
 105 term of 2 years, with two clerks from counties with a population  
 106 of fewer than 100,000, two clerks from counties with a  
 107 population of at least 100,000 but fewer than 500,000, two  
 108 clerks from counties with a population of at least 500,000 but  
 109 fewer than 1 million, and two clerks from counties with a  
 110 population of ~~more than~~ 1 million or more. The executive council  
 111 shall also include, as ex officio members, a designee of the  
 112 President of the Senate and a designee of the Speaker of the  
 113 House of Representatives. The Chief Justice of the Supreme Court  
 114 shall designate one additional member to represent the state  
 115 courts system.  
 116 2. The Legislature determines that it is in the public

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117 interest that the members of the executive council of the  
 118 corporation be subject to the requirements of ss. 112.313,  
 119 112.3135, and 112.3143(2), notwithstanding the fact that the  
 120 council members are not public officers or employees. For  
 121 purposes of these sections, the council members shall be  
 122 considered to be public officers or employees.

123 3. A member of the executive council of the corporation may  
 124 not represent another person or entity for compensation before  
 125 the corporation for a period of 2 years following his or her  
 126 service on the executive council.

127 Section 2. Section 112.3142, Florida Statutes, is amended  
 128 to read:

129 112.3142 Ethics training for specified constitutional  
 130 officers and elected municipal officers.-

131 (1) As used in this section, the term "constitutional  
 132 officers" includes the Governor, the Lieutenant Governor, the  
 133 Attorney General, the Chief Financial Officer, the Commissioner  
 134 of Agriculture, state attorneys, public defenders, sheriffs, tax  
 135 collectors, property appraisers, supervisors of elections,  
 136 clerks of the circuit court, county commissioners, district  
 137 school board members, and superintendents of schools.

138 (2) (a) All constitutional officers must complete 4 hours of  
 139 ethics training each calendar year which annually that  
 140 addresses, at a minimum, s. 8, Art. II of the State  
 141 Constitution, the Code of Ethics for Public Officers and  
 142 Employees, and the public records and public meetings laws of  
 143 this state. This requirement may be satisfied by completion of a  
 144 continuing legal education class or other continuing  
 145 professional education class, seminar, or presentation if the

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146 required subjects are covered.

147 (b) Beginning January 1, 2015, all elected municipal  
 148 officers must complete 4 hours of ethics training each calendar  
 149 year which addresses, at a minimum, s. 8, Art. II of the State  
 150 Constitution, the Code of Ethics for Public Officers and  
 151 Employees, and the public records and public meetings laws of  
 152 this state. This requirement may be satisfied by completion of a  
 153 continuing legal education class or other continuing  
 154 professional education class, seminar, or presentation if the  
 155 required subjects are covered.

156 (c) ~~(b)~~ The commission shall adopt rules establishing  
 157 minimum course content for the portion of an ethics training  
 158 class ~~which that~~ addresses s. 8, Art. II of the State  
 159 Constitution and the Code of Ethics for Public Officers and  
 160 Employees.

161 (d) The Legislature intends that a constitutional officer  
 162 or elected municipal officer who is required to complete ethics  
 163 training pursuant to this section receive the required training  
 164 as close as possible to the date that he or she assumes office.  
 165 A constitutional officer or elected municipal officer assuming a  
 166 new office or new term of office on or before March 31 must  
 167 complete the annual training on or before December 31 of the  
 168 year in which the term of office began. A constitutional officer  
 169 or elected municipal officer assuming a new office after March  
 170 31 is not required to complete ethics training for the calendar  
 171 year in which he or she assumes the new office.

172 (3) Each house of the Legislature shall provide for ethics  
 173 training pursuant to its rules.

174 Section 3. Subsections (1) and (2), paragraph (g) of

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175 subsection (5), and paragraphs (a) and (c) of present subsection  
 176 (7) of section 112.3144, Florida Statutes, are amended, present  
 177 subsections (6) through (9) of that section are redesignated as  
 178 subsections (7) through (10), respectively, and a new subsection  
 179 (6) is added to that section, to read:

180 112.3144 Full and public disclosure of financial  
 181 interests.-

182 (1) An officer who is required by s. 8, Art. II of the  
 183 State Constitution to file a full and public disclosure of his  
 184 or her financial interests for any calendar or fiscal year shall  
 185 file that disclosure with the Florida Commission on Ethics.  
 186 Additionally, beginning January 1, 2015, an officer who is  
 187 required to complete annual ethics training pursuant to s.  
 188 112.3142 must certify on his or her full and public disclosure  
 189 of financial interests that he or she has completed the required  
 190 training.

191 (2) A person who is required, pursuant to s. 8, Art. II of  
 192 the State Constitution, to file a full and public disclosure of  
 193 financial interests and who has filed a full and public  
 194 disclosure of financial interests for any calendar or fiscal  
 195 year shall not be required to file a statement of financial  
 196 interests pursuant to s. 112.3145(2) and (3) for the same year  
 197 or for any part thereof notwithstanding any requirement of this  
 198 part. If an incumbent in an elective office has filed the full  
 199 and public disclosure of financial interests to qualify for  
 200 election to the same office or if ~~When~~ a candidate ~~has qualified~~  
 201 for office holds another office subject to the annual filing  
 202 requirement, the qualifying officer shall forward an electronic  
 203 copy of the full and public disclosure of financial interests to

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204 the commission no later than July 1. The electronic copy of the  
 205 full and public disclosure of financial interests satisfies the  
 206 annual disclosure requirement of this section. A candidate who  
 207 does not qualify until after the annual full and public  
 208 disclosure of financial interests has been filed pursuant to  
 209 this section shall file a copy of his or her disclosure with the  
 210 officer before whom he or she qualifies.

211 (5) Forms for compliance with the full and public  
 212 disclosure requirements of s. 8, Art. II of the State  
 213 Constitution shall be created by the Commission on Ethics. The  
 214 commission shall give notice of disclosure deadlines and  
 215 delinquencies and distribute forms in the following manner:

216 (g) The notification requirements and fines of this  
 217 subsection do not apply to candidates or to the first filing  
 218 required of any person appointed to elective constitutional  
 219 office or other position required to file full and public  
 220 disclosure, unless the person's name is on the commission's  
 221 notification list and the person received notification from the  
 222 commission. The appointing official shall notify such newly  
 223 appointed person of the obligation to file full and public  
 224 disclosure by July 1. The notification requirements and fines of  
 225 this subsection do not apply to the final filing provided for in  
 226 subsection ~~(7)~~(6).

227 (6) If a person holding public office or public employment  
 228 fails or refuses to file a full and public disclosure of  
 229 financial interests for any year in which the person received  
 230 notice from the commission regarding the failure to file and has  
 231 accrued the maximum automatic fine authorized under this  
 232 section, regardless of whether the fine imposed was paid or

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233 collected, the commission may initiate an investigation and  
 234 conduct a public hearing without receipt of a complaint to  
 235 determine whether the person's failure to file is willful. Such  
 236 investigation and hearing must be conducted in accordance with  
 237 s. 112.324. Except as provided in s. 112.324(4), if the  
 238 commission determines that the person willfully failed to file a  
 239 full and public disclosure of financial interests, the  
 240 commission shall enter an order recommending that the officer or  
 241 employee be removed from his or her public office or public  
 242 employment.

243 ~~(8)(7)~~(a) The commission shall treat an amended full and  
 244 public disclosure of financial interests which that is filed  
 245 before prior to September 1 of the current year in which the  
 246 disclosure is due as the original filing, regardless of whether  
 247 a complaint has been filed. ~~If a complaint pertaining to the~~  
 248 ~~current year alleges a failure to properly and accurately~~  
 249 ~~disclose any information required by this section or if a~~  
 250 ~~complaint filed pertaining to a previous reporting period within~~  
 251 ~~the preceding 5 years alleges a failure to properly and~~  
 252 ~~accurately disclose any information required to be disclosed by~~  
 253 ~~this section, the commission may immediately follow complaint~~  
 254 ~~procedures in s. 112.324. However, If a complaint filed after~~  
 255 ~~August 25~~ alleges only an immaterial, inconsequential, or de  
 256 minimis error or omission, the commission may not take any  
 257 action on the complaint, other than notifying the filer of the  
 258 complaint. The filer must be given 30 days to file an amended  
 259 full and public disclosure of financial interests correcting any  
 260 errors. If the filer does not file an amended full and public  
 261 disclosure of financial interests within 30 days after the

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262 commission sends notice of the complaint, the commission may  
 263 continue with proceedings pursuant to s. 112.324.

264 (c) For purposes of this section, an error or omission is  
 265 immaterial, inconsequential, or de minimis if the original  
 266 filing provided sufficient information for the public to  
 267 identify potential conflicts of interest. However, failure to  
 268 certify completion of annual ethics training required under s.  
 269 112.3142 does not constitute an immaterial, inconsequential, or  
 270 de minimis error or omission.

271 Section 4. Present subsections (4) through (11) of section  
 272 112.3145, Florida Statutes, are redesignated as subsections (5)  
 273 through (12), respectively, a new subsection (4) is added to  
 274 that section, paragraph (c) is added to present subsection (7)  
 275 of that section, and paragraphs (a) and (c) of present  
 276 subsection (9) of that section are amended, to read:

277 112.3145 Disclosure of financial interests and clients  
 278 represented before agencies.—

279 (4) Beginning January 1, 2015, an officer who is required  
 280 to complete annual ethics training pursuant to s. 112.3142 must  
 281 certify on his or her statement of financial interests that he  
 282 or she has completed the required training.

283 ~~(8)(7)~~

284 (c) If a person holding public office or public employment  
 285 fails or refuses to file an annual statement of financial  
 286 interests for any year in which the person received notice from  
 287 the commission regarding the failure to file and has accrued the  
 288 maximum automatic fine authorized under this section, regardless  
 289 of whether the fine imposed was paid or collected, the  
 290 commission may initiate an investigation and conduct a public

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291 hearing without receipt of a complaint to determine whether the  
 292 person's failure to file is willful. Such investigation and  
 293 hearing must be conducted in accordance with s. 112.324. Except  
 294 as provided in s. 112.324(4), if the commission determines that  
 295 the person willfully failed to file a statement of financial  
 296 interests, the commission shall enter an order recommending that  
 297 the officer or employee be removed from his or her public office  
 298 or public employment.

299 (10)(9)(a) The commission shall treat an amended annual  
 300 statement of financial interests which that is filed before  
 301 prior to September 1 of the current year in which the statement  
 302 is due as the original filing, regardless of whether a complaint  
 303 has been filed. If a complaint pertaining to the current year  
 304 alleges a failure to properly and accurately disclose any  
 305 information required by this section or if a complaint filed  
 306 pertaining to a previous reporting period within the preceding 5  
 307 years alleges a failure to properly and accurately disclose any  
 308 information required to be disclosed by this section, the  
 309 commission may immediately follow complaint procedures in s.  
 310 112.324. However, If a complaint filed after August 25 alleges  
 311 only an immaterial, inconsequential, or de minimis error or  
 312 omission, the commission may not take any action on the  
 313 complaint, other than notifying the filer of the complaint. The  
 314 filer must be given 30 days to file an amended statement of  
 315 financial interests correcting any errors. If the filer does not  
 316 file an amended statement of financial interests within 30 days  
 317 after the commission sends notice of the complaint, the  
 318 commission may continue with proceedings pursuant to s. 112.324.

319 (c) For purposes of this section, an error or omission is

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320 immaterial, inconsequential, or de minimis if the original  
 321 filing provided sufficient information for the public to  
 322 identify potential conflicts of interest. However, failure to  
 323 certify completion of annual ethics training required under s.  
 324 112.3142 does not constitute an immaterial, inconsequential, or  
 325 de minimis error or omission.

326 Section 5. Section 112.31455, Florida Statutes, is amended  
 327 to read:

328 112.31455 Withholding of public salary-related payments  
 329 Collection methods for unpaid automatic fines for failure to  
 330 timely file disclosure of financial interests.-

331 (1) Before referring any unpaid fine accrued pursuant to s.  
 332 112.3144(5) or s. 112.3145(7) ~~s. 112.3145(6)~~ to the Department  
 333 of Financial Services, the commission shall attempt to determine  
 334 whether the individual owing such a fine is a current public  
 335 officer or current public employee. If so, the commission may  
 336 notify the Chief Financial Officer or the governing body of the  
 337 appropriate county, municipality, or special district of the  
 338 total amount of any fine owed to the commission by such  
 339 individual.

340 (a) After receipt and verification of the notice from the  
 341 commission, the Chief Financial Officer or the governing body of  
 342 the county, municipality, or special district shall withhold the  
 343 entire amount of any fine owed, and any administrative costs  
 344 incurred, from the individual's next salary-related payment. If  
 345 the fine exceeds the amount of the next salary-related payment,  
 346 all salary-related payments must be withheld until the fine and  
 347 administrative costs are paid in full begin withholding the  
 348 lesser of 10 percent or the maximum amount allowed under federal

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349 ~~law from any salary-related payment.~~ The withheld payments shall  
350 be remitted to the commission until the fine is satisfied.

351 (b) The Chief Financial Officer or the governing body of  
352 the county, municipality, or special district may retain an  
353 amount of each withheld payment, as provided in s. 77.0305, to  
354 cover the administrative costs incurred under this section.

355 (c) If a current public officer or current public employee  
356 demonstrates to the Chief Financial Officer or the governing  
357 body responsible for paying him or her that the public salary is  
358 his or her primary source of income and that withholding the  
359 full amount of any fine owed from a salary-related payment would  
360 present an undue hardship, the amount withheld from a public  
361 salary may be reduced to not less than 10 percent of the salary-  
362 related payment.

363 ~~(2) If the commission determines that the individual who is~~  
364 ~~the subject of an unpaid fine accrued pursuant to s. 112.3144(5)~~  
365 ~~or s. 112.3145(6) is no longer a public officer or public~~  
366 ~~employee or if the commission is unable to determine whether the~~  
367 ~~individual is a current public officer or public employee, the~~  
368 ~~commission may, 6 months after the order becomes final, seek~~  
369 ~~garnishment of any wages to satisfy the amount of the fine, or~~  
370 ~~any unpaid portion thereof, pursuant to chapter 77. Upon~~  
371 ~~recording the order imposing the fine with the clerk of the~~  
372 ~~circuit court, the order shall be deemed a judgment for purposes~~  
373 ~~of garnishment pursuant to chapter 77.~~

374 (2)(3) The commission may refer unpaid fines to the  
375 appropriate collection agency, as directed by the Chief  
376 Financial Officer, to utilize any collection methods provided by  
377 law. Except as expressly limited by this section, any other

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378 collection methods authorized by law are allowed.

379 (3)(4) Action may be taken to collect any unpaid fine  
380 imposed by ss. 112.3144 and 112.3145 within 20 years after the  
381 date the final order is rendered.

382 Section 6. Section 112.31456, Florida Statutes, is created  
383 to read:

384 112.31456 Garnishment of wages for unpaid automatic fines  
385 for failure to timely file disclosure of financial interests.—

386 (1) Before referring any unpaid fine accrued pursuant to s.  
387 112.3144(5) or s. 112.3145(7) to the Department of Financial  
388 Services, the commission shall attempt to determine whether the  
389 individual owing such fine is a current public officer or  
390 current public employee. If the commission determines that an  
391 individual who is the subject of an unpaid fine accrued pursuant  
392 to s. 112.3144(5) or s. 112.3145(7) is no longer a public  
393 officer or public employee or the commission is unable to  
394 determine whether the individual is a current public officer or  
395 public employee, the commission may, 6 months after the order  
396 becomes final, seek garnishment of any wages to satisfy the  
397 amount of the fine, or any unpaid portion thereof, pursuant to  
398 chapter 77. Upon recording the order imposing the fine with the  
399 clerk of the circuit court, the order shall be deemed a judgment  
400 for purposes of garnishment pursuant to chapter 77.

401 (2) The commission may refer unpaid fines to the  
402 appropriate collection agency, as directed by the Chief  
403 Financial Officer, to use any collection methods provided by  
404 law. Except as expressly limited by this section, any other  
405 collection methods authorized by law are allowed.

406 (3) Action may be taken to collect any unpaid fine imposed

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407 by ss. 112.3144 and 112.3145 within 20 years after the date the  
 408 final order is rendered.

409 Section 7. Section 112.3251, Florida Statutes, is created  
 410 to read:

411 112.3251 Citizen support and direct-support organizations;  
 412 standards of conduct.—A citizen support or direct-support  
 413 organization created or authorized pursuant to law must adopt  
 414 its own ethics code. The ethics code must contain the standards  
 415 of conduct and disclosures required under ss. 112.313 and  
 416 112.3143(2), respectively. However, an ethics code adopted  
 417 pursuant to this section is not required to contain the  
 418 standards of conduct specified in s. 112.313(3) or (7). The  
 419 citizen support or direct-support organization may adopt  
 420 additional or more stringent standards of conduct and disclosure  
 421 requirements, provided that those standards of conduct and  
 422 disclosure requirements do not otherwise conflict with this  
 423 part. The ethics code must be conspicuously posted on the  
 424 website of the citizen support or direct-support organization.

425 Section 8. Section 112.3261, Florida Statutes, is created  
 426 to read:

427 112.3261 Lobbying before governmental entities;  
 428 registration and reporting.—

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

430 (a) "Governmental entity" means a water management  
 431 district, a hospital district, a children's services district,  
 432 an expressway authority as the term "authority" is defined in s.  
 433 348.0002, a port authority as the term is defined in s. 315.02,  
 434 or an independent special district with annual revenues of more  
 435 than \$5 million that exercises ad valorem taxing authority.

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436 (b) "Lobbies" means seeking, on behalf of another person,  
 437 to influence a governmental entity with respect to a decision of  
 438 the entity in an area of policy or procurement or an attempt to  
 439 obtain the goodwill of an entity official or employee.

440 (c) "Lobbyist" has the same meaning as in s. 112.3215.

441 (d) "Principal" has the same meaning as in s. 112.3215.

442 (2) A person may not lobby a governmental entity until such  
 443 person has registered as a lobbyist with that entity. Such  
 444 registration shall be due upon initially being retained to lobby  
 445 and is renewable on a calendar-year basis thereafter. Upon  
 446 registration, the person shall provide a statement signed by the  
 447 principal or principal's representative stating that the  
 448 registrant is authorized to represent the principal. The  
 449 principal shall also identify and designate its main business on  
 450 the statement authorizing that lobbyist pursuant to a  
 451 classification system approved by the governmental entity. Any  
 452 changes to the information required by this section must be  
 453 disclosed within 15 days by filing a new registration form. The  
 454 registration form shall require each lobbyist to disclose, under  
 455 oath, the following:

456 (a) The lobbyist's name and business address.

457 (b) The name and business address of each principal  
 458 represented.

459 (c) The existence of any direct or indirect business  
 460 association, partnership, or financial relationship with any  
 461 officer or employee of a governmental entity with which he or  
 462 she lobbies or intends to lobby.

463 (d) In lieu of creating its own lobbyist registration  
 464 forms, a governmental entity may accept a completed legislative

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465 branch or executive branch lobbyist registration form.

466 (3) A governmental entity shall make lobbyist registrations  
 467 available to the public. If a governmental entity maintains a  
 468 website, a database of currently registered lobbyists and  
 469 principals must be available on the entity's website.

470 (4) A lobbyist shall promptly send a written statement to  
 471 the governmental entity cancelling the registration for a  
 472 principal upon termination of the lobbyist's representation of  
 473 that principal. A governmental entity may remove the name of a  
 474 lobbyist from the list of registered lobbyists if the principal  
 475 notifies the entity that a person is no longer authorized to  
 476 represent that principal.

477 (5) A governmental entity may establish an annual lobbyist  
 478 registration fee, not to exceed \$40, for each principal  
 479 represented. The governmental entity may use the moneys  
 480 collected only to administer the provisions of this section.

481 (6) A governmental entity shall be diligent to ascertain  
 482 whether persons required to register pursuant to this section  
 483 have complied. A governmental entity may not knowingly authorize  
 484 a person who is not registered pursuant to this section to lobby  
 485 the entity.

486 (7) Upon discovery of a violation of this section, a  
 487 governmental entity or any person may file a sworn complaint  
 488 with the commission.

489 Section 9. Paragraph (c) of subsection (1) of section  
 490 288.901, Florida Statutes, is amended, and paragraph (d) is  
 491 added to that subsection, to read:

492 288.901 Enterprise Florida, Inc.-

493 (1) CREATION.-

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494 (c) The Legislature determines that it is in the public  
 495 interest ~~that for~~ the members of the Enterprise Florida, Inc.,  
 496 board of directors ~~to~~ be subject to the requirements of ss.  
 497 112.313, 112.3135, and 112.3143(2), and 112.313, excluding s.  
 498 ~~112.313(2),~~ notwithstanding the fact that the board members are  
 499 not public officers or employees. For purposes of those  
 500 sections, the board members shall be considered to be public  
 501 officers or employees. The exemption set forth in s. 112.313(12)  
 502 for advisory boards applies to the members of the Enterprise  
 503 Florida, Inc., board of directors. Further, each member of the  
 504 board of directors who is not otherwise required to file  
 505 financial disclosures pursuant to s. 8, Art. II of the State  
 506 Constitution or s. 112.3144~~7~~ shall file disclosure of financial  
 507 interests pursuant to s. 112.3145.

508 (d) A member of the Enterprise Florida, Inc., board of  
 509 directors may not represent another person or entity for  
 510 compensation before the corporation for a period of 2 years  
 511 following his or her service on the board of directors.

512 Section 10. Present paragraph (b) of subsection (2) of  
 513 section 288.92, Florida Statutes, is redesignated as paragraph  
 514 (c), and a new paragraph (b) is added to that subsection, to  
 515 read:

516 288.92 Divisions of Enterprise Florida, Inc.-

517 (2)

518 (b)1. The Legislature determines that it is in the public  
 519 interest that the following officers be subject to ss. 112.313,  
 520 112.3135, and 112.3143(2), notwithstanding the fact that such  
 521 officers are not public officers or employees:

522 a. Officers of the divisions of Enterprise Florida, Inc.;



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523 b. Officers of subsidiaries of Enterprise Florida, Inc.;

524 c. Officers of corporations created to carry out the  
525 missions of Enterprise Florida, Inc.; and

526 d. Officers of corporations with which a division is  
527 required by law to contract with to carry out its missions.

528 2. Such officers may not represent another person or entity  
529 for compensation before Enterprise Florida, Inc., for a period  
530 of 2 years after retirement from or termination of service to  
531 the division.

532 Section 11. Paragraph (a) of subsection (3) of section  
533 288.9604, Florida Statutes, is amended to read:

534 288.9604 Creation of the authority.—

535 (3) (a) 1. A director may not ~~shall~~ receive ~~no~~ compensation  
536 for his or her services, but is entitled to ~~the~~ necessary  
537 expenses, including travel expenses, incurred in the discharge  
538 of his or her duties. Each director shall hold office until his  
539 or her successor has been appointed.

540 2. The Legislature determines that it is in the public  
541 interest that a director of the board of directors of the  
542 Florida Development Finance Corporation be subject to ss.  
543 112.313, 112.3135, and 112.3143(2), notwithstanding the fact  
544 that the directors are not public officers or employees. For  
545 purposes of these sections, the directors shall be considered to  
546 be public officers or employees.

547 3. A director of the board of directors of the corporation  
548 may not represent another person or entity for compensation  
549 before the corporation for a period of 2 years following his or  
550 her service on the board of directors.

551 Section 12. Paragraph (d) of subsection (6) of section

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552 627.351, Florida Statutes, is amended to read:

553 627.351 Insurance risk apportionment plans.—

554 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

555 (d)1. All prospective employees for senior management  
556 positions, as defined by the plan of operation, are subject to  
557 background checks as a prerequisite for employment. The office  
558 shall conduct the background checks pursuant to ss. 624.34,  
559 624.404(3), and 628.261.

560 2. On or before July 1 of each year, employees of the  
561 corporation must sign and submit a statement attesting that they  
562 do not have a conflict of interest, as defined in part III of  
563 chapter 112. As a condition of employment, all prospective  
564 employees must sign and submit to the corporation a conflict-of-  
565 interest statement.

566 3. The executive director, senior managers, and members of  
567 the board of governors are subject to part III of chapter 112,  
568 including, but not limited to, the code of ethics and public  
569 disclosure and reporting of financial interests, pursuant to s.  
570 112.3145. Notwithstanding s. 112.3143(2), a board member may not  
571 vote on any measure that would inure to his or her special  
572 private gain or loss; that he or she knows would inure to the  
573 special private gain or loss of any principal by whom he or she  
574 is retained or to the parent organization or subsidiary of a  
575 corporate principal by which he or she is retained, other than  
576 an agency as defined in s. 112.312; or that he or she knows  
577 would inure to the special private gain or loss of a relative or  
578 business associate of the public officer. Before the vote is  
579 taken, such member shall publicly state to the assembly the  
580 nature of his or her interest in the matter from which he or she

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581 is abstaining from voting and, within 15 days after the vote  
 582 occurs, disclose the nature of his or her interest as a public  
 583 record in a memorandum filed with the person responsible for  
 584 recording the minutes of the meeting, who shall incorporate the  
 585 memorandum in the minutes. Senior managers and board members are  
 586 also required to file such disclosures with the Commission on  
 587 Ethics and the Office of Insurance Regulation. The executive  
 588 director of the corporation or his or her designee shall notify  
 589 each existing and newly appointed member of the board of  
 590 governors and senior managers of their duty to comply with the  
 591 reporting requirements of part III of chapter 112. At least  
 592 quarterly, the executive director or his or her designee shall  
 593 submit to the Commission on Ethics a list of names of the senior  
 594 managers and members of the board of governors who are subject  
 595 to the public disclosure requirements under s. 112.3145.

596 4. Notwithstanding s. 112.3148, ~~or~~ s. 112.3149, or any  
 597 other provision of law, an employee or board member may not  
 598 knowingly accept, directly or indirectly, any gift or  
 599 expenditure from a person or entity, or an employee or  
 600 representative of such person or entity, which has a contractual  
 601 relationship with the corporation or who is under consideration  
 602 for a contract. An employee or board member who fails to comply  
 603 with subparagraph 3. or this subparagraph is subject to  
 604 penalties provided under ss. 112.317 and 112.3173.

605 5. The executive director, a member of the board of  
 606 governors, and a ~~any~~ senior manager of the corporation are ~~who~~  
 607 is employed on or after January 1, 2007, regardless of the date  
 608 of hire, who subsequently retires or terminates employment is  
 609 prohibited from representing another person or entity before the

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610 corporation for 2 years after retirement from or termination of  
 611 service to employment ~~from~~ the corporation.

612 6. The executive director, a member of the board of  
 613 governors, and a ~~any~~ senior manager of the corporation are ~~who~~  
 614 is employed on or after January 1, 2007, regardless of the date  
 615 of hire, who subsequently retires or terminates employment is  
 616 prohibited from having any employment or contractual  
 617 relationship for 2 years after retirement from or termination of  
 618 service to the corporation with an insurer that has entered into  
 619 a take-out bonus agreement with the corporation.

620 Section 13. This act shall take effect July 1, 2014.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Ethics and Elections, *Chair*  
Appropriations  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Environmental Preservation and Conservation  
Gaming  
Judiciary  
Rules

**SENATOR JACK LATVALA**  
20th District

March 5, 2014

The Honorable Joe Negron, Chair  
Senate Committee on Appropriations  
404 S. Monroe St., 201 The Capitol  
Tallahassee, FL 32399-1100

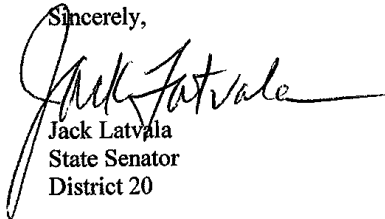
Dear Chairman Negron:

I respectfully request that Senate Bill 846/Governmental Ethics be placed on the agenda of the Senate Committee on Appropriations at your earliest convenience. The bill was favorably referred from the Senate Committee on Community Affairs on March 5, 2014.

This bill will tighten ethical standards applicable to quasi-governmental entities by clarifying that members of various boards must comply with standards of conduct for public officers, the anti-nepotism provision, voting conflicts standards, and are prohibited from lobbying their entity for two years after their service ends.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,



Jack Latvala  
State Senator  
District 20

JL:tc

CC: Cindy Kynoch, Staff Director; Ann Roberts, Administrative Assistant

### REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SPB 7086

INTRODUCER: For consideration by the Appropriations Committee

SUBJECT: Internal Revenue Code

DATE: March 13, 2014

REVISED: \_\_\_\_\_

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Babin</u>	<u>Kynoch</u>	_____	<b>AP Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7086 updates Florida's corporate Income Tax Code by adopting the Internal Revenue Code as in effect on January 1, 2014.

The Revenue Estimating Conference (REC) estimates that this bill will not have a fiscal impact.

The bill substantially amends section 220.03, Florida Statutes.

**II. Present Situation:**

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income.

Florida maintains this relationship with the federal Internal Revenue Code by each year adopting the federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income.

**III. Effect of Proposed Changes:**

The bill updates Florida's corporate Income Tax Code to reflect changes in the federal Internal Revenue Code.

The bill takes effect upon becoming a law and operates retroactively to January 1, 2014.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

By adopting recent changes to the Internal Revenue Code, Florida provides ease of administration for Florida corporate taxpayers.

## C. Government Sector Impact:

The REC estimates that SPB 7086 will have no fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 220.03 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

---

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

---

FOR CONSIDERATION By the Committee on Appropriations

576-01918-14

20147086\_\_

1 A bill to be entitled  
 2 An act relating to the Internal Revenue Code; amending  
 3 s. 220.03, F.S.; adopting the 2014 version of the  
 4 code; providing an effective date.  
 5  
 6 Be It Enacted by the Legislature of the State of Florida:  
 7  
 8 Section 1. Paragraph (n) of subsection (1) and paragraph  
 9 (c) of subsection (2) of section 220.03, Florida Statutes, are  
 10 amended to read:  
 11 220.03 Definitions.—  
 12 (1) SPECIFIC TERMS.—When used in this code, and when not  
 13 otherwise distinctly expressed or manifestly incompatible with  
 14 the intent thereof, the following terms shall have the following  
 15 meanings:  
 16 (n) "Internal Revenue Code" means the United States  
 17 Internal Revenue Code of 1986, as amended and in effect on  
 18 January 1, 2014 ~~2013~~, except as provided in subsection (3).  
 19 (2) DEFINITIONAL RULES.—When used in this code and neither  
 20 otherwise distinctly expressed nor manifestly incompatible with  
 21 the intent thereof:  
 22 (c) Any term used in this code has the same meaning as when  
 23 used in a comparable context in the Internal Revenue Code and  
 24 other statutes of the United States relating to federal income  
 25 taxes, as such code and statutes are in effect on January 1,  
 26 2014 ~~2013~~. However, if subsection (3) is implemented, the  
 27 meaning of a term shall be taken at the time the term is applied  
 28 under this code.  
 29 Section 2. This act shall take effect upon becoming a law

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

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30 and operate retroactively to January 1, 2014.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 102

INTRODUCER: Appropriations Committee; Transportation Committee; and Senator Diaz de la Portilla and others

SUBJECT: Drivers Leaving the Scene of a Crash

DATE: March 13, 2014

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Price</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2. <u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3. <u>Carey</u>	<u>Martin</u>	<u>ATD</u>	<u>Favorable</u>
4. <u>Carey</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 102 creates the “Aaron Cohen Life Protection Act.” The bill addresses a perceived or potential incentive in current law to leave the scene of a crash by:

- Punishing leaving the scene of a crash resulting in serious bodily injury to a person as a second degree felony, rather than a third degree felony;
- Imposing a mandatory minimum term of imprisonment of four years for a driver convicted of leaving the scene of a crash resulting in the death of a person;
- Increasing the mandatory minimum term of imprisonment from two to four years for a driver convicted of leaving the scene of a crash resulting in the death of a person while driving under the influence (DUI);
- Imposing a minimum driver license revocation period of at least three years and driver education requirements for leaving the scene of a crash;
- Ranking offenses for leaving the scene of a crash one level higher than specified in the Criminal Punishment Code if the victim of the offense was a “vulnerable road user”;
- Authorizing a defendant to move the court to depart from the mandatory minimum term of imprisonment for leaving the scene of a crash resulting in death, unless the violation was committed while the defendant was DUI; authorizing the state to object to the defendant’s motion; and authorizing a court to grant the motion upon a finding that imposition of the mandatory minimum term would constitute or result in an injustice.



The Criminal Justice Impact Conference (CJIC) met on January 30, 2014 and found that the bill's impact upon prison beds is indeterminate.

## II. Present Situation:

Aaron Cohen was an experienced cyclist and avid runner who was 36 years old when, on February 15, 2012, he was struck and killed in a hit-and-run accident on the Rickenbacker Causeway, which leads to Key Biscayne in Miami-Dade County.<sup>1</sup>

The driver of the vehicle that struck Aaron Cohen, Michel Traverso, fled the scene of the accident and eventually turned himself in the following day. Aaron eventually died as a result of his injuries, leaving behind a wife and two young children.

Evidence in Traverso's prosecution later showed that he'd been at a local bar before getting behind the wheel of his car that morning ... However prosecutors had no direct evidence that Traverso was actually intoxicated at the time his vehicle struck Aaron Cohen, which would have been necessary for a DUI manslaughter prosecution.

Traverso eventually pled guilty to violating Florida's leaving the scene of an accident (LSA) law, and was sentenced to 21 months in jail.<sup>2</sup>

### Leaving the Scene of a Crash

Section 316.027, F.S., requires the driver of a vehicle involved in a crash occurring on public or private property and resulting in injury to or death of a person to remain at the scene of the crash until the driver fulfills the requirements of s. 316.062, F.S.

Section 316.062, F.S., requires the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property driven or attended by any person to:

- Give his or her name, address, and vehicle registration number;
- Provide a driver's license, upon request and if available, to any person injured in the crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash;
- Provide a driver's license, upon request, to any police officer at the scene or who is investigating the crash;
- Render to any injured person reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person; and

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<sup>1</sup> SR 932 (2013 Reg. Session).

<sup>2</sup> <http://aaroncohenlaw.org/?page/114045/read-this---the-lsa-gap-in-florida>: Last visited December 17, 2013.

- Having stopped and remained at the scene to provide the required information, if none of the persons identified are able to receive the information, report the crash to the nearest police authority and submit the required information.

### ***Injury***

For crashes resulting in injury to a person, a driver found in willful violation of s. 316.027, F.S., commits a third degree felony punishable by a term of imprisonment not exceeding five years,<sup>3</sup> a possible additional fine not exceeding \$5,000,<sup>4</sup> or imposition under certain circumstances of an extended term of imprisonment for habitual felony offenders, habitual violent felony offenders, three-time felony offenders, and violent career criminals.<sup>5</sup> Proof that the driver caused or contributed to causing injury to a person is not required for a conviction.<sup>6</sup>

### ***Death***

For crashes resulting in the death of a person, a driver found in willful violation of s. 316.027, F.S., commits a first degree felony punishable by a term of imprisonment up to 30 years,<sup>7</sup> a possible additional fine up to \$10,000,<sup>8</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>9</sup> Again, proof that the driver caused or contributed to causing the death of a person is not required for a conviction, and current law reflects no mandatory minimum sentence for these violations.

However, a driver must be sentenced to a mandatory minimum term of imprisonment of two years if the violation occurs while driving under the influence of alcoholic beverages, certain chemical substances, or certain controlled substances when affected to the extent that the person's normal faculties are impaired, or when the person has a 0.08 blood- or breath-alcohol level.<sup>10</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to revoke the driver's license of a person convicted of a violation of s. 316.027, F.S. Further, with respect to a crash involving death or a bodily injury requiring transport to a medical facility, a convicted driver must also attend a driver improvement course approved by the DHSMV to maintain driving privileges.<sup>11</sup> If a crash causes or results in the death of another person, the convicted person may also be required by the court to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents.

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<sup>3</sup> Section 775.082, F.S.

<sup>4</sup> Section 775.083, F.S.

<sup>5</sup> Section 775.084, F.S.

<sup>6</sup> See *Lawrence v. State*, 801 So.2d 293, 295 (Fla. 2d DCA 2001) and *Kelly v. State*, 987 So.2d 1237, 1239 (Fla. 2d DCA 2008).

<sup>7</sup> Section 775.082, F.S.

<sup>8</sup> Section 775.083, F.S.

<sup>9</sup> Section 775.084, F.S.

<sup>10</sup> Section 316.193(1), F.S.

<sup>11</sup> Section 322.0261, F.S.

### ***Fleeing or Attempting to Elude a Law Enforcement Officer***

Under s. 316.1935, F.S., any person who:

- In the course of unlawfully leaving or attempting to leave the scene of a crash in violation of ss. 316.027 and 316.062, F.S.;
- Having knowledge of an order to stop by a law enforcement officer;
- Willfully refuses or fails to stop or, having stopped in knowing compliance, willfully flees in an attempt to elude the officer; and
- As a result of such fleeing or eluding:
  - *Causes injury to another person or damage to another's property*, commits aggravated fleeing or eluding, a second degree felony, punishable by a term of imprisonment up to 15 years,<sup>12</sup> a possible additional fine up to \$10,000,<sup>13</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders;<sup>14</sup> or
  - *Causes serious bodily injury or death to another person*, including any law enforcement officer involved in attempting to stop the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony, punishable by a term of imprisonment up to 30 years,<sup>15</sup> a possible additional fine up to \$10,000,<sup>16</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>17</sup>

In both cases, a person may also be charged with the offenses under ss. 316.027 and 316.062, F.S., relating to unlawfully leaving the scene of a crash. A court is required to sentence any person convicted of committing aggravated fleeing or eluding *with serious bodily injury or death* to a mandatory minimum sentence of 3 years imprisonment.

### **Driving Under the Influence**

Section 316.193(1), F.S., provides a person is guilty of driving under the influence when that person is driving a vehicle under the influence of alcoholic beverages, certain chemical substances, or certain controlled substances when affected to the extent that the person's normal faculties are impaired, or when the person has a 0.08 blood- or breath-alcohol level.

### ***Serious Bodily Injury***

Any person under the influence as described above and who by reason of operating a vehicle *causes or contributes to causing serious bodily injury* to another,<sup>18</sup> commits a third degree felony<sup>19</sup> punishable by a term of imprisonment not exceeding five years,<sup>20</sup> a possible additional fine not exceeding \$5,000,<sup>21</sup> or imposition under certain circumstances of an extended term of

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<sup>12</sup> Section 775.082, F.S.

<sup>13</sup> Section 775.083, F.S.

<sup>14</sup> Section 775.084, F.S.

<sup>15</sup> Section 775.082, F.S.

<sup>16</sup> Section 775.083, F.S.

<sup>17</sup> Section 775.084, F.S.

<sup>18</sup> Defined 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."

<sup>19</sup> Section 316.193(3)(c)2., F.S.

<sup>20</sup> Section 775.082, F.S.

<sup>21</sup> Section 775.083, F.S.

imprisonment for habitual felony offenders, habitual violent felony offenders, three-time felony offenders, and violent career criminals.<sup>22</sup>

### ***Death***

Any person under the influence as described above and who by reason of operating a vehicle *causes or contributes to causing the death*<sup>23</sup> of any human being or unborn quick child commits a second degree felony and DUI manslaughter,<sup>24</sup> punishable by a term of imprisonment up to 15 years,<sup>25</sup> a possible additional fine up to \$10,000,<sup>26</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>27</sup>

If, at the time of the crash, the person knew or should have known the crash occurred and the person failed to give information and render aid as required by s. 316.062, F.S., that person commits a first degree felony **and** DUI manslaughter, punishable by a term of imprisonment up to 30 years,<sup>28</sup> a possible additional fine up to \$10,000,<sup>29</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>30</sup>

A person convicted of DUI manslaughter must serve a mandatory minimum term of imprisonment of four years.

Thus, in cases involving DUI and leaving the scene of a crash resulting in death, current law may provide an incentive to leave because the mandatory minimum sentence of four years for DUI manslaughter is avoided if a DUI charge is avoided by leaving the scene. A person driving DUI may also view an attempt to flee or elude in the process of leaving the scene as advantageous because, if successful in fleeing or eluding, a DUI charge is again avoided, and the mandatory minimum for fleeing and eluding is one year less than the mandatory minimum of four years for DUI manslaughter.

### **Driver License/Periods of Suspension or Revocation:**

Section 322.28, F.S., provides for certain driver license suspension and revocation periods and, unless otherwise provided, subsection (1) limits the authority of the DHSMV to suspend or revoke a driver's license to one year. Thus, the revocation period for violations of s. 316.027, F.S., whether the crash resulted in injury or death (in the absence of DUI), is one year.

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<sup>22</sup> Section 775.084, F.S.

<sup>23</sup> See *Magaw v. State*, 537 So.2d 564, 567 (Fla. 1989): “[Under the DUI manslaughter statute,] the state is not required to prove that the operator’s drinking caused the accident. The statute requires only that the operation of the vehicle ... caused the accident.”

<sup>24</sup> Section 316.193(3)(c)3., F.S.

<sup>25</sup> Section 775.082, F.S.

<sup>26</sup> Section 775.083, F.S.

<sup>27</sup> Section 775.084, F.S.

<sup>28</sup> Section 775.082, F.S.

<sup>29</sup> Section 775.083, F.S.

<sup>30</sup> Section 775.084, F.S.

The revocation period for aggravated fleeing and eluding resulting in injury to another person, damage to the property of another person, or serious bodily injury or death to another person is not less than one year nor more than five years.<sup>31</sup>

Section 322.28(4), F.S., currently requires a court to revoke for a minimum of three years the driver license of a person convicted of DUI under s. 316.193(3)(c)2., F.S., who by vehicle operation *caused or contributed to causing serious bodily injury to another*, as defined in s. 316.1933, F.S. That section defines “serious bodily injury” 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.” If a conviction under s. 316.193(3)(c)2., F.S., involving serious bodily injury, also constitutes a previous conviction,<sup>32</sup> the period of suspension or revocation graduates based on whether the offender has prior convictions/suspensions.<sup>33</sup> A court is required to permanently revoke the driver license of any person convicted of DUI manslaughter in violation of s. 316.193, F.S.

Thus, under current law, in cases involving DUI and leaving the scene of a crash resulting in death, while revocation of the driver’s license for violations under s. 316.027, F.S., and s. 316.193, F.S., is permanent, a person driving DUI may similarly view an attempt to flee or elude in the process of leaving the scene as advantageous because, if successful in fleeing or eluding, a DUI charge is avoided. The period of license revocation in such event would be not less than one year nor more than five, as opposed to permanent.

### **Criminal Punishment Code/Offense Severity Ranking Chart**

The Criminal Punishment Code (code)<sup>34</sup> is Florida’s framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors.

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for sentencing. The court is permitted to impose sentences concurrently or consecutively.

The code includes a list of ‘mitigating’ factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender’s sentence below the lowest permissible sentence (a “downward departure”). A mandatory minimum term is not subject to these mitigating factors.<sup>35</sup>

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<sup>31</sup> Section 316.1935(5), F.S.

<sup>32</sup> See s. 322.28(2)(a) and (d), F.S.

<sup>33</sup> Section 322.28(2)(d), F.S. See also s. 322.26, F.S.

<sup>34</sup> Sections 921.002 - 921.0027, F.S.

<sup>35</sup> See *State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

Mandatory minimum terms impact code sentencing. If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.<sup>36</sup>

### III. Effect of Proposed Changes:

The bill generally addresses the incentive in current law to leave the scene of a crash by imposing mandatory minimum sentences where none currently exist and, particularly, with respect to cases involving DUI and death, by increasing the penalty for leaving the scene.

**Section 1** provides that the act may be cited as the “Aaron Cohen Life Protection Act.”

**Section 2** amends s. 316.027, F.S., as follows:

- Creates a new subsection (1) and defines “serious bodily injury” as the term is currently defined in s. 316.1933, F.S., to mean an injury to a 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 a bodily member or organ; and
- Defines “vulnerable road user” to mean:
  - A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
  - A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
  - A person riding an animal; or
  - A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
    - A farm tractor or similar vehicle designed primarily for farm use;
    - A skateboard, roller skates, in-line skates;
    - A horse-drawn carriage;
    - An electric personal assistive mobility device; or
    - A wheelchair.
- Revises the existing provisions requiring a person to stop and remain at the scene of a crash to address separately crashes resulting in injury to a person *other than serious bodily injury*, crashes resulting in serious bodily injury to a person, and crashes resulting in death of a person; and to impose punishment as follows:
  - Leaving the scene of a crash resulting in injury to a person other than serious bodily injury continues to be punished as a third degree felony.
  - Leaving the scene of a crash resulting in serious bodily injury to a person is punished as a second degree felony, as opposed to the current third degree.

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<sup>36</sup> Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing ‘floor’ for the court and there is no prohibition to gain-time. If the court only sentences the defendant to the mandatory term specified by statute, the Department of Corrections (DOC) establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. *See Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner’s release prior to serving a minimum of 85% of the sentence).

- Leaving the scene of a crash resulting in the death of a person continues to be punished as a first degree felony, but a mandatory minimum term of imprisonment of four years is imposed.
- If the violation occurs while the driver is also DUI, the current mandatory minimum sentence is increased from two years to four years, the same as for DUI manslaughter.
- Requires a driver found in violation of leaving the scene of a crash involving injury, serious bodily injury, or death to have his or her driver license revoked for a minimum of three years as provided in s. 322.28(4), F.S. Prior to having his or her driving privilege reinstated, the driver must submit to the DHSMV proof of completion of:
  - A victim's impact panel session in a judicial circuit if such panel exists; or
  - If such panel does not exist, a driver education course relating to the rights of vulnerable road users relative to vehicles on the roadway.
- Ranks offenses for leaving the scene of a crash one level higher than specified in the code if the victim of the offense was a "vulnerable road user," resulting in higher total sentence points and a higher lowest permissible sentence (if no serious injury occurs, a Level 5 offense becomes a Level 6 offense; if there is serious injury, a Level 6 offense becomes a Level 7 offense; and if death occurs, a Level 7 offense becomes a Level 8 offense); and
- Allows a defendant to move the court to depart from the four-year mandatory minimum sentence for leaving the scene of a crash with a death, unless the defendant was driving DUI at the time of the violation; authorizes the state to object to the defendant's departure; allows the court to depart only if it finds that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term would constitute or result in an injustice; and requires the court to state the basis for granting a departure in open court.

The bill also makes technical and conforming changes to s. 316.027, F.S.

**Section 3** amends s. 322.0261(2), F.S., to require the DHSMV to include in its approved driver improvement course curriculum instruction specifically addressing the rights of vulnerable road users relative to vehicles on the roadway.

**Section 4** amends s. 322.28(4), F.S., to require a court to revoke the driver license of a person convicted of leaving the scene of a crash for a minimum of three years; and to incorporate the minimum revocation period into provisions directing the DHSMV to revoke the driver license for such period in the event the period of revocation was not specified by the court at the time of imposing sentence or within 30 days thereafter.

**Section 5** reenacts s. 322.34(6), F.S., relating to driving while a driver license is suspended, revoked, canceled, or disqualified, to incorporate the amendment to s. 322.28, F.S., in a reference thereto, and makes a technical change.

**Section 6** amends s. 921.0022, F.S., to revise the offense severity ranking chart to correct the cross reference to the appropriate subsection, paragraph, and description of s. 316.027, F.S., for leaving the scene of a crash with injury *other than serious bodily injury*, which remains a Level 5 third degree felony; to include the second degree felony for a violation of leaving the scene of a crash involving serious bodily injury as a Level 6 offense; and to revise the cross reference to the offense of leaving the scene of a crash resulting in death, which remains a Level 7 first degree

felony. As noted, if the victim is a “vulnerable road user,” offenses for leaving the scene of a crash are ranked one level higher.

**Section 7** provides the act takes effect on July 1, 2014.

**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:

Indeterminate, except that the DHSMV advises CS/CS/SB 102 will require approximately 30 non-recurring system programming hours, the cost of which will be absorbed within existing resources.

The Criminal Justice Impact Conference (CJIC) met on January 30, 2014 and found that the bill’s impact upon prison beds is also indeterminate. The Office of Economic and Demographic Research (EDR) stated that the proposed changes to s. 316.027, F.S., will increase both the felony degree and the offense severity level for leaving the scene of an accident involving serious bodily injury, but the percentage of cases that currently involve “serious” bodily injury is indeterminable. According to the EDR, incarceration rates and average sentence lengths for the current and proposed offenses related to leaving the scene of an accident involving serious bodily injury are as follows:

Incarceration rate for all 3rd degree, level 5 offenses	22.8 percent
Average sentence length for all 3rd degree, level 5 offenses	33.0 months
Incarceration rate for all 2nd degree, level 6 offenses	48.2 percent
Average sentence length for all 2nd degree, level 6 offenses	57.8 months



The EDR states that the differences in these two measures suggest that the proposed changes involving serious injury may result in additional prison admissions and in longer sentences for some offenders currently being sentenced to prison, but the lack of data to estimate these changes is what results in an indeterminate impact.

In addition, offenders currently sentenced under s. 316.027(1)(b), F.S., leaving the scene of an accident involving death, will be subject to a 4-year mandatory minimum sentence under the bill. However, the EDR said it is not possible to determine the percentage of current offenders who receive the 2-year mandatory minimum sentence for leaving the scene while DUI. The current average sentence length for all of the offenders in this offense is 91.9 months. Nearly 75 percent of these sentences are 48 months or longer suggesting that the impact from the bill will be limited, but the lack of data to estimate these changes also results in an indeterminate impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 316.027, 322.0261, 322.28, 322.34, and 921.0022.

**IX. 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 Appropriations on March 13, 2014**

The committee substitute clarifies that a driver whose license has been suspended for leaving the scene of a crash with injury, serious bodily injury, or death must complete a victim's impact panel session in a judicial circuit or, if such a panel does not exist, a DHSMV approved driver improvement course relating to the rights of vulnerable road users and provide proof of completion to the DHSMV prior to the reinstatement of a driver license.

**CS by Transportation on January 9, 2014:**

The CS differs from the original bill primarily as follows:

- Removes the three-year and seven-year mandatory minimum sentences for leaving the scene of a crash with injury or with serious bodily injury, respectively;
- Imposes a mandatory minimum sentence of four years for leaving the scene of a crash with a death, rather than ten years;
- Increases the mandatory minimum sentence for leaving the scene with a death **while DUI** from two to four years, the same as for DUI manslaughter;

- Provides for ranking one level higher than specified in the code offenses for leaving the scene of a crash if the victim of the offense was a “vulnerable road user”; and allows a defendant to move for departure from the four-year mandatory minimum sentence for leaving the scene with a death in the absence of DUI; authorizes the state to object; requires the court to state in open court the basis for granting such motion, upon a finding that a factor, consideration, or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Benacquisto) recommended the following:

**Senate Amendment**

Delete lines 118 - 126

and insert:

(e) A driver who violates paragraph (a), paragraph (b), or paragraph (c) shall have his or her driver license revoked for at least 3 years as provided in s. 322.28(4).

1. A person convicted of violating paragraph (a), paragraph (b), or paragraph (c) shall, before his or her driving privilege may be reinstated, present to the department proof of completion



479484

11 of a victim's impact panel session in a judicial circuit if such  
12 a panel exists, or if such a panel does not exist, a department-  
13 approved driver improvement course relating to the rights of  
14 vulnerable road users relative to vehicles on the roadway as  
15 provided in s. 322.0261(2).

16 2. The department may reinstate an offender's driving  
17 privilege after he or she satisfies the 3-year revocation period  
18 as provided in s. 322.28(4) and successfully completes either a  
19 victim's impact panel session or a department-approved driver  
20 improvement course relating to the rights of vulnerable road  
21 users relative to vehicles on the roadway as provided in s.  
22 322.0261(2).

23 3. For purposes of this paragraph, an offender's driving  
24 privilege may be reinstated only after the department verifies  
25 that the offender participated in and successfully completed a  
26 victim's impact panel session or a department-approved driver  
27 improvement course.

By the Committee on Transportation; and Senators Diaz de la Portilla, Garcia, and Evers

596-00986-14

2014102c1

1 A bill to be entitled  
 2 An act relating to drivers leaving the scene of a  
 3 crash; creating the "Aaron Cohen Life Protection Act";  
 4 amending s. 316.027, F.S.; redefining the term  
 5 "serious bodily injury" and defining the term  
 6 "vulnerable road user"; requiring the driver of a  
 7 vehicle involved in a crash that results in serious  
 8 bodily injury to a person to immediately stop the  
 9 vehicle and remain at the scene of the crash;  
 10 providing that a person commits a felony of the second  
 11 degree if he or she fails to stop the vehicle and  
 12 remain at the scene of the crash until specified  
 13 requirements are fulfilled; requiring the court to  
 14 impose a mandatory minimum term of imprisonment under  
 15 certain circumstances; requiring the revocation of the  
 16 driver's driver license; requiring the driver to  
 17 participate in specified programs; providing for  
 18 ranking of an offense committed if the victim of the  
 19 offense was a vulnerable road user; authorizing the  
 20 defendant to move to depart from the mandatory minimum  
 21 term of imprisonment under certain circumstances;  
 22 providing requirements and procedures for such  
 23 departure; amending s. 322.0261, F.S.; requiring the  
 24 Department of Highway Safety and Motor Vehicles to  
 25 include in the curriculum of a certain driver  
 26 improvement course instruction addressing the rights  
 27 of vulnerable road users; amending s. 322.28, F.S.;  
 28 requiring the court to revoke for at least 3 years the  
 29 driver license of a person convicted of leaving the

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30 scene of a crash involving injury, serious bodily  
 31 injury, or death; reenacting and amending s.  
 32 322.34(6), F.S., relating to driving while a driver  
 33 license is suspended, revoked, canceled, or  
 34 disqualified, to incorporate the amendment to s.  
 35 322.28, F.S., in a reference thereto; amending s.  
 36 921.0022, F.S.; revising the offense severity ranking  
 37 chart; conforming a cross-reference; providing an  
 38 effective date.  
 39  
 40 Be It Enacted by the Legislature of the State of Florida:  
 41  
 42 Section 1. This act may be cited as the "Aaron Cohen Life  
 43 Protection Act."  
 44 Section 2. Section 316.027, Florida Statutes, is amended to  
 45 read:  
 46 316.027 Crash involving death or personal injuries.—  
 47 (1) As used in this section, the term:  
 48 (a) "Serious bodily injury" means an injury to a person,  
 49 including the driver, which consists of a physical condition  
 50 that creates a substantial risk of death, serious personal  
 51 disfigurement, or protracted loss or impairment of the function  
 52 of a bodily member or organ.  
 53 (b) "Vulnerable road user" means:  
 54 1. A pedestrian, including a person actually engaged in  
 55 work upon a highway, or in work upon utility facilities along a  
 56 highway, or engaged in the provision of emergency services  
 57 within the right-of-way;  
 58 2. A person operating a bicycle, motorcycle, scooter, or

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59 moped lawfully on the roadway;

60 3. A person riding an animal; or

61 4. A person lawfully operating on a public right-of-way,  
62 crosswalk, or shoulder of the roadway:

63 a. A farm tractor or similar vehicle designed primarily for  
64 farm use;

65 b. A skateboard, roller skates, or in-line skates;

66 c. A horse-drawn carriage;

67 d. An electric personal assistive mobility device; or

68 e. A wheelchair.

69 (2)(1)(a) The driver of a ~~any~~ vehicle involved in a crash  
70 occurring on public or private property which ~~that~~ results in  
71 injury to a ~~of any~~ person other than serious bodily injury shall  
72 ~~must~~ immediately stop the vehicle at the scene of the crash, or  
73 as close thereto as possible, and shall ~~must~~ remain at the scene  
74 of the crash until he or she has fulfilled the requirements of  
75 s. 316.062. A ~~Any~~ person who willfully violates this paragraph  
76 commits a felony of the third degree, punishable as provided in  
77 s. 775.082, s. 775.083, or s. 775.084.

78 (b) The driver of a vehicle involved in a crash occurring  
79 on public or private property which results in serious bodily  
80 injury to a person shall immediately stop the vehicle at the  
81 scene of the crash, or as close thereto as possible, and shall  
82 remain at the scene of the crash until he or she has fulfilled  
83 the requirements of s. 316.062. A person who willfully violates  
84 this paragraph commits a felony of the second degree, punishable  
85 as provided in s. 775.082, s. 775.083, or s. 775.084.

86 (c)(b) The driver of a ~~any~~ vehicle involved in a crash  
87 occurring on public or private property which ~~that~~ results in

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88 the death of a ~~any~~ person shall ~~must~~ immediately stop the  
89 vehicle at the scene of the crash, or as close thereto as  
90 possible, and shall ~~must~~ remain at the scene of the crash until  
91 he or she has fulfilled the requirements of s. 316.062. A person  
92 who is arrested for a violation of this paragraph and who has  
93 previously been convicted of a violation of this section, s.  
94 316.061, s. 316.191, or s. 316.193, or a felony violation of s.  
95 322.34, shall be held in custody until brought before the court  
96 for admittance to bail in accordance with chapter 903. A ~~Any~~  
97 person who willfully violates this paragraph commits a felony of  
98 the first degree, punishable as provided in s. 775.082, s.  
99 775.083, or s. 775.084, and shall be sentenced to a mandatory  
100 minimum term of imprisonment of 4 years. A ~~Any~~ person who  
101 willfully commits such a violation while driving under the  
102 influence as set forth in s. 316.193(1) shall be sentenced to a  
103 mandatory minimum term of imprisonment of 4 ~~2~~ years.

104 (d)(e) Notwithstanding s. 775.089(1)(a), if the driver of a  
105 vehicle violates paragraph (a), ~~or~~ paragraph (b), or paragraph  
106 (c), the court shall order the driver to make restitution to the  
107 victim for any damage or loss unless the court finds clear and  
108 compelling reasons not to order the restitution. Restitution may  
109 be monetary or nonmonetary restitution. The court shall make the  
110 payment of restitution a condition of probation in accordance  
111 with s. 948.03. An order requiring the defendant to make  
112 restitution to a victim does not remove or diminish the  
113 requirement that the court order payment to the Crimes  
114 Compensation Trust Fund under chapter 960. Payment of an award  
115 by the Crimes Compensation Trust Fund creates an order of  
116 restitution to the Crimes Compensation Trust Fund unless

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117 specifically waived in accordance with s. 775.089(1)(b).

118 (e) A driver who violates paragraph (a), paragraph (b), or  
 119 paragraph (c) shall:

120 1. Have his or her driver license revoked for at least 3  
 121 years as provided in s. 322.28(4);

122 2. Participate in a victim's impact panel session in a  
 123 judicial circuit if such a panel exists; or

124 3. Participate in a driver education course relating to the  
 125 rights of vulnerable road users relative to vehicles on the  
 126 roadway.

127 (f) For purposes of sentencing under chapter 921 and  
 128 determining incentive gain-time eligibility under chapter 944,  
 129 an offense listed in this subsection is ranked one level above  
 130 the ranking specified in s. 921.0022 or s. 921.0023 for the  
 131 offense committed if the victim of the offense was a vulnerable  
 132 road user.

133 (g) The defendant may move to depart from the mandatory  
 134 minimum term of imprisonment prescribed in paragraph (c) unless  
 135 the violation was committed while the defendant was driving  
 136 under the influence. The state may object to this departure. The  
 137 court may grant the motion only if it finds that a factor,  
 138 consideration, or circumstance clearly demonstrates that  
 139 imposing a mandatory minimum term of imprisonment would  
 140 constitute or result in an injustice. The court shall state in  
 141 open court the basis for granting the motion.

142 ~~(2) The department shall revoke the driver's license of the~~  
 143 ~~person so convicted.~~

144 (3) The stops shall ~~Every stop must~~ be made without  
 145 unnecessarily obstructing traffic ~~more than is necessary,~~ and,

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146 if a damaged vehicle is obstructing traffic, the driver of the  
 147 vehicle ~~shall~~ ~~must~~ make every reasonable effort to move the  
 148 vehicle or have it moved so as not to obstruct the regular flow  
 149 of traffic. ~~A~~ ~~Any~~ person who fails to comply with this  
 150 subsection shall be cited for a nonmoving violation, punishable  
 151 as provided in chapter 318.

152 (4) In addition to any other civil, criminal, or  
 153 administrative penalty imposed, a person whose commission of a  
 154 noncriminal traffic infraction or ~~a~~ ~~any~~ violation of this  
 155 chapter or s. 1006.66 causes or results in the death of another  
 156 person may, ~~in addition to any other civil, criminal, or~~  
 157 ~~administrative penalty imposed,~~ be required by the court to  
 158 serve 120 community service hours in a trauma center or hospital  
 159 that regularly receives victims of vehicle accidents, under the  
 160 supervision of a registered nurse, an emergency room physician,  
 161 or an emergency medical technician pursuant to a voluntary  
 162 community service program operated by the trauma center or  
 163 hospital.

164 (5) This section does not apply to crashes occurring during  
 165 a motorsports event, as defined in s. 549.10(1), or at a closed-  
 166 course motorsport facility, as defined in s. 549.09(1).

167 Section 3. Subsection (2) of section 322.0261, Florida  
 168 Statutes, is amended to read:

169 322.0261 Driver improvement course; requirement to maintain  
 170 driving privileges; failure to complete; department approval of  
 171 course.-

172 (2) With respect to an operator convicted of, or who  
 173 pleaded nolo contendere to, a traffic offense giving rise to a  
 174 crash identified in paragraph (1)(a) or paragraph (1)(b), the

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175 department shall require that the operator, in addition to other  
 176 applicable penalties, attend a department-approved driver  
 177 improvement course in order to maintain his or her driving  
 178 privileges. The department shall include in the course  
 179 curriculum instruction specifically addressing the rights of  
 180 vulnerable road users as defined in s. 316.027 relative to  
 181 vehicles on the roadway. If the operator fails to complete the  
 182 course within 90 days after receiving notice from the  
 183 department, the operator's driver ~~driver's~~ license shall be  
 184 canceled by the department until the course is successfully  
 185 completed.

186 Section 4. Subsection (4) of section 322.28, Florida  
 187 Statutes, is amended to read:

188 322.28 Period of suspension or revocation.—

189 (4) (a) Upon a conviction for a violation of s.  
 190 316.193(3) (c)2., involving serious bodily injury, a conviction  
 191 of manslaughter resulting from the operation of a motor vehicle,  
 192 or a conviction of vehicular homicide, the court shall revoke  
 193 the driver license of the person convicted for a minimum period  
 194 of 3 years. If a conviction under s. 316.193(3) (c)2., involving  
 195 serious bodily injury, is also a subsequent conviction as  
 196 described under paragraph (2) (a), the court shall revoke the  
 197 driver license or driving privilege of the person convicted for  
 198 the period applicable as provided in paragraph (2) (a) or  
 199 paragraph (2) (d).

200 (b) Upon a conviction for a violation of s. 316.027(2) (a),  
 201 s. 316.027(2) (b), or s. 316.027(2) (c) involving injury, serious  
 202 bodily injury, or death, the court shall revoke the driver  
 203 license of the person convicted for a minimum period of 3 years.

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204 ~~(c) (b)~~ If the period of revocation was not specified by the  
 205 court at the time of imposing sentence or within 30 days  
 206 thereafter, the department shall revoke the driver license for  
 207 the minimum period applicable under paragraph (a) or paragraph  
 208 (b) or, for a subsequent conviction, for the minimum period  
 209 applicable under paragraph (2) (a) or paragraph (2) (d).

210 Section 5. For the purpose of incorporating the amendment  
 211 made by this act to section 322.28, Florida Statutes, in a  
 212 reference thereto, subsection (6) of section 322.34, Florida  
 213 Statutes, is reenacted and amended to read:

214 322.34 Driving while license suspended, revoked, canceled,  
 215 or disqualified.—

216 (6) Any person who operates a motor vehicle:

217 (a) Without having a driver's license as required under s.  
 218 322.03; or

219 (b) While his or her driver's license or driving privilege  
 220 is canceled, suspended, or revoked pursuant to s. 316.655, s.  
 221 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

222 and who by careless or negligent operation of the motor vehicle  
 223 causes the death of or serious bodily injury to another human  
 224 being ~~commits is guilty of~~ a felony of the third degree,  
 225 punishable as provided in s. 775.082 or s. 775.083.

226 Section 6. Paragraphs (e) through (g) of subsection (3) of  
 227 section 921.0022, Florida Statutes, are amended to read:

228 921.0022 Criminal Punishment Code; offense severity ranking  
 229 chart.—

230 (3) OFFENSE SEVERITY RANKING CHART

231 (e) LEVEL 5  
 232

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233	Florida Statute	Felony Degree	Description
234	316.027 <del>(2) (a) (1) (a)</del>	3rd	Accidents involving personal injuries <u>other than serious bodily injury</u> , failure to stop; leaving scene.
235	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
236	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
237	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
238	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny

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			lobster trap, line, or buoy.
239	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
240	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
241	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
242	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
243	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding

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244	624.401(4)(b)2.	2nd		Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
245	626.902(1)(c)	2nd		Representing an unauthorized insurer; repeat offender.
246	790.01(2)	3rd		Carrying a concealed firearm.
247	790.162	2nd		Threat to throw or discharge destructive device.
248	790.163(1)	2nd		False report of deadly explosive or weapon of mass destruction.
249	790.221(1)	2nd		Possession of short-barreled shotgun or

	596-00986-14		2014102c1	machine gun.
250	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
251	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years <u>of age</u> .
252	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years <u>of age</u> or older.
253	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
254	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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255	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
256	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
257	812.131(2)(b)	3rd	Robbery by sudden snatching.
258	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
259	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
260	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
261	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements,

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			making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
262	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
263	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
264	825.1025(4)	3rd	Lewd or lascivious exhibition in the

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			presence of an elderly person or disabled adult.	
265	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	
266	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.	
267	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.	
268	843.01	3rd	Resist officer with violence to person;	

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			resist arrest with violence.	
269	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.	
270	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.	
271	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	
272	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	
273	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 <u>years of age</u> to join a criminal	

274	596-00986-14	2014102c1	gang.
275	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
276	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
276	893.13(1)(d)1.	1st	Sell, manufacture, or

277	596-00986-14	2014102c1	deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
278	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
278	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a),

Line	Statute	Degree	Description
279	596-00986-14		2014102c1 (2) (b), or (2) (c) 4. drugs) within 1,000 feet of public housing facility.
280	893.13(4) (b)	2nd	Deliver to minor cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs).
281	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
282	(f) LEVEL 6		
283	Florida	Felony	
284	Statute	Degree	Description
285	<u>316.027(2) (b)</u>	<u>2nd</u>	<u>Leaving the scene of a crash involving serious bodily injury.</u>

286	596-00986-14		2014102c1
287	316.193(2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
288	499.0051(3)	2nd	Knowing forgery of pedigree papers.
289	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
290	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
291	775.0875(1)	3rd	Taking firearm from law enforcement officer.
292	784.021(1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
293	784.021(1) (b)	3rd	Aggravated assault; intent to commit felony.
293	784.041	3rd	Felony battery; domestic battery by strangulation.

294	596-00986-14		2014102c1
	784.048(3)	3rd	Aggravated stalking; credible threat.
295	784.048(5)	3rd	Aggravated stalking of person under 16.
296	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
297	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
298	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
299	784.081(2)	2nd	Aggravated assault on specified official or employee.
300	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
301	784.083(2)	2nd	Aggravated assault on

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			code inspector.
302	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
303	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
304	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
305	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
306	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
307	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual

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			activity by custodial	
			adult.	
308	794.05(1)	2nd	Unlawful sexual activity	
			with specified minor.	
309	800.04(5)(d)	3rd	Lewd or lascivious	
			molestation; victim 12	
			years of age or older	
			but less than 16 years	
			<u>of age</u> ; offender less	
310			than 18 years.	
	800.04(6)(b)	2nd	Lewd or lascivious	
			conduct; offender 18	
			years of age or older.	
311	806.031(2)	2nd	Arson resulting in great	
			bodily harm to	
			firefighter or any other	
			person.	
312	810.02(3)(c)	2nd	Burglary of occupied	
			structure; unarmed; no	
			assault or battery.	
313	810.145(8)(b)	2nd	Video voyeurism; certain	
			minor victims; 2nd or	
			subsequent offense.	

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314	812.014(2)(b)1.	2nd	Property stolen \$20,000	
			or more, but less than	
			\$100,000, grand theft in	
			2nd degree.	
315	812.014(6)	2nd	Theft; property stolen	
			\$3,000 or more;	
			coordination of others.	
316	812.015(9)(a)	2nd	Retail theft; property	
			stolen \$300 or more;	
			second or subsequent	
			conviction.	
317	812.015(9)(b)	2nd	Retail theft; property	
			stolen \$3,000 or more;	
			coordination of others.	
318	812.13(2)(c)	2nd	Robbery, no firearm or	
			other weapon (strong-arm	
			robbery).	
319	817.4821(5)	2nd	Possess cloning	
			paraphernalia with	
			intent to create cloned	
			cellular telephones.	
320	825.102(1)	3rd	Abuse of an elderly	

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			person or disabled	
			adult.	
321	825.102(3)(c)	3rd	Neglect of an elderly	
			person or disabled	
			adult.	
322	825.1025(3)	3rd	Lewd or lascivious	
			molestation of an	
			elderly person or	
			disabled adult.	
323	825.103(2)(c)	3rd	Exploiting an elderly	
			person or disabled adult	
			and property is valued	
			at less than \$20,000.	
324	827.03(2)(c)	3rd	Abuse of a child.	
325	827.03(2)(d)	3rd	Neglect of a child.	
326	827.071(2) & (3)	2nd	Use or induce a child in	
			a sexual performance, or	
			promote or direct such	
			performance.	
327	836.05	2nd	Threats; extortion.	
328	836.10	2nd	Written threats to kill	

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			or do bodily injury.	
329	843.12	3rd	Aids or assists person	
			to escape.	
330	847.011	3rd	Distributing, offering	
			to distribute, or	
			possessing with intent	
			to distribute obscene	
			materials depicting	
			minors.	
331	847.012	3rd	Knowingly using a minor	
			in the production of	
			materials harmful to	
			minors.	
332	847.0135(2)	3rd	Facilitates sexual	
			conduct of or with a	
			minor or the visual	
			depiction of such	
			conduct.	
333	914.23	2nd	Retaliation against a	
			witness, victim, or	
			informant, with bodily	
			injury.	
334	944.35(3)(a)2.	3rd	Committing malicious	

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	596-00986-14		2014102c1
			battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
335	944.40	2nd	Escapes.
336	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
337	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
338	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
339			
340			
341	(g) LEVEL 7		
342			

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	Florida Statute	Felony Degree	Description
343	316.027(2)(c) <del>(1)(b)</del>	1st	Accident involving death, failure to stop; leaving scene.
344	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
345	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
346	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
347	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great

	596-00986-14		2014102c1	
			bodily harm, permanent	
			disfiguration,	
			permanent disability,	
			or death.	
348	409.920	3rd	Medicaid provider	
	(2) (b) 1.a.		fraud; \$10,000 or less.	
349	409.920	2nd	Medicaid provider	
	(2) (b) 1.b.		fraud; more than	
			\$10,000, but less than	
			\$50,000.	
350	456.065(2)	3rd	Practicing a health	
			care profession without	
			a license.	
351	456.065(2)	2nd	Practicing a health	
			care profession without	
			a license which results	
			in serious bodily	
			injury.	
352	458.327(1)	3rd	Practicing medicine	
			without a license.	
353	459.013(1)	3rd	Practicing osteopathic	
			medicine without a	
			license.	

	596-00986-14		2014102c1	
354	460.411(1)	3rd	Practicing chiropractic	
			medicine without a	
			license.	
355	461.012(1)	3rd	Practicing podiatric	
			medicine without a	
			license.	
356	462.17	3rd	Practicing naturopathy	
			without a license.	
357	463.015(1)	3rd	Practicing optometry	
			without a license.	
358	464.016(1)	3rd	Practicing nursing	
			without a license.	
359	465.015(2)	3rd	Practicing pharmacy	
			without a license.	
360	466.026(1)	3rd	Practicing dentistry or	
			dental hygiene without	
			a license.	
361	467.201	3rd	Practicing midwifery	
			without a license.	
362	468.366	3rd	Delivering respiratory	

	596-00986-14		2014102c1	care services without a license.
363				
	483.828(1)	3rd		Practicing as clinical laboratory personnel without a license.
364				
	483.901(9)	3rd		Practicing medical physics without a license.
365				
	484.013(1)(c)	3rd		Preparing or dispensing optical devices without a prescription.
366				
	484.053	3rd		Dispensing hearing aids without a license.
367				
	494.0018(2)	1st		Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
368				
	560.123(8)(b)1.	3rd		Failure to report currency or payment

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

	596-00986-14		2014102c1	instruments exceeding \$300 but less than \$20,000 by a money services business.
369				
	560.125(5)(a)	3rd		Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
370				
	655.50(10)(b)1.	3rd		Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
371				
	775.21(10)(a)	3rd		Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
372				
	775.21(10)(b)	3rd		Sexual predator working where children regularly congregate.

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373	596-00986-14	2014102c1	
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
374	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
375	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
376	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
377	782.072	2nd	Killing of a human

378	596-00986-14	2014102c1	being by the operation of a vessel in a reckless manner (vessel homicide).
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
379	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
380	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
381	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
382	784.048(7)	3rd	Aggravated stalking; violation of court order.
383	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
384			

	596-00986-14		2014102c1
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
385			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
386			
	784.081(1)	1st	Aggravated battery on specified official or employee.
387			
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
388			
	784.083(1)	1st	Aggravated battery on code inspector.
389			
	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
390			
	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport

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	596-00986-14		2014102c1
			of any individual from outside Florida to within the state.
391			
	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
392			
	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
393			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
394			
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
395			
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
396			

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	596-00986-14		2014102c1
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
397	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
398	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
399	796.03	2nd	Procuring any person under 16 years <u>of age</u> for prostitution.
400	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim

	596-00986-14		2014102c1
			less than 12 years of age; offender less than 18 years <u>of age</u> .
401	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years <u>of age</u> ; offender 18 years <u>of age</u> or older.
402	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
403	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
404	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
405	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
406	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.

	596-00986-14		2014102c1
407	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
408	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
409	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
410	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
411	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
412			

	596-00986-14		2014102c1
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
413	812.131(2)(a)	2nd	Robbery by sudden snatching.
414	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
415	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
416	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
417	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
418	817.234(11)(c)	1st	Insurance fraud;



	596-00986-14		2014102c1	
			property value \$100,000	
			or more.	
419	817.2341	1st	Making false entries of	
	(2) (b) & (3) (b)		material fact or false	
			statements regarding	
			property values	
			relating to the	
			solvency of an insuring	
			entity which are a	
			significant cause of	
			the insolvency of that	
			entity.	
420	817.535 (2) (a)	3rd	Filing false lien or	
			other unauthorized	
			document.	
421	825.102 (3) (b)	2nd	Neglecting an elderly	
			person or disabled	
			adult causing great	
			bodily harm,	
			disability, or	
			disfigurement.	
422	825.103 (2) (b)	2nd	Exploiting an elderly	
			person or disabled	
			adult and property is	
			valued at \$20,000 or	

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	596-00986-14		2014102c1	
			more, but less than	
			\$100,000.	
423	827.03 (2) (b)	2nd	Neglect of a child	
			causing great bodily	
			harm, disability, or	
			disfigurement.	
424	827.04 (3)	3rd	Impregnation of a child	
			under 16 years of age	
			by person 21 years of	
			age or older.	
425	837.05 (2)	3rd	Giving false	
			information about	
			alleged capital felony	
			to a law enforcement	
			officer.	
426	838.015	2nd	Bribery.	
427	838.016	2nd	Unlawful compensation	
			or reward for official	
			behavior.	
428	838.021 (3) (a)	2nd	Unlawful harm to a	
			public servant.	
429	838.22	2nd	Bid tampering.	

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	596-00986-14		2014102c1
430	843.0855 (2)	3rd	Impersonation of a public officer or employee.
431	843.0855 (3)	3rd	Unlawful simulation of legal process.
432	843.0855 (4)	3rd	Intimidation of a public officer or employee.
433	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
434	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
435	872.06	2nd	Abuse of a dead human body.
436	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

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	596-00986-14		2014102c1
437	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
438	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
439	893.13 (1) (e) 1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4., within 1,000 feet of

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2014102c1

property used for  
religious services or a  
specified business  
site.

440

893.13(4)(a) 1st Deliver to minor  
cocaine (or other s.  
893.03(1)(a), (1)(b),  
(1)(d), (2)(a), (2)(b),  
or (2)(c)4. drugs).

441

893.135(1)(a)1. 1st Trafficking in  
cannabis, more than 25  
lbs., less than 2,000  
lbs.

442

893.135 1st Trafficking in cocaine,  
(1)(b)1.a. more than 28 grams,  
less than 200 grams.

443

893.135 1st Trafficking in illegal  
(1)(c)1.a. drugs, more than 4  
grams, less than 14  
grams.

444

893.135(1)(d)1. 1st Trafficking in  
phencyclidine, more  
than 28 grams, less  
than 200 grams.

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2014102c1

445

893.135(1)(e)1. 1st Trafficking in  
methaqualone, more than  
200 grams, less than 5  
kilograms.

446

893.135(1)(f)1. 1st Trafficking in  
amphetamine, more than  
14 grams, less than 28  
grams.

447

893.135 1st Trafficking in  
(1)(g)1.a. flunitrazepam, 4 grams  
or more, less than 14  
grams.

448

893.135 1st Trafficking in gamma-  
(1)(h)1.a. hydroxybutyric acid  
(GHB), 1 kilogram or  
more, less than 5  
kilograms.

449

893.135 1st Trafficking in 1,4-  
(1)(j)1.a. Butanediol, 1 kilogram  
or more, less than 5  
kilograms.

450

893.135 1st Trafficking in  
(1)(k)2.a. Phenethylamines, 10

	596-00986-14		2014102c1	
			grams or more, less	
			than 200 grams.	
451	893.1351 (2)	2nd	Possession of place for	
			trafficking in or	
			manufacturing of	
			controlled substance.	
452	896.101 (5) (a)	3rd	Money laundering,	
			financial transactions	
			exceeding \$300 but less	
			than \$20,000.	
453	896.104 (4) (a) 1.	3rd	Structuring	
			transactions to evade	
			reporting or	
			registration	
			requirements, financial	
			transactions exceeding	
			\$300 but less than	
			\$20,000.	
454	943.0435 (4) (c)	2nd	Sexual offender	
			vacating permanent	
			residence; failure to	
			comply with reporting	
			requirements.	
455	943.0435 (8)	2nd	Sexual offender;	

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	596-00986-14		2014102c1	
			remains in state after	
			indicating intent to	
			leave; failure to	
			comply with reporting	
			requirements.	
456	943.0435 (9) (a)	3rd	Sexual offender;	
			failure to comply with	
			reporting requirements.	
457	943.0435 (13)	3rd	Failure to report or	
			providing false	
			information about a	
			sexual offender; harbor	
			or conceal a sexual	
			offender.	
458	943.0435 (14)	3rd	Sexual offender;	
			failure to report and	
			reregister; failure to	
			respond to address	
			verification.	
459	944.607 (9)	3rd	Sexual offender;	
			failure to comply with	
			reporting requirements.	
460	944.607 (10) (a)	3rd	Sexual offender;	
			failure to submit to	

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2014102c1

the taking of a  
digitized photograph.

461

944.607(12)

3rd

Failure to report or  
providing false  
information about a  
sexual offender; harbor  
or conceal a sexual  
offender.

462

944.607(13)

3rd

Sexual offender;  
failure to report and  
reregister; failure to  
respond to address  
verification.

463

985.4815(10)

3rd

Sexual offender;  
failure to submit to  
the taking of a  
digitized photograph.

464

985.4815(12)

3rd

Failure to report or  
providing false  
information about a  
sexual offender; harbor  
or conceal a sexual  
offender.

465

985.4815(13)

3rd

Sexual offender;

596-00986-14

2014102c1

failure to report and  
reregister; failure to  
respond to address  
verification.

466

467

Section 7. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Banking and Insurance  
Children, Families, and Elder Affairs  
Ethics and Elections  
Rules  
Transportation

### JOINT COMMITTEE:

Joint Committee on Administrative Procedures

**SENATOR MIGUEL DIAZ de la PORTILLA**

40th District

February 19, 2014

The Honorable Joe Negron  
Chair  
Senate Appropriations Committee

Vie Email

Dear Chairman Negron:

Committee Substitute for Senate Bill 102 has passed unanimously out of the first three committees of reference. The next committee is full Appropriations. I respectfully request that you agenda the bill at the next available meeting.

Your consideration is very much appreciated.

Sincerely,

Miguel Diaz de la Portilla  
Senator, District 40

Cc: Ms. Cindy Kynoch, Staff Director; Ms. Alicia Weiss, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

3-13-14

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

Meeting Date

Topic LEAVING SCENE OF CRASH Bill Number SB 102  
Name JEFF SHARKEY Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title MANAGING PARTNER CAG  
Address 106 E COLLEGE AVE, SUITE 640 Phone 850-224-1460  
Street \_\_\_\_\_  
City TALLAHASSEE State FL Zip 32301 E-mail \_\_\_\_\_  
Speaking:  For  Against  Information \* WAVE IN SUPPORT  
Representing FLORIDA BICYCLE ASSOCIATION  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14  
Meeting Date

Topic Aaron Cohen Life Protection Act

Bill Number 102  
*(if applicable)*

Name Kristen Allen

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title State Victim Services Manager

Address 1018 Thomasville Rd, #101

Phone 850-681-0061

Street

Tallahassee, FL 32303

City

State

Zip

E-mail Kristen.allen@madd.org

Speaking:  For  Against  Information

Representing MADD Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

APPEARANCE RECORD

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

3 / 13 / 2014

Meeting Date

Topic \_\_\_\_\_ Bill Number 102

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title TRUSTEE (if applicable)

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic DRIVERS LEAVING THE SCENE OF A CRASH

Bill Number SB 102

(if applicable)

Name AMY MERCER

Amendment Barcode

(if applicable)

Job Title EXECUTIVE DIRECTOR, FL POLICE CHIEFS ASSOCIATION

Address 904 N GARDEN ST

Phone 850-219-3631

Street

TALL 32308

City

State

Zip

E-mail

Speaking:  For  Against  Information

Representing FLORIDA POLICE CHIEFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14

Meeting Date

Topic Aaron Cohen

Bill Number 102  
*(if applicable)*

Name ENIDA WALSH

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 4141 Lybyer Ave

Phone 954 478 7155

Street

Miami FL 33133

City

State

Zip

E-mail ewalsh@fyfper.com

Speaking:  For  Against  Information

Representing Aaron Cohen Law Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/CS/SB 218

INTRODUCER: Appropriations Committee; Transportation Committee; and Senator Grimsley

SUBJECT: Transportation

DATE: March 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Fav/CS</b>
2.	Wiehle	Caldwell	CU	<b>Favorable</b>
3.	Malcolm	Hrdlicka	CM	<b>Favorable</b>
4.	Carey	Kynoch	AP	<b>Fav/CS</b>
5.				
6.				

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/CS/SB 218 revises provisions relating to certain transportation-related utility relocation expenses, outdoor advertising permit exemptions, and the tourist-oriented directional sign program. The bill:

- Provides an exemption for certain public-utilities in a rural area of critical economic concern (RACEC) from the requirement to pay the cost to remove or relocate utility lines in certain circumstances;
- Repeals unnecessary rulemaking authority relating to lighting restrictions for certain outdoor advertising signs;
- Exempts certain signs placed by tourist-oriented businesses, farm signs placed during harvest seasons, “acknowledgement signs” on public school premises, and displays on specific sports facilities from permitting requirements;
- Provides that certain exemptions from sign permitting may not be implemented if such exemptions will adversely impact the allocation of federal funds to the Florida Department of Transportation (FDOT);
- Directs the FDOT to notify a sign owner that a sign must be removed if federal funds are adversely impacted, and authorizes the FDOT to remove the sign and assess costs to the sign owner if the sign is not removed;

- Expands the tourist-oriented directional sign program to all rural and conventional roads, and clarifies provisions relating to the program;
- Allows for the display of an amber light on a commercial vehicle or trailer designed for transporting unprocessed logs or pulpwood;
- Provides for the factoring of revenues from existing FDOT wireless communications leases to increase available funding for capital expenditures for the statewide transportation system; and

Allows municipalities within a rural area of critical economic concern or a rural area of critical economic concern community to compete for project funding using the Small County Outreach Program criteria.

The bill will have an indeterminate but insignificant negative impact on the State Transportation Trust Fund.

## II. Present Situation:

### Utility Relocation Expenses

Section 337.401, F.S., regulates the use of road and rail corridor right-of-ways by utilities.<sup>1</sup> It authorizes the FDOT and local governmental entities<sup>2</sup> to regulate the placement and maintenance of utility lines along, across, or on any public road or rail corridor under their respective jurisdictions.

Section 337.403, F.S., requires a utility owner to remove or relocate a utility that the authority finds is unreasonably interfering with the use, maintenance, improvement, extension, or expansion of the road or rail corridor. The utility owner, upon 30 days' written notice by the authority, must initiate work on the removal or relocation. The work must be completed within a reasonable time stated in the notice or as agreed to by the authority and the utility owner. The utility owner must bear the cost of the removal or relocation except in the following cases:

- When utility relocation is required due to construction of a project on the federal-aid interstate system and federal funding will cover at least 90 percent of the project cost, the FDOT pays for the removal or relocation;
- When utility work is performed as part of a transportation facility construction contract, the FDOT may participate in those costs that exceed the FDOT's estimate of the cost of the work by 10 percent;<sup>3</sup>
- When utility work is performed in advance of a construction contract, the FDOT may participate in the cost of removing trees, stumps, and roots necessary for the relocation;
- If the utility being removed or relocated was initially installed to exclusively serve the authority or its tenants, the authority bears the cost of the utility work;
- If, in an agreement between a utility and an authority made after July 1, 2009, the utility conveys, subordinates, or relinquishes 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

<sup>1</sup> "Utility" means "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structure[ ] . . . ." Section 337.401(1)(a), F.S.

<sup>2</sup> Referred to in ss. 337.401-337.404, F.S., as the "authority."

<sup>3</sup> However, the FDOT's participation amount is limited to the difference between the estimate of the work in the agreement plus 10 percent and the amount awarded for the utility work in the construction contract. Section 337.403(1)(b), F.S.

the agreement expressly addressing future responsibility for the cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation;

- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the facility has been transferred to a public utility within the past 5 years, the FDOT bears the cost of the necessary utility work; and
- An authority may bear the costs of utility work when the utility is not able to establish a compensable property right in the property where the utility is located if;
  - The utility was physically located on the property before the authority acquired rights in the property;
  - The utility demonstrates it has a compensable property right in all adjacent properties along the alignment of the utility; and
  - The information available to the authority does not establish the priorities of the authority's and the utility's interest in the property.

The FDOT advises that under its procedure 710-030-005-a, *Utility Work for Local Government Utilities*,<sup>4</sup> when a local-government utility cannot afford work necessitated by an FDOT project as determined by the FDOT's comptroller, the FDOT will pay for the work. In such cases, the utility signs a promissory note to reimburse the FDOT, thereby allowing the FDOT project to proceed, potentially avoiding contractor delay claims. According to the FDOT, if the utility does not reimburse the FDOT within 10 years, the FDOT can take steps to write off the loss as opposed to undergoing collection efforts.<sup>5</sup>

The FDOT advises it currently "has approximately \$12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."<sup>6</sup>

### **Control of Outdoor Advertising**

Since the passage of the Highway Beautification Act (HBA)<sup>7</sup> in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along federal-aid primary, interstate, and National Highway System roads. The primary features of the HBA 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.<sup>8</sup> Billboard controls apply to interstates, federal-aid primary roads, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs<sup>9</sup> along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.<sup>10</sup>

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<sup>4</sup> Available at <http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/710030005.pdf> (last visited Feb. 10, 2014).

<sup>5</sup> FDOT Legislative Bill Analysis, *SB 218*, 2 (Oct. 25, 2013) (on file with the Committee on Commerce and Tourism).

<sup>6</sup> *Id.* at 4.

<sup>7</sup> 23 U.S.C. s. 131 et seq.

<sup>8</sup> *Id.* at (d); *see id.* at (t).

<sup>9</sup> A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. Section 479.01(17), F.S.

<sup>10</sup> 21 U.S.C. s. 131(g).

- States and localities may enact stricter laws than stipulated in the HBA.<sup>11</sup>

The HBA requires the development of standards for certain signs as well as the removal of nonconforming signs.<sup>12</sup> While 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.<sup>13</sup>

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation<sup>14</sup> incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements to obtain sign permits 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.<sup>15</sup> 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.

#### *On-Premise Signs/Lighting Restrictions/Rulemaking Authority*

Section 479.16(1), F.S., exempts from signage permitting, signs on the premises of an establishment that consist primarily of the name of the establishment or identify the merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises, provided the signs comply with the lighting restrictions "under department rule adopted pursuant to s. 479.11(5), F.S."

Section 479.11(5), F.S., prohibits an on-premise sign that displays "intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any [state or federal highway or interstate] or which is illuminated in such a manner so as . . . to impair the vision of motorists or otherwise distract motorists . . ."

The FDOT currently has no adopted rule that addresses lighting restrictions for on-premise signs pursuant to s. 479.11(5), F.S., and instead relies on the quoted statute. The rulemaking authority in s. 479.16(1), F.S., is therefore unnecessary.<sup>16</sup>

#### *Other Permit Exemptions*

In addition to the exemption for on-premise signs in s. 479.16(1), F.S., s. 479.16, F.S., includes exemptions from permitting for a number of other types of signs, including:

<sup>11</sup> *Id.* at (k).

<sup>12</sup> *Id.* at (d) and (r).

<sup>13</sup> *Id.* at (b).

<sup>14</sup> Available at <http://www.scenic.org/storage/PDFs/FSAs/fl1965.pdf> (last visited Feb. 10, 2014).

<sup>15</sup> 21 U.S.C. s. 131(b) and (d). See also s. 479.11, F.S.

<sup>16</sup> E-mail from Rob Jessee, Office of Right of Way, FDOT (Feb. 10, 2014) (on file with the Committee on Commerce and Tourism).

- Signs on property stating only the name of the owner, lessee, or occupant of the premises and no larger than 8 square feet in area;
- Signs no larger than 8 square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or government agencies;
- Signs placed on benches, transit shelters, and waste receptacles; and
- Signs no larger than 16 square feet placed at a state highway road junction denoting only the distance or direction of a residence or farm, or, in a rural area where a hardship is created because a small business is not visible from the junction, one sign no larger than 16 square feet, denoting only the name of, and the distance and direction to, the business.

The final exemption does not apply to charter counties and may not be implemented if the federal government notifies the FDOT that implementation will adversely affect the allocation of federal funds to the FDOT.<sup>17</sup>

#### *Tourist-Oriented Directional Sign Program*

Section 479.262, F.S., establishes a tourist-oriented directional (TOD) sign program for intersections on rural and conventional state, county, or municipal roads in rural counties identified by criteria and population in s. 288.0656, F.S., i.e., rural areas of critical economic concern. (RACEC). The program is intended to provide directions to tourist-oriented businesses, services, and activities in RACEC areas, when approved and permitted by county or local government entities.<sup>18</sup>

A county or local government that issues permits for a TOD sign program is responsible for sign construction, maintenance, and program operation for roads on the State Highway System and may establish permit fees sufficient to offset associated costs.<sup>19</sup> TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices<sup>20</sup> (MUTCD) and rules established by the FDOT.<sup>21</sup>

TOD signs may be installed on the State Highway System only after being permitted by the FDOT, and placement of TOD signs is limited to rural conventional roads, as required in the MUTCD.<sup>22</sup> TOD signs may *not* be placed within the right-of-way of limited access facilities; within the right-of-way of a limited access facility interchange, regardless of jurisdiction or local

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<sup>17</sup> Section 479.16(15), F.S.

<sup>18</sup> Section 288.0656(2), F.S., defines a “rural area of critical economic concern” as 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” is defined to mean a county with a population of 75,000 or fewer, a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, or a municipality therein.

<sup>19</sup> Section 479.262(1), F.S.; “Prior to requesting a permit to install TODS on the state highway system, a local government shall have established, by ordinance, criteria for TODS program eligibility including participant qualifications and location regulations.” Rule 14-51.061(3), F.A.C.

<sup>20</sup> Adopted by the FDOT pursuant to s. 316.0745(2), F.S.

<sup>21</sup> Section 479.262(3), F.S.

<sup>22</sup> Rule 14-51.063(1) and (2), F.A.C.



road classification; on conventional roads in urban areas; or at interchanges on freeways or expressways.<sup>23</sup>

### **Use of Amber Lights on Vehicles and Equipment**

Section 316.2397(4), F.S. authorizes the use or display of amber lights when certain vehicles and equipment are in operation and a hazard exists. This includes road or street maintenance equipment and vehicles, road service vehicles, refuse collection vehicles, petroleum tankers and mail carriers.

### **Small County Outreach Program**

The Small County Outreach Program (SCOP) is authorized in s. 339.2818, F.S. The purpose of the program is to assist small county governments in repairing or rehabilitating county bridges, paving unpaved roads, addressing road related drainage improvements, resurfacing or reconstructing of county roads, or constructing capacity or safety improvements to county roads. A small county is defined as any county that has a population of 150,000 or less as determined by the most recent official population estimate as determined by the Office of Economic and Demographic Research.

Small counties are eligible to compete for funds designated for projects on county roads. The FDOT provides 75 percent of the cost of the projects funded under this program. Funds paid into the State Transportation Trust Fund pursuant to s. 201.15, F.S., for the purposes of the SCOP are annually appropriated for expenditure to support the program.<sup>24</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends 316.2397, F.S., to authorize the display of an amber light on a commercial motor vehicle or trailer designed to transport unprocessed logs or pulpwood.

**Section 2** amends s. 337.403, F.S., to add an exception to the general rule that a utility owner must bear the cost of removing or relocating a utility. This exception applies if a municipally- or county-owned utility is located in a RACEC and the FDOT determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by an FDOT project on the State Highway System. Under these circumstances, the FDOT may pay the cost of the work performed by the FDOT or its contractors.

This exception “[f]ormalizes current FDOT procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by an FDOT project.”<sup>25</sup>

<sup>23</sup> *Id.* at (2); s. 2K.01 of Ch. 2K of the MUTCD (2009), available at <http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part2ithu2n.pdf> (last visited Feb. 10, 2014).

<sup>24</sup> Section. 201.15(1)(c)1., F.S., provides for the distribution of 38.2 percent or \$541.75 million (whichever is less) of documentary stamp tax revenues to the State Transportation Trust Fund in FDOT, and allocates the revenues among various programs.

<sup>25</sup> FDOT Bill Analysis at 2.

**Section 3** creates s. 339.041, F.S., authorizing the monetization of existing FDOT wireless communication leases in order to increase funding for fixed capital expenditures for statewide transportation systems. In addition to providing legislative intent, this section:

- Creates a mechanism for factoring future revenues received by the FDOT for wireless communication facilities on department property;
- Exempts the revenues from factoring from income taxation under federal law;
- Specifies the FDOT property which may be used for the purpose of factoring revenues;
- Authorizes the FDOT to solicit investors to enter into factoring agreements through the issuance of an invitation to negotiate;
- Specifies that the obligations of the FDOT and investors under a factoring agreement do not constitute a general obligation of the state or pledge of the full faith and credit or taxing power of the state;
- Requires an annual appropriation for the FDOT to make the lease payments to the investors in the manner established in the agreements between the FDOT and investors.
- Provides for the proceeds received from lease agreements for wireless communication facilities to be deposited into the State Transportation Trust Fund and used for fixed capital expenditures for the statewide transportation system.

**Section 4** amends s. 339.2818, F.S., to allow a municipality within a rural area of critical economic concern or a rural area of critical economic concern community designated under s. 288.0656(7)(a), F.S., to compete for project funding using the existing criteria of the Small County Outreach Program as specified in s. 339.2818(4), F.S., at up to 100 percent of the project costs, excluding capacity projects. The funding for municipalities would be subject to an additional appropriation in excess of those appropriated for the Small County Outreach Program.

**Section 5** amends s. 479.16, F.S., relating to signs for which permits are not required, to:

- Clarify that signs placed on certain objects, such as benches, news racks, and street light poles, which are regulated under s. 337.408, F.S., are exempt from permit requirements under s. 479.16, F.S.;
- Eliminate unnecessary rulemaking authority; and
- Allow the small business “hardship” sign authorization exemption to also apply in charter counties.

The bill also authorizes the following new sign permit exemptions:

- Local tourist-oriented business signs within a RACEC, provided that:
  - Signs are not more than eight square feet in size and not more than four feet tall;
  - Signs are located only in rural areas on a facility that does not meet the definition of a limited access facility;
  - Signs are located within two miles of the business location and at least 500 feet apart;
  - Signs are located only in two directions leading to the business;
  - Signs are not located within the right-of-way; and
  - The business is at least four miles from any other business using the exemption and the business does not participate in any other directional sign program;
- Temporary harvest-season signs, provided such signs measure up to 32 square feet, denote only the distance or direction of a farm operation, and are erected at a road junction within

the State Highway System; such signs may only be erected during the harvest season, not to exceed 4 months;

- “Acknowledgement signs,”<sup>26</sup> provided such signs:
  - Are erected upon publicly funded school premises;
  - Relate to a specific public school club, team, or event;
  - Are placed at least 1,000 feet from any other acknowledgement sign on the same side of the roadway; and
  - Limit sponsor information to no more than 100 square feet of the sign; and
- Displays erected upon a sports facility,<sup>27</sup> the content of which is directly related to the facility’s activities or where products or services offered on the sports facility property are present, provided such displays are mounted flush to the surface of the sports facility and rely on the building facade for structural support.

The bill prohibits implementation or continuation of the provisions allowing permit exemptions for small business “hardship” signs, local tourist-oriented business signs, harvest-season signs, public school premise “acknowledgement signs,” and sports facility displays if the federal government notifies the FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT. In such an event, the FDOT is required to provide notice to a sign owner that the sign must be removed within 30 days; the FDOT is required to remove the sign if the owner does not remove it and the FDOT’s costs will be assessed against and collected from the owner.

**Section 6** amends s. 479.262, F.S., relating to the TOD sign program. The bill expands the program by repealing the restriction limiting the program to roads in a RACEC and providing that the program applies to intersections on rural and conventional state, county or municipal roads. The bill also expressly states, consistent with Rule 14-51.063, F.A.C., and the MUTCD, that a TOD sign may not be used on roads in urban areas or at interchanges on freeways or expressways.

**Section 7** provides the bill takes effect on July 1, 2014.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

<sup>26</sup> The bill defines the term “acknowledgement sign” to mean “a sign that is intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or other entity.”

<sup>27</sup> “Sports facility” is defined to mean “an athletic complex, athletic arena, or athletic stadium, including physically connected parking facilities, which is open to the public and has a permanent installed seating capacity of 15,000 people or more.”

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In the event the FDOT bears the cost of utility work for municipally- or county-owned utility removal or relocation, and such action avoids delay of a project on the State Highway System, a positive but indeterminate fiscal impact to businesses and private individuals may be realized under CS/SB 218.

The authorization to use signs without a permit to advertise local tourist-oriented businesses; farm products; public school club, team, or event sponsors; and products and services directly related to a sports facility's activities or offered on the sports facility's property provides greater opportunity to attract people to such businesses or events.

Revision of the TOD sign program to eliminate restriction of the program to signs at intersections in a RACEC provides greater opportunity for business participation in the program. Participants may be subject to permit fees established by local governments.

C. Government Sector Impact:

According to the FDOT, formalizing the FDOT's procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by an FDOT project will result in a negative, but indeterminate, fiscal impact to the state. The FDOT advises it currently "has approximately \$12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers" and states the waiver provision will result in an indeterminate reduction in expenditures for local governments that receive a promissory note waiver from the FDOT.<sup>28</sup>

The bill avoids a potential annual penalty of 10 percent of federal highway funds by authorizing the FDOT to remove signs erected under the additional sign permit exemptions if the Federal Government notifies the FDOT of an adverse impact on the allocation of federal funds.

According to the FDOT, the expansion of participation in the TOD sign program may produce a positive but indeterminate fiscal impact for local governments as a result of

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<sup>28</sup> FDOT Bill Analysis at 4.

them issuing sign permits for signs located on roads where signs previously were not permitted.<sup>29</sup>

The bill authorizes the FDOT to enter into agreements with investors to monetize the revenues received by the FDOT on existing leases for wireless communications facilities on department property. According to the FDOT, existing lease payments for wireless communications total approximately \$1.4 million annually. Factoring the revenues from lease payments would provide a lump sum of cash that would be available for statewide transportation projects in the initial year of a factoring agreement with investors. However, the forecasted annual revenue for existing lease payments would be eliminated in later years of the transportation work program and an alternative fund source would be needed for existing commitments programmed to use those revenues. Factoring the revenues may result in a negative cash impact over time.

A municipality within a rural area of critical economic concern or a rural area of critical economic concern community designated under s. 288.0656(7)(a), would be eligible to compete for funding using the existing Small County Outreach Program criteria at up to 100 percent of the project costs, excluding capacity projects. The funding for municipalities would be subject to an additional appropriation in excess of those appropriated for the Small County Outreach Program.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 337.403, 479.16, and 479.262.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

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

##### **CS by Appropriations on March 13, 2014:**

The CS adds the following provisions to the bill:

- Allows for the display of an amber light on a commercial vehicle or trailer designed for transporting unprocessed logs or pulpwood;
- Provides for the factoring of revenues from existing FDOT wireless communications leases to increase available funding for capital expenditures for the statewide transportation system; and

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<sup>29</sup> *Id.*

- Allows municipalities within a rural area of critical economic concern or a rural area of critical economic concern to compete for project funding using the Small County Outreach program criteria.

**CS by Transportation on November 7, 2013:**

The CS reflects a technical revision to the language relating to signs placed by local tourist-oriented businesses to rely on an existing definition of “limited access facility,” thereby avoiding the need for the FDOT to incur expenses associated with adopting by rule a definition of “non-limited access facility.”

**B. Amendments:**

None.



252134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 33 and 34

insert:

Section 1. Subsection (4) of section 316.2397, Florida Statutes, is amended to read:

316.2397 Certain lights prohibited; exceptions.—

(4) Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show



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11 or display amber lights when in operation or a hazard exists. A  
12 commercial motor vehicle or trailer designed to transport  
13 unprocessed logs or pulpwood may show or display an amber light  
14 affixed to the rearmost point of the vehicle or trailer.

15

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

17 And the title is amended as follows:

18       Between lines 2 and 3

19 insert:

20       316.2397, F.S., expanding the types of vehicles that  
21       may show or display an amber light; amending s.





182532

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/12/2014	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 33 and 34

insert:

Section 1. Effective January 1, 2015, section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(1) Except as provided under subsection (2), a surcharge of \$2 ~~\$2.00~~ per day or any part of a day is imposed upon the lease or rental of a motor vehicle licensed for hire and designed to



182532

11 carry less than nine passengers regardless of whether the such  
12 motor vehicle is licensed in this state Florida. The surcharge  
13 applies to only the first 30 days of the term of a any lease or  
14 rental. The surcharge is subject to all applicable taxes imposed  
15 under by this chapter.

16 (2) A member of a car-sharing service who uses a motor  
17 vehicle as described in subsection (1) pursuant to an agreement  
18 with the car-sharing service for less than 24 hours shall pay a  
19 surcharge of \$1 per usage. A member of a car-sharing service who  
20 uses the same motor vehicle for at least 24 consecutive hours  
21 shall pay a surcharge of \$2 per day or any part of a day as  
22 provided under subsection (1).

23 (a) For purposes of this subsection, "car-sharing service"  
24 means a membership-based organization or business, or a division  
25 thereof, which requires the payment of an application or  
26 membership fee and provides member access to motor vehicles:

27 1. Only at locations that are not staffed by car-sharing  
28 service personnel employed solely for the purpose of interacting  
29 with members;

30 2. Twenty-four hours per day, 7 days per week;

31 3. Only through automated means, including, but not limited  
32 to, smartphone applications and electronic membership cards;

33 4. On an hourly basis or for a shorter increment of time;

34 5. Without a separate fee for refueling the motor vehicle;

35 6. Without a separate fee for minimum financial  
36 responsibility liability insurance; and

37 7. Owned or controlled by the car-sharing service or its  
38 affiliates.

39 (b) The surcharge described in this subsection does not



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40 apply to the lease, rental, or use of a motor vehicle from a  
41 location owned, operated, or leased by or for the benefit of an  
42 airport or airport authority.

43 ~~(3)(2)(a)~~ Notwithstanding s. ~~the provisions of section~~  
44 212.20, and less the costs of administration, 80 percent of the  
45 proceeds of this surcharge shall be deposited in the State  
46 Transportation Trust Fund, 15.75 percent of the proceeds of this  
47 surcharge shall be deposited in the Tourism Promotional Trust  
48 Fund created in s. 288.122, and 4.25 percent of the proceeds of  
49 this surcharge shall be deposited in the Florida International  
50 Trade and Promotion Trust Fund.

51 (a) For the purposes of this subsection, "proceeds" of the  
52 surcharge means all funds collected and received by the  
53 department under this section, including interest and penalties  
54 on delinquent surcharges. The department shall provide the  
55 Department of Transportation rental car surcharge revenue  
56 information for the previous state fiscal year by September 1 of  
57 each year.

58 (b) Notwithstanding any other provision of law, ~~in fiscal~~  
59 ~~year 2007-2008 and each year thereafter,~~ the proceeds deposited  
60 in the State Transportation Trust Fund shall be allocated on an  
61 annual basis in the Department of Transportation's work program  
62 to each department district, except the Turnpike District. The  
63 amount allocated to ~~for~~ each district shall be based on ~~upon~~ the  
64 amount of proceeds attributed to the counties within each  
65 respective district.

66 ~~(4)(3)(a)~~ Except as provided in this section, the  
67 department shall administer, collect, and enforce the surcharge  
68 as provided in this chapter.



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69            (a)~~(b)~~ The department shall require dealers to report  
70 surcharge collections according to the county to which the  
71 surcharge was attributed. For purposes of this section, the  
72 surcharge shall be attributed to the county where the rental  
73 agreement was entered into.

74            (b)~~(c)~~ Dealers who collect the rental car surcharge shall  
75 report to the department all surcharge revenues attributed to  
76 the county where the rental agreement was entered into on a  
77 timely filed return for each required reporting period. The  
78 provisions of this chapter which apply to interest and penalties  
79 on delinquent taxes ~~shall~~ apply to the surcharge. The surcharge  
80 is ~~shall~~ not be included in the calculation of estimated taxes  
81 pursuant to s. 212.11. The dealer's credit provided in s. 212.12  
82 does ~~shall~~ not apply to any amount collected under this section.

83            (5)~~(4)~~ The surcharge imposed by this section does not apply  
84 to a motor vehicle provided at no charge to a person whose motor  
85 vehicle is being repaired, adjusted, or serviced by the entity  
86 providing the replacement motor vehicle.

87  
88 ===== T I T L E   A M E N D M E N T =====

89 And the title is amended as follows:

90            Between lines 2 and 3

91 insert:

92            212.0606, F.S.; specifying circumstances under which a  
93 member of a car-sharing service is required to pay a  
94 surcharge based on a usage basis rather than a daily  
95 basis; defining the term "car-sharing service";  
96 amending s.



128248

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 123 and 124

insert:

Section 2. Section 339.041, Florida Statutes, is created to read:

339.041 Factoring of revenues from leases for wireless communication facilities.—

(1) The Legislature finds that efforts to increase funding



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10 for capital expenditures for the transportation system are  
11 necessary for the protection of the public safety and general  
12 welfare and for the preservation of transportation facilities in  
13 this state. It is, therefore, the intent of the Legislature:

14 (a) To create a mechanism for factoring future revenues  
15 received by the department from leases for wireless  
16 communication facilities on department property on a nonrecourse  
17 basis;

18 (b) To fund fixed capital expenditures for the statewide  
19 transportation system from proceeds generated through this  
20 mechanism; and

21 (c) To maximize revenues from factoring by ensuring that  
22 such revenues are exempt from income taxation under federal law  
23 in order to increase funds available for capital expenditures.

24 (2) For the purposes of factoring revenues under this  
25 section, department property includes real property located  
26 within the department's limited access rights-of-way, property  
27 located outside the current operating right-of-way limits which  
28 is not needed to support current transportation facilities,  
29 other property owned by the Board of Trustees of the Internal  
30 Improvement Trust Fund and leased by the department, space on  
31 department telecommunications facilities, and space on  
32 department structures.

33 (3) The department may solicit investors willing to enter  
34 into agreements to purchase the revenue stream from one or more  
35 existing department leases for wireless communication facilities  
36 on property owned or controlled by the department through the  
37 issuance of an invitation to negotiate. Such agreements shall be  
38 structured as tax-exempt financings for federal income tax



128248

39 purposes in order to result in the largest possible payout.

40 (4) The department may not pledge the credit, the general  
41 revenues, or the taxing power of the state or of any political  
42 subdivision of the state. The obligations of the department and  
43 investors under the agreement do not constitute a general  
44 obligation of the state or a pledge of the full faith and credit  
45 or taxing power of the state. The agreement is payable from and  
46 secured solely by payments received from department leases for  
47 wireless communication facilities on property owned or  
48 controlled by the department, and neither the state nor any of  
49 its agencies has any liability beyond such payments.

50 (5) The department may make any covenant or representation  
51 necessary or desirable in connection with the agreement,  
52 including a commitment by the department to take whatever  
53 actions are necessary on behalf of investors to enforce the  
54 department's rights to payments on property leased for wireless  
55 communications facilities. However, the department may not  
56 guarantee that revenues actually received in a future year will  
57 be those anticipated in its leases for wireless communication  
58 facilities. The department may agree to use its best efforts to  
59 ensure that anticipated future-year revenues are protected. Any  
60 risk that actual revenues received from department leases for  
61 wireless communications facilities will be lower than  
62 anticipated shall be borne exclusively by investors.

63 (6) Subject to annual appropriation, the investors shall  
64 collect the lease payments on a schedule and in a manner  
65 established in the agreements entered into pursuant to this  
66 section between the department and the investors. The agreements  
67 may provide for lease payments to be made directly to investors



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68 by lessees if the lease agreements entered into by the  
69 department and the lessees pursuant to s. 365.172(12)(f) allow  
70 direct payment.

71 (7) Proceeds received by the department from leases for  
72 wireless communication facilities shall be deposited in the  
73 State Transportation Trust Fund created under s. 206.46 and used  
74 for fixed capital expenditures for the statewide transportation  
75 system.

76  
77 ===== T I T L E A M E N D M E N T =====

78 And the title is amended as follows:

79 Delete line 9

80 and insert:

81 under certain circumstances; creating s. 339.041,  
82 F.S.; providing legislative intent; describing the  
83 types of department property eligible for factoring  
84 future revenues received by the department from leases  
85 for communication facilities on department property;  
86 authorizing the department to enter into agreements  
87 with investors to purchase the revenue streams from  
88 department leases of wireless communication facilities  
89 on such property pursuant to an invitation to  
90 negotiate; prohibiting the department from pledging  
91 state credit; allowing the department to make certain  
92 covenants; providing for the appropriation and payment  
93 of moneys received from such agreements to investors;  
94 requiring the proceeds from such leases to be used for  
95 capital expenditures; amending s. 479.16, F.S.;





813366

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/12/2014	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 123 and 124

insert:

Section 2. Section 339.2820, Florida Statutes, is created to read:

339.2820 Small City Road and Bridge Assistance program.—

(1) There is created within the Department of Transportation the Small City Road and Bridge Assistance Program. The purpose of this program is to assist small city



813366

11 governments in repairing or rehabilitating city bridges,  
12 resurfacing or reconstructing city roads, addressing road-  
13 related drainage improvements, or constructing safety  
14 improvements to city roads.

15 (2) For the purposes of this section, the term "small city"  
16 means any rural community included by the definitions in  
17 subparagraphs 3 or 4 of s.288.0656(2) (e) within a "Rural area of  
18 critical economic concern" designated by the Governor under  
19 s.288.0656(2) (d).

20 (3) Beginning with fiscal year 2014-2015 until fiscal year  
21 2019-2020, up to \$9 million annually from the General Revenue  
22 Fund shall be deposited into the State Transportation Trust Fund  
23 to be used for the purposes of funding the Small City Road and  
24 Bridge Assistance Program as described in this section.

25 (4) (a) Small cities shall be eligible to compete for funds  
26 that have been designated for the Small City Road and Bridge  
27 Assistance Program for repairing or rehabilitating city bridges,  
28 resurfacing or reconstructing city roads, addressing road-  
29 related drainage improvements, or constructing safety  
30 improvements to city roads. Capacity improvements on city roads  
31 shall not be eligible for funding under the program.

32 (b) In determining a city's eligibility for assistance  
33 under this program, the department may consider whether the city  
34 has attempted to keep city roads in satisfactory condition,  
35 including the amount of available local revenues dedicated to  
36 road and bridge maintenance. The department may also consider  
37 the extent to which the city has offered to provide a match of  
38 local funds with state funds provided under the program.

39 (c) The following criteria must be used to prioritize road



813366

40 projects for funding under the program:

41 1. The primary criterion is the physical condition of the  
42 road or bridge as measured by the department.

43 2. As secondary criteria the department may consider:

44 a. Whether a road or bridge is used as an evacuation route.

45 b. Whether a road or bridge has high levels of agricultural  
46 travel.

47 c. Whether a road or bridge is considered a major arterial  
48 route.

49 d. Whether a road or bridge is considered a feeder road.

50 e. Safety issues that the department determines exist with  
51 respect to a road or bridge.

52 f. Other criteria related to the impact of a project on the  
53 public road system or on the state or local economy as  
54 determined by the department.

55 (5) The department is authorized to administer contracts on  
56 behalf of a city selected to receive funding for a project under  
57 this section. All projects funded under this section shall be  
58 included in the department's work program developed pursuant to  
59 s. 339.135.

60  
61

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

63 And the title is amended as follows:

64 Delete line 9

65 and insert:

66 under certain circumstances; creating s. 339.2820,

67 F.S.; establishing the Small City Road and Bridge

68 Assistance Program within the Department of



813366

69 Transportation; defining the term "small city";  
70 appropriating up to \$9 million annually from the  
71 General Revenue Fund, beginning in fiscal year 2014-  
72 2015 until fiscal year 2019-2020, for deposit into the  
73 State Transportation Trust Fund for the purpose of  
74 funding the program; providing that small cities are  
75 eligible to compete for funds designated for the  
76 program for identified activities; providing that  
77 capacity improvements on city roads are not eligible  
78 for program funding; providing eligibility criteria;  
79 providing project prioritization criteria; authorizing  
80 the Department of Transportation to administer  
81 contracts on behalf of a city; requiring all projects  
82 funded under the program to be included in the  
83 Department of Transportation's work program; amending  
84 s. 479.16, F.S.;



243762

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 123 and 124

insert:

Section 2. Subsection (7) is added to section 339.2818, Florida Statutes, to read:

339.2818 Small County Outreach Program.—

(1) There is created within the Department of Transportation the Small County Outreach Program. The purpose of this program is to assist small county governments in repairing



243762

11 or rehabilitating county bridges, paving unpaved roads,  
12 addressing road-related drainage improvements, resurfacing or  
13 reconstructing county roads, or constructing capacity or safety  
14 improvements to county roads.

15 (2) For the purposes of this section, the term "small  
16 county" means any county that has a population of 150,000 or  
17 less as determined by the most recent official estimate pursuant  
18 to s. 186.901.

19 (3) Funds allocated under this program, pursuant to s. 4,  
20 ch. 2000-257, Laws of Florida, are in addition to any funds  
21 provided pursuant to s. 339.2816, for the Small County Road  
22 Assistance Program.

23 (4) (a) Small counties shall be eligible to compete for  
24 funds that have been designated for the Small County Outreach  
25 Program for projects on county roads. The department shall fund  
26 75 percent of the cost of projects on county roads funded under  
27 the program.

28 (b) In determining a county's eligibility for assistance  
29 under this program, the department may consider whether the  
30 county has attempted to keep county roads in satisfactory  
31 condition, which may be evidenced through an established  
32 pavement management plan.

33 (c) The following criteria shall be used to prioritize road  
34 projects for funding under the program:

35 1. The primary criterion is the physical condition of the  
36 road as measured by the department.

37 2. As secondary criteria the department may consider:

38 a. Whether a road is used as an evacuation route.

39 b. Whether a road has high levels of agricultural travel.



243762

- 40 c. Whether a road is considered a major arterial route.
- 41 d. Whether a road is considered a feeder road.
- 42 e. Information as evidenced to the department through an
- 43 established pavement management plan.
- 44 f. Other criteria related to the impact of a project on the
- 45 public road system or on the state or local economy as
- 46 determined by the department.
- 47 (5) The department is authorized to administer contracts on
- 48 behalf of a county selected to receive funding for a project
- 49 under this section. All projects funded under this section shall
- 50 be included in the department's work program developed pursuant
- 51 to s. 339.135.
- 52 (6) Funds paid into the State Transportation Trust Fund
- 53 pursuant to s. 201.15 for the purposes of the Small County
- 54 Outreach Program are hereby annually appropriated for
- 55 expenditure to support the Small County Outreach Program.
- 56 (7) Subject to a specific appropriation in addition to
- 57 funds annually appropriated for projects under this section, a
- 58 municipality within a rural area of critical economic concern or
- 59 a rural area of critical economic concern community designated
- 60 under s. 288.0656(7)(a) may compete for the additional project
- 61 funding using the criteria listed in subsection (4) at up to
- 62 100% of project costs, excluding capacity improvement projects.

63  
64

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

66 And the title is amended as follows:

67 Delete line 9

68 and insert:



243762

69           under certain circumstances; authorizing a  
70           municipality with in a rural area of critical economic  
71           concern or a rural area of critical economic concern  
72           community to compete for project funding using Small  
73           County Outreach Program criteria, subject to an  
74           appropriation in addition to funds annually  
75           appropriated to the Small County Outreach Program,  
76           excluding capacity improvement projects; amending s.  
77           479.16, F.S.;





891306

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/12/2014	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 308

and insert:

Section 4. Except as otherwise provided in this act, this act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete line 30



891306

11 and insert:  
12 providing effective dates.

By the Committee on Transportation; and Senator Grimsley

596-00650-14

2014218c1

1 A bill to be entitled  
 2 An act relating to transportation; amending s.  
 3 337.403, F.S.; providing an exception for payment of  
 4 certain utility work necessitated by a project on the  
 5 State Highway System for municipally owned utilities  
 6 or county-owned utilities located in rural areas of  
 7 critical economic concern and authorizing the  
 8 Department of Transportation to pay for such costs  
 9 under certain circumstances; amending s. 479.16, F.S.;  
 10 exempting certain signs from the provisions of ch.  
 11 479, F.S.; exempting from permitting certain signs  
 12 placed by tourist-oriented businesses, certain farm  
 13 signs placed during harvest seasons, certain  
 14 acknowledgement signs on publicly funded school  
 15 premises, and certain displays on specific sports  
 16 facilities; providing that certain provisions relating  
 17 to the regulation of signs may not be implemented or  
 18 continued if such actions will adversely impact the  
 19 allocation of federal funds to the Department of  
 20 Transportation; directing the department to notify a  
 21 sign owner that the sign must be removed if federal  
 22 funds are adversely impacted; authorizing the  
 23 department to remove the sign and assess costs to the  
 24 sign owner under certain circumstances; amending s.  
 25 479.262, F.S.; clarifying provisions relating to the  
 26 tourist-oriented directional sign program; limiting  
 27 the placement of such signs to intersections on  
 28 certain rural roads; prohibiting such signs in urban  
 29 areas or at interchanges on freeways or expressways;

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

596-00650-14

2014218c1

30 providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Subsection (1) of section 337.403, Florida  
 35 Statutes, is amended to read:  
 36 337.403 Interference caused by relocation of utility;  
 37 expenses.—  
 38 (1) If a utility that is placed upon, under, over, or along  
 39 any public road or publicly owned rail corridor is found by the  
 40 authority to be unreasonably interfering in any way with the  
 41 convenient, safe, or continuous use, or the maintenance,  
 42 improvement, extension, or expansion, of such public road or  
 43 publicly owned rail corridor, the utility owner shall, upon 30  
 44 days' written notice to the utility or its agent by the  
 45 authority, initiate the work necessary to alleviate the  
 46 interference at its own expense except as provided in paragraphs  
 47 (a)-(h) ~~(a)-(g)~~. The work must be completed within such  
 48 reasonable time as stated in the notice or such time as agreed  
 49 to by the authority and the utility owner.  
 50 (a) If the relocation of utility facilities, as referred to  
 51 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
 52 84-627 ~~627~~ of the ~~84th~~ Congress, is necessitated by the  
 53 construction of a project on the federal-aid interstate system,  
 54 including extensions thereof within urban areas, and the cost of  
 55 the project is eligible and approved for reimbursement by the  
 56 Federal Government to the extent of 90 percent or more under the  
 57 Federal Aid Highway Act, or any amendment thereof, then in that  
 58 event the utility owning or operating such facilities shall

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2014218c1

59 perform any necessary work upon notice from the department, and  
60 the state shall pay the entire expense properly attributable to  
61 such work after deducting therefrom any increase in the value of  
62 a new facility and any salvage value derived from an old  
63 facility.

64 (b) When a joint agreement between the department and the  
65 utility is executed for utility work to be accomplished as part  
66 of a contract for construction of a transportation facility, the  
67 department may participate in those utility work costs that  
68 exceed the department's official estimate of the cost of the  
69 work by more than 10 percent. The amount of such participation  
70 is shall be limited to the difference between the official  
71 estimate of all the work in the joint agreement plus 10 percent  
72 and the amount awarded for this work in the construction  
73 contract for such work. The department may not participate in  
74 any utility work costs that occur as a result of changes or  
75 additions during the course of the contract.

76 (c) When an agreement between the department and utility is  
77 executed for utility work to be accomplished in advance of a  
78 contract for construction of a transportation facility, the  
79 department may participate in the cost of clearing and grubbing  
80 necessary to perform such work.

81 (d) If the utility facility was initially installed to  
82 exclusively serve the authority or its tenants, or both, the  
83 authority shall bear the costs of the utility work. However, the  
84 authority is not responsible for the cost of utility work  
85 related to any subsequent additions to that facility for the  
86 purpose of serving others.

87 (e) If, under an agreement between a utility and the

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2014218c1

88 authority entered into after July 1, 2009, the utility conveys,  
89 subordinates, or relinquishes a compensable property right to  
90 the authority for the purpose of accommodating the acquisition  
91 or use of the right-of-way by the authority, without the  
92 agreement expressly addressing future responsibility for the  
93 cost of necessary utility work, the authority shall bear the  
94 cost of removal or relocation. This paragraph does not impair or  
95 restrict, and may not be used to interpret, the terms of any  
96 such agreement entered into before July 1, 2009.

97 (f) If the utility is an electric facility being relocated  
98 underground in order to enhance vehicular, bicycle, and  
99 pedestrian safety and in which ownership of the electric  
100 facility to be placed underground has been transferred from a  
101 private to a public utility within the past 5 years, the  
102 department shall incur all costs of the necessary utility work.

103 (g) An authority may bear the costs of utility work  
104 required to eliminate an unreasonable interference when the  
105 utility is not able to establish that it has a compensable  
106 property right in the particular property where the utility is  
107 located if:

108 1. The utility was physically located on the particular  
109 property before the authority acquired rights in the property;

110 2. The utility demonstrates that it has a compensable  
111 property right in all adjacent properties along the alignment of  
112 the utility; and

113 3. The information available to the authority does not  
114 establish the relative priorities of the authority's and the  
115 utility's interests in the particular property.

116 (h) If a municipally owned utility or county-owned utility

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2014218c1

117 is located in a rural area of critical economic concern, as  
 118 defined in s. 288.0656(2), and the department determines that  
 119 the utility is unable, and will not be able within the next 10  
 120 years, to pay for the cost of utility work necessitated by a  
 121 department project on the State Highway System, the department  
 122 may pay, in whole or in part, the cost of such utility work  
 123 performed by the department or its contractor.

124 Section 2. Section 479.16, Florida Statutes, is amended to  
 125 read:

126 479.16 Signs for which permits are not required.—Signs  
 127 placed on benches, transit shelters, modular news racks, street  
 128 light poles, public pay telephones, and waste receptacles within  
 129 the right-of-way, as provided under s. 337.408, are exempt from  
 130 this chapter. The following signs are exempt from the  
 131 requirement that a permit ~~for a sign~~ be obtained under the  
 132 ~~provisions of this chapter but must are required to~~ comply with  
 133 ~~the provisions of s. 479.11(4)-(8):~~

134 (1) Signs erected on the premises of an establishment,  
 135 which ~~signs~~ consist primarily of the name of the establishment  
 136 or ~~which~~ identify the principal or accessory merchandise,  
 137 services, activities, or entertainment sold, produced,  
 138 manufactured, or furnished on the premises of the establishment  
 139 and which comply with the lighting restrictions imposed under  
 140 ~~department rule adopted pursuant to s. 479.11(5), or signs owned~~  
 141 by a municipality or a county located on the premises of such  
 142 municipality or ~~such~~ county which display information regarding  
 143 government services, activities, events, or entertainment. For  
 144 purposes of this section, the following types of messages shall  
 145 not be considered information regarding government services,

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2014218c1

146 activities, events, or entertainment:

147 (a) Messages that ~~which~~ specifically reference any  
 148 commercial enterprise.

149 (b) Messages that ~~which~~ reference a commercial sponsor of  
 150 any event.

151 (c) Personal messages.

152 (d) Political campaign messages.

153

154 If a sign located on the premises of an establishment consists  
 155 principally of brand name or trade name advertising and the  
 156 merchandise or service is only incidental to the principal  
 157 activity, or if the owner of the establishment receives rental  
 158 income from the sign, ~~then~~ the sign is not exempt under this  
 159 subsection.

160 (2) Signs erected, used, or maintained on a farm by the  
 161 owner or lessee of such farm and relating solely to farm  
 162 produce, merchandise, service, or entertainment sold, produced,  
 163 manufactured, or furnished on such farm.

164 (3) Signs posted or displayed on real property by the owner  
 165 or by the authority of the owner, stating that the real property  
 166 is for sale or rent. However, if the sign contains any message  
 167 not pertaining to the sale or rental of the ~~that~~ real property,  
 168 ~~then~~ it is not exempt under this section.

169 (4) Official notices or advertisements posted or displayed  
 170 on private property by or under the direction of any public or  
 171 court officer in the performance of her or his official or  
 172 directed duties, or by trustees under deeds of trust or deeds of  
 173 assignment or other similar instruments.

174 (5) Danger or precautionary signs relating to the premises

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

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2014218c1

175 on which they are located; forest fire warning signs erected  
 176 under the authority of the Florida Forest Service of the  
 177 Department of Agriculture and Consumer Services; and signs,  
 178 notices, or symbols erected by the United States Government  
 179 under the direction of the United States Forestry Service.

180 (6) Notices of any railroad, bridge, ferry, or other  
 181 transportation or transmission company necessary for the  
 182 direction or safety of the public.

183 (7) Signs, notices, or symbols for the information of  
 184 aviators as to location, directions, and landings and conditions  
 185 affecting safety in aviation erected or authorized by the  
 186 department.

187 (8) Signs or notices measuring up to 8 square feet in area  
 188 which are erected or maintained upon property and state stating  
 189 only the name of the owner, lessee, or occupant of the premises  
 190 and not exceeding 8 square feet in area.

191 (9) Historical markers erected by ~~duly constituted and~~  
 192 authorized public authorities.

193 (10) Official traffic control signs and markers erected,  
 194 caused to be erected, or approved by the department.

195 (11) Signs erected upon property warning the public against  
 196 hunting and fishing or trespassing ~~thereon.~~

197 (12) Signs ~~not in excess of up to~~ up to 8 square feet which that  
 198 are owned by and relate to the facilities and activities of  
 199 churches, civic organizations, fraternal organizations,  
 200 charitable organizations, or units or agencies of government.

201 ~~(13) Except that signs placed on benches, transit shelters,~~  
 202 ~~and waste receptacles as provided for in s. 337.408 are exempt~~  
 203 ~~from all provisions of this chapter.~~

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2014218c1

204 ~~(13)-(14)~~ Signs relating exclusively to political campaigns.

205 ~~(14)-(15)~~ Signs measuring up to not in excess of 16 square  
 206 feet placed at a road junction with the State Highway System  
 207 denoting only the distance or direction of a residence or farm  
 208 operation, or, outside an incorporated in a rural area where a  
 209 hardship is created because a small business is not visible from  
 210 the road junction with the State Highway System, one sign  
 211 measuring up to not in excess of 16 square feet, denoting only  
 212 the name of the business and the distance and direction to the  
 213 business. ~~The small-business-sign provision of this subsection~~  
 214 ~~does not apply to charter counties and may not be implemented if~~  
 215 ~~the Federal Government notifies the department that~~  
 216 ~~implementation will adversely affect the allocation of federal~~  
 217 ~~funds to the department.~~

218 (15) Signs placed by a local tourist-oriented business  
 219 located within a rural area of critical economic concern as  
 220 defined under s. 288.0656(2) which are:

221 (a) Not more than 8 square feet in size or more than 4 feet  
 222 in height;

223 (b) Located only in rural areas on a facility that does not  
 224 meet the definition of a limited access facility as defined by  
 225 department rule;

226 (c) Located within 2 miles of the business location and at  
 227 least 500 feet apart;

228 (d) Located only in two directions leading to the business;  
 229 and

230 (e) Not located within the road right-of-way.

231  
 232 A business placing such signs must be at least 4 miles from any

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

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2014218c1

233 other business using this exemption and may not participate in  
 234 any other directional signage program by the department.

235 (16) Signs measuring up to 32 square feet denoting only the  
 236 distance or direction of a farm operation which are erected at a  
 237 road junction with the State Highway System, but only during the  
 238 harvest season of the farm operation for a period not to exceed  
 239 4 months.

240 (17) Acknowledgement signs erected upon publicly funded  
 241 school premises which relate to a specific public school club,  
 242 team, or event which are placed at least 1,000 feet from any  
 243 other acknowledgement sign on the same side of the roadway. The  
 244 sponsor information on an acknowledgement sign may constitute no  
 245 more than 100 square feet of the sign. For purposes of this  
 246 subsection, the term "acknowledgement sign" means a sign that is  
 247 intended to inform the traveling public that a public school  
 248 club, team, or event has been sponsored by a person, firm, or  
 249 other entity.

250 (18) Displays erected upon a sports facility the content of  
 251 which is directly related to the facility's activities or where  
 252 products or services offered on the sports facility property are  
 253 present. Displays must be mounted flush to the surface of the  
 254 sports facility and must rely upon the building facade for  
 255 structural support. For purposes of this subsection, the term  
 256 "sports facility" means an athletic complex, athletic arena, or  
 257 athletic stadium, including physically connected parking  
 258 facilities, which is open to the public and has a permanent  
 259 installed seating capacity of 15,000 people or more.

260 The exemptions in subsections (14)-(18) may not be implemented  
 261

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2014218c1

262 or continued if the Federal Government notifies the department  
 263 that implementation or continuation will adversely impact the  
 264 allocation of federal funds to the department. If the exemptions  
 265 in subsections (14)-(18) are not implemented or continued due to  
 266 notification from the Federal Government that the allocation of  
 267 federal funds to the department will be adversely impacted, the  
 268 department shall provide notice to the sign owner that the sign  
 269 must be removed within 30 days. If the sign is not removed  
 270 within 30 days after receipt of the notice by the sign owner,  
 271 the department may remove the sign, and the costs incurred in  
 272 connection with the sign removal shall be assessed against and  
 273 collected from the sign owner.

274 Section 3. Section 479.262, Florida Statutes, is amended to  
 275 read:

276 479.262 Tourist-oriented directional sign program.—

277 (1) A tourist-oriented directional sign program to provide  
 278 directions to rural tourist-oriented businesses, services, and  
 279 activities may be established for intersections on rural and  
 280 conventional state, county, or municipal roads only ~~in rural~~  
 281 ~~counties identified by criteria and population in s. 288.0656~~  
 282 when approved and permitted by county or local government  
 283 entities within their respective jurisdictional areas ~~at~~  
 284 ~~intersections on rural and conventional state, county, or~~  
 285 ~~municipal roads~~. A county or local government ~~that which~~ issues  
 286 permits for a tourist-oriented directional sign program ~~is shall~~  
 287 ~~be~~ responsible for sign construction, maintenance, and program  
 288 operation in compliance with subsection (3) for roads on the  
 289 state highway system and may establish permit fees sufficient to  
 290 offset associated costs. A tourist-oriented directional sign may

596-00650-14

2014218c1

291 not be used on roads in urban areas or at interchanges on  
292 freeways or expressways.

293 (2) This section does not create a proprietary or  
294 compensable interest in any tourist-oriented directional sign  
295 site or location for any permittee on any rural and conventional  
296 state, county, or municipal road ~~roads~~. The department or the  
297 permitting entity may terminate permits or change locations of  
298 tourist-oriented directional sign sites as determined necessary  
299 for construction or improvement of transportation facilities or  
300 for improved traffic control or safety.

301 (3) Tourist-oriented directional signs installed on the  
302 state highway system must ~~shall~~ comply with the requirements of  
303 the federal Manual on Uniform Traffic Control Devices and rules  
304 established by the department. The department may adopt rules to  
305 establish requirements for participant qualification,  
306 construction standards, location of sign sites, and other  
307 criteria necessary to implement this program.

308 Section 4. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic Log Trailers / Transportation

Bill Number 218  
(if applicable)

Name Jim Spratt

Amendment Barcode 252134  
(if applicable)

Job Title \_\_\_\_\_

Address PO Box 10011

Phone 850-228-1296

TALCAHASSEE FL 32302  
City State Zip

E-mail Jim@MagnoliaStrategicLLC.com

Speaking:  For  Against  Information

Representing FLORIDA FORESTRY ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14  
Meeting Date

Topic TRANSPORTATION

Bill Number 218  
(if applicable)

Name RON RICHMOND

Amendment Barcode 128748  
(if applicable)

Job Title \_\_\_\_\_

Address 1394 MILLSTREAM ROAD  
Street

Phone 545-5964

TALLAHASSEE, FL 32312  
City State Zip

E-mail ronaldrichmond@comcast.net

Speaking:  For  Against  Information

Representing AP WIRELESS PARTNERS, LLC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic \_\_\_\_\_

Bill Number CS SB 218  
(if applicable)

Name JOSEPH R. SPRATT

Amendment Barcode 243762  
(if applicable)

Job Title hobbyist

Address 250 HAW ST.

Phone \_\_\_\_\_

Street

LABELLE

FL

33975

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing CITY OF LABELLE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/13/14

*Meeting Date*

Topic Transportation

Bill Number SB 218  
*(if applicable)*

Name RYAN PADGETT

Amendment Barcode 243762  
*(if applicable)*

Job Title Asst. General Counsel

Address PO Box 1757

Phone 850-701-3616

*Street*

Tallahassee

FL

32302

E-mail rpadgett@flcities.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14  
Meeting Date

243762

Topic Grimsley Amendment

Bill Number SB 218  
(if applicable)

Name Chris Doolin

Amendment Barcode 243762  
(if applicable)

Job Title Consultant

Address 1118-B Thomasville Rd.

Phone 5085492

City Tallahassee State Fla Zip

E-mail c.doolin@netally.com

Speaking:  For  Against  Information

Grimsley Amendment

Representing Small County Coalition

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

8/13/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 218  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 230

INTRODUCER: Appropriations Committee; Transportation Committee; and Senator Simmons

SUBJECT: Orlando-Orange County Expressway Authority

DATE: March 13, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Fav/CS</b>
2.	Stearns	Yeatman	CA	<b>Favorable</b>
3.	Carey	Kynoch	AP	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 230 re-names the Orlando-Orange County Expressway Authority (OOCEA) as the Central Florida Expressway Authority (CFX) and expands the area served by the CFX to include the counties of Seminole, Lake, and Osceola Counties in addition to Orange County. The bill provides for the transfer of governance and control, legal rights and powers, responsibilities, terms and obligations of the OOCEA System to the CFX and, in addition:

- Provides for the composition of the governing body of the CFX, the appointment of its officers and the expiration of terms of the standing OOCEA board members, and revises quorum and voting requirements applicable to the CFX;
- Provides ethics and financial disclosure requirements for members and the executive director of the CFX, as well as ethics requirements for the CFX employees and consultants.
- Removes the existing OOCEA requirement that the route of a project be approved by a municipality before the right-of-way can be acquired;
- Requires that the CFX encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities;
- Removes the existing OOCEA authority to waive payment and performance bonds for certain public works projects awarded pursuant to an economic development program;
- Provides that upon termination of the lease-purchase agreement title in fee simple absolute to the former OOCEA system will be transferred to the state and extends the term of authorized lease-purchase agreements from 40 to 99 years;

- Provides for the transfer of the Osceola County Expressway System to the CFX and provides for the repeal of part V of ch. 348, F.S., on the same date the Osceola County Expressway System is transferred to the CFX; and
- Provides the bill takes effect upon becoming law.

The bill may have an indeterminate but insignificant negative fiscal impact on the State Transportation Trust Fund.

## II. Present Situation:

### Orlando-Orange County Expressway Authority

The Orlando-Orange County Expressway Authority currently serves Orange County and is authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.<sup>1</sup>

The OOCEA governing body consists of five members. The Governor appoints three members who are citizens of Orange County and who serve four year terms and may be reappointed. The Orange County mayor and the Florida Department of Transportation's (FDOT) District Five Secretary serve as *ex-officio* members of the Board.<sup>2</sup>

The OOCEA currently owns and operates 109 centerline miles of roadway in Orange County, which includes:

- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);
- 23 miles of the Martin Andersen Beachline Expressway (SR 528);
- 33 miles of the Central Florida GreeneWay (SR 417);
- 22 miles of the Daniel Webster Western Beltway (SR 429); and
- Nine miles of the John Land Apopka Expressway (SR 414).<sup>3</sup>

Pursuant to an existing Memorandum of Understanding (MOU) and lease-purchase agreement between the FDOT and the OOCEA, the authority will independently finance, build, own and manage certain portions of the Wekiva Parkway. To ensure that funds are available to the FDOT for the Wekiva Parkway, the 2012 Legislature codified references to the existing MOU and lease-purchase agreements and established a repayment schedule for the OOCEA to reimburse the FDOT for the costs of operation and maintenance of the Orlando-Orange County Expressway System in accordance with the terms of the MOU.<sup>4</sup>

To ensure financing was available to the FDOT for its portion of the Wekiva Parkway, the OOCEA was required to pay the FDOT \$10 million on July 1, 2012, and is required to pay \$20 million every July 1 thereafter to pay off the long-term debt obligation to the FDOT. The OOCEA's long-term debt obligation as of November 30, 2013, is \$211,334,985.29.

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<sup>1</sup> Section 348.754(2)(n), F.S.

<sup>2</sup> Section 348.753, F.S.

<sup>3</sup> FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 40.

<sup>4</sup> Chapter 2012-128, L.O.F.



### **Osceola County Expressway Authority**

Created in 2010, the Osceola County Expressway Authority (OCX) currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act, including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.<sup>5</sup>

#### ***OCX Governing Board***

The OCX governing body consists of six members. Five members must be residents of Osceola County, one of which must be a member of a racial or ethnic minority. Three of the five are appointed by the governing body of the county and the remaining two are appointed by the Governor. The FDOT's District Five Secretary serves as an *ex-officio*, non-voting member.<sup>6</sup>

#### ***OCX Facilities***

The OCX is not currently operating any facility and has no funding or staff. Staff assistance and other support have been provided by Osceola County. The FDOT provided a \$2.5 million grant to the OCX in May of 2012, and the funds will be used for two project development and environment studies that will be conducted by the Florida Turnpike Enterprise. The OCX adopted a 2040 Master Plan that includes construction of four proposed tolled expressways: the Poinciana Parkway, the Southport Connector Expressway, the Northeast Connector Expressway, and the Osceola Parkway Extension. The OCX has an agreement with Osceola County under which the county will advance funds for operation and startup costs until the OCX has a revenue-producing project. The agreement requires the OCX to repay the county within 15 years of receiving toll revenues. A 2012 agreement calls for issuance of bonds by the county to pay for the Poinciana Parkway project costs incurred by the OCX. The OCX will design and construct the parkway pursuant to a lease-purchase agreement with the county.<sup>7</sup>

### **Seminole County and Lake County**

The Seminole County Expressway Authority was abolished by the Legislature in 2011;<sup>8</sup> neither Seminole County nor Lake County is currently served by an expressway authority. The Florida Turnpike Enterprise currently owns and operates Florida's Turnpike, parts of which are located within Seminole and Lake Counties.

### **III. Effect of Proposed Changes:**

Generally, the bill re-names the OOCEA as the CFX; expands the area served by the CFX beyond Orange County to include Seminole, Lake, and Osceola Counties; and transfers governance and control of the OOCEA system to the CFX.

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<sup>5</sup> Section 348.0004, F.S.

<sup>6</sup> Section 348.9952, F.S.

<sup>7</sup> FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 171.

<sup>8</sup> Ch. 2011-64, L.O.F.

**Section 1** amends s. 348.751, F.S., to change the short title of part III of ch. 348, F.S., from the “Orlando-Orange County Expressway Authority Law” to the “Central Florida Expressway Authority Law.”

**Section 2** amends s. 348.752, F.S., to define:

- “Central Florida Expressway Authority” to mean the “body politic and corporate and agency of the state created by this chapter”;
- “Central Florida Expressway System,” to mean “any expressway and appurtenant facilities including all approaches, roads, bridges, and avenues for the expressway and any rapid transit, trams, or fixed guideways located within the right-of-way of an expressway”; and
- “Transportation facilities” to mean “the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance, and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities.” Administrative and other office space used by the authority is also included in the term.

This section of the bill also deletes the definitions of “city” and “county,” revises various definitions to conform terminology to the renaming, and makes technical changes.

**Section 3** amends s. 348.753, F.S., in which the OOCEA is created, to replace and rename the OOCEA as the Central Florida Expressway Authority and requires that the CFX assume the governance and control of the OOCEA System immediately upon the effective date of the bill.

The bill also provides for nine members of the CFX governing board as follows:

- The chairs of the boards of county commission of Seminole, Lake, and Osceola Counties shall each appoint one member, who may be a commission member or chair;
- The Mayor of Orange County shall appoint a member from the Orange County Commission;
- Three citizen members appointed by the Governor, two of which must be citizens of Orange County; and one member must be a citizen of either Seminole, Lake, or Osceola County;
- The mayor of Orange County; and
- The mayor of the City of Orlando.

The executive director of Florida’s Turnpike Enterprise serves as a nonvoting advisor to the CFX governing body. The Governor’s appointees are to serve four-year terms; county-appointed members are to serve two-year terms; and the terms of current OOCEA board members expire on the effective date of the bill. Except as provided, a person who is an officer or employee of a municipality or county may not be appointed as a CFX board member. Five members of the authority constitute a quorum.

In addition to meeting the requirements of ch. 112, F.S., the bill provides a member or the executive director of the CFX may not:

- Personally represent another person or entity for compensation before the CFX for a period of two years after vacating his or her position.
- Within two years after retirement or termination, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, F.S., that

was doing business with the CFX at any time during the person's membership on or employment by the authority.

- After retirement or termination, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, F.S., in connection with a contract in which the member or executive director personally and substantially participated in through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority.

A violation of this subsection is generally punishable by a number of measures, depending upon whether the violator is a public officer, an employee or person designated as a public officer who otherwise would be deemed to be an employee, or a former public officer or employee. The possible penalties range, for example, from impeachment or removal from office, suspension or dismissal from employment, and loss of some portion of salary, to public censure and reprimand, a \$10,000 civil penalty, and restitution of any benefits received because of a violation.<sup>9</sup>

The bill also requires the following annual disclosures on a disclosure form:

- Any relationship a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.
- Whether a relative of such board member, employee, or consultant is a registered lobbyist, and if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.
- Any and all interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within, or within a one-half mile radius of, any actual or prospective authority roadway project. The executive director shall provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners, to all board members, employees, and consultants.

Furthermore, the CFX board members, employees, and consultants who hold positions that may influence CFX decisions are required to refrain from engaging in any relationship that may adversely affect their judgment.

In addition, the bill requires the CFX general counsel to serve as the CFX ethics officer and:

- The required disclosure forms must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.
- The conflict of interest process shall be outlined in the CFX's Code of Ethics.
- Authority employees and consultants are prohibited from serving on the governing body of the authority while employed by or under contract with the authority.
- Employees shall be adequately informed and trained on the code of ethics and shall continually participate in ongoing ethics education.

**Section 4** amends s. 348.754, F.S., relating to the purposes and powers of the authority, to:

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<sup>9</sup> Section 112.317, F.S.

- Specify the area served by the authority to be within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties, except as otherwise specifically provided by law;
- Authorize the CFX to construct the Central Florida Expressway System, including rapid transit, trams, fixed guideways, thoroughfares, and boulevards;
- Authorize the CFX to construct, operate, and maintain roads, bridges, and transportation facilities, and electronic toll payment systems on the roads, bridges, and transportation facilities outside the boundaries of Orange, Seminole, Lake, and Osceola Counties with the consent of the county within whose jurisdiction the activities occur; and
- Prohibit the CFX from constructing any extensions, additions, or improvements to the expressway system in Lake County without the prior consent of the FDOT Secretary to ensure the continued financial feasibility of the construction of the Wekiva Parkway by the FDOT.

The term of authorized existing lease-purchase agreements is extended from 40 to 99 years. However, the bill precludes the CFX from entering into any other lease-purchase agreements with the FDOT, and from amending the existing agreement between the OOCEA and the FDOT to expand or increase the FDOT's obligations unless it is determined by the FDOT that an amendment is necessary to permit the refunding of bonds issued prior to July 1, 2013.

Toll revenues attributable to an increase in toll rates charged on or after the effective date of the bill for the use of a portion of the system may not be used to construct or expand a different portion of the system, unless a two-thirds majority of the members of the authority approves the use of revenues, with certain exceptions. Notwithstanding s. 338.165, F.S., and except as otherwise prohibited, the bill provides that the authority may, within the right-of-way of the expressway system, use excess revenues to finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of an intermodal facility or facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system.

The requirement for approval of the municipal governing board of a project route prior to the acquisition of right-of-way for a project within the boundaries of Orange County is removed, as are provisions authorizing the CFX to waive payment and performance bonds on certain construction contracts and related small business provisions.

**Sections 5 through 11** conform terminology and make grammatical and editorial changes by amending:

- Section 348.7543, F.S., relating to bond financing authority for improvements by the CFX;
- Section 348.7544, F.S., relating to construction and financing of the Northwest Beltway Part A;
- Section 348.7545, F.S., relating to construction and financing of the Western Beltway Part C;
- Section 348.7546, F.S., relating to construction and financing of the Wekiva Parkway;
- Section 348.7547, F.S., relating to construction and financing of the Maitland Boulevard Extension and the Northwest Beltway Part A realignment;
- Section 348.755, F.S., relating to bonds of the authority; and
- Section 348.756, F.S., relating to remedies of the bondholders.

**Section 12** amends s. 348.757, F.S., to provide that upon the termination of the current lease-purchase agreement between the OOCEA and the FDOT, title in fee simple absolute to the former OOCEA system must be transferred to the state.

**Sections 13 through 17 and section 19** conform terminology and make grammatical and editorial changes by amending:

- Section 348.758, F.S., relating to appointment of the FDOT as construction agent for the authority;
- Section 348.759, F.S., relating to acquisition of lands and property;
- Section 348.760, F.S., relating to cooperation with other units, boards, agencies, and individuals;
- Section 348.761, F.S., relating to covenants of the state;
- Section 348.765, F.S., relating to complete and additional authority; and
- Section 369.317, F.S., relating to the Wekiva Parkway.

**Section 18** amends s. 348.9953, F.S., relating to the purposes and powers of the OCX, to provide that the purposes and powers of the OCX may only be exercised with respect to the Poinciana Parkway, and the OCX may exist only until the earlier of December 31, 2016, or the completion of construction of the Poinciana Parkway. OCX's expressway system is also limited to the Poinciana Parkway as described in the OCX Master Plan. The OCX may construct additions and improvements to the Parkway that modify or revise the project but are within limits described in the Master Plan.

**Section 20** amends s. 369.324, F.S., to remove and replace references to the OOCEA and to the previously repealed Seminole County Expressway Authority and revise the composition of the Wekiva River Basin Commission as a result of the repeal of the Seminole County Expressway Authority.

**Section 21** provides that although, the CFX governing body will have one or more members from Osceola County upon the effective date of the bill and may employ the specified purposes and powers regarding Osceola County, the OCX shall continue solely for the purpose of planning and construction of the Poinciana Parkway. The bill restates in this section that upon the earlier of December 31, 2016, or completion of construction of the Poinciana Parkway, all powers, governance, and control of the Osceola County Expressway System and the assets, liabilities, facilities, tangible and intangible property and any rights in the property, as well as any other legal rights, are transferred to the CFX. The bill also repeals part V of ch. 348, F.S., which creates the OCX, on the same date as the transfer.

The CFX is directed to comply with all obligations of any other governmental entities incurred on behalf of the OCX system, including any obligations of Osceola County relating to operations and maintenance of the OCX system and any loan repayment obligations, including State Infrastructure Bank loans.

Except with respect to bonds or other debt obligations originally issued by Osceola County or the OCX for financing the Poinciana Parkway, which remains solely subject to the covenants and agreements of Osceola County to make payments for any debt service shortfalls, payment obligations transferred to the CFX are to be made from revenues available after payment of

specified amounts. This effectively makes Osceola County responsible for the payment of any debt service not covered by the toll revenue of the Poinciana Parkway.

**Section 21** provides that the act shall take effect on becoming 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:

None.

C. Government Sector Impact:

According to the FDOT, there is a possible indeterminate negative impact as CS/CS/SB 230 extends the maximum term of the lease-purchase agreement from the longer of 40 years and bonds outstanding to the longer of 99 years and bonds outstanding.

Authority is provided to amend the existing lease-purchase agreement between the OOCEA and the FDOT, if the FDOT determines that the amendment is necessary to permit the refunding of bonds issues prior to July 1, 2013. This could increase the FDOT's existing obligations.

The OOCEA's current long term debt obligation to the FDOT is over \$211 million.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

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<sup>10</sup> 2014 FDOT Legislative Bill Analysis, SB 230. On file in the Senate Transportation Committee.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 348.751, 348.752, 348.753, 348.754, 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, 348.756, 348.757, 348.758, 348.759, 348.760, 348.761, 348.765, 348.9953, 369.317, and 369.324.

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

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

**CS/CS by Appropriations on March 13, 2014:**

The CS:

- Revises the date of the assumption of control of the OOECA by the CFX immediately upon the effective date of the bill;
- Revises the date of the assumption of control of the OCX by the CFX to the earlier of December 31, 2016, or the completion of construction by the OCX of the Poinciana Parkway.
- Limits the purpose of the OCX solely to the planning and construction of the Poinciana Parkway.
- Provides that bonds or other debt obligations originally issued by Osceola County or the OCX to finance the Poinciana Parkway remain solely subject to the covenants and agreements of Osceola County to make payments for any debt service shortfalls.
- Revises the composition of the governing body of the CFX.
- Provides ethics and financial disclosure requirements for a member or the executive director of the CFX, as well as ethics requirements for the CFX employees and consultants.

**CS by Transportation on January 9, 2014:**

The CS incorporates a technical amendment to change the word “chapter” to the word “part” (lines 72 and 88 of the original bill) to reference the appropriate part of ch. 348, F.S., applicable to the re-named Central Florida Expressway Authority and to correct a title error.

**B. Amendments:**

None.



337450

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Gardiner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 159 - 346

and insert:

(2) (a) Immediately upon the effective date of this act, the Central Florida Expressway Authority shall assume the governance and control of the Orlando-Orange County Expressway Authority System, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property. Any rights in such property, and other legal rights of the





337450

11 authority, are transferred to the Central Florida Expressway  
12 Authority. The Central Florida Expressway Authority shall  
13 immediately succeed to and assume the powers, responsibilities,  
14 and obligations of the Orlando-Orange County Expressway  
15 Authority.

16 (b) The transfer pursuant to this subsection is subject to  
17 the terms and covenants provided for the protection of the  
18 holders of the Orlando-Orange County Expressway Authority bonds  
19 in the lease-purchase agreement and the resolutions adopted in  
20 connection with the issuance of the bonds. Further, the transfer  
21 does not impair the terms of the contract between the Orlando-  
22 Orange County Expressway Authority and the bondholders, does not  
23 act to the detriment of the bondholders, and does not diminish  
24 the security for the bonds. After the transfer, the Central  
25 Florida Expressway Authority shall operate and maintain the  
26 expressway system and any other facilities of the Orlando-Orange  
27 County Expressway Authority in accordance with the terms,  
28 conditions, and covenants contained in the bond resolutions and  
29 lease-purchase agreement securing the bonds of the authority.  
30 The Central Florida Expressway Authority shall collect toll  
31 revenues and apply them to the payment of debt service as  
32 provided in the bond resolution securing the bonds, and shall  
33 expressly assume all obligations relating to the bonds to ensure  
34 that the transfer will have no adverse impact on the security  
35 for the bonds. The transfer does not make the obligation to pay  
36 the principal and interest on the bonds a general liability of  
37 the Central Florida Expressway Authority or pledge additional  
38 expressway system revenues to payment of the bonds. Revenues  
39 that are generated by the expressway system and other facilities



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40 of the Central Florida Expressway Authority which were pledged  
41 by the Orlando-Orange County Expressway Authority to payment of  
42 the bonds will remain subject to the pledge for the benefit of  
43 the bondholders. The transfer does not modify or eliminate any  
44 prior obligation of the department to pay certain costs of the  
45 expressway system from sources other than revenues of the  
46 expressway system.

47 (3)~~(2)~~ The governing body of the authority shall consist of  
48 nine ~~five~~ members. The chairs of the boards of the county  
49 commissions of Seminole, Lake, and Osceola Counties shall each  
50 appoint one member, who may be a commission member or chair. The  
51 Mayor of Orange County shall appoint a member from the Orange  
52 County Commission. The Governor shall appoint three citizen  
53 members. Of the Governor's appointments, two ~~Three~~ members must  
54 shall be citizens of Orange County and one member must be a  
55 citizen of either Seminole County, Lake County, or Osceola  
56 County, who shall be appointed by the Governor. The eighth  
57 ~~fourth~~ member must shall be, ~~ex officio,~~ the Mayor of chair of  
58 the ~~County Commissioners of~~ Orange County. The ninth member must  
59 be the Mayor of the City of Orlando. The executive director of  
60 Florida Turnpike Enterprise shall serve as a nonvoting advisor  
61 to the governing body of the authority, and the ~~fifth~~ member  
62 shall be, ~~ex officio,~~ the ~~district secretary of the Department~~  
63 of ~~Transportation serving in the district that contains Orange~~  
64 County. The ~~term of~~ Each ~~appointed~~ member appointed by the  
65 Governor shall serve ~~be~~ for 4 years. Each county-appointed  
66 member shall serve for 2 years. The terms of standing board  
67 members expire upon the effective date of this act. Each  
68 appointed member shall hold office until his or her successor



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69 has been appointed and has qualified. A vacancy occurring during  
70 a term must ~~shall~~ be filled only for the balance of the  
71 unexpired term. Each appointed member of the authority shall be  
72 a person of outstanding reputation for integrity,  
73 responsibility, and business ability, but, except as provided in  
74 this subsection, a ~~no~~ person who is an officer or employee of a  
75 municipality or any city or of Orange county may not in any  
76 other capacity ~~shall~~ be an appointed member of the authority.  
77 Any member of the authority is ~~shall be~~ eligible for  
78 reappointment.

79 (4) ~~(3)~~ (a) The authority shall elect one of its members as  
80 chair of the authority. The authority shall also elect one of  
81 its members as vice chair, one of its members as a secretary,  
82 and one of its members as a treasurer ~~who may or may not be~~  
83 ~~members of the authority.~~ The chair, vice chair, secretary, and  
84 treasurer shall hold such offices at the will of the authority.  
85 Five ~~Three~~ members of the authority ~~shall~~ constitute a quorum,  
86 and the vote of five ~~three~~ members is ~~shall be~~ necessary for any  
87 action taken by the authority. A ~~No~~ vacancy in the authority  
88 does not ~~shall~~ impair the right of a quorum of the authority to  
89 exercise all of the rights and perform all of the duties of the  
90 authority.

91 (b) Upon the effective date of his or her appointment, or  
92 as soon thereafter as practicable, each appointed member of the  
93 authority shall enter upon his or her duties. Members of the  
94 authority may be removed from office by the Governor for  
95 misconduct, malfeasance, misfeasance, or nonfeasance in office.

96 (c) Members of the authority are entitled to receive  
97 reimbursement from the authority for travel and other necessary



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98 expenses incurred in connection with the business of the  
99 authority as provided in s. 112.061, but may not draw salaries  
100 or other compensation.

101 (5)(4)(a) The authority may employ an executive secretary,  
102 an executive director, its own counsel and legal staff,  
103 technical experts, and the such engineers, and such employees  
104 that, permanent or temporary, as it requires. The authority may  
105 require and may determine the qualifications and fix the  
106 compensation of such persons, firms, or corporations, and may  
107 employ a fiscal agent or agents; provided, however, that the  
108 authority shall solicit sealed proposals from at least three  
109 persons, firms, or corporations for the performance of any  
110 services as fiscal agents. The authority may delegate to one or  
111 more of its agents or employees the such of its power as it  
112 deems shall deem necessary to carry out the purposes of this  
113 part, subject always to the supervision and control of the  
114 authority. Members of the authority may be removed from their  
115 office by the Governor for misconduct, malfeasance, misfeasance,  
116 or nonfeasance in office.

117 ~~(b) Members of the authority are shall be entitled to~~  
118 ~~receive from the authority their travel and other necessary~~  
119 ~~expenses incurred in connection with the business of the~~  
120 ~~authority as provided in s. 112.061, but may not they shall draw~~  
121 ~~no salaries or other compensation.~~

122 (6) In addition to meeting the requirements of chapter 112,  
123 a member or the executive director of the authority may not:

124 (a) Personally represent another person or entity for  
125 compensation before the authority for a period of 2 years  
126 following vacation of his or her position.



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127       (b) Within 2 years after retirement or termination, have an  
128 employment or contractual relationship with a business entity  
129 other than an agency, as defined in s. 112.312, that was doing  
130 business with the authority at any time during the person's  
131 membership on or employment by the authority.

132       (c) After retirement or termination, have an employment or  
133 contractual relationship with a business entity other than an  
134 agency as defined in s. 112.312, in connection with a contract  
135 in which the member or executive director personally and  
136 substantially participated in through decision, approval,  
137 disapproval, recommendation, rendering of advice, or  
138 investigation while he or she was a member or employee of the  
139 authority.

140       (d) A violation of this subsection is punishable in  
141 accordance with s. 112.317.

142       (7) The authority's general counsel shall serve as the  
143 authority's ethics officer.

144       (8) Authority board members, employees, and consultants who  
145 hold positions that may influence authority decisions shall  
146 refrain from engaging in any relationship that may adversely  
147 affect their judgment in carrying out authority business. The  
148 following disclosures must be made annually on a disclosure form  
149 to prevent such conflicts of interest and preserve the integrity  
150 and transparency of the authority to the public:

151       (a) Any relationship a board member, employee, or  
152 consultant has which affords a current or future financial  
153 benefit to such board member, employee, or consultant, or to a  
154 relative or business associate of such board member, employee,  
155 or consultant, and which a reasonable person would conclude has



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156 the potential to create a prohibited conflict of interest.

157 (b) Whether a relative of such board member, employee, or  
158 consultant is a registered lobbyist, and if so, the names of  
159 such lobbyist's clients. Such names shall be provided in writing  
160 to the ethics officer.

161 (c) Any and all interests in real property that such board  
162 member, employee, or consultant has, or that a relative,  
163 principal, client, or business associate of such board member,  
164 employee, or consultant has whenever such real property is  
165 located within, or within a one-half mile radius of, any actual  
166 or prospective authority roadway project. The executive director  
167 shall provide a corridor map and a property ownership list  
168 reflecting the ownership of all real property within the  
169 disclosure area, or an alignment map with a list of associated  
170 owners, to all board members, employees, and consultants.

171 (9) The disclosure forms required under subsection (8) must  
172 be reviewed by the ethics officer or, if a form is filed by the  
173 general counsel, by the executive director.

174 (10) The conflict of interest process shall be outlined in  
175 the authority's Code of Ethics.

176 (11) Authority employees and consultants are prohibited  
177 from serving on the governing body of the authority while  
178 employed by or under contract with the authority.

179 (12) The code of ethics policy shall be reviewed and  
180 updated by the ethics officer and presented for board approval  
181 at a minimum of once every 2 years.

182 (13) Employees shall be adequately informed and trained on  
183 the code of ethics and shall continually participate in ongoing  
184 ethics education.



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185 Section 4. Section 348.754, Florida Statutes, is amended to  
186 read:

187 348.754 Purposes and powers.—

188 (1) (a) The authority created and established under ~~by the~~  
189 ~~provisions of this part is hereby~~ granted and has ~~shall~~ have the  
190 right to acquire, hold, construct, improve, maintain, operate,  
191 own, and lease in the capacity of lessor, the Central Florida  
192 ~~Orlando-Orange County~~ Expressway System, hereinafter referred to  
193 as "system." Except as otherwise specifically provided by law,  
194 including paragraph (2) (n), the area served by the authority  
195 shall be within the geographical boundaries of Orange, Seminole,  
196 Lake, and Osceola Counties.

197 (b) ~~It is the express intention of this part that said~~  
198 ~~authority,~~ In the construction of the Central Florida said  
199 ~~Orlando-Orange County~~ Expressway System, the authority may ~~shall~~  
200 ~~be authorized to~~ construct any extensions, additions, or  
201 improvements to the said system or appurtenant facilities,  
202 including all necessary approaches, roads, bridges, ~~and~~ avenues  
203 of access, rapid transit, trams, fixed guideways, thoroughfares,  
204 and boulevards with any such changes, modifications, or  
205 revisions of the said project which are ~~as shall be~~ deemed  
206 desirable and proper.

207 (c) Notwithstanding any other provision of this section to  
208 the contrary, to ensure the continued financial feasibility of  
209 the portion of the Wekiva Parkway to be constructed by the  
210 department, the authority may not, without the prior consent of  
211 the secretary of the department, construct any extensions,  
212 additions, or improvements to the expressway system in Lake  
213 County.



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214 (2) The authority ~~is hereby granted, and shall have and~~ may  
215 exercise all powers necessary, appurtenant, convenient, or  
216 incidental to the implementation ~~carrying out~~ of the stated  
217 ~~aforsaid~~ purposes, including, but not ~~without being~~ limited to,  
218 the following rights and powers:

219 (a) To sue and be sued, implead and be impleaded, complain  
220 and defend in all courts.

221 (b) To adopt, use, and alter at will a corporate seal.

222 (c) To acquire by donation or otherwise, purchase, hold,  
223 lease as lessee, and use any franchise or any, property, real,  
224 personal, ~~or~~ mixed, or tangible or intangible, or any options  
225 ~~thereof~~ in its own name or in conjunction with others, or  
226 interest in those options ~~therein~~, necessary or desirable to  
227 carry for ~~carrying~~ out the purposes of the authority, and to  
228 sell, lease as lessor, transfer, and dispose of any property or  
229 interest in the property ~~therein~~ at any time acquired by it.

230 (d) To enter into and make leases for terms not exceeding  
231 99 years, as ~~either~~ lessee or lessor, in order to carry out the  
232 right to lease as specified ~~set forth~~ in this part.

233 (e) To enter into and make lease-purchase agreements with  
234 the department for terms not exceeding 99 ~~40~~ years, or until any  
235 bonds secured by a pledge of rentals pursuant to the agreement  
236 ~~thereunder~~, and any refundings pursuant to the agreement  
237 ~~thereof~~, are fully paid as to both principal and interest,  
238 whichever is longer. The authority is a party to a lease-  
239 purchase agreement between the department and the authority  
240 dated December 23, 1985, as supplemented by a first supplement  
241 to the lease-purchase agreement dated November 25, 1986, and a  
242 second supplement to the lease-purchase agreement dated October





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243 27, 1988. The authority may not enter into other lease-purchase  
244 agreements with the department and may not amend the existing  
245 agreement in a manner that expands or increases the department's  
246 obligations unless the department determines that the agreement  
247 or amendment is necessary to permit the refunding of bonds  
248 issued before July 1, 2013.

249 (f) To fix, alter, charge, establish, and collect rates,  
250 fees, rentals, and other charges for the services and facilities  
251 of the Central Florida Orlando-Orange County Expressway System,  
252 which must rates, fees, rentals and other charges shall always  
253 be sufficient to comply with any covenants made with the holders  
254 of any bonds issued pursuant to this part; provided, however,  
255 ~~that~~ such right and power may be assigned or delegated, by the  
256 authority, to the department. Toll revenues attributable to an  
257 increase in the toll rates charged on or after the effective  
258 date of this act for the use of a portion of the system may not  
259 be used to construct or expand a different portion of the system  
260 unless a two-thirds majority of the members of the authority  
261 votes to approve such use. This requirement does not apply if,  
262 and to the extent that:

263 1. Application of the requirement would violate any  
264 covenant established in a resolution or trust indenture under  
265 which bonds were issued by the Orlando-Orange County Expressway  
266 Authority on or before the effective date of this act; or

267  
268 ===== T I T L E A M E N D M E N T =====

269 And the title is amended as follows:

270 Delete line 17

271 and insert:



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272 technical changes; prohibiting a member or the  
273 executive director of the authority from personally  
274 representing certain persons or entities for a  
275 specified time period; prohibiting a retired or  
276 terminated member or executive director of the  
277 authority from contracting with a business entity  
278 under certain circumstances; providing penalties;  
279 requiring authority board members, employees, and  
280 consultants to make certain annual disclosures;  
281 requiring an ethics officer to review such  
282 disclosures; requiring the authority code of ethics to  
283 include a conflict of interest process; prohibiting  
284 authority employees and consultants from serving on  
285 the board during their employment or contract period;  
286 requiring the code of ethics to be reviewed and  
287 updated at least every 2 years; requiring employees to  
288 participate in ongoing ethics education; amending s.  
289 348.754, F.S.;



474374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Gardiner) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 1030 and 1031

insert:

Section 18. Section 348.9953, Florida Statutes, is amended to read:

348.9953 Purposes and powers.—The purposes and powers of the authority are ~~shall be~~ the same as those identified in the Florida Expressway Authority Act, except that such purposes and powers may only be exercised with respect to the Poinciana



474374

11 Parkway. The Osceola County Expressway Authority may exist only  
12 until the earlier of December 31, 2016, or the completion of  
13 construction of the Poinciana Parkway, a limited access facility  
14 of approximately 9 miles in length in Osceola County with its  
15 northwestern terminus at the intersection of County Road 54 and  
16 US 17/US 92 and its southeastern terminus at the current  
17 intersection of Rhododendron and Cypress Parkway, described in  
18 the Osceola County Expressway Authority May 8, 2012, Master  
19 Plan. The authority's expressway system shall be limited to the  
20 Poinciana Parkway, as it is described in the Osceola County  
21 Expressway Authority May 8, 2012, Master Plan, except that the  
22 authority may construct additions to, or improvements to, the  
23 Poinciana Parkway, including all necessary approaches, roads,  
24 bridges, and avenues of access, with such changes,  
25 modifications, or revisions of the project that are deemed  
26 desirable and proper. However, the authority may not extend the  
27 Poinciana Parkway beyond the project limits described in the  
28 Osceola County Expressway Authority May 8, 2012, Master Plan. In  
29 implementing this act, the authority shall institute procedures  
30 to encourage the awarding of contracts for professional services  
31 and construction to certified minority business enterprises as  
32 defined in s. 288.703. The authority shall develop and implement  
33 activities to encourage the participation of certified minority  
34 business enterprises in the contracting process.

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

37 And the title is amended as follows:

38 Delete line 48

39 and insert:



474374

40 and 348.765, F.S.; conforming terminology and making  
41 technical changes; amending s. 348.9953, F.S.;  
42 limiting the purpose and powers of the Osceola County  
43 Expressway Authority; providing for the termination of  
44 the Osceola County Expressway Authority by a specified  
45 time period; prohibiting the authority from extending  
46 the Poinciana Parkway beyond a specified limit;  
47 amending s. 369.317, F.S.; conforming terminology and



281474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Gardiner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 1159 - 1205

and insert:

Section 1. (1) While the governing body of the authority, upon the effective date of this act, has one or more members from Osceola County as provided in s. 348.753(3), Florida Statutes, and the authority has the purposes and powers described in s. 348.754, Florida Statutes, regarding Osceola County, the Osceola County Expressway Authority shall continue



281474

11 solely for the purpose of planning and construction of the  
12 Poinciana Parkway as provided and permitted in this subsection.  
13 Upon the earlier of December 31, 2016, or the completion of  
14 construction of the Poinciana Parkway, a limited access facility  
15 of approximately 9 miles in length in Osceola County with its  
16 northwestern terminus at the intersection of County Road 54 and  
17 US 17/US 92 and its southeastern terminus at the current  
18 intersection of Rhododendron and Cypress Parkway, described in  
19 the Osceola County Expressway Authority May 8, 2012, Master  
20 Plan, all powers, governance, and control of the Osceola County  
21 Expressway System, created pursuant to part V, chapter 348,  
22 Florida Statutes, is transferred to the Central Florida  
23 Expressway Authority, and the assets, liabilities, facilities,  
24 tangible and intangible property and any rights in the property,  
25 and any other legal rights of the Osceola County Expressway  
26 Authority are transferred to the Central Florida Expressway  
27 Authority. Part V of chapter 348, Florida Statutes, consisting  
28 of ss. 348.9950-348.9961, is repealed on the same date that the  
29 Osceola County Expressway System is transferred to the Central  
30 Florida Expressway Authority.

31 (2) The Central Florida Expressway Authority shall comply  
32 with any and all obligations of any other governmental entities  
33 incurred on behalf of the Osceola County Expressway System,  
34 including any obligations of Osceola County with respect to  
35 operations and maintenance of the Osceola County Expressway  
36 System and any loan repayment obligations, including repayment  
37 obligations with respect to State Infrastructure Bank loans.  
38 Except with respect to the bonds or other debt obligations  
39 originally issued by Osceola County or the Osceola County



281474

40 Expressway Authority for purposes of financing the planning and  
41 construction of the Poinciana Parkway as provided and permitted  
42 in subsection (1), which shall remain solely subject to the  
43 covenants and agreements of Osceola County to make payments for  
44 any debt service shortfalls, payment obligations transferred to  
45 the Central Florida Expressway Authority shall be made from  
46 revenues available for such purpose after payment of all amounts  
47 required:

48 (a) Otherwise by law;

49 (b) By the terms of any resolution authorizing the issuance  
50 of bonds by the authority, the Orlando-Orange County Expressway  
51 Authority, or the Osceola County Expressway Authority;

52 (c) By the terms of any resolution under which bonds are  
53 issued by Osceola County for the purpose of constructing  
54 improvements to the Osceola County Expressway System; and

55 (d) By the terms of the memorandum of understanding between  
56 the Orlando-Orange County Expressway Authority and the  
57 department as ratified by the board of the Orlando-Orange County  
58 Expressway Authority on February 22, 2012.

59 Section 2. The Division of Law Revision and Information is  
60 directed to replace the phrase "the effective date of this act"  
61 wherever it occurs in this act with the date the act becomes a  
62 law.

63 Section 3. This act shall take effect upon becoming a law.

64  
65 ===== T I T L E A M E N D M E N T =====

66 And the title is amended as follows:

67 Delete line 61

68 and insert:





281474

69 other obligations; providing a directive to the  
70 Division of Law Revision and Information; providing an  
71 effective date.

By the Committee on Transportation; and Senator Simmons

596-00985-14

2014230c1

1 A bill to be entitled  
 2 An act relating to the Orlando-Orange County  
 3 Expressway Authority; amending ss. 348.751 and  
 4 348.752, F.S.; renaming the Orlando-Orange County  
 5 Expressway System as the "Central Florida Expressway  
 6 System"; revising definitions; making technical  
 7 changes; amending s. 348.753, F.S.; creating the  
 8 Central Florida Expressway Authority; providing for  
 9 the transfer of governance and control, legal rights  
 10 and powers, responsibilities, terms, and obligations  
 11 to the authority; providing conditions for the  
 12 transfer; revising the composition of the governing  
 13 body of the authority; providing for appointment of  
 14 officers of the authority and for the expiration of  
 15 terms of standing board members; revising quorum and  
 16 voting requirements; conforming terminology and making  
 17 technical changes; amending s. 348.754, F.S.;  
 18 providing that the area served by the authority is  
 19 within the geopolitical boundaries of Orange,  
 20 Seminole, Lake, and Osceola Counties; requiring the  
 21 authority to have prior consent from the Secretary of  
 22 the Department of Transportation to construct an  
 23 extension, addition, or improvement to the expressway  
 24 system in Lake County; extending, to 99 years from 40  
 25 years, the term of a lease-purchase agreement;  
 26 limiting the authority's authority to enter into a  
 27 lease-purchase agreement; limiting the use of certain  
 28 toll-revenues; providing exceptions; removing the  
 29 requirement that the route of a project must be

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

596-00985-14

2014230c1

30 approved by a municipality before the right-of-way can  
 31 be acquired; requiring that the authority encourage  
 32 the inclusion of local-, small-, minority-, and women-  
 33 owned businesses in its procurement and contracting  
 34 opportunities; removing the authority and criteria for  
 35 an authority to waive payment and performance bonds  
 36 for certain public works projects that are awarded  
 37 pursuant to an economic development program;  
 38 conforming terminology and making technical changes;  
 39 amending ss. 348.7543, 348.7544, 348.7545, 348.7546,  
 40 348.7547, 348.755, and 348.756, F.S.; conforming  
 41 terminology and making technical changes; amending s.  
 42 348.757, F.S.; providing that upon termination of the  
 43 lease-purchase agreement of the former Orlando-Orange  
 44 County Expressway System, title in fee simple to the  
 45 former system shall be transferred to the state;  
 46 conforming terminology and making technical changes;  
 47 amending ss. 348.758, 348.759, 348.760, 348.761,  
 48 348.765, and 369.317, F.S.; conforming terminology and  
 49 making technical changes; amending s. 369.324, F.S.;  
 50 revising the membership of the Wekiva River Basin  
 51 Commission; conforming terminology; providing criteria  
 52 for the transfer of the Osceola County Expressway  
 53 System to the Central Florida Expressway Authority;  
 54 providing for the repeal of part V of ch. 348, F.S.,  
 55 when the Osceola County Expressway System is  
 56 transferred to the Central Florida Expressway  
 57 Authority; requiring the Central Florida Expressway  
 58 Authority to reimburse other governmental entities for

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

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2014230c1

59 obligations related to the Osceola County Expressway  
60 System; providing for reimbursement after payment of  
61 other obligations; providing an effective date.

62  
63 Be It Enacted by the Legislature of the State of Florida:

64  
65 Section 1. Section 348.751, Florida Statutes, is amended to  
66 read:

67 348.751 Short title.—This part ~~shall be known and~~ may be  
68 cited as the "Central Florida Orlando-Orange County Expressway  
69 Authority Law."

70 Section 2. Section 348.752, Florida Statutes, is amended to  
71 read:

72 348.752 Definitions.—As used in this part ~~The following~~  
73 ~~terms, whenever used or referred to in this law, shall have the~~  
74 ~~following meanings, except in those instances where the context~~  
75 ~~clearly indicates otherwise:~~

76 (1) The term "agency of the state" means ~~and includes~~ the  
77 state and any department of, or corporation, agency, or  
78 instrumentality ~~heretofore or hereafter~~ created, designated, or  
79 established by, the state.

80 (2) The term "authority" means the body politic and  
81 corporate, and agency of the state created by this part.

82 (3) The term "bonds" means ~~and includes~~ the notes, bonds,  
83 refunding bonds, or other evidences of indebtedness or  
84 obligations, in either temporary or definitive form, which the  
85 authority is authorized to issue pursuant to this part.

86 (4) The term "Central Florida Expressway Authority" means  
87 the body politic and corporate, and agency of the state created

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88 by this part.

89 (5) The term "Central Florida Expressway System" means any  
90 expressway and appurtenant facilities, including all approaches,  
91 roads, bridges, and avenues for the expressway and any rapid  
92 transit, trams, or fixed guideways located within the right-of-  
93 way of an expressway.

94 ~~(4) The term "city" means the City of Orlando.~~

95 ~~(5) The term "county" means the County of Orange.~~

96 (6) The term "department" means the Department of  
97 Transportation existing under chapters 334-339.

98 (7) The term "expressway" has the same meaning is the same  
99 as limited access expressway.

100 (8) The term "federal agency" means and includes the United  
101 States, the President of the United States, and any department  
102 of, or corporation, agency, or instrumentality ~~heretofore or~~  
103 ~~hereafter~~ created, designated, or established by, the United  
104 States.

105 (9) The term "lease-purchase agreement" means the lease-  
106 purchase agreements that which the authority is authorized  
107 ~~pursuant to this part~~ to enter into with the Department of  
108 Transportation pursuant to this part.

109 (10) The term "limited access expressway" means a street or  
110 highway specifically especially designed for through traffic,  
111 and over, from, or to which, ~~a no~~ person does not shall have the  
112 right of easement, use, or access except in accordance with the  
113 rules ~~of and regulations promulgated and established by~~ the  
114 authority governing its use for the use of such facility. Such  
115 highways or streets may be parkways that do not allow traffic  
116 ~~by, from which~~ trucks, buses, and other commercial vehicles

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2014230c1

117 ~~shall be excluded, or they may be~~ freeways open to use by all  
 118 customary forms of street and highway traffic.

119 (11) The term "members" means ~~the governing body of the~~  
 120 authority, and the term "member" means an individual who serves  
 121 on the one of the individuals constituting such governing body  
 122 of the authority.

123 (12) The term "Orange County gasoline tax funds" means ~~all~~  
 124 the revenue derived from the 80-percent surplus gasoline tax  
 125 funds accruing in each year to the Department of Transportation  
 126 for use in Orange County under ~~the provisions of s. 9, Art. XII~~  
 127 of the State Constitution, after deducting deduction only of any  
 128 amounts of said gasoline tax funds previously heretofore pledged  
 129 by the department or the county for outstanding obligations.

130 ~~(13) The term "Orlando-Orange County Expressway System"~~  
 131 means any and all expressways and appurtenant facilities  
 132 thereto, including, but not limited to, all approaches, roads,  
 133 bridges, and avenues of access for said expressway or  
 134 expressways.

135 ~~(13)(14)~~ The term "State Board of Administration" means the  
 136 body corporate existing under the provisions of s. 4, Art. IV of  
 137 the State Constitution, or any successor ~~thereto~~.

138 (14) The term "transportation facilities" means and  
 139 includes the mobile and fixed assets, and the associated real or  
 140 personal property or rights, used in the transportation of  
 141 persons or property by any means of conveyance, and all  
 142 appurtenances, such as, but not limited to, highways; limited or  
 143 controlled access lanes, avenues of access, and facilities;  
 144 vehicles; fixed guideway facilities, including maintenance  
 145 facilities; and administrative and other office space for the

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146 exercise by the authority of the powers and obligations granted  
 147 in this part.

148 ~~(15) Words importing singular number include the plural~~  
 149 ~~number in each case and vice versa, and words importing persons~~  
 150 ~~include firms and corporations.~~

151 Section 3. Section 348.753, Florida Statutes, is amended to  
 152 read:

153 348.753 Central Florida ~~Orlando-Orange County~~ Expressway  
 154 Authority.-

155 (1) There is ~~hereby~~ created and established a body politic  
 156 and corporate, an agency of the state, to be known as the  
 157 Central Florida ~~Orlando-Orange County~~ Expressway Authority,  
 158 hereinafter referred to as "authority."

159 (2) (a) Effective July 1, 2015, the Central Florida  
 160 Expressway Authority shall assume the governance and control of  
 161 the Orlando-Orange County Expressway Authority System, including  
 162 its assets, personnel, contracts, obligations, liabilities,  
 163 facilities, and tangible and intangible property. Any rights in  
 164 such property, and other legal rights of the authority, are  
 165 transferred to the Central Florida Expressway Authority. The  
 166 Central Florida Expressway Authority shall succeed to and assume  
 167 the powers, responsibilities, and obligations of the Orlando-  
 168 Orange County Expressway Authority on July 1, 2015.

169 (b) The transfer pursuant to this subsection is subject to  
 170 the terms and covenants provided for the protection of the  
 171 holders of the Orlando-Orange County Expressway Authority bonds  
 172 in the lease-purchase agreement and the resolutions adopted in  
 173 connection with the issuance of the bonds. Further, the transfer  
 174 does not impair the terms of the contract between the Orlando-

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175 Orange County Expressway Authority and the bondholders, does not  
 176 act to the detriment of the bondholders, and does not diminish  
 177 the security for the bonds. After the transfer, the Central  
 178 Florida Expressway Authority shall operate and maintain the  
 179 expressway system and any other facilities of the Orlando-Orange  
 180 County Expressway Authority in accordance with the terms,  
 181 conditions, and covenants contained in the bond resolutions and  
 182 lease-purchase agreement securing the bonds of the authority.  
 183 The Central Florida Expressway Authority shall collect toll  
 184 revenues and apply them to the payment of debt service as  
 185 provided in the bond resolution securing the bonds, and shall  
 186 expressly assume all obligations relating to the bonds to ensure  
 187 that the transfer will have no adverse impact on the security  
 188 for the bonds. The transfer does not make the obligation to pay  
 189 the principal and interest on the bonds a general liability of  
 190 the Central Florida Expressway Authority or pledge additional  
 191 expressway system revenues to payment of the bonds. Revenues  
 192 that are generated by the expressway system and other facilities  
 193 of the Central Florida Expressway Authority which were pledged  
 194 by the Orlando-Orange County Expressway Authority to payment of  
 195 the bonds will remain subject to the pledge for the benefit of  
 196 the bondholders. The transfer does not modify or eliminate any  
 197 prior obligation of the department to pay certain costs of the  
 198 expressway system from sources other than revenues of the  
 199 expressway system.

200 (3)(2) The governing body of the authority shall consist of  
 201 11 five members. The chairs of the boards of the county  
 202 commissions of Seminole, Lake, and Osceola Counties shall each  
 203 appoint one member, who may be a commission member or chair. The

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204 Governor shall appoint six citizen members. Of the Governor's  
 205 appointments, two ~~Three~~ members must ~~shall~~ be citizens of Orange  
 206 County, one member each must be a citizen of Seminole, Lake, and  
 207 Osceola Counties, and one member may be a citizen of any of the  
 208 identified counties ~~who shall be appointed by the Governor.~~ The  
 209 10th ~~fourth~~ member ~~must shall be, ex officio,~~ the Mayor of chair  
 210 of the County Commissioners of Orange County. The 11th member  
 211 must be the Mayor of the City of Orlando. The executive director  
 212 of Florida Turnpike Enterprise shall serve as a nonvoting  
 213 advisor to the governing body of the authority, ~~and the fifth~~  
 214 member shall be, ex officio, the district secretary of the  
 215 Department of Transportation serving in the district that  
 216 contains Orange County. The term of Each appointed member  
 217 appointed by the Governor shall ~~serve be~~ for 4 years. Each  
 218 county-appointed member shall serve for 2 years. The terms of  
 219 standing board members expire on July 1, 2015. Each appointed  
 220 member shall hold office until his or her successor has been  
 221 appointed and has qualified. A vacancy occurring during a term  
 222 must ~~shall~~ be filled only for the balance of the unexpired term.  
 223 Each appointed member of the authority shall be a person of  
 224 outstanding reputation for integrity, responsibility, and  
 225 business ability, but, ~~except as provided in this subsection, a~~  
 226 ~~ne~~ person who is an officer or employee of a municipality or any  
 227 city ~~or of Orange county~~ may not in any other capacity shall be  
 228 an appointed member of the authority. Any member of the  
 229 authority is ~~shall be~~ eligible for reappointment.

230 (4)(3)(a) The authority shall elect one of its members as  
 231 chair of the authority. The authority shall also elect one of  
 232 its members as vice chair, one of its members as a secretary,

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233 and one of its members as a treasurer who may or may not be  
 234 ~~members of the authority~~. The chair, vice chair, secretary, and  
 235 treasurer shall hold such offices at the will of the authority.  
 236 Six ~~Three~~ members of the authority shall constitute a quorum,  
 237 and the vote of six ~~three~~ members is ~~shall be~~ necessary for any  
 238 action taken by the authority. A ~~No~~ vacancy in the authority  
 239 does not ~~shall~~ impair the right of a quorum of the authority to  
 240 exercise all of the rights and perform all of the duties of the  
 241 authority.

242 (b) Upon the effective date of his or her appointment, or  
 243 as soon thereafter as practicable, each appointed member of the  
 244 authority shall enter upon his or her duties.

245 (5) ~~(4)~~ (a) The authority may employ an executive secretary,  
 246 an executive director, its own counsel and legal staff,  
 247 technical experts, and the ~~such~~ engineers, and ~~such~~ employees  
 248 that, permanent or temporary, as it requires. The authority may  
 249 ~~require and~~ may determine the qualifications and fix the  
 250 compensation of such persons, firms, or corporations, and may  
 251 employ a fiscal agent or agents; provided, however, that the  
 252 authority shall solicit sealed proposals from at least three  
 253 persons, firms, or corporations for the performance of any  
 254 services as fiscal agents. The authority may delegate to one or  
 255 more of its agents or employees the ~~such of its power as~~ it  
 256 deems ~~shall deem~~ necessary to carry out the purposes of this  
 257 part, subject always to the supervision and control of the  
 258 authority. Members of the authority may be removed from ~~their~~  
 259 office by the Governor for misconduct, malfeasance, misfeasance,  
 260 or nonfeasance in office.

261 (b) Members of the authority are ~~shall be~~ entitled to

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262 receive from the authority their travel and other necessary  
 263 expenses incurred in connection with the business of the  
 264 authority as provided in s. 112.061, but may not ~~they shall~~ draw  
 265 ~~ne~~ salaries or other compensation.

266 Section 4. Section 348.754, Florida Statutes, is amended to  
 267 read:

268 348.754 Purposes and powers.—

269 (1) (a) The authority created and established under ~~by the~~  
 270 ~~provisions of~~ this part is hereby granted and has ~~shall~~ have the  
 271 right to acquire, hold, construct, improve, maintain, operate,  
 272 own, and lease in the capacity of lessor, the Central Florida  
 273 Orlando-Orange County Expressway System, hereinafter referred to  
 274 as "system." Except as otherwise specifically provided by law,  
 275 including paragraph (2) (n), the area served by the authority  
 276 shall be within the geographical boundaries of Orange, Seminole,  
 277 Lake, and Osceola Counties.

278 (b) ~~It is the express intention of this part that said~~  
 279 ~~authority~~, In the construction of the Central Florida ~~said~~  
 280 Orlando-Orange County Expressway System, the authority may ~~shall~~  
 281 ~~be authorized to~~ construct any extensions, additions, or  
 282 improvements to the ~~said~~ system or appurtenant facilities,  
 283 including all necessary approaches, roads, bridges, and avenues  
 284 of access, rapid transit, trams, fixed guideways, thoroughfares,  
 285 and boulevards with any ~~such~~ changes, modifications, or  
 286 revisions of the ~~said~~ project which are ~~as shall be~~ deemed  
 287 desirable and proper.

288 (c) Notwithstanding any other provision of this section to  
 289 the contrary, to ensure the continued financial feasibility of  
 290 the portion of the Wekiva Parkway to be constructed by the

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291 department, the authority may not, without the prior consent of  
 292 the secretary of the department, construct any extensions,  
 293 additions, or improvements to the expressway system in Lake  
 294 County.

295 (2) The authority ~~is hereby granted, and shall have and~~ may  
 296 exercise all powers necessary, appurtenant, convenient, or  
 297 incidental to the implementation carrying out of the stated  
 298 ~~aforsaid~~ purposes, including, but not without being limited to,  
 299 the following rights and powers:

300 (a) To sue and be sued, implead and be impleaded, complain  
 301 and defend in all courts.

302 (b) To adopt, use, and alter at will a corporate seal.

303 (c) To acquire by donation or otherwise, purchase, hold,  
 304 lease as lessee, and use any franchise or any property, real,  
 305 personal, ~~or~~ mixed, or tangible or intangible, or any options  
 306 ~~thereof~~ in its own name or in conjunction with others, or  
 307 interest in those options therein, necessary or desirable to  
 308 carry for carrying out the purposes of the authority, and to  
 309 sell, lease as lessor, transfer, and dispose of any property or  
 310 interest in the property therein at any time acquired by it.

311 (d) To enter into and make leases for terms not exceeding  
 312 99 years, as ~~either~~ lessee or lessor, in order to carry out the  
 313 right to lease as specified set forth in this part.

314 (e) To enter into and make lease-purchase agreements with  
 315 the department for terms not exceeding 99 40 years, or until any  
 316 bonds secured by a pledge of rentals pursuant to the agreement  
 317 ~~thereunder~~, and any refundings pursuant to the agreement  
 318 ~~thereof~~, are fully paid as to both principal and interest,  
 319 whichever is longer. The authority is a party to a lease-

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320 purchase agreement between the department and the authority  
 321 dated December 23, 1985, as supplemented by a first supplement  
 322 to the lease-purchase agreement dated November 25, 1986, and a  
 323 second supplement to the lease-purchase agreement dated October  
 324 27, 1988. The authority may not enter into other lease-purchase  
 325 agreements with the department and may not amend the existing  
 326 agreement in a manner that expands or increases the department's  
 327 obligations unless the department determines that the agreement  
 328 or amendment is necessary to permit the refunding of bonds  
 329 issued before July 1, 2013.

330 (f) To fix, alter, charge, establish, and collect rates,  
 331 fees, rentals, and other charges for the services and facilities  
 332 of the Central Florida Orlando Orange County Expressway System,  
 333 which must rates, fees, rentals and other charges shall always  
 334 be sufficient to comply with any covenants made with the holders  
 335 of any bonds issued pursuant to this part; ~~provided,~~ however,  
 336 ~~that~~ such right and power may be assigned or delegated, by the  
 337 authority, to the department. Toll revenues attributable to an  
 338 increase in the toll rates charged on or after July 1, 2015, for  
 339 the use of a facility or portion of a facility may not be used  
 340 to construct or expand a different facility unless a two-thirds  
 341 majority of the members of the authority votes to approve such  
 342 use. This requirement does not apply if, and to the extent that:

343 1. Application of the requirement would violate any  
 344 covenant established in a resolution or trust indenture under  
 345 which bonds were issued by the Orlando-Orange County Expressway  
 346 Authority on or before July 1, 2015; or

347 2. Application of the requirement would cause the authority  
 348 to be unable to meet its obligations under the terms of the

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349 memorandum of understanding between the authority and the  
 350 department as ratified by the Orlando-Orange County Expressway  
 351 Authority board on February 22, 2012.

352  
 353 Notwithstanding s. 338.165, and except as otherwise prohibited  
 354 by this part, to the extent revenues of the expressway system  
 355 exceed amounts required to comply with any covenants made with  
 356 the holders of bonds issued pursuant to this part, revenues may  
 357 be used for purposes enumerated in subsection (6), provided the  
 358 expenditures are consistent with the metropolitan planning  
 359 organization's adopted long-range plan.

360 (g) To borrow money, make and issue negotiable notes,  
 361 bonds, refunding bonds, and other evidences of indebtedness or  
 362 obligations, either in temporary or definitive form, ~~hereinafter~~  
 363 ~~in this chapter sometimes called "bonds" of the authority,~~ for  
 364 the purpose of financing all or part of the improvement or  
 365 extension of the Central Florida Orlando-Orange County  
 366 Expressway System, and appurtenant facilities, including all  
 367 approaches, streets, roads, bridges, and avenues of access for  
 368 the Central Florida ~~said Orlando-Orange County~~ Expressway System  
 369 and for any other purpose authorized by this part, ~~said bonds to~~  
 370 ~~mature in not exceeding 40 years from the date of the issuance~~  
 371 ~~thereof,~~ and to secure the payment of such bonds or any part  
 372 thereof by a pledge of any or all of its revenues, rates, fees,  
 373 rentals, or other charges, including all or any portion of the  
 374 Orange County gasoline tax funds received by the authority  
 375 pursuant to ~~the terms of~~ any lease-purchase agreement between  
 376 the authority and the department; and in general to provide for  
 377 the security of ~~the said~~ bonds and the rights and remedies of

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378 the holders thereof. ~~Provided, However, that~~ no portion of the  
 379 Orange County gasoline tax funds ~~may shall~~ be pledged for the  
 380 construction of any project for which a toll is to be charged  
 381 unless the anticipated ~~toll is~~ tolls are reasonably estimated by  
 382 the board of county commissioners, at the date of its resolution  
 383 pledging ~~the said~~ funds, to be sufficient to cover the principal  
 384 and interest of such obligations during the period when ~~the said~~  
 385 pledge of funds is shall be in effect. The bonds issued under  
 386 this paragraph must mature not more than 40 years after their  
 387 issue date.

388 1. The authority shall reimburse Orange County for any sums  
 389 expended from ~~the said~~ gasoline tax funds used for the payment  
 390 of such obligations. Any gasoline tax funds so disbursed must  
 391 shall be repaid when the authority deems it practicable,  
 392 together with interest at the highest rate applicable to any  
 393 obligations of the authority.

394 2. If, pursuant to this section, In the event the authority  
 395 funds shall determine to fund or refunds refund any bonds  
 396 previously theretofore issued by ~~the said~~ authority, ~~or the by~~  
 397 said commission before the bonds mature as aforesaid prior to  
 398 the maturity thereof, the proceeds of such funding or refunding  
 399 must bonds shall, pending the prior redemption of ~~these the~~  
 400 bonds to be funded or refunded, be invested in direct  
 401 obligations of the United States, ~~and it is the express~~  
 402 intention of this part that such outstanding bonds may be funded  
 403 or refunded by the issuance of bonds pursuant to this part.

404 (h) To make contracts ~~of every name and nature,~~ including,  
 405 but not limited to, partnerships providing for participation in  
 406 ownership and revenues, and to execute all instruments necessary

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407 or convenient for conducting ~~the carrying on of~~ its business.

408 (i) Notwithstanding paragraphs (a)-(h), ~~Without limitation~~  
409 ~~of the foregoing,~~ to borrow money and accept grants from, and to  
410 enter into contracts, leases, or other transactions with any  
411 federal agency, the state, any agency of the state, the County  
412 of Orange, the City of Orlando, or with any other public body of  
413 the state.

414 (j) To have the power of eminent domain, including the  
415 procedural powers granted under both chapters 73 and 74.

416 (k) To pledge, hypothecate, or otherwise encumber ~~all or~~  
417 any part of the revenues, rates, fees, rentals, or other charges  
418 or receipts of the authority, including all or any portion of  
419 the Orange County gasoline tax funds received by the authority  
420 pursuant to the terms of any lease-purchase agreement between  
421 the authority and the department, as security for ~~all or~~ any of  
422 the obligations of the authority.

423 (l) To enter into partnership and other agreements  
424 respecting ownership and revenue participation in order to  
425 facilitate financing and constructing the Western Beltway, or  
426 portions thereof.

427 (m) To do everything ~~all acts and things~~ necessary or  
428 convenient for the conduct of its business and the general  
429 welfare of the authority, in order to comply with ~~carry out the~~  
430 ~~powers granted to it by~~ this part or any other law.

431 (n) With the consent of the county within whose  
432 jurisdiction the following activities occur, the authority shall  
433 have the right to construct, operate, and maintain roads,  
434 bridges, avenues of access, transportation facilities,  
435 thoroughfares, and boulevards outside the jurisdictional

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436 boundaries of Orange, Seminole, Lake, and Osceola Counties  
437 County, together with the right to construct, repair, replace,  
438 operate, install, and maintain electronic toll payment systems  
439 thereon, ~~with all necessary and incidental powers to accomplish~~  
440 ~~the foregoing.~~

441 (3) The authority ~~does not shall~~ have the ~~no~~ power ~~at any~~  
442 ~~time or in any manner~~ to pledge the credit or taxing power of  
443 the state or any political subdivision or agency thereof,  
444 including any city and any county ~~the City of Orlando and the~~  
445 ~~County of Orange,~~ nor may ~~nor shall~~ any of the authority's  
446 obligations be deemed to be obligations of the state or of any  
447 political subdivision or agency thereof, nor may ~~nor shall~~ the  
448 state or any political subdivision or agency thereof, except the  
449 authority, be liable for the payment of the principal of or  
450 interest on such obligations.

451 ~~(4) Anything in this part to the contrary notwithstanding,~~  
452 ~~acquisition of right-of-way for a project of the authority which~~  
453 ~~is within the boundaries of any municipality in Orange County~~  
454 ~~shall not be begun unless and until the route of said project~~  
455 ~~within said municipality has been given prior approval by the~~  
456 ~~governing body of said municipality.~~

457 ~~(4)-(5)~~ The authority has ~~shall~~ have no power other than by  
458 consent of an affected Orange county or any affected city, to  
459 enter into any agreement which would legally prohibit the  
460 construction of a any road by the respective county or city  
461 ~~Orange County or by any city within Orange County.~~

462 (5) The authority shall encourage the inclusion of local-,  
463 small-, minority-, and women-owned businesses in its procurement  
464 and contracting opportunities.

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465 (6)(a) The authority may, within the right-of-way of the  
 466 expressway system, finance or refinance the planning, design,  
 467 acquisition, construction, extension, rehabilitation, equipping,  
 468 preservation, maintenance, or improvement of an intermodal  
 469 facility or facilities, a multimodal corridor or corridors, or  
 470 any programs or projects that will improve the levels of service  
 471 on the expressway system Notwithstanding s. 255.05, the Orlando-  
 472 Orange County Expressway Authority may waive payment and  
 473 performance bonds on construction contracts for the construction  
 474 of a public building, for the prosecution and completion of a  
 475 public work, or for repairs on a public building or public work  
 476 that has a cost of \$500,000 or less and when the project is  
 477 awarded pursuant to an economic development program for the  
 478 encouragement of local small businesses that has been adopted by  
 479 the governing body of the Orlando-Orange County Expressway  
 480 Authority pursuant to a resolution or policy.

481 (b) The authority's adopted criteria for participation in  
 482 the economic development program for local small businesses  
 483 requires that a participant:

- 484 1. Be an independent business.
- 485 2. Be principally domiciled in the Orange County Standard  
 486 Metropolitan Statistical Area.
- 487 3. Employ 25 or fewer full-time employees.
- 488 4. Have gross annual sales averaging \$3 million or less  
 489 over the immediately preceding 3 calendar years with regard to  
 490 any construction element of the program.
- 491 5. Be accepted as a participant in the Orlando-Orange  
 492 County Expressway Authority's microcontracts program or such  
 493 other small business program as may be hereinafter enacted by

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494 ~~the Orlando-Orange County Expressway Authority.~~

495 ~~6. Participate in an educational curriculum or technical~~  
 496 ~~assistance program for business development that will assist the~~  
 497 ~~small business in becoming eligible for bonding.~~

498 ~~(c) The authority's adopted procedures for waiving payment~~  
 499 ~~and performance bonds on projects with values not less than~~  
 500 ~~\$200,000 and not exceeding \$500,000 shall provide that payment~~  
 501 ~~and performance bonds may only be waived on projects that have~~  
 502 ~~been set aside to be competitively bid on by participants in an~~  
 503 ~~economic development program for local small businesses. The~~  
 504 ~~authority's executive director or his or her designee shall~~  
 505 ~~determine whether specific construction projects are suitable~~  
 506 ~~for:~~

- 507 1. Bidding under the authority's microcontracts program by  
 508 registered local small businesses; and
- 509 2. Waiver of the payment and performance bond.

510 The decision of the authority's executive director or deputy  
 511 executive director to waive the payment and performance bond  
 512 shall be based upon his or her investigation and conclusion that  
 513 there exists sufficient competition so that the authority  
 514 receives a fair price and does not undertake any unusual risk  
 515 with respect to such project.

516 (d) For any contract for which a payment and performance  
 517 bond has been waived pursuant to the authority set forth in this  
 518 section, the Orlando-Orange County Expressway Authority shall  
 519 pay all persons defined in s. 713.01 who furnish labor,  
 520 services, or materials for the prosecution of the work provided  
 521 for in the contract to the same extent and upon the same  
 522

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523 ~~conditions that a surety on the payment bond under s. 255.05~~  
 524 ~~would have been obligated to pay such persons if the payment and~~  
 525 ~~performance bond had not been waived. The authority shall record~~  
 526 ~~notice of this obligation in the manner and location that surety~~  
 527 ~~bonds are recorded. The notice shall include the information~~  
 528 ~~describing the contract that s. 255.05(1) requires be stated on~~  
 529 ~~the front page of the bond. Notwithstanding that s. 255.05(9)~~  
 530 ~~generally applies when a performance and payment bond is~~  
 531 ~~required, s. 255.05(9) shall apply under this subsection to any~~  
 532 ~~contract on which performance or payment bonds are waived and~~  
 533 ~~any claim to payment under this subsection shall be treated as a~~  
 534 ~~contract claim pursuant to s. 255.05(9).~~

535 ~~(e) A small business that has been the successful bidder on~~  
 536 ~~six projects for which the payment and performance bond was~~  
 537 ~~waived by the authority pursuant to paragraph (a) shall be~~  
 538 ~~ineligible to bid on additional projects for which the payment~~  
 539 ~~and performance bond is to be waived. The local small business~~  
 540 ~~may continue to participate in other elements of the economic~~  
 541 ~~development program for local small businesses as long as it is~~  
 542 ~~eligible.~~

543 ~~(f) The authority shall conduct bond eligibility training~~  
 544 ~~for businesses qualifying for bond waiver under this subsection~~  
 545 ~~to encourage and promote bond eligibility for such businesses.~~

546 ~~(g) The authority shall prepare a biennial report on the~~  
 547 ~~activities undertaken pursuant to this subsection to be~~  
 548 ~~submitted to the Orange County legislative delegation. The~~  
 549 ~~initial report shall be due December 31, 2010.~~

550 Section 5. Section 348.7543, Florida Statutes, is amended  
 551 to read:

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552 348.7543 Improvements, bond financing authority for.-  
 553 Pursuant to s. 11(f), Art. VII of the State Constitution, the  
 554 Legislature ~~hereby~~ approves for bond financing by the Central  
 555 Florida Orlando-Orange County Expressway Authority improvements  
 556 to toll collection facilities, interchanges to the legislatively  
 557 approved expressway system, and any other facility appurtenant,  
 558 necessary, or incidental to the approved system. Subject to  
 559 terms and conditions of applicable revenue bond resolutions and  
 560 covenants, such costs may be financed in whole or in part by  
 561 revenue bonds issued pursuant to s. 348.755(1)(a) or (b) whether  
 562 currently issued or issued in the future, or by a combination of  
 563 such bonds.

564 Section 6. Section 348.7544, Florida Statutes, is amended  
 565 to read:

566 348.7544 Northwest Beltway Part A, construction authorized;  
 567 financing.-Notwithstanding s. 338.2275, the Central Florida  
 568 Orlando-Orange County Expressway Authority ~~is hereby~~  
 569 ~~authorized to~~ construct, finance, operate, own, and maintain  
 570 that portion of the Western Beltway known as the Northwest  
 571 Beltway Part A, extending from Florida's Turnpike near Ocoee  
 572 north to U.S. 441 near Apopka, as part of the authority's 20-  
 573 year capital projects plan. This project may be financed with  
 574 any funds available to the authority for such purpose or revenue  
 575 bonds issued by the Division of Bond Finance of the State Board  
 576 of Administration on behalf of the authority pursuant to s. 11,  
 577 Art. VII of the State Constitution and the State Bond Act, ss.  
 578 215.57-215.83.

579 Section 7. Section 348.7545, Florida Statutes, is amended  
 580 to read:

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581 348.7545 Western Beltway Part C, construction authorized;  
 582 financing.—Notwithstanding s. 338.2275, the Central Florida  
 583 ~~Orlando-Orange County~~ Expressway Authority ~~may is authorized to~~  
 584 exercise its condemnation powers, construct, finance, operate,  
 585 own, and maintain that portion of the Western Beltway known as  
 586 the Western Beltway Part C, extending from Florida's Turnpike  
 587 near Ocoee in Orange County southerly through Orange and Osceola  
 588 Counties to an interchange with I-4 near the Osceola-Polk County  
 589 line, as part of the authority's 20-year capital projects plan.  
 590 This project may be financed with any funds available to the  
 591 authority for such purpose or revenue bonds issued by the  
 592 Division of Bond Finance of the State Board of Administration on  
 593 behalf of the authority pursuant to s. 11, Art. VII of the State  
 594 Constitution and the State Bond Act, ss. 215.57-215.83. This  
 595 project may be refinanced with bonds issued by the authority  
 596 pursuant to s. 348.755(1)(d).

597 Section 8. Section 348.7546, Florida Statutes, is amended  
 598 to read:

599 348.7546 Wekiva Parkway, construction authorized;  
 600 financing.—

601 (1) The Central Florida ~~Orlando-Orange County~~ Expressway  
 602 Authority ~~may is authorized to~~ exercise its condemnation powers  
 603 and to construct, finance, operate, own, and maintain those  
 604 portions of the Wekiva Parkway which are identified by agreement  
 605 between the authority and the department and which are included  
 606 as part of the authority's long-range capital improvement plan.  
 607 The "Wekiva Parkway" means any limited access highway or  
 608 expressway constructed between State Road 429 and Interstate 4  
 609 specifically incorporating the corridor alignment recommended by

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610 Recommendation 2 of the Wekiva River Basin Area Task Force final  
 611 report dated January 15, 2003, and the recommendations of the SR  
 612 429 Working Group which were adopted January 16, 2004. This  
 613 project may be financed with any funds available to the  
 614 authority for such purpose or revenue bonds issued by the  
 615 authority under s. 11, Art. VII of the State Constitution and s.  
 616 348.755(1)(b). This section does not invalidate the exercise by  
 617 the authority of its condemnation powers or the acquisition of  
 618 any property for the Wekiva Parkway before July 1, 2012.

619 (2) Notwithstanding any other provision of law ~~to the~~  
 620 ~~contrary~~, in order to ensure that funds are available to the  
 621 department for its portion of the Wekiva Parkway, beginning July  
 622 1, 2012, the authority shall repay the expenditures by the  
 623 department for costs of operation and maintenance of the Central  
 624 Florida ~~Orlando-Orange County~~ Expressway System in accordance  
 625 with the terms of the memorandum of understanding between the  
 626 authority and the department as ratified by the authority board  
 627 on February 22, 2012, which requires the authority to pay the  
 628 department \$10 million on July 1, 2012, and \$20 million on each  
 629 successive July 1 until the department has been fully reimbursed  
 630 for all costs of the Central Florida ~~Orlando-Orange County~~  
 631 Expressway System which were paid, advanced, or reimbursed to  
 632 the authority by the department, with a final payment in the  
 633 amount of the balance remaining. Notwithstanding any other law  
 634 ~~to the contrary~~, the funds paid to the department pursuant to  
 635 this subsection must ~~shall~~ be allocated by the department for  
 636 construction of the Wekiva Parkway.

637 (3) The department's obligation to construct its portions  
 638 of the Wekiva Parkway is contingent upon the timely payment by

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639 the authority of the annual payments required of the authority  
640 and receipt of all required environmental permits and approvals  
641 by the Federal Government.

642 Section 9. Section 348.7547, Florida Statutes, is amended  
643 to read:

644 348.7547 Maitland Boulevard Extension and Northwest Beltway  
645 Part A Realignment construction authorized; financing.—  
646 Notwithstanding s. 338.2275, the Central Florida Orlando-Orange  
647 County Expressway Authority ~~may is hereby authorized to~~ exercise  
648 its condemnation powers, construct, finance, operate, own, and  
649 maintain the portion of State Road 414 known as the Maitland  
650 Boulevard Extension and the realigned portion of the Northwest  
651 Beltway Part A as part of the authority's long-range capital  
652 improvement plan. The Maitland Boulevard Extension extends will  
653 ~~extend~~ from the current terminus of State Road 414 at U.S. 441  
654 west to State Road 429 in west Orange County. The realigned  
655 portion of the Northwest Beltway Part A runs will run from the  
656 point at or near where the Maitland Boulevard Extension connects  
657 ~~will connect~~ with State Road 429 and proceeds will proceed to  
658 the west and then north resulting in the northern terminus of  
659 State Road 429 moving farther west before reconnecting with U.S.  
660 441. However, under no circumstances ~~may shall~~ the realignment  
661 of the Northwest Beltway Part A conflict with or contradict with  
662 the alignment of the Wekiva Parkway as defined in s. 348.7546.  
663 This project may be financed with any funds available to the  
664 authority for such purpose or revenue bonds issued by the  
665 authority under s. 11, Art. VII of the State Constitution and s.  
666 348.755(1)(b).

667 Section 10. Subsections (2) and (3) of section 348.755,

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668 Florida Statutes, are amended to read:

669 348.755 Bonds of the authority.—

670 (2) Any ~~such resolution that authorizes or resolutions~~  
671 ~~authorizing~~ any bonds issued under this section hereunder may  
672 contain provisions that must ~~which shall~~ be part of the contract  
673 with the holders of such bonds, relating as to:

674 (a) The pledging of ~~all or~~ any part of the revenues, rates,  
675 fees, rentals, ~~(including all or~~ any portion of the Orange  
676 County gasoline tax funds received by the authority pursuant to  
677 the terms of any lease-purchase agreement between the authority  
678 and the department, or any part thereof), or other charges or  
679 receipts of the authority, derived by the authority, from the  
680 Central Florida Orlando-Orange County Expressway System.

681 (b) The completion, improvement, operation, extension,  
682 maintenance, repair, lease or lease-purchase agreement of the  
683 ~~said~~ system, and the duties of the authority and others,  
684 including the department, ~~with reference thereto~~.

685 (c) Limitations on the purposes to which the proceeds of  
686 the bonds, then or thereafter to be issued, or of any loan or  
687 grant by the United States or the state may be applied.

688 (d) The fixing, charging, establishing, and collecting of  
689 rates, fees, rentals, or other charges for use of the services  
690 and facilities of the Central Florida Orlando-Orange County  
691 Expressway System or any part thereof.

692 (e) The setting aside of reserves or sinking funds or  
693 repair and replacement funds and the regulation and disposition  
694 thereof.

695 (f) Limitations on the issuance of additional bonds.

696 (g) The terms and provisions of any lease-purchase

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697 agreement, deed of trust or indenture securing the bonds, or  
698 under which the same may be issued.

699 (h) Any other or additional agreements with the holders of  
700 the bonds which the authority may deem desirable and proper.

701 (3) The authority may employ fiscal agents as provided by  
702 this part or the State Board of Administration of Florida may  
703 upon request of the authority act as fiscal agent for the  
704 authority in the issuance of any bonds that ~~which~~ may be issued  
705 pursuant to this part, and the State Board of Administration may  
706 upon request of the authority take over the management, control,  
707 administration, custody, and payment of any ~~or all~~ debt services  
708 or funds or assets now or hereafter available for any bonds  
709 issued pursuant to this part. The authority may enter into any  
710 deeds of trust, indentures or other agreements with its fiscal  
711 agent, or with any bank or trust company within or without the  
712 state, as security for such bonds, and may, under such  
713 agreements, sign and pledge ~~all or~~ any of the revenues, rates,  
714 fees, rentals or other charges or receipts of the authority,  
715 including ~~all or~~ any portion of the Orange County gasoline tax  
716 funds received by the authority pursuant to the terms of any  
717 lease-purchase agreement between the authority and the  
718 department, ~~thereunder~~. Such deed of trust, indenture, or other  
719 agreement may contain such provisions as are customary in such  
720 instruments, or, as the authority may authorize, including but  
721 without limitation, provisions as to:

722 (a) The completion, improvement, operation, extension,  
723 maintenance, repair, and lease of, or lease-purchase agreement  
724 relating to the Central Florida ~~Orlando-Orange County~~ Expressway  
725 System, and the duties of the authority and others including the

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726 department, with reference thereto.

727 (b) The application of funds and the safeguarding of funds  
728 on hand or on deposit.

729 (c) The rights and remedies of the trustee and the holders  
730 of the bonds.

731 (d) The terms and provisions of the bonds or the  
732 resolutions authorizing the issuance of same.

733 Section 11. Subsections (3) and (4) of section 348.756,  
734 Florida Statutes, are amended to read:

735 348.756 Remedies of the bondholders.-

736 (3) When a ~~Any~~ trustee is when appointed pursuant to  
737 subsection (1) as aforesaid, or is acting under a deed of trust,  
738 indenture, or other agreement, and whether or not all bonds have  
739 been declared due and payable, the trustee is ~~shall be~~ entitled  
740 ~~as of right~~ to the appointment of a receiver, who may enter upon  
741 and take possession of the Central Florida ~~Orlando-Orange County~~  
742 Expressway System or the facilities or any part of the system or  
743 facilities or parts thereof, the rates, fees, rentals, or other  
744 revenues, charges, or receipts that from which are, or may be,  
745 applicable to the payment of the bonds so in default, and  
746 subject to and in compliance with the provisions of any lease-  
747 purchase agreement between the authority and the department  
748 operate and maintain the same, for and on behalf of and in the  
749 name of, the authority, the department, and the bondholders, and  
750 collect and receive all rates, fees, rentals, and other charges  
751 or receipts or revenues arising therefrom in the same manner as  
752 the authority or the department might do, and shall deposit all  
753 such moneys in a separate account and apply the same in such  
754 manner as the court directs ~~shall direct~~. In any suit, action,

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755 or proceeding by the trustee, the fees, counsel fees, and  
 756 expenses of the trustee, and ~~the said~~ receiver, if any, and all  
 757 costs and disbursements allowed by the court ~~must shall~~ be a  
 758 first charge on any rates, fees, rentals, or other charges,  
 759 revenues, or receipts, derived from the ~~Central Florida Orlando-~~  
 760 ~~Orange County~~ Expressway System, or the facilities or services  
 761 or any part ~~of the system or facilities or parts thereof,~~  
 762 including payments under any such lease-purchase agreement ~~as~~  
 763 ~~aforesaid~~ which ~~said~~ rates, fees, rentals, or other charges,  
 764 revenues, or receipts ~~shall or~~ may be applicable to the payment  
 765 of the bonds ~~that are~~ ~~so~~ in default. ~~The Such~~ trustee ~~has shall,~~  
 766 ~~in addition to the foregoing, have and possess~~ all of the powers  
 767 necessary or appropriate for the exercise of any functions  
 768 specifically set forth ~~in this section herein~~ or incident to the  
 769 representation of the bondholders in the enforcement and  
 770 protection of their rights.

771 (4) ~~Nothing in~~ This section or any other section of this  
 772 part ~~does not shall~~ authorize any receiver appointed ~~pursuant~~  
 773 ~~hereto~~ for the purpose, subject to and in compliance with the  
 774 provisions of any lease-purchase agreement between the authority  
 775 and the department, of operating and maintaining the Central  
 776 Florida Orlando-Orange County Expressway System or any  
 777 facilities or part ~~of the system or facilities or parts thereof,~~  
 778 to sell, assign, mortgage, or otherwise dispose of any of the  
 779 assets of whatever kind and character belonging to the  
 780 authority. ~~It is the intention of this part to limit~~ The powers  
 781 of ~~the such~~ receiver, subject to and in compliance with the  
 782 provisions of any lease-purchase agreement between the authority  
 783 and the department, are limited to the operation and maintenance

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784 of the Central Florida ~~Orlando-Orange County~~ Expressway System,  
 785 or any facility, or part ~~or parts~~ thereof, as the court may  
 786 direct, in the name and for and on behalf of the authority, the  
 787 department, and the bondholders, and no holder of bonds on the  
 788 authority nor any trustee, ~~has shall ever have~~ the right in any  
 789 suit, action, or proceeding at law or in equity, to compel a  
 790 receiver, nor ~~may shall~~ any receiver be authorized or any court  
 791 be empowered to direct the receiver to sell, assign, mortgage,  
 792 or otherwise dispose of any assets ~~of whatever kind or character~~  
 793 belonging to the authority.

794 Section 12. Subsections (1) through (7) of section 348.757,  
 795 Florida Statutes, are amended to read:

796 348.757 Lease-purchase agreement.—

797 (1) ~~In order to effectuate the purposes of this part and as~~  
 798 ~~authorized by this part,~~ The authority may enter into a lease-  
 799 purchase agreement with the department relating to and covering  
 800 the former Orlando-Orange County Expressway System.

801 (2) ~~The Such~~ lease-purchase agreement must shall provide  
 802 for the leasing of the former Orlando-Orange County Expressway  
 803 System, by the authority, as lessor, to the department, as  
 804 lessee, must shall prescribe the term of such lease and the  
 805 rentals to be paid ~~thereunder,~~ and must shall provide that upon  
 806 the completion of the faithful performance ~~thereunder~~ and the  
 807 termination of ~~the such~~ lease-purchase agreement, title in fee  
 808 simple absolute to the former Orlando-Orange County Expressway  
 809 System as then constituted shall be transferred in accordance  
 810 with law by the authority, to the state and the authority shall  
 811 deliver to the department such deeds and conveyances as shall be  
 812 necessary or convenient to vest title in fee simple absolute in

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813 the state.

814 (3) ~~The~~ Such lease-purchase agreement may include ~~such~~  
 815 other provisions, agreements, and covenants that ~~as~~ the  
 816 authority and the department deem advisable or required,  
 817 including, but not limited to, provisions as to the bonds to be  
 818 issued under, and for the purposes of, this part, the  
 819 completion, extension, improvement, operation, and maintenance  
 820 of the former Orlando-Orange County Expressway System and the  
 821 expenses and the cost of operation of the said authority, the  
 822 charging and collection of tolls, rates, fees, and other charges  
 823 for the use of the services and facilities of the system  
 824 thereof, the application of federal or state grants or aid that  
 825 which may be made or given to assist the authority in the  
 826 completion, extension, improvement, operation, and maintenance  
 827 of the former Orlando-Orange County ~~Orlando~~ Expressway System,  
 828 which the authority is ~~hereby~~ authorized to accept and apply to  
 829 such purposes, the enforcement of payment and collection of  
 830 rentals and any other terms, provisions, or covenants necessary,  
 831 incidental, or appurtenant to the making of and full performance  
 832 under the such lease-purchase agreement.

833 (4) The department as lessee under the such lease-purchase  
 834 agreement, ~~may is hereby authorized to~~ pay as rentals under the  
 835 agreement thereunder any rates, fees, charges, funds, moneys,  
 836 receipts, or income accruing to the department from the  
 837 operation of the former Orlando-Orange County Expressway System  
 838 and the Orange County gasoline tax funds and may also pay as  
 839 rentals any appropriations received by the department pursuant  
 840 to any act of the Legislature of the state heretofore or  
 841 hereafter enacted; ~~provided,~~ however, this part or the that

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842 ~~nothing herein nor in such~~ lease-purchase agreement is not  
 843 intended to and does not ~~nor shall this part or such lease-~~  
 844 ~~purchase agreement~~ require the making or continuance of such  
 845 appropriations, and ~~nor shall~~ any holder of bonds issued  
 846 pursuant to this part does not ~~ever~~ have any right to compel the  
 847 making or continuance of such appropriations.

848 (5) ~~A~~ No pledge of the said Orange County gasoline tax  
 849 funds as rentals under a such lease-purchase agreement may not  
 850 ~~shall~~ be made without the consent of the County of Orange  
 851 evidenced by a resolution duly adopted by the board of county  
 852 commissioners of said county at a public hearing held pursuant  
 853 to due notice thereof published at least once a week for 3  
 854 consecutive weeks before the hearing in a newspaper of general  
 855 circulation in Orange County. The said resolution, among other  
 856 things, must shall provide that any excess of the said pledged  
 857 gasoline tax funds which is not required for debt service or  
 858 reserves for the such debt service for any bonds issued by the  
 859 ~~said~~ authority shall be returned annually to the department for  
 860 distribution to Orange County as provided by law. Before making  
 861 any application for a such pledge of gasoline tax funds, the  
 862 authority shall present the plan of its proposed project to the  
 863 Orange County planning and zoning commission for its comments  
 864 and recommendations.

865 (6) ~~The said~~ department may shall have power to covenant in  
 866 any lease-purchase agreement that it will pay all or any part of  
 867 the cost of the operation, maintenance, repair, renewal, and  
 868 replacement of the said system, and any part of the cost of  
 869 completing the said system to the extent that the proceeds of  
 870 bonds issued ~~therefor~~ are insufficient, from sources other than



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871 the revenues derived from the operation of the said system and  
 872 the said Orange County gasoline tax funds. The said department  
 873 may also agree to make such other payments from any moneys  
 874 available to the said commission, the said county, or the said  
 875 city in connection with the construction or completion of the  
 876 said system as shall be deemed by the said department to be fair  
 877 and proper under any ~~such covenants heretofore or hereafter~~  
 878 entered into.

879 (7) The said system ~~must shall~~ be a part of the state road  
 880 system and the said department ~~may is hereby authorized~~, upon  
 881 the request of the authority, ~~to~~ expend out of any funds  
 882 available for the purpose the such moneys, and ~~to~~ use ~~such of~~  
 883 its engineering and other forces, as may be necessary ~~and~~  
 884 ~~desirable in the judgment of said department~~, for the operation  
 885 of the said authority and for traffic surveys, borings, surveys,  
 886 preparation of plans and specifications, estimates of cost, and  
 887 other preliminary engineering and other studies; provided,  
 888 however, that the aggregate amount of moneys expended for the  
 889 said purposes by the said department ~~do shall~~ not exceed the sum  
 890 of \$375,000.

891 Section 13. Section 348.758, Florida Statutes, is amended  
 892 to read:

893 348.758 Appointment of department ~~as may be appointed~~ agent  
 894 of authority for construction.—The department may be appointed  
 895 by the said authority as its agent for the purpose of  
 896 constructing improvements and extensions to the Central Florida  
 897 Orlando-Orange County Expressway System and for its the  
 898 completion thereof. In such event, the authority shall provide  
 899 the department with complete copies of all documents,

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900 agreements, resolutions, contracts, and instruments relating  
 901 thereto and shall request the department to do such construction  
 902 work, including the planning, surveying, and actual construction  
 903 of the completion, extensions, and improvements to the Central  
 904 Florida Orlando-Orange County Expressway System and shall  
 905 transfer to the credit of an account of the department in the  
 906 State Treasury ~~of the state~~ the necessary funds, ~~therefor~~ and  
 907 the department ~~may shall thereupon be authorized, empowered and~~  
 908 ~~directed to~~ proceed with such construction and ~~to~~ use the said  
 909 funds for such purpose in the same manner that it is ~~now~~  
 910 authorized to use the funds ~~otherwise provided by law~~ for the  
 911 its use in construction of roads and bridges.

912 Section 14. Section 348.759, Florida Statutes, is amended  
 913 to read:

914 348.759 Acquisition of lands and property.—

915 (1) For the purposes of this part, the Central Florida  
 916 Orlando-Orange County Expressway Authority may acquire private  
 917 or public property and property rights, including rights of  
 918 access, air, view, and light, by gift, devise, purchase, or  
 919 condemnation by eminent domain proceedings, as the authority  
 920 ~~deems may deem~~ necessary for any of the purposes of this part,  
 921 including, but not limited to, any lands reasonably necessary  
 922 for securing applicable permits, areas necessary for management  
 923 of access, borrow pits, drainage ditches, water retention areas,  
 924 rest areas, replacement access for landowners whose access is  
 925 impaired due to the construction of a facility, and replacement  
 926 rights-of-way for relocated rail and utility facilities; for  
 927 existing, proposed, or anticipated transportation facilities on  
 928 the Central Florida Orlando-Orange County Expressway System or

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929 in a transportation corridor designated by the authority; or for  
 930 the purposes of screening, relocation, removal, or disposal of  
 931 junkyards and scrap metal processing facilities. The authority  
 932 ~~may shall also have the power to~~ condemn any material and  
 933 property necessary for such purposes.

934 (2) The ~~right of eminent domain herein conferred shall be~~  
 935 ~~exercised by the authority shall exercise the right of eminent~~  
 936 domain in the manner provided by law.

937 (3) When the authority acquires property for a  
 938 transportation facility or in a transportation corridor, it is  
 939 not subject to any liability imposed by chapter 376 or chapter  
 940 403 for preexisting soil or groundwater contamination due solely  
 941 to its ownership. This section does not affect the rights or  
 942 liabilities of any past or future owners of the acquired  
 943 property and ~~nor~~ does not ~~it~~ affect the liability of any  
 944 governmental entity for the results of its actions which create  
 945 or exacerbate a pollution source. The authority and the  
 946 Department of Environmental Protection may enter into  
 947 interagency agreements for the performance, funding, and  
 948 reimbursement of the investigative and remedial acts necessary  
 949 for property acquired by the authority.

950 Section 15. Section 348.760, Florida Statutes, is amended  
 951 to read:

952 348.760 Cooperation with other units, boards, agencies, and  
 953 individuals.—~~A Express authority and power is hereby given and~~  
 954 ~~granted any~~ county, municipality, drainage district, road and  
 955 bridge district, school district or any other political  
 956 subdivision, board, commission, or individual in, or of, the  
 957 state ~~may~~ to make and enter into with the authority, contracts,

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958 leases, conveyances, partnerships, or other agreements pursuant  
 959 to within the provisions and purposes of this part. The  
 960 authority ~~may is hereby expressly authorized to~~ make and enter  
 961 into contracts, leases, conveyances, partnerships, and other  
 962 agreements with any political subdivision, agency, or  
 963 instrumentality of the state and any ~~and all~~ federal agencies,  
 964 corporations, and individuals, for the purpose of carrying out  
 965 the provisions of this part ~~or with the consent of the Seminole~~  
 966 ~~County Expressway Authority, for the purpose of carrying out and~~  
 967 ~~implementing part VIII of this chapter.~~

968 Section 16. Section 348.761, Florida Statutes, is amended  
 969 to read:

970 348.761 Covenant of the state.—The state pledges does  
 971 ~~hereby pledge~~ to, and agrees, with any person, firm or  
 972 corporation, or federal or state agency subscribing to, or  
 973 acquiring the bonds to be issued by the authority for the  
 974 purposes of this part that the state will not limit or alter the  
 975 rights that are hereby vested in the authority and the  
 976 department until all issued bonds and interest at any time  
 977 ~~issued, together with the interest thereon,~~ are fully paid and  
 978 discharged insofar as the pledge same affects the rights of the  
 979 holders of bonds issued pursuant to this part hereunder. The  
 980 state does further pledge to, and agree, with the United States  
 981 that in the event any federal agency constructs or contributes  
 982 ~~shall construct or contribute~~ any funds for the completion,  
 983 extension, or improvement of the Central Florida Orlando-Orange  
 984 ~~County Expressway System,~~ or any part or portion of the system  
 985 ~~thereof,~~ the state will not alter or limit the rights and powers  
 986 of the authority and the department in any manner that which

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987 would be inconsistent with the continued maintenance and  
 988 operation of the Central Florida Orlando-Orange County  
 989 Expressway System or the completion, extension, or improvement  
 990 of the system thereof, or ~~that which~~ would be inconsistent with  
 991 the due performance of any agreements between the authority and  
 992 any such federal agency, and the authority and the department  
 993 shall continue to have and may exercise all powers ~~herein~~  
 994 granted in this part, so long as the powers are same shall be  
 995 necessary or desirable for the carrying out of the purposes of  
 996 this part and the purposes of the United States in the  
 997 completion, extension, or improvement of the Central Florida  
 998 Orlando-Orange County Expressway System, or any part of the  
 999 system or portion thereof.

1000 Section 17. Section 348.765, Florida Statutes, is amended  
 1001 to read:

1002 348.765 This part complete and additional authority.-

1003 (1) The powers conferred by this part are shall be in  
 1004 addition and supplemental to the existing powers of the said  
 1005 board and the department, and this part may shall not be  
 1006 construed as repealing any of the provisions, of any other law,  
 1007 general, special, or local, but to supersede such other laws in  
 1008 the exercise of the powers provided in this part, and to provide  
 1009 a complete method for the exercise of the powers granted in this  
 1010 part. The extension and improvement of the Central Florida said  
 1011 Orlando-Orange County Expressway System, and the issuance of  
 1012 bonds pursuant to this part hereunder to finance all or part of  
 1013 the cost of the system thereof, may be accomplished upon  
 1014 compliance with the provisions of this part without regard to or  
 1015 necessity for compliance with the provisions, limitations, or

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1016 restrictions contained in any other general, special, or local  
 1017 law, including, but not limited to, s. 215.821, and no approval  
 1018 of any bonds issued under this part by the qualified electors or  
 1019 qualified electors who are freeholders in the state or in the  
 1020 ~~said~~ County of Orange, or in the said City of Orlando, or in any  
 1021 other political subdivision of the state, ~~is shall be~~ required  
 1022 for the issuance of such bonds pursuant to this part.

1023 (2) This part ~~does shall not be deemed to~~ repeal, rescind,  
 1024 or modify any other law ~~or laws~~ relating to the said State Board  
 1025 of Administration, the said Department of Transportation, or the  
 1026 Division of Bond Finance of the State Board of Administration,  
 1027 but supersedes any shall be deemed to and shall supersede such  
 1028 ~~other law that is or laws as~~ are inconsistent with the  
 1029 provisions of this part, including, but not limited to, s.  
 1030 215.821.

1031 Section 18. Subsections (6) and (7) of section 369.317,  
 1032 Florida Statutes, are amended to read:

1033 369.317 Wekiva Parkway.-

1034 (6) The Central Florida Orlando-Orange County Expressway  
 1035 Authority is hereby granted the authority to act as a third-  
 1036 party acquisition agent, pursuant to s. 259.041 on behalf of the  
 1037 Board of Trustees or chapter 373 on behalf of the governing  
 1038 board of the St. Johns River Water Management District, for the  
 1039 acquisition of all necessary lands, property and all interests  
 1040 in property identified herein, including fee simple or less-  
 1041 than-fee simple interests. The lands subject to this authority  
 1042 are identified in paragraph 10.a., State of Florida, Office of  
 1043 the Governor, Executive Order 03-112 of July 1, 2003, and in  
 1044 Recommendation 16 of the Wekiva Basin Area Task Force created by

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1045 Executive Order 2002-259, such lands otherwise known as  
 1046 Neighborhood Lakes, a 1,587+/-acre parcel located in Orange and  
 1047 Lake Counties within Sections 27, 28, 33, and 34 of Township 19  
 1048 South, Range 28 East, and Sections 3, 4, 5, and 9 of Township 20  
 1049 South, Range 28 East; Seminole Woods/Swamp, a 5,353+/-acre  
 1050 parcel located in Lake County within Section 37, Township 19  
 1051 South, Range 28 East; New Garden Coal; a 1,605+/-acre parcel in  
 1052 Lake County within Sections 23, 25, 26, 35, and 36, Township 19  
 1053 South, Range 28 East; Pine Plantation, a 617+/-acre tract  
 1054 consisting of eight individual parcels within the Apopka City  
 1055 limits. The Department of Transportation, the Department of  
 1056 Environmental Protection, the St. Johns River Water Management  
 1057 District, and other land acquisition entities shall participate  
 1058 and cooperate in providing information and support to the third-  
 1059 party acquisition agent. The land acquisition process authorized  
 1060 by this paragraph shall begin no later than December 31, 2004.  
 1061 Acquisition of the properties identified as Neighborhood Lakes,  
 1062 Pine Plantation, and New Garden Coal, or approval as a  
 1063 mitigation bank shall be concluded no later than December 31,  
 1064 2010. Department of Transportation and Central Florida Orlando-  
 1065 ~~Orange County~~ Expressway Authority funds expended to purchase an  
 1066 interest in those lands identified in this subsection shall be  
 1067 eligible as environmental mitigation for road construction  
 1068 related impacts in the Wekiva Study Area. If any of the lands  
 1069 identified in this subsection are used as environmental  
 1070 mitigation for road-construction-related impacts incurred by the  
 1071 Department of Transportation or Central Florida Orlando-Orange  
 1072 ~~County~~ Expressway Authority, or for other impacts incurred by  
 1073 other entities, within the Wekiva Study Area or within the

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1074 Wekiva parkway alignment corridor, and if the mitigation offsets  
 1075 these impacts, the St. Johns River Water Management District and  
 1076 the Department of Environmental Protection shall consider the  
 1077 activity regulated under part IV of chapter 373 to meet the  
 1078 cumulative impact requirements of s. 373.414(8)(a).

1079 (a) Acquisition of the land described in this section is  
 1080 required to provide right-of-way for the Wekiva Parkway, a  
 1081 limited access roadway linking State Road 429 to Interstate 4,  
 1082 an essential component in meeting regional transportation needs  
 1083 to provide regional connectivity, improve safety, accommodate  
 1084 projected population and economic growth, and satisfy critical  
 1085 transportation requirements caused by increased traffic volume  
 1086 growth and travel demands.

1087 (b) Acquisition of the lands described in this section is  
 1088 also required to protect the surface water and groundwater  
 1089 resources of Lake, Orange, and Seminole counties, otherwise  
 1090 known as the Wekiva Study Area, including recharge within the  
 1091 springshed that provides for the Wekiva River system. Protection  
 1092 of this area is crucial to the long term viability of the Wekiva  
 1093 River and springs and the central Florida region's water supply.  
 1094 Acquisition of the lands described in this section is also  
 1095 necessary to alleviate pressure from growth and development  
 1096 affecting the surface and groundwater resources within the  
 1097 recharge area.

1098 (c) Lands acquired pursuant to this section that are needed  
 1099 for transportation facilities for the Wekiva Parkway shall be  
 1100 determined not necessary for conservation purposes pursuant to  
 1101 ss. 253.034(6) and 373.089(5) and shall be transferred to or  
 1102 retained by the Central Florida Orlando-Orange County Expressway

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1103 Authority or the Department of Transportation upon reimbursement  
1104 of the full purchase price and acquisition costs.

1105 (7) The Department of Transportation, the Department of  
1106 Environmental Protection, the St. Johns River Water Management  
1107 District, Central Florida ~~Orlando-Orange County~~ Expressway  
1108 Authority, and other land acquisition entities shall cooperate  
1109 and establish funding responsibilities and partnerships by  
1110 agreement to the extent funds are available to the various  
1111 entities. Properties acquired with Florida Forever funds shall  
1112 be in accordance with s. 259.041 or chapter 373. The Central  
1113 Florida ~~Orlando-Orange County~~ Expressway Authority shall acquire  
1114 land in accordance with this section of law to the extent funds  
1115 are available from the various funding partners, but shall not  
1116 be required nor assumed to fund the land acquisition beyond the  
1117 agreement and funding provided by the various land acquisition  
1118 entities.

1119 Section 19. Subsection (1) of section 369.324, Florida  
1120 Statutes, is amended to read:

1121 369.324 Wekiva River Basin Commission.—

1122 (1) The Wekiva River Basin Commission is created to monitor  
1123 and ensure the implementation of the recommendations of the  
1124 Wekiva River Basin Coordinating Committee for the Wekiva Study  
1125 Area. The East Central Florida Regional Planning Council shall  
1126 provide staff support to the commission with funding assistance  
1127 from the Department of Economic Opportunity. The commission  
1128 shall be comprised of a total of 18 ~~19~~ members appointed by the  
1129 Governor, 9 of whom shall be voting members and 9 ~~10~~ shall be ad  
1130 hoc nonvoting members. The voting members shall include:

1131 (a) One member of each of the Boards of County

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

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1132 Commissioners for Lake, Orange, and Seminole Counties.

1133 (b) One municipal elected official to serve as a  
1134 representative of the municipalities located within the Wekiva  
1135 Study Area of Lake County.

1136 (c) One municipal elected official to serve as a  
1137 representative of the municipalities located within the Wekiva  
1138 Study Area of Orange County.

1139 (d) One municipal elected official to serve as a  
1140 representative of the municipalities located within the Wekiva  
1141 Study Area of Seminole County.

1142 (e) One citizen representing an environmental or  
1143 conservation organization, one citizen representing a local  
1144 property owner, a land developer, or an agricultural entity, and  
1145 one at-large citizen who shall serve as chair of the council.

1146 (f) The ad hoc nonvoting members shall include one  
1147 representative from each of the following entities:

- 1148 1. St. Johns River Management District.
- 1149 2. Department of Economic Opportunity.
- 1150 3. Department of Environmental Protection.
- 1151 4. Department of Health.
- 1152 5. Department of Agriculture and Consumer Services.
- 1153 6. Fish and Wildlife Conservation Commission.
- 1154 7. Department of Transportation.
- 1155 8. MetroPlan Orlando.
- 1156 9. Central Florida ~~Orlando-Orange County~~ Expressway

1157 Authority.

1158 ~~10. Seminole County Expressway Authority.~~

1159 Section 20. (1) Effective upon the completion of  
1160 construction of the Poinciana Parkway, a limited access facility

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1161 of approximately 9 miles in length in Osceola County with its  
 1162 northwestern terminus at the intersection of County Road 54 and  
 1163 US 17/US 92 and its southeastern terminus at the current  
 1164 intersection of Rhododendron and Cypress Parkway, described in  
 1165 the Osceola County Expressway Authority May 8, 2012, Master  
 1166 Plan, all powers, governance, and control of the Osceola County  
 1167 Expressway System, created pursuant to part V, chapter 348,  
 1168 Florida Statutes, is transferred to the Central Florida  
 1169 Expressway Authority, and the assets, liabilities, facilities,  
 1170 tangible and intangible property and any rights in the property,  
 1171 and any other legal rights of the Osceola County Expressway  
 1172 Authority are transferred to the Central Florida Expressway  
 1173 Authority. The effective date of such transfer shall be extended  
 1174 until completion of construction of such portions of the  
 1175 Southport Connector Expressway, the Northeast Connector  
 1176 Expressway, such portions of the Poinciana Parkway to connect to  
 1177 State Road 429, and the Osceola Parkway Extension, as each is  
 1178 described in the Osceola County Expressway Authority May 8,  
 1179 2012, Master Plan, which are included in any design contract  
 1180 executed by the Osceola County Expressway Authority before July  
 1181 1, 2020. Part V of chapter 348, Florida Statutes, consisting of  
 1182 ss. 348.9950-348.9961, is repealed on the same date that the  
 1183 Osceola County Expressway System is transferred to the Central  
 1184 Florida Expressway Authority.

1185 (2) The Central Florida Expressway Authority shall also  
 1186 reimburse any and all obligations of any other governmental  
 1187 entities with respect to the Osceola County Expressway System,  
 1188 including any obligations of Osceola County with respect to  
 1189 operations and maintenance of the Osceola County Expressway

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1190 System and any loan repayment obligations, including repayment  
 1191 obligations with respect to State Infrastructure Bank loans.  
 1192 Such reimbursement shall be made from revenues available for  
 1193 such purpose after payment of all amounts required:  
 1194 (a) Otherwise by law;  
 1195 (b) By the terms of any resolution authorizing the issuance  
 1196 of bonds by the authority, the Orlando-Orange County Expressway  
 1197 Authority, or the Osceola County Expressway Authority;  
 1198 (c) By the terms of any resolution under which bonds are  
 1199 issued by Osceola County for the purpose of constructing  
 1200 improvements to the Osceola County Expressway System; and  
 1201 (d) By the terms of the memorandum of understanding between  
 1202 the Orlando-Orange County Expressway Authority and the  
 1203 department as ratified by the board of the Orlando-Orange County  
 1204 Expressway Authority on February 22, 2012.

1205 Section 21. This act shall take effect July 1, 2015.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** February 6, 2014

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I respectfully request that **Senate Bill 230**, relating to Orlando-Orange County Expressway Authority, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons  
Florida Senate, District 10

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 230  
*(if applicable)*

Name Kelley Teague

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 201 S Rosalind Ave

Phone 407 421 4863

*Street* Orlando *City* FL *State* 32801 *Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Orange County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Transportation

Bill Number SB 230  
*(if applicable)*

Name John Wayne Smith

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 301 S. Bron  
*Street*

Phone 570-7242

Tall FL 32301  
*City State Zip*

E-mail john@peoples-smith

Speaking:  For  Against  Information

Waive Support

Representing City of Orlando

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/CS/SB 272

INTRODUCER: Appropriations Committee; Communications, Energy, and Public Utilities Committee;  
Community Affairs Committee; and Senator Simpson

SUBJECT: Water and Wastewater Utilities

DATE: March 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	White	Yeatman	CA	Fav/CS
3.	Davis	Kynoch	AP	Fav/CS

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 272 creates a process for customers to petition the Florida Public Service Commission (PSC, FPSC, or commission) to require compliance with secondary water quality standards. If a utility fails to comply with commission orders, the process could result in revocation of the utility's certificate of authority. The bill provides petition criteria and factors the commission must consider in its review of the petition and the action it may take to dispose of the petition.

The bill adds secondary water quality standards to the criteria that the PSC must consider when setting rates for water service. The bill provides guidelines for the secondary water quality standards. The bill authorizes the commission to deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water service is less than satisfactory. The bill requires a utility to provide an estimate of the costs and benefits of plausible solutions for each concern that the commission finds, meet with the customers to discuss the costs and solutions, and periodically report on the progress of implementation. The commission may require the utility to resolve certain problems and require benchmarks and periodic progress reporting. The bill authorizes the commission to adopt rules to assess and enforce compliance with the secondary water standards and prescribe penalties for a utility's failure to adequately address each concern.

The bill appropriates \$212,521 in recurring funds and \$12,012 in nonrecurring funds from the General Revenue Fund to the PSC and authorizes three full-time equivalent positions for the 2014-2015 fiscal year to implement the provisions in this act.

## II. Present Situation:

### Regulatory Compact

Utilities subject to economic regulation have what is called a “regulatory compact” with their customers and the regulators, which is a method of balancing rights and obligations of a utility and its ratepayers. The regulatory compact has been described as follows:

The utility business represents a compact of sorts; a monopoly on service in a particular geographic area (coupled with state-conferred rights of eminent domain or condemnation) is granted the utility in exchange for a regime of intensive regulation, including price regulation, quite alien to the free market. . . . Each party to the compact gets something in the bargain. As a general rule, utility investors are provided a level of stability in earnings and value less likely to be attained in the unregulated or moderately regulated sector; in turn, ratepayers are afforded universal, non-discriminatory service and protection from monopoly profits through political control over an economic enterprise.<sup>1</sup>

### Public Service Commission Jurisdiction Over Water and Wastewater Utilities

Chapter 367, F.S., is the Water and Wastewater System Regulatory law. Section 367.011, F.S., grants the commission exclusive jurisdiction over each utility with respect to its authority, service, and rates. It also declares the regulation of utilities to be in the public interest, and the chapter to be an exercise of the police power of the state for the protection of the public health, safety, and welfare.

Despite this broad grant of authority, the PSC does not have the authority over all water and wastewater utilities. Section 367.022(2), F.S., exempts from the PSC regulation or application of chapter 367, F.S., to those water or wastewater systems owned, operated, managed, or controlled by governmental authorities,<sup>2</sup> including water or wastewater facilities operated by private firms pursuant to water or wastewater facility privatization contracts.

Section 367.171, F.S., provides that, after ten continuous years under the jurisdiction of the commission, a county can opt-out of commission jurisdiction by resolution or ordinance. In such a case, the county regulates the rates of all utilities in that county. However, the commission has exclusive jurisdiction over all utility systems whose services transverse county boundaries, whether the counties involved are jurisdictional or nonjurisdictional. The commission does not have jurisdiction over utility systems that are subject to, and remain subject to, interlocal utility

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<sup>1</sup> Tomain and Cudahy, *Energy Law*, 121-122 (quoting *Jersey Cent. Power and Light Co. v. F.E.R.C.*, 810 F.2d 1168 (D.C. Cir. 1987)).

<sup>2</sup> In this context, the term “governmental authority” means a political subdivision, a regional water supply authority, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility. See Section 367.021(7), F.S.

agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverses county boundaries. According to the PSC webpage, the commission has jurisdiction over 143 investor-owned utilities in 37 counties that serve 120,567 water and 74,317 wastewater customers<sup>3</sup> and counties have jurisdiction in 30 counties, as listed in the following table.<sup>4</sup>

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Alachua	Baker
Bradford	Bay
Brevard	Calhoun
Broward	Citrus
Charlotte	Collier
Clay	Columbia
Duval	Dade
Escambia	Desoto
Franklin	Dixie
Gadsden	Flagler
Gulf	Gilchrist
Hardee	Glades
Highlands	Hamilton
Jackson	Hendry
Lake	Hernando
Lee	Hillsborough
Levy	Holmes
Manatee	Indian River
Marion	Jefferson
Martin	Lafayette
Monroe	Leon
Nassau	Liberty
Okaloosa	Madison
Okeechobee	Santa Rosa
Orange	Santa Rosa
Osceola	Suwanee
Palm Beach	Taylor
Pasco	Union
Pinellas	Wakulla
Polk	Walton
Putnam	
Seminole	
St. Johns	
St. Lucie	

<sup>3</sup> Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry* (April 2013), at 29-33, <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2013.pdf> (last visited Jan. 31, 2014).

<sup>4</sup>FPSC, *Jurisdictional and Non-Jurisdictional Counties*, <http://www.psc.state.fl.us/utilities/waterwastewater/wawtextchart.pdf> (last visited Jan. 31, 2014).

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Sumter	
Volusia	
Washington	

**Public Service Commission Rate-Making and Water Quality**

Pursuant to s. 367.081, F.S., the PSC establishes rates which are just, reasonable, compensatory, and not unfairly discriminatory. In doing so, the commission must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

According to the PSC staff:

The FPSC establishes rates for investor-owned water and wastewater utilities on an individualized, prospective basis. In the rate-setting process, a utility submits investments it believes are appropriate for inclusion into its rate base, and expenses that it considers appropriate for recovery in rates. The role of the PSC is to determine the extent to which such investments and expenses submitted are reasonable and prudent. Once the PSC determines which items are allowable for the purpose of recovery, rates are established that allow the utility an opportunity to earn a fair rate of return on its investment and to recover all prudently incurred expenses associated with the provision of utility service. The PSC does not set rates for government-owned utilities.

The commission establishes rates for investor-owned water and wastewater utilities pursuant to Chapter 367, F.S., in those counties that have elected to place utilities under the PSC jurisdiction. The objective of regulation under the statute is to provide safe potable water and wastewater services at fair and reasonable rates. The PSC sets rates through an evidentiary administrative proceeding, or through a process known as a Staff Assisted Rate Case (SARC). The commission holds customer service hearings in the investor-owned utility’s service area to accept customer testimony as part of the record of the proceeding. The FPSC reviews the utility’s costs to determine if they are prudently incurred. The FPSC also reviews the utility’s earnings to determine a fair rate of return on investment.

When setting rates, the PSC takes into account customer concerns and issues with water and wastewater utilities, including the value and the quality of the service. The commission has the flexibility to adjust rates based on the evidence on record in a rate case. However, current law does not give the PSC specific authority to consider secondary drinking water standards or wastewater standards.<sup>5</sup>

<sup>5</sup> FPSC, *Senate Bill 272 Agency Analysis* (Nov. 13, 2013).

Although the statute requires the commission to consider quality of service in setting rates, the focus is on the quality of the service provided; that is, the focus is primarily on how well the utility provides water, not the quality of the water itself. The quality of the water and compliance with secondary water quality standards are recurrent issues at both the PSC and the Legislature.<sup>6</sup> In 2012, the Legislature created the Study Committee on Investor-Owned Water & Wastewater Utility Systems (study committee) and directed it to review a list of issues, including water quality.<sup>7</sup> The study committee recommended amending s. 367.081, F.S., to establish a mechanism within a rate case proceeding to require the PSC to consider the extent to which a utility meets secondary water and wastewater standards.<sup>8</sup>

### **Penalties**

Section 367.161, F.S., provides penalties. If a utility knowingly refuses to comply with or willfully violates any provision of Chapter 367, F.S., or any commission rule or order, the utility is subject to a penalty for each such offense of not more than \$5,000 to be fixed, imposed, and collected by the commission. Each day that the refusal or violation continues constitutes a separate offense. Each penalty is a lien upon the real and personal property of the utility, enforceable by the commission as a statutory lien under Chapter 85, F.S. The proceeds from the enforcement of a lien are deposited into the General Revenue Fund.

### **Standards for Secondary Water Quality Characteristics**

Secondary water quality characteristics refer to those characteristics of drinking water that typically have no adverse health effects, but instead are generally associated with aesthetic concerns.<sup>9</sup> The Department of Environmental Protection (DEP) has established maximum allowed levels for 14 criteria of secondary water quality characteristics. Based on the U.S. Environmental Protection Agency (EPA) mandated standards, the DEP's list of secondary water quality characteristics includes: aluminum, chlorine, copper, fluoride, iron, manganese, silver, sulfate, zinc, color, odor, pH, total dissolved solids, and foaming agents.<sup>10</sup>

Water quality monitoring of secondary water quality characteristics by the DEP consists of a three-year schedule of sampling of all water systems in the state serving more than 25 people per

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<sup>6</sup> Water quality of service problems, for which customers have provided testimony at PSC hearings, include black water, pressure, odor, and customer service. See PSC, Final Order No. PSC-97-0280-FOF-WS (Mar. 12, 1997).

<sup>7</sup> The Study Committee was created by Chapter 2012-187, s. 2, Laws of Fla. (CS/HB 1389).

<sup>8</sup> For the text of the recommended statutory change, see Study Committee on Investor-Owned Water & Wastewater Utility Systems, Study Committee Report (Feb. 15, 2013), Attachment IV.9-D, at 115 of 386, *available at* <http://www.psc.state.fl.us/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Jan. 31, 2014).

<sup>9</sup> Secondary drinking water contaminants, if found at considerably high concentrations, may result in health implications in addition to just aesthetic degradation.

<sup>10</sup> DEP, *Secondary Drinking Water Standards*, [http://www.dep.state.fl.us/water/drinkingwater/sec\\_con.htm](http://www.dep.state.fl.us/water/drinkingwater/sec_con.htm) (last visited Jan. 31, 2014).

day.<sup>11</sup> Every three years a single sample<sup>12</sup> is taken from a plant or from the connected distribution system, but not from homes.<sup>13</sup> Violations of DEP's secondary water quality characteristics found by the three year test result in quarterly sampling in accordance with a corrective action plan.<sup>14</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 367.072, F.S., to allow customers to petition the commission for relief when water quality standards are not met by a utility. The bill requires customers to first file a notice of intent with the commission, wait up to ten days for instructions from the commission, and then collect signatures within 90 days of receiving instructions. The bill requires that the petition must be signed by at least 65 percent of the utility's customers of the service area covered under the certificate of authorization, and must state with specificity the problem that the utility's customers have with the utility's quality of water service. Customers who sign the petition must be customers currently receiving service from the utility. If customers are served by a master meter, 65 percent of the customers, tenants, or unit owners served must support the petition. Customers are given 30 days to cure an insufficient petition.<sup>15</sup> The bill prohibits a utility from filing a rate case until the petition is acted upon by the commission.

The commission must review the petition to determine if it complies with the requirements set forth in the section and the issues identified support a reasonable likelihood that the utility is failing to provide quality of water service. A docket is opened if these standards are met. The utility must respond to each problem identified in the petition and explain if the utility meets federal and state primary standards or secondary standards established in s. 367.0812, F.S. The utility must also give an explanation of its relationship with its customers, including each complaint received, length of time each customer has been complaining, the resolution of each complaint, and the time taken to address each complaint.

The commission must evaluate the petition by considering the issues identified, the utility's response, and any other factors the commission deems relevant. Based upon its evaluation, the commission may dismiss the petition, require the utility to take the necessary steps to correct the quality of water service issues identified in the petition, within a time certain and with certain reporting benchmarks, or revoke the utility's certificate, in which case a receiver will be appointed. The commission must adopt rules relating to the requirements for the petition and may adopt other rules to implement the section.

**Section 2** creates s. 367.0812, F.S., to provide that when the PSC is setting rates for a water utility, it must consider the extent to which the utility has met secondary water quality standards

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<sup>11</sup> The schedule of sampling is based on system size. Systems serving large communities are being tested this year, and small communities will be tested next year. Telephone interview with Van Hoofnagle, DEP Division of Water Resource Management (Jan.23, 2014).

<sup>12</sup> A confirmation sample is allowed. *Id.*

<sup>13</sup> See Rule 62-550.520, F.A.C.

<sup>14</sup> Senate Communications, Energy, & Public Utilities telephone interview with Van Hoofnagle, DEP Division of Water Resource Management (Jan.23, 2014).

<sup>15</sup> If the petition is dismissed for insufficiency, customers would not be allowed to file a subsequent petition for one year.

established by the DEP. In determining whether a utility has met these standards, the PSC must consider:

- Testimony and evidence provided by customers and the utility;
- The results of past tests required by the DEP or a county health department which measure the utility's compliance with the applicable secondary water quality standards;
- Complaints filed by customers with the relevant regulatory authority regarding the applicable secondary water quality standards, or wastewater standards, during the past five years; and
- Results of any updated tests deemed necessary by the commission.

The commission shall consider a finding by the DEP as to whether the utility has failed to meet the DEP's secondary water quality standards.

The utility is required to meet with its customers within a time prescribed by the commission to discuss estimated costs and benefits to implement plausible solutions and report to the commission if the customers and the utility agree on a solution for each quality of service issue identified or if the customers and the utility prefer a different solutions to at least one of the quality of service issues identified. The commission may require the utility to implement solutions that are in the best interest of the customers for each issue and establish benchmarks and interim reporting on the progress of implementation. The commission may allow companies to recover its costs for solutions required by the commission.

During a rate case proceeding under new s. 367.0812, F.S., customers may not file a petition to revoke a certificate.

The commission may prescribe penalties for a utility's failure to adequately resolve each quality of water service concern, which may include fines provided in s. 367.161, F.S., a reduction of return on equity of up to 100 basis points (one percent), denial of all or part of a rate increase until the quality of service is found to be satisfactory, or revocation of the certificate of authorization. The commission is required to adopt rules to assess and enforce a utility's compliance with this section.

**Section 3** appropriates \$212,521 in recurring funds and \$12,012 in nonrecurring funds from the General Revenue Fund to the PSC and authorizes three full-time equivalent positions for the 2014-2015 fiscal year to implement the provisions in this act related to the regulation of the quality of water service.

**Section 4** provides an effective date of July 1, 2014.

#### **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:

While the concept of reducing a utility's rate of return on equity (ROE) based on mismanagement is "by no means new to Florida or other jurisdictions,"<sup>16</sup> the PSC staff notes that the denial of all of a rate increase, pursuant to Section 2 of the bill, could be interpreted as confiscatory ratemaking and, therefore, unconstitutional.<sup>17</sup> Utilities are entitled to a reasonable rate of return on equity, which may be offset by the commission based on a utility's "overall quality of service and the performance of the management."<sup>18</sup>

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/CS/SB 272, private water utilities that do not satisfactorily address customer complaints regarding secondary water standards might lose their certificate of authority to provide service. Customers may realize an increase in the cost of water services if certain services are improved; however, the customer will be fully informed of the costs and benefits and may participate in the decision to incur those costs before increases are incurred.

C. Government Sector Impact:

Section 2 of the bill will require water rate cases heard by the Commission, to consider additional testimony and evidence. The PSC staff estimates the implementation of this bill will require three full-time equivalent positions and \$224,533 for Fiscal Year 2014-2015, based on incremental staffing needs, travel to facilitate meetings between customers and utilities, and other expenses associated with the water initiatives.<sup>19</sup> Due to declining revenue, the estimated Fiscal Year 2014-2015 adjusted unreserved Regulatory Trust Fund (RTF) balance is projected to be \$557,724 (includes \$1,137,474 five percent state trust fund reserve) as of 6-30-15. According to the PSC, a \$4.4 million cash balance is needed in the trust fund for cash flow. The minimum cash flow requirement is based on an estimated need of two months operating and non-operating costs, and because Regulatory Assessment fees are received semi-annually. The commission plans to initiate rulemaking to increase revenue in October 2014.<sup>20</sup>

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<sup>16</sup> *Gulf v. Wilson*, 597 So. 2d 270 at 273-274 (Fla. 1992).

<sup>17</sup> FPSC, *supra* note 5.

<sup>18</sup> See Order No. PSC-01-1988-PAA-WU, *In re: Application for staff-assisted rate case in Columbia County by Consolidated Water Works, Inc.*, Docket No. 001682-WU (Oct. 8, 2001).

<sup>19</sup> FPSC, *Estimated Fiscal Impact of CS for SB272* (Feb. 3, 2014).

<sup>20</sup> Discussion during meeting with FPSC staff on February 27, 2014.

Based on the current expenditure and revenue projections in the RTF, the bill appropriates \$212,521 in recurring funds and \$12,012 in nonrecurring funds from the General Revenue Fund to the PSC and authorizes three full-time equivalent positions for the 2014-2015 fiscal year to implement the provisions in this act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/CS/SB 272 inadvertently changed the effective date of the bill to July 1, 2014. The effective date should be October 1, 2014, to accommodate rulemaking provisions in the bill.

**VIII. Statutes Affected:**

This bill creates sections 367.072 and 367.0812 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS/CS by Appropriations on March 13, 2014:**

- Removes all reference to wastewater service and applies only to quality of water service;
- Clarifies and revises the process for filing a petition by customers and the process the commission follows in reviewing the petition;
- Removes reference to placing a certificate of authority on probationary status;
- Removes the requirement that the DEP set secondary wastewater service standards;
- Clarifies that customers may not petition the commission to revoke a certificate if there is an open ratemaking docket for that utility;
- Makes conforming changes to use the term “quality of water service”;
- Replaces the term “system” with “customer of the service area covered under the certificate of authorization”; and
- Provides an appropriation to the PSC for implementing the provisions of the bill.

**CS/CS by Community Affairs on February 4, 2014:**

The bill refines and clarifies the petition process for revocation. After receiving notice of intent to file a petition from customers, the PSC would:

- Notify appropriate parties while maintaining privacy of customer records;
- Receive and verify supporting documentation during a 90 day petition signature timeframe;
- Allow petitioners one opportunity to cure an insufficient petition;
- Ensure compliance with federal and state secondary water and wastewater criteria; removing references to local or water management districts;
- Dismiss the petition when supported by clear and convincing evidence;

- Determine whether to place the utility's certificate on probationary status in conjunction with corrective action, or revoke the certificate; and
- Disallow petitioners from filing another petition for one year subsequent a dismissal.

Additionally, the bill provides further direction to the PSC on water and wastewater rate cases, by:

- Requiring the DEP to set, by rule, acceptable secondary water quality and wastewater service standards;
- Allowing companies to recover costs for solutions required by the commission;
- Providing penalties, including denial of all or part of a rate increase;
- Disallowing a utility from filing a rate case while a revocation docket is open; and
- Disallowing customers from filing a petition to revoke the certificate of a utility during rate case proceedings.

**CS by Communications, Energy, and Public Utilities on January 14, 2014:**

The CS removes the provisions that:

- Limit the rates that may be charged by a private water and wastewater utility; and
- Require adjustment of rates to that of government-owned water and wastewater utilities and that requires that any amount collected the previous 12 months that is greater than the adjusted rate must be refunded.

The bill creates a process whereby customers may petition the commission to require compliance with secondary water quality standards and, if the utility fails to comply with the commission orders, the utility's certificate of authority may be revoked. The bill provides criteria the petition must meet to be considered by the commission. The bill provides criteria the commission must consider in its review of the petition and the action it may take to dispose of the petition.

The bill authorizes the commission to deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water or wastewater service is less than satisfactory.

The bill revises the ratemaking process the commission must follow when considering secondary water quality and wastewater service standards to include that the utility inform the commission of the issues and solutions on which the utility and the customers agree and disagree. The commission may require the utility to implement solutions that are in the best interest of the customer and establish benchmarks and require periodic reporting.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 367.072, Florida Statutes, is created to  
read:

367.072 Petition to revoke certificate of authorization.-

The Legislature finds that it is in the public interest that  
water service be of good quality and consistent with the  
standards set forth in this chapter. Therefore, a utility's



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11 certificate of authorization to provide water service may be  
12 revoked if, after its customers file a petition with the  
13 commission, the commission finds that revocation is in the best  
14 interest of the customers in accordance with this section. As  
15 used in this section, the term "customer" means an individual  
16 whose property is serviced by a single meter or a person whose  
17 name appears on the bill for a master meter.

18 (1) If the commission receives a letter from the customers  
19 of a utility stating their intent to file a petition, the  
20 utility is prohibited from filing a rate case until the petition  
21 is acted upon by the commission.

22 (a) Within 10 days after receipt of the letter, commission  
23 staff shall notify the utility of the customers' intent to file  
24 a petition and that the utility may not file for a rate increase  
25 until the petition is acted upon by the commission.

26 (b) Commission staff shall send to the customers  
27 instructions regarding the information required on the petition  
28 and the subsequent process the commission will follow. The  
29 petition must be filed within 90 days after the receipt of the  
30 instruction. Commission staff shall review the petition and  
31 notify the customers within 10 days after receipt of the  
32 petition that the petition is sufficient for the commission to  
33 act or that additional information is necessary. The customers  
34 must file a cured petition within 30 days after receipt of the  
35 notice to cure and provide a copy of the petition to the  
36 utility. If the customers fail to file or refile a petition  
37 within the allotted time, the commission shall dismiss the  
38 petition with prejudice, and the customers may not file another  
39 petition for 1 year after the dismissal.



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40       (2) A petition must:  
41       (a) State with specificity each issue that customers have  
42 with the quality of water service, each time the problem was  
43 reported to the utility, and how long each issue has existed;  
44 and  
45       (b) Be signed by at least 65 percent of the customers of  
46 the service area covered under the certificate of authorization.  
47 A person whose name appears on the bill for a master meter may  
48 sign a petition if at least 65 percent of the customers,  
49 tenants, or unit owners served by the master meter support the  
50 petition, in which case documentation of such support must be  
51 included with the petition.  
52       (3) If the petition is in compliance with this section and  
53 the issues identified within the petition support a reasonable  
54 likelihood that the utility is failing to provide quality of  
55 water service, a docket shall be opened. The utility shall use  
56 the following criteria in preparing a response to the  
57 commission, addressing the issues identified within the petition  
58 and defending the quality of its water service:  
59       (a) Federal and state primary water quality standards or  
60 secondary water quality standards pursuant to s. 367.0812; and  
61       (b) The relationship between the utility and its customers,  
62 including each complaint received regarding the quality of water  
63 service, the length of time each customer has been complaining  
64 about the service, the resolution of each complaint, and the  
65 time it has taken to address such complaints.  
66       (4) The commission shall evaluate the issues identified in  
67 the petition, the utility's response as to whether it is  
68 providing quality of water service, and any other factor the



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69 commission deems relevant.

70 (5) Based upon its evaluation, the commission shall:

71 (a) Dismiss the petition, in which case the decision must  
72 be supported by clear and convincing evidence and is subject to  
73 ss. 120.569 and 120.57;

74 (b) Require the utility to take the necessary steps to  
75 correct the quality of water service issues identified in the  
76 petition. The commission shall set benchmarks within a  
77 timeframe, not to exceed 3 years, and may require the utility to  
78 provide interim reports describing its progress in meeting such  
79 benchmarks. The commission may extend the term 3 years for  
80 circumstances that delay the project which are not in the  
81 control of the utility, such as natural disasters and obtaining  
82 permits necessary for meeting such benchmarks; or

83 (c) Notwithstanding s. 367.045, revoke the utility's  
84 certificate of authorization, in which case a receiver must be  
85 appointed pursuant to s. 367.165 until a sale of the utility  
86 system has been approved pursuant to s. 367.071.

87 (6) The commission shall adopt by rule the format of and  
88 requirements for a petition and may adopt other rules to  
89 administer this section.

90 Section 2. Section 367.0812, Florida Statutes, is created  
91 to read:

92 367.0812 Rate fixing; quality of water service as  
93 criterion.—

94 (1) In fixing rates that are just, reasonable,  
95 compensatory, and not unfairly discriminatory, the commission  
96 shall consider the extent to which the utility provides water  
97 service that meets secondary water quality standards as



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98 established by the Department of Environmental Protection. In  
99 determining whether a utility has satisfied its obligation to  
100 provide quality of water service that meets these standards, the  
101 commission shall consider:

102 (a) Testimony and evidence provided by customers and the  
103 utility;

104 (b) The results of past tests required by a county health  
105 department or the Department of Environmental Protection which  
106 measure the utility's compliance with the applicable secondary  
107 water quality standards;

108 (c) Complaints regarding the applicable secondary water  
109 quality standards filed by customers with the commission, the  
110 Department of Environmental Protection, the respective local  
111 governmental entity, or a county health department during the  
112 past 5 years; and

113 (d) If the commission deems necessary, the results of any  
114 updated test.

115 (2) (a) In determining the quality of water service, the  
116 commission shall consider a finding by the Department of  
117 Environmental Protection as to whether the utility has failed to  
118 provide water service that meets the secondary water quality  
119 standards of the department.

120 (b) The utility shall create an estimate of the costs and  
121 benefits of a plausible solution to each issue identified by the  
122 commission.

123 (c) The utility shall meet with its customers within a time  
124 prescribed by the commission to discuss the estimated costs and  
125 benefits of and time necessary for implementing a plausible  
126 solution for each quality of water service issue identified, and





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127 the utility shall report the results of such meetings to the  
128 commission.

129 (d) The utility shall inform the commission, if:

130 1. The customers and the utility agree on a solution for  
131 each quality of water service issue identified, of each agreed  
132 on solution and the cost of each solution; or

133 2. The customers and the utility prefer a different  
134 solution to at least one of the quality of water service issues  
135 identified, of the preferred solutions by each and the cost of  
136 each solution.

137 (e) The commission may require the utility to implement a  
138 solution that is in the best interest of the customers for each  
139 quality of water service issue. The utility may recover its  
140 costs in implementing the solutions ordered by the commission.  
141 The commission may establish the necessary benchmarks that a  
142 utility must meet for each solution and require the utility to  
143 report periodically until each solution is completed.

144 (3) Notwithstanding s. 367.072, customers may not petition  
145 the commission to revoke the certificate of authorization of a  
146 utility if it is the subject of a proceeding under this chapter.

147 (4) The commission may prescribe penalties for a utility's  
148 failure to adequately resolve each quality of water service  
149 issue as required. Penalties may include penalties as provided  
150 in s. 367.161, a reduction of return on equity of up to 100  
151 basis points, the denial of all or part of a rate increase for a  
152 utility's system or part of a system if it determines that the  
153 quality of water service is less than satisfactory until the  
154 quality of water is found to be satisfactory, or revocation of  
155 the certificate of authorization pursuant to s. 367.072.



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156 (5) The commission shall adopt rules to assess and enforce  
157 compliance with this section.

158 Section 3. For the 2014-2015 fiscal year, the sums of  
159 \$212,521 in recurring funds and \$12,012 in nonrecurring funds  
160 from the General Revenue Fund and three full-time equivalent  
161 positions with an associated salary rate of 131,235 are  
162 appropriated to the Florida Public Service Commission to  
163 implement the provisions of this act related to the regulation  
164 of the quality of water service.

165 Section 4. This act shall take effect July 1, 2014.

166  
167 ===== T I T L E A M E N D M E N T =====

168 And the title is amended as follows:

169 Delete everything before the enacting clause  
170 and insert:

171 A bill to be entitled

172 An act relating to water utilities; creating s.  
173 367.072, F.S.; providing legislative findings;  
174 defining the term "customer"; authorizing the Florida  
175 Public Service Commission to revoke a certificate of  
176 authorization upon receipt of a petition; providing  
177 criteria for such petition; authorizing the commission  
178 to adopt rules; creating s. 367.0812, F.S.; requiring  
179 the commission to consider the quality of water  
180 service when fixing rates; providing criteria that the  
181 commission must consider in making its determination  
182 on the petition; requiring the utility to meet with  
183 its customers to discuss the costs and benefits of  
184 plausible solutions if the commission finds that the



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185 utility has failed to meet certain quality of water  
186 standards; prohibiting a customer from petitioning the  
187 commission to revoke the certificate of authorization  
188 of a utility under certain circumstances; authorizing  
189 the commission to prescribe penalties for certain  
190 failures of the utility; requiring the commission to  
191 adopt rules; providing an appropriation; providing an  
192 effective date.

By the Committees on Community Affairs; and Communications,  
Energy, and Public Utilities; and Senator Simpson

578-01649-14

2014272c2

1 A bill to be entitled  
2 An act relating to water and wastewater utilities;  
3 creating s. 367.072, F.S.; providing legislative  
4 findings; authorizing the Florida Public Service  
5 Commission to revoke a certificate of authorization  
6 upon receipt of a petition; requiring customers to  
7 file a notice of intent with the commission before  
8 submitting a petition; providing criteria for such  
9 petition; requiring the commission to take certain  
10 steps in response to the petition; prohibiting the  
11 customers from filing a petition within a specified  
12 timeframe under certain circumstances; prohibiting a  
13 utility from filing for a rate case under certain  
14 circumstances; requiring the utility to submit a  
15 response; requiring the commission to adopt rules;  
16 creating s. 367.0812, F.S.; requiring the commission  
17 to consider the quality of water or wastewater service  
18 when fixing rates; providing criteria that the  
19 commission must consider in making its determination;  
20 requiring the utility to meet with its customers to  
21 discuss the costs and benefits of plausible solutions  
22 if the commission finds that the utility has failed to  
23 meet certain water or wastewater quality standards;  
24 requiring that the utility be allowed to recover the  
25 costs of the solutions ordered by the commission;  
26 prohibiting customers from petitioning the commission  
27 to revoke the certificate of authorization of a  
28 utility under certain circumstances; authorizing the  
29 commission to impose penalties on a utility for

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

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30 certain failures; requiring the commission to adopt  
31 rules; requiring the Department of Environmental  
32 Protection to establish secondary wastewater service  
33 standards regarding the generation of odor, noise,  
34 aerosol drift, and lighting; providing an effective  
35 date.

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

38  
39 Section 1. Section 367.072, Florida Statutes, is created to  
40 read:

41 367.072 Petition to revoke certificate of authorization.-  
42 The Legislature finds that it is in the public interest that  
43 water and wastewater service be of good quality and consistent  
44 with the standards set forth in this chapter. Therefore, a  
45 utility's certificate of authorization may be revoked if, after  
46 its customers file a petition in accordance with this section,  
47 the commission finds that revocation is in the best interest of  
48 the customers.

49 (1) Customers must file a notice of intent with the  
50 commission before filing a petition. Within 10 days after  
51 receipt of a notice of intent, the commission staff shall:

52 (a) Notify the applicable utility that its customers have  
53 filed a notice of intent; and

54 (b) Send the customers instructions detailing the required  
55 format and content of the petition and the subsequent process  
56 the commission must follow.

57 (2) Within 90 days after receipt of such instructions, the  
58 customers must file a petition that, for the purpose of

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

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59 determining whether a utility is providing satisfactory water  
 60 quality or wastewater service, must:

61 (a) State with specificity each issue that the customers  
 62 have with the water quality or wastewater service, each time the  
 63 problem was reported to the utility, and how long each issue has  
 64 existed; and

65 (b) Be signed by at least 65 percent of a utility's  
 66 customers within a system. The term "customer" means an  
 67 individual who owns or rents property that is serviced by a  
 68 single meter or an individual whose name appears on the bill for  
 69 a master meter. Only one signature for each service address may  
 70 be included on the petition. An individual whose name appears on  
 71 the bill for a master meter may sign a petition if at least 65  
 72 percent of the heads of the households served by the master  
 73 meter, such as tenants or unit owners, support the petition, in  
 74 which case documentation of such support must be included with  
 75 the petition.

76 (3) The commission shall review the petition and, within 10  
 77 days after receipt, notify the customers whether the petition is  
 78 sufficient or whether additional information is required. If  
 79 additional information is required, the customers must file a  
 80 cured petition within 30 days after receipt of the notification.  
 81 If the customers fail to file the petition in accordance with  
 82 this subsection, the commission shall dismiss the petition, and  
 83 the customers may not file another petition for 1 year after the  
 84 date of dismissal.

85 (4) If the petition is in compliance with this section and  
 86 the issues identified within the petition support a reasonable  
 87 likelihood that the water or wastewater utility is failing to

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88 provide quality water or wastewater service, a docket shall be  
 89 opened. Once opened, the utility may not file for a rate case  
 90 until the docket is closed.

91 (5) A copy of the petition and written notification  
 92 regarding the prohibition against filing a rate case while the  
 93 docket remains open must be provided to the utility. The utility  
 94 shall submit a response to the commission addressing the issues  
 95 identified within the petition and explaining whether it is  
 96 providing quality water or wastewater service using the  
 97 following criteria:

98 (a) Federal and state primary water and wastewater  
 99 standards or secondary water quality or wastewater service  
 100 standards provided in s. 367.0812; and

101 (b) The relationship between the utility and its customers,  
 102 including each complaint received regarding service quality, the  
 103 length of time each customer has been complaining about service,  
 104 the resolution of each complaint, and the time it has taken to  
 105 address such complaints.

106 (6) The commission shall evaluate the issues identified  
 107 within the petition, the utility's response as to whether it is  
 108 providing quality water or wastewater service, and any other  
 109 factor the commission deems relevant.

110 (7) Notwithstanding s. 367.045 and based upon its  
 111 evaluation, the commission shall:

112 (a) Dismiss the petition if the decision is supported by  
 113 clear and convincing evidence, in which case the decision is  
 114 subject to ss. 120.569 and 120.57;

115 (b) Place the utility's certificate on probationary status  
 116 and require the utility to take the necessary steps to correct

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117 the water quality or wastewater service issues identified. The  
 118 commission shall set benchmarks within a timeframe, not to  
 119 exceed 3 years, and may require the utility to provide interim  
 120 reports describing its progress in meeting such benchmarks. The  
 121 commission may extend the timeframe for compliance beyond 3  
 122 years if the circumstances that delay the utility, such as  
 123 obtaining permits or natural disaster, are not within the  
 124 utility's control; or

125 (c) Revoke the utility's certificate of authorization, in  
 126 which case a receiver must be appointed pursuant to s. 367.165  
 127 until a sale of the utility system has been approved pursuant to  
 128 s. 367.071.

129 (8) The commission shall adopt by rule the format of and  
 130 requirements for a petition and may adopt other rules to  
 131 administer this section.

132 Section 2. Section 367.0812, Florida Statutes, is created  
 133 to read:

134 367.0812 Rate fixing; quality of water or wastewater  
 135 service as criterion.-

136 (1) In fixing rates that are just, reasonable,  
 137 compensatory, and not unfairly discriminatory, the commission  
 138 shall consider the extent to which the utility provides water  
 139 service that meets secondary water quality standards for taste,  
 140 odor, color, or corrosiveness, as established by the Department  
 141 of Environmental Protection. In determining whether a utility  
 142 has satisfied its obligation to provide water service to its  
 143 customers which meets the standards for taste, odor, color, or  
 144 corrosiveness, the commission shall consider:

145 (a) Testimony and evidence provided by customers and the

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146 utility;

147 (b) The results of past tests required by the Department of  
 148 Environmental Protection which measure the utility's compliance  
 149 with the applicable secondary water quality standards or with a  
 150 county health department;

151 (c) Complaints regarding the applicable secondary water  
 152 quality standards filed by customers with the commission or the  
 153 Department of Environmental Protection, or the respective local  
 154 governmental entity, or a county health department during the  
 155 past 5 years; and

156 (d) If the commission deems necessary, the results of any  
 157 updated test.

158 (2) In fixing just, reasonable, compensatory, and not  
 159 unfairly discriminatory rates, the commission shall consider the  
 160 extent to which the utility provides wastewater service to its  
 161 customers without generating odor, noise, aerosol drift, or  
 162 lighting in excess of the standards established by the  
 163 Department of Environmental Protection. In determining the  
 164 extent to which the utility provides wastewater service to its  
 165 customers without generating odor, noise, aerosol drift, or  
 166 lighting in excess of the standards by the Department of  
 167 Environmental Protection, the commission shall consider:

168 (a) Testimony and evidence provided by customers and the  
 169 utility;

170 (b) The results of past tests required by the Department of  
 171 Environmental Protection which measure the utility's compliance  
 172 with the applicable standards established by the Department of  
 173 Environmental Protection; and

174 (c) Complaints regarding the alleged odor, noise, aerosol

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175 drift, or lighting filed with the Department of Environmental  
 176 Protection or the commission, or the respective local  
 177 governmental entity, or a county health department during the  
 178 past 5 years.

179 (3) (a) In determining the quality of water or wastewater  
 180 service, the commission shall consider a finding by the  
 181 department as to whether a utility:

182 1. Has failed to provide water service that meets the  
 183 secondary water quality standards of the department regarding  
 184 taste, odor, color, or corrosiveness; or

185 2. Has generated odor, noise, aerosol drift, or lighting in  
 186 providing wastewater service in excess of the standards  
 187 established by the Department of Environmental Protection,

188 the utility shall create an estimate of the costs and benefits  
 189 of a plausible solution to each quality of water or wastewater  
 190 service issue identified by the commission.

191 (b) The utility shall meet with its customers within a time  
 192 prescribed by the commission to discuss the estimated costs and  
 193 benefits of and time necessary for implementing a plausible  
 194 solution for each quality of service issue identified, and the  
 195 utility shall report the results of such meeting to the  
 196 commission.

197 (c) The utility shall inform the commission if:

198 1. The customers and the utility agree on a solution for  
 199 each quality of service issue identified, what the solution is,  
 200 and the cost of the solution; or

201 2. The customers and the utility prefer a different  
 202 solution to at least one of the quality of service issues  
 203

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204 identified and the solution and cost of the solution preferred  
 205 by each.

206 (d) The commission may require the utility to implement a  
 207 solution that is in the best interest of the customers for each  
 208 quality of service issue. The utility shall be allowed to  
 209 recover the costs of the solutions ordered by the commission.  
 210 The commission may establish the necessary benchmarks that a  
 211 utility must meet for each solution and require the utility to  
 212 report periodically until each solution is completed.

213 (4) Notwithstanding s. 367.072, customers may not petition  
 214 the commission to revoke the certificate of authorization of a  
 215 utility during the proceedings under this section.

216 (5) The commission may prescribe penalties for a utility's  
 217 failure to adequately resolve each quality of water or  
 218 wastewater service issue as required. Penalties may include  
 219 finest as provided in s. 367.161; a reduction of return on equity  
 220 of up to 100 basis points; the denial of all or part of a rate  
 221 increase for a utility's system or part of a system if the  
 222 commission determines that the water quality is less than  
 223 satisfactory, until the water quality is found to be  
 224 satisfactory; or cancellation of the certificate of  
 225 authorization under s. 367.072.

226 (6) The commission shall adopt rules to assess and enforce  
 227 compliance with this section. The Department of Environmental  
 228 Protection shall establish secondary wastewater service  
 229 standards regarding the generation of odor, noise, aerosol  
 230 drift, and lighting.

231 Section 3. This act shall take effect October 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

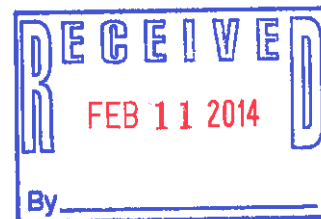
**SENATOR WILTON SIMPSON**  
18th District

### COMMITTEES:

Community Affairs, *Chair*  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Environmental Preservation and Conservation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee



February 11, 2014

Senator Joe Negron, Chairman  
Committee on Appropriations  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399

Senator Negron,

Please place Senate Bill 272 relating to water and wastewater utilities, on the next Committee on Appropriations agenda.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson  
Senator, 18<sup>th</sup> District

### REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/11/2014

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 272

*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 326

INTRODUCER: Judiciary Committee and Senator Thompson

SUBJECT: Victims of Wrongful Incarceration

DATE: March 13, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>
4.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 326 amends the “Victims of Wrongful Incarceration Compensation Act” (act) to make a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person. Under the bill, a claimant is “innocent of the offenses charged” and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant’s conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

Under current law, a claimant’s eligibility for compensation is established through a court order vacating the claimant’s conviction and sentence as the result of exonerating evidence.

A claimant who is eligible for compensation under the criteria in the bill must apply to the Department of Legal Affairs (DLA) for compensation. The same application documents currently required for compensation under the existing criteria are required for a claimant who is eligible for compensation under the bill, except that the certified copy of the nolle prosequi or nolle prosequi memorandum replaces the requirement of the court order vacating conviction and sentence.

Current amounts and forms of compensation, such as monetary compensation, an educational tuition and fee waiver, and the reimbursement of fines, penalties, court costs, and reasonable attorney's fees available to wrongfully incarcerated persons are equally available to wrongfully incarcerated persons qualifying for redress under the bill. Similarly, timelines for the DLA to review an application and related decision-making are the same as in current law.

The bill does not affect the provision of existing law which makes a wrongfully incarcerated person ineligible for compensation as the result of a disqualifying felony conviction.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

According to the Office of State Court Administrator and the Department of Legal Affairs, the bill has an insignificant fiscal impact.

## II. Present Situation:

### **Victims of Wrongful Incarceration Compensation Act and Postconviction DNA Testing**

In 2001, postconviction DNA testing became more widely available in Florida. It was a statutory recognition that the science behind DNA testing was evolving and was reliable evidence of identity.<sup>1</sup> In cases where DNA evidence exists at the crime scene and is collected and processed properly, DNA has been the evidence which can help solve "cold cases" and provide the basis for exonerating the innocent.

The Florida Legislature established the "Victims of Wrongful Incarceration Compensation Act" in 2008.<sup>2</sup> The act defines a wrongfully incarcerated person as:

a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and ... the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.<sup>3</sup>

The impetus for the act seems to have been the number of exonerations that were occurring in Florida due to DNA evidence showing people were innocent of committing crimes for which they were incarcerated and the Legislature's interest in compensating these wrongfully incarcerated people.<sup>4</sup>

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<sup>1</sup> See Ch. 2001-97, L.O.F.; s. 925.11 and s. 943.3251, F.S.; see also *Sireci v. State*, 773 So.2d 34 (Fla. 2000) noting that "DNA typing was recognized in this state as a valid test as early as 1988." It should be noted, however, that in crimes that occurred long before DNA testing was admitted in evidence by the courts, physical evidence from a crime scene was likely collected and processed much differently than it is now because there was no expectation that such scientific evidence existed.

<sup>2</sup> Chapter 2008-39, L.O.F.

<sup>3</sup> Section 961.02(4), F.S.

<sup>4</sup> "The Bill Analysis and Fiscal Impact Statement prepared by the staff of the Judiciary Committee demonstrates that the Victims of Wrongful Incarceration Compensation Act was prompted by cases in which DNA evidence had exonerated

### ***Disqualifying Felonies***

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony, which is one of the following situations:

- The person had a prior conviction or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.<sup>5</sup>

### ***Court Process of Establishing Status as a Wrongfully Incarcerated Person***

The claimant first files a petition with the original sentencing court seeking status as a wrongfully incarcerated person eligible for compensation. The claimant must allege in the petition verifiable and substantial evidence of actual innocence exists and the claimant is not disqualified from seeking compensation.<sup>6</sup>

The prosecuting authority has 30 days to submit a response to the court.<sup>7</sup> Based on the prosecuting attorney's response, the court will either find the petitioner has met his or her burden through clear and convincing evidence of innocence, or based on a preponderance of the evidence, the petitioner is ineligible for compensation due to a separate disqualifying felony.<sup>8</sup> If the court finds the petitioner ineligible, the court will dismiss the petition.<sup>9</sup>

If the prosecuting attorney contests the petition and raises issues of fact on the question of innocence, an administrative law judge must determine whether the petitioner is eligible for compensation.<sup>10</sup> The original sentencing court will then review the administrative law judge's finding and issue its own order within 60 days.<sup>11</sup>

### ***Application Requirements for the Department of Legal Affairs***

After receiving a court order vacating the conviction and the sentence, the claimant must file an application with the Department of Legal Affairs (DLA) within two years after the original sentencing court enters its order finding the person is a wrongfully incarcerated person eligible for compensation.<sup>12</sup>

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defendants. See Fla. S. Bill Analysis & Fiscal Impact Statement of Mar. 26, 2008, § 2 for Bill CS/SB 756, p. 2 (“In Florida, at least nine people have been exonerated or released from incarceration since 2000, as a result of post-conviction DNA testing.”). The legislature was concerned about compensating persons who were actually innocent, but not necessarily about paying people who had been found not guilty.” *Fessenden v. State*, 52 So. 3d (Fla. 2d DCA 2010).

<sup>5</sup> Section 961.04, F.S.

<sup>6</sup> Section 961.03(1)(a)1. and 2., F.S.

<sup>7</sup> Section 961.03(2), F.S.

<sup>8</sup> Section 961.03(3) and (4), F.S.

<sup>9</sup> Section 961.03(4)(a), F.S.

<sup>10</sup> Section 961.03(5), F.S.

<sup>11</sup> Section 961.03(6)(d), F.S.

<sup>12</sup> Section 961.05(1), F.S.

The claimant must provide through application:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation (meaning not disqualified);
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including documentation from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency and a current form of photo identification, showing that the applicant is the person wrongfully incarcerated;
- Supporting documentation of fines, penalties, and court costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the DLA.<sup>13</sup>

The DLA forwards one set of fingerprints each to the Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) for a criminal records background check of the applicant.<sup>14</sup>

The DLA must notify the applicant of errors or omissions within 30 calendar days after receipt of the application and provide an opportunity to correct the application within 15 days.<sup>15</sup>

The DLA has 90 days to process a claim and must notify the claimant within 5 business days after its determination. If the DLA determines the applicant meets all requirements, the applicant is eligible for compensation.<sup>16</sup>

### ***Compensation***

Compensation consists of:

- Monetary compensation, at the rate of \$50,000 for each year of wrongful incarceration, subject to proration and inflation based on the Consumer Price Index;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.

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<sup>13</sup> Section 961.05(4), F.S.

<sup>14</sup> Section 961.05(5), F.S.

<sup>15</sup> Section 961.05(6), F.S.

<sup>16</sup> Section 961.05(6) and (7), F.S.

Total compensation is capped at \$2 million.<sup>17</sup>

***Wrongfully Incarcerated Persons Ineligible for Relief under Chapter 961, F.S.***

Although the Victims of Wrongful Incarceration Compensation Act specifically provides compensation for wrongfully incarcerated persons, not all wrongfully incarcerated persons are eligible for relief under the act.

James Richardson was the first man to file a claim under the act. Mr. Richardson was convicted of murdering one of his children by poisoning (although all of his seven children and step-children died during the tragedy), in Arcadia in 1968. He spent over 21 years in prison, four of them on Death Row<sup>18</sup> before his sentence was eventually vacated and he was granted a new trial in 1989. The trial never occurred because the Miami-Dade State Attorney who had been assigned by the Governor to investigate allegations against the state of suborning perjury, using perjured testimony to obtain a conviction, and suppressing exculpatory evidence filed a *nolle prosequi* in the case, thereby closing the case to further proceedings by the State.<sup>19</sup>

Mr. Richardson and DeSoto County subsequently settled a lawsuit over his wrongful prosecution for \$150,000. The State contested his claim under the act, however, and the matter went to a hearing before an Administrative Law Judge (ALJ) on July 17, 2009.<sup>20</sup> At the hearing, Mr. Richardson testified he did not kill his children and took two approaches to provide verifiable and substantial evidence of his innocence in support of his testimony.

He first relied upon the investigation conducted by the Miami-Dade State Attorney and the testimony of one of its participants. Mr. Richardson's second approach was to attempt to show the babysitter had murdered the children by presenting facts regarding the timing of her access to the children, her ability to poison the children's lunch, her suspicious behavior during the minutes after the children became violently ill, and a possible motive for her actions.<sup>21</sup> A 1988 affidavit written by the Arcadia Chief of Police in which he opined Mr. Richardson had been framed and the babysitter was the guilty party was also presented as evidence at the hearing.<sup>22</sup>

The ALJ found there to be "clear and convincing evidence that the investigation leading up to (Mr. Richardson's) prosecution and conviction was incomplete," that there was "conflicting evidence," that critical facts were never determined, conflicting statements were withheld from the defense, the State presented perjured testimony from jailhouse informants and apparently the

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<sup>17</sup> Section 961.06(1), F.S.

<sup>18</sup> Richardson's death sentence was commuted to 25 years to life after the U.S. Supreme Court decided the 1972 *Furman v. Georgia* case that found unconstitutional procedural errors in capital cases and which required resentencing in cases where the death penalty had been handed down (408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)).

<sup>19</sup> Florida Commission on Capital Cases, "Case Histories: A Review of 23 Individuals Released from Death Row," June 20, 2002; see also Sherrer, "Arcadia and the Twenty Year Effort to Exonerate James Joseph Richardson," <http://justicedenied.org/arcadia.htm>, September 11, 2008.

<sup>20</sup> *Id.* See also "Wrongly jailed inmate seeks compensation," the Associated Press, July 17, 2009, reported at <http://www2.tbo.com>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

sheriff, and that the “investigation appeared to focus only on (Mr. Richardson) as a suspect and not also on others whose involvement was suspicious.”<sup>23</sup>

The ALJ found that while there *was* an absence of evidence proving Mr. Richardson guilty beyond a reasonable doubt (at the murder trial), there *was not* sufficient evidence at the hearing to find Mr. Richardson actually innocent as required by the act.<sup>24</sup>

The ALJ explained that the act requires consideration of the *factual sufficiency* (of the evidence) “[i]n other words, proof of actual innocence is required.”<sup>25</sup> Paragraph 38 of the ALJ’s findings of fact indicates that “hearsay,” “suggestions,” “opinion testimony,” memoranda outlining the Governor-ordered investigation and responses thereto, testimony by individuals as to what they considered during their respective investigations, and Mr. Richardson’s own testimony denying his guilt did not constitute verifiable and substantial evidence of his innocence.<sup>26</sup>

Upon reviewing the ALJ’s recommended order and a transcript of the hearing, the trial court entered its order denying Mr. Richardson’s claim.<sup>27</sup> Mr. Richardson appealed the court’s order and it was affirmed by the Second District Court of Appeal.<sup>28</sup>

### III. Effect of Proposed Changes:

This bill makes a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person under the “Victims of Wrongful Incarceration Compensation Act.” Under the bill, a claimant is “innocent of the offenses charged” and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant’s conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

Under current law, a claimant’s eligibility for compensation is established through a court order vacating the claimant’s conviction and sentence as the result of exonerating evidence.

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<sup>23</sup> Recommended Order, *Richardson v. State*, Case No. 09-2718VWI, August 21, 2009.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Richardson v. State*, Case No. 09-2718VWI, Final Order, October 23, 2009. It is interesting to note that as in the Richardson case, some 41 years after a crime occurred it is unlikely verifiable and substantial evidence of innocence is available to a claimant in a case where DNA evidence is nonexistent.

<sup>28</sup> *Richardson v. State*, 2010 WL 5464239 (Fla. 2d DCA December 29, 2010), referencing *Fessenden v. State*, 52 So.3d 35 (Fla. 2d DCA 2010) in which Fessenden’s conviction was overturned on a *matter of law*. It was not overturned because the State failed to prove wrongdoing. In the *Fessenden* case analysis, the Court notes that “[w]hen an appellate court reverses a judgment and sentence for lack of evidence, it does not make any determination that the defendant is actually innocent; it merely determines that the State did not provide evidence that could support a verdict of guilt beyond a reasonable doubt. There is a substantial difference in our system of justice between the concept of ‘not guilty’ and that of ‘actual innocence.’”

Under the bill, just as for other claims for compensation under ch. 961, F.S., only the wrongfully incarcerated person may pursue a claim. An estate or a personal representative of an estate is prohibited from filing a claim on behalf of a wrongfully incarcerated person.

To receive compensation, the wrongfully incarcerated person must submit an application to the DLA which includes:

- A certified copy of the nolle prosequi or nolle prosequi memorandum;
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency of this state and a current form of photo identification;
- Supporting documentation of fines, penalties, and courts costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the DLA.

Application requirements are identical to the current requirements under s. 961.05, F.S., except instead of requiring a court order vacating conviction and sentence, a nolle prosequi entered by the special prosecutor is required. Likewise, a mandatory background check confirming an absence of disqualifying felonies remains in place and the timelines for the DLA to process applications are the same.

If the DLA determines a claimant meets the requirements of the act, the wrongfully incarcerated person is entitled to the same forms and amounts of compensation currently provided in law.

The bill clarifies the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person, instead of a single annuity, with the compensation awarded under the Victims of Wrongful Incarceration Compensation Act. In purchasing the annuities, the CFO must maximize the benefits to the wrongfully incarcerated person.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

The bill takes effect July 1, 2014 and is repealed July 1, 2018.

#### **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 Office of the State Courts Administrator does not expect a fiscal impact.<sup>29</sup>

The Department of Legal Affairs (DLA) does not expect a fiscal impact. To date, the DLA indicates seven claims have been made since the inception of ch. 961, F.S., in 2008. Of these, three claims have been paid in the cases of Leroy McGee (2010), James Bain (2011), and Luis Diaz (2012). The DLA denied one claim, that of Jarvis McBride (2012). Three other claims resulted in findings of ineligibility or incomplete submission of application: Robert Lewis (2011), Edwin Lampkin (2012), and Ricardo Johnson (2013).

The DLA has incurred insignificant costs to process applications for compensation due to the scarcity of claims to date and because the claimant is responsible for providing necessary documentation.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 961.055 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 961.055 and 961.056.

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<sup>29</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement SB 326* (February 6, 2014).

<sup>30</sup> Email correspondence with Rob Johnson, Director of Legislative and Cabinet Affairs, Office of the Attorney General (February 5, 2014).

**IX. Additional Information:**

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

**CS by Judiciary on February 11, 2014:**

The committee substitute:

- Clarifies that the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person instead of a single annuity.
- Specifies that in entering into annuity contracts for the compensation awarded under the Victims of Wrongful Incarceration Compensation Act, the CFO must maximize the benefit to the wrongfully incarcerated person.

- B. **Amendments:**

None.

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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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By the Committee on Judiciary; and Senator Thompson

590-01753-14

2014326c1

1 A bill to be entitled  
 2 An act relating to victims of wrongful incarceration;  
 3 creating s. 961.055, F.S.; providing that a wrongfully  
 4 incarcerated person who was convicted and sentenced to  
 5 death on or before December 31, 1979, is exempt from  
 6 certain application procedures for compensation if a  
 7 special prosecutor issues a nolle prosequi after  
 8 reviewing the defendant's conviction; creating s.  
 9 961.056, F.S.; providing alternative procedures for  
 10 applying for compensation; requiring the claimant to  
 11 file an application with the Department of Legal  
 12 Affairs within a specified time; requiring the  
 13 application to include certain information and  
 14 documents; providing that the claimant is entitled to  
 15 compensation if all requirements are met; providing  
 16 that the section is repealed on a specified date;  
 17 amending s. 961.06, F.S.; requiring the Chief  
 18 Financial Officer to issue payment to an insurance  
 19 company or other financial institution authorized to  
 20 issue annuity contracts to purchase an annuity or  
 21 annuities selected by the wrongfully incarcerated  
 22 person; authorizing the Chief Financial Officer to  
 23 execute all necessary agreements to implement  
 24 compensation and to maximize the benefit to the  
 25 wrongfully incarcerated person; requiring the  
 26 wrongfully incarcerated person to sign a waiver before  
 27 the department's approval of the application;  
 28 providing an effective date.  
 29

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

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2014326c1

30 Be It Enacted by the Legislature of the State of Florida:  
 31  
 32 Section 1. Section 961.055, Florida Statutes, is created to  
 33 read:  
 34 961.055 Application for compensation for a wrongfully  
 35 incarcerated person; exemption from application by nolle  
 36 prosequi.—  
 37 (1) A person alleged to be a wrongfully incarcerated person  
 38 who was convicted and sentenced to death on or before December  
 39 31, 1979, is exempt from the application provisions of ss.  
 40 961.03, 961.04, and 961.05 in the determination of wrongful  
 41 incarceration and eligibility to receive compensation pursuant  
 42 to s. 961.06 if:  
 43 (a) The Governor issues an executive order appointing a  
 44 special prosecutor to review the defendant's conviction; and  
 45 (b) The special prosecutor thereafter enters a nolle  
 46 prosequi for the charges for which the defendant was convicted  
 47 and sentenced to death.  
 48 (2) The nolle prosequi constitutes conclusive proof that  
 49 the defendant is innocent of the offenses charged and is  
 50 eligible to receive compensation under this chapter.  
 51 (3) This section is repealed July 1, 2018.  
 52 Section 2. Section 961.056, Florida Statutes, is created to  
 53 read:  
 54 961.056 Alternative application for compensation for a  
 55 wrongfully incarcerated person.—  
 56 (1) A person who has been determined to be a wrongfully  
 57 incarcerated person pursuant to s. 961.055 is eligible to apply  
 58 to the department to receive compensation for such wrongful

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59 incarceration.

60 (a) Only the wrongfully incarcerated person may apply for  
 61 compensation. The estate of, or personal representative for, a  
 62 decedent may not apply on behalf of the decedent for  
 63 compensation for wrongful incarceration.

64 (b) In order to receive compensation, the wrongfully  
 65 incarcerated person shall, by July 1, 2016, submit to the  
 66 Department of Legal Affairs an application for compensation  
 67 irrespective of whether the person has previously sought  
 68 compensation under this chapter. The application must include:

69 1. A certified copy of the nolle prosequi or nolle prosequi  
 70 memorandum;

71 2. Certified copies of the original judgment and sentence;

72 3. Documentation demonstrating the length of the sentence  
 73 served, including documentation from the Department of  
 74 Corrections regarding the person's admission into and release  
 75 from the custody of the Department of Corrections;

76 4. Positive proof of identification, as evidenced by two  
 77 full sets of fingerprints prepared by a law enforcement agency  
 78 of this state and a current form of photo identification;

79 5. Supporting documentation of any fine, penalty, or court  
 80 costs imposed on and paid by the wrongfully incarcerated person  
 81 as described in s. 961.06(1);

82 6. Supporting documentation of any reasonable attorney fees  
 83 and expenses as described in s. 961.06(1); and

84 7. Any other documentation, evidence, or information  
 85 required by rules adopted by the department.

86 (2) The law enforcement agency that prepared the  
 87 applicant's set of fingerprints shall forward both full sets to

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88 the Department of Law Enforcement. The Department of Law  
 89 Enforcement shall retain one set for statewide criminal records  
 90 checks and forward the second set of fingerprints to the Federal  
 91 Bureau of Investigation for national criminal records checks.  
 92 The results of the state and national records checks shall be  
 93 submitted to the department.

94 (3) Upon receipt of an application, the department shall  
 95 examine the application and, within 30 days after receipt of the  
 96 application, shall notify the claimant of any error or omission  
 97 and request any additional information relevant to the review of  
 98 the application.

99 (a) The claimant has 15 days after proper notification by  
 100 the department to correct any identified error or omission in  
 101 the application and to supply any additional information  
 102 relevant to the application.

103 (b) The department may not deny an application for failure  
 104 of the claimant to correct an error or omission or to supply  
 105 additional information unless the department has notified the  
 106 claimant of such error or omission and requested the additional  
 107 information within the 30-day period specified in this  
 108 subsection.

109 (c) The department shall process and review each complete  
 110 application within 90 calendar days.

111 (d) Once the department determines whether a claim for  
 112 compensation meets the requirements of this chapter, the  
 113 department shall notify the claimant within 5 business days  
 114 after that determination.

115 (5) If the department determines that a claimant meets the  
 116 requirements of this chapter, the wrongfully incarcerated person

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117 is entitled to compensation under s. 961.06.

118 (6) This section is repealed July 1, 2018.

119 Section 3. Subsections (4) and (5) of section 961.06,  
120 Florida Statutes, are amended to read:

121 961.06 Compensation for wrongful incarceration.-

122 (4) The Chief Financial Officer shall issue payment in the  
123 amount determined by the department to an insurance company or  
124 other financial institution admitted and authorized to issue  
125 purchase an annuity contracts in this state to purchase an  
126 annuity or annuities, selected by the wrongfully incarcerated  
127 person, on behalf of the claimant for a term of not less than 10  
128 years. The Chief Financial Officer is directed to execute all  
129 necessary agreements to implement this act and to maximize the  
130 benefit to the wrongfully incarcerated person. The terms of the  
131 annuity or annuities shall:

132 (a) Provide that the annuity or annuities may not be sold,  
133 discounted, or used as security for a loan or mortgage by the  
134 wrongfully incarcerated person applicant.

135 (b) Contain beneficiary provisions for the continued  
136 disbursement of the annuity or annuities in the event of the  
137 death of the wrongfully incarcerated person applicant.

138 (5) Before the department approves the application for  
139 compensation ~~Chief Financial Officer draws the warrant for the~~  
140 ~~purchase of the annuity,~~ the wrongfully incarcerated person  
141 ~~claimant~~ must sign a release and waiver on behalf of the  
142 wrongfully incarcerated person claimant and his or her heirs,  
143 successors, and assigns, forever releasing the state or any  
144 agency, instrumentality, or any political subdivision thereof,  
145 or any other entity subject to ~~the provisions of s. 768.28, from~~

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146 all present or future claims that the wrongfully incarcerated  
147 person claimant or his or her heirs, successors, or assigns may  
148 have against such entities arising out of the facts in  
149 connection with the wrongful conviction for which compensation  
150 is being sought under the act. ~~The release and waiver must be~~  
151 ~~provided to the department prior to the issuance of the warrant~~  
152 ~~by the Chief Financial Officer.~~

153 Section 4. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General
Government, Vice Chair
Community Affairs, Vice Chair
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Children, Families, and Elder Affairs
Commerce and Tourism
Transportation

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR GERALDINE F. THOMPSON
12th District

March 4, 2014

The Honorable Joe Negron
412 Senate Office Building
BY HAND

Dear Chair Negron:

I respectfully request CS/SB 326—Wrongful Incarceration be placed on the agenda of the
Committee on Appropriations as soon as possible.

This Bill will allow an individual who has been incarcerated in the State of Florida, but as a
result of circumstances beyond their control, is unable to prove his or her innocence through the
conventional means such as DNA evidence, to make application to the Department of Legal
Affairs by proving their wrongful incarceration by an additional procedure.

Thank you for your consideration.

Sincerely,

Geraldine F. Thompson

Senator Geraldine Thompson, District 12
GT:dr

cc: Cindy Kynoch

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3 / 13 / 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 326  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Committee

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**BILL:** PCS/SB 384 (543868)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Bradley

**SUBJECT:** Juvenile Sentencing

**DATE:** March 12, 2014

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Fav/CS</b>
4.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-Meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 384 conforms Florida law to recent U.S. Supreme Court decisions involving the sentencing of juvenile offenders. The bill provides that any offender who is convicted of murder that was committed before he or she was 18 years old may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers certain factors relative to the offender's age and attendant circumstances. For capital offenses, the judge must impose a minimum sentence of at least 35 years if life imprisonment is not appropriate.

The bill also provides for a judicial hearing to review the sentences of certain juvenile offenders. An offender who is sentenced to more than 25 years for felony murder is entitled to a sentence review hearing after 25 years if the offender was not the person who actually killed the victim. An offender who is sentenced to more than 20 years for a non-homicide offense is entitled to a sentence review hearing after 20 years and is entitled to another hearing after 30 years if not released sooner. If the court that conducts any sentence review hearing determines that the offender has been rehabilitated and is fit to reenter society, the offender must be released with a modified sentence that requires serving a minimum term of 5 years of probation. Otherwise, the court must enter a written order stating the reasons for not modifying the sentence.

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill as originally filed has no impact on prison beds. It does not appear that the changes in the



committee substitute would affect this determination. The bill may have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill will require more time and resources. However, according to the Office of the State Courts Administrator, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.

## II. Present Situation:

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

### **Graham v. Florida**

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."<sup>2</sup> Because Florida abolished parole<sup>3</sup> and the Court deems the possibility of executive clemency to be remote,<sup>4</sup> a juvenile offender in Florida cannot presently be given a life sentence for a non-homicide offense.

*Graham* applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.<sup>5</sup> Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The U.S. Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the District Courts in reviewing sentences for a lengthy term of years. The Florida First District Court of Appeal recognizes that a lengthy term of years is a *de*

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<sup>1</sup> The term "juvenile offender" refers to an offender who was less than 18 years of age at the time the offense was committed for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 years may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

<sup>2</sup> *Graham* at 82.

<sup>3</sup> Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

<sup>4</sup> *Graham* at 70.

<sup>5</sup> See, e.g., *St. Val v. State*, 107 So. 3d 553 (Fla. 4th DCA 2013); *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010).

*facto* life sentence if it exceeds the juvenile offender's life expectancy.<sup>6</sup> On the other hand, the Florida Fourth and Fifth District Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.<sup>7</sup>

On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So. 3d 1084 (Fla. 5th DCA 2012). In *Gridine*, the First District Court of Appeal found that a 70 year sentence was not the equivalent of life. In *Henry*, the Fifth District Court of Appeal upheld a sentence of 90 years because *Graham* does not prohibit a lengthy term of years.

### **Miller v. Alabama**

In *Miller*, the U.S. Supreme Court held that juvenile offenders who commit homicide may not be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized factors related to the offender's age must be considered before a life without parole sentence may be imposed. The Court also indicated that it expects few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted mandatory life-without-parole sentences “preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it.”<sup>8</sup> Although the Court did not require consideration of specific factors, it highlighted the following concerns:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U.S., at —, —, 130 S.Ct., at 2032 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct.

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<sup>6</sup> *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams*) and 80 years (*Floyd v. State*, 87 So. 3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So. 3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011)).

<sup>7</sup> See *Guzman v. State*, 110 So. 3d 480 (Fla. 4th DCA 2013); [Henry v. State](#), 82 So. 3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning: see *Young v. State*, 110 So. 3d 931 (Fla. 2d DCA 2013).

<sup>8</sup> *Miller* at 2467.

2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children’s responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.<sup>9</sup>

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the U.S. Supreme Court’s holdings in *Roper*, which invalidated the death penalty for juvenile offenders, and *Miller*, the statutory punishment for a juvenile who commits capital murder is not clear. In *Horsley v. State*, 121 So. 3d 1130 (Fla. 5th DCA 2013), the Fifth District Court of Appeal applied the principle of statutory revival in concluding that the only possible sentence for a juvenile convicted of capital murder is life with the possibility of parole after 25 years.<sup>10</sup> The Florida Supreme Court has accepted jurisdiction of *Horsley* to address the question of whether *Miller* operates to revive this earlier sentence previously contained in the 1993 statute.<sup>11</sup>

Other state and federal courts have issued differing opinions as to whether *Miller* applies retroactively. The First and Third District Courts of Appeal view *Miller* as a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued.<sup>12</sup> The Second District Court of Appeal, in contrast, recently held that *Miller* is retroactive because it was an opinion of fundamental significance.<sup>13</sup> The Fourth and Fifth District Courts of Appeal and the Florida Supreme Court have not addressed the retroactivity issue.<sup>14</sup> However, the Supreme Court has scheduled oral argument on March 6, 2014, to address the question of whether *Miller* should be given retroactive effect.

### **Graham and Miller Inmates**

The Department of Corrections reports that in March 2013 it had custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);<sup>15</sup> and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.<sup>16</sup>

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<sup>9</sup> *Miller* at 2468.

<sup>10</sup> Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that is constitutional under *Miller* when applied to a juvenile offender.

<sup>11</sup> *Horsley v. State*, 2013 WL 6224657 (Table) (Fla. 2013).

<sup>12</sup> See *Gonzalez v. State*, 101 So. 3d 886 (Fla. 1st DCA 2012); *Geter v. State*, 115 So. 3d 385 (Fla. 3d DCA 2013).

<sup>13</sup> See *Toye v. State*, 2014 WL 228639 (Fla. 2d DCA 2014).

<sup>14</sup> The United States Court of Appeals for the Eleventh Circuit, whose geographical jurisdiction includes cases arising in Florida, has also held that *Miller* does not apply retroactively to cases that are not on direct appeal (*In re Morgan*, 713 F.3d 1365 (11th Cir. 2013)).

<sup>15</sup> This includes inmates who were sentenced for attempted murder. In *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

<sup>16</sup> The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections (DOC) staff to Senate Criminal Justice Committee staff, which is on file with the Senate Committee on Judiciary. A follow-up e-mail dated January 3, 2014, from DOC staff to the Senate Criminal Justice Committee staff (on file with Senate Committee on Judiciary) indicates there have been no significant changes in this information.

## Life Expectancy

The Center for Disease Control’s United States Life Tables for 2009 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:<sup>17</sup>

<b>Remaining Life Expectancy: 17-18 Year Old Persons in the United States</b>	
Hispanic Females	67.1 years
White Females	64.8 years
Hispanic Males	62.4 years
Black Females	61.8 years
White Males	60.1 years
Black Males	55.4 years

## Parole

A January 2008 Blueprint Commission and Department of Juvenile Justice report, “*Getting Smart about Juvenile Justice in Florida*,” included a recommendation that juveniles who received more than a 10-year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.<sup>18</sup>

## Felony Murder Rule

Under common law, the felony murder rule held that if a person is killed during the commission of a felony, the person or persons responsible for the felony can be charged with murder. Florida has codified the felony murder rule in the s. 782.04, F.S. There are three types of felony murder:

- First degree felony murder (s. 782.04(1)(a), F.S.) applies to a killing that is committed by a person engaged in the perpetration or attempted perpetration of one of eighteen specified felonies. First degree felony murder is a capital felony, punishable by death or life imprisonment without the possibility of parole.
- Second degree felony murder (s. 782.04(3), F.S.) applies to a killing that is committed during the perpetration of one of the eighteen specified felonies if the killing was committed by someone other than a perpetrator of the felony. Second degree felony murder is a first degree felony punishable by imprisonment for a term of years not exceeding life.
- Third degree felony murder (s. 782.04(4), F.S.) applies to a killing that: (1) is perpetrated without any design to effect death, and (2) is committed by a person engaged in the perpetration of a felony other than one of the eighteen specified felonies or unlawful distribution of certain controlled substances. Third degree felony murder is a second degree felony, punishable by a term of imprisonment not exceeding 15 years.

<sup>17</sup> The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2009*, National Vital Statistics Reports, Volume 62, Number 7 (January 6, 2014), available at [http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62\\_07.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_07.pdf) (last visited on February 26, 2014).

<sup>18</sup> Florida Tax Watch, *Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion*, 47 (March 2010).

Section 777.011, F.S., codifies the law of principals, which provides that a person who “aids, abets, counsels, hires, or otherwise procures” the commission of an offense is a principal in the first degree in committing the offense. A principal in the first degree may be charged, convicted, and punished as if he or she was the actual perpetrator of the offense even if not actually present. The law of principals in s. 777.011, F.S., and the felony murder rule in s. 782.04, F.S., combine to make an offender liable for murder even if he or she was not the person who actually killed the victim.

### III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012). It does so by: (1) making procedural changes at the sentencing phase for juvenile offenders who are convicted of a murder for which they can be imprisoned for life; (2) providing for a sentence review after 25 years for a juvenile offender who is convicted of felony murder if the offender was not the person who actually killed the victim; and (3) creating a procedure to review the sentence of juvenile offenders after they are incarcerated for 20 years and, if necessary, after 30 years if they are serving a sentence for committing a non-homicide offense.

#### *Graham* Defendants

The bill does not change the procedure for original sentencing of juvenile offenders for non-homicide offenses. However, it gives juvenile offenders who are sentenced to more than 20 years, including those sentenced to life, the opportunity to have a sentence review hearing after 20 years of incarceration. The bill allows the offender to have another sentence review hearing after serving 30 years if he or she is still imprisoned at that time. The Department of Corrections is required to notify the offender of the right to have a sentence review hearing 30 months before the date on which the offender would be eligible for a hearing. If the offender requests the sentence review hearing, the sentencing court must hold a hearing during which it considers:

- Whether the offender demonstrates maturity and rehabilitation.
- Whether the offender is at the same level of risk to society as at the time of the initial sentencing.
- The opinion of the victim or the victim’s next of kin, including previous statements made during the trial or initial sentencing phase if the victim or the next of kin chooses not to participate in the resentencing hearing.
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.
- Whether the offender has shown sincere and sustained remorse for the criminal offense.
- Whether the offender’s age, maturity, and psychological development at the time of the offense affected his or her behavior.
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if available.
- Whether the offender was a victim of sexual, physical, or emotional abuse before committing the offense.

- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If the court finds that the offender has been rehabilitated and reasonably believes that the offender is fit to reenter society, it must impose a probationary term of at least five years. Otherwise, it must enter a written order stating the reasons for not modifying the sentence.

The bill does not expressly state whether its provision relating to sentence review hearings for non-homicide offenders is intended to apply retroactively. Therefore, it is presumed to apply prospectively.<sup>19</sup>

### ***Miller* defendants and other juvenile offenders who commit homicide**

The bill provides for a mandatory sentencing hearing to determine whether a juvenile offender who is convicted of a capital felony (or an offense that is reclassified as a capital felony) will be sentenced to life imprisonment. The bill requires the court to sentence the juvenile offender to life imprisonment if it concludes that life imprisonment is appropriate. In making its determination, the court must consider the following factors that reflect the areas of concern expressed by the United States Supreme Court in *Miller*:

- The nature and circumstances of the offense committed by the defendant.
- The effect of the crime on the victim's family and on the community.
- The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- The defendant's background, including his or her family, home, and community environment.
- The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- The extent of the defendant's participation in the offense.
- The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- The nature and extent of the defendant's prior criminal history.
- The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- The possibility of rehabilitating the defendant.

If the sentencing court concludes life imprisonment is not appropriate, it must sentence the offender to imprisonment for a term of at least 35 years.

The sentencing court must also consider the above factors in sentencing a juvenile offender who has been convicted of murder under s. 782.04, F.S., which is classified as a life felony or a first-degree felony punishable by a term of years not exceeding life imprisonment. Such an offender may only be sentenced to life imprisonment, or to imprisonment for a term of years equal to life imprisonment,<sup>20</sup> if the court considers the factors and concludes that a life sentence is

<sup>19</sup> See *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999).

<sup>20</sup> The bill creates the phrase "term of years equal to life imprisonment," leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

appropriate.<sup>21</sup> If the court concludes that a life sentence is not appropriate, there is not a 35 year minimum sentence requirement as there is in capital cases.

A juvenile offender who is sentenced to more than 25 years for committing felony murder is entitled to a sentence review hearing after 25 years if the offender was not the person who actually killed the victim. The procedures for notifying the offender of eligibility, conducting the hearing, and determining whether to modify the sentence are the same as those in a sentence review hearing for a non-murder offense. However, a felony murderer is only entitled to one sentence review hearing.

The bill does not state whether this provision relating to juvenile murderers is intended to apply retroactively. Therefore, it is presumed to apply prospectively.<sup>22</sup> The implications of this with regard to those convicted of murders for which a life sentence is mandatory are discussed in paragraph D of the “Constitutional Issues” section of this analysis.

### **Correction of Cross-references**

Sections 3, 4, 5, and 6 of the bill conform cross-references to s. 775.082(3), F.S., that are found in ss. 316.3026(2), 373.430(3), 403.161(3), and 648.571(3), F.S., respectively. The corrections are non-substantive and are required by the redesignating of paragraphs in s. 775.082(3), F.S., due to the insertion of a new paragraph (b).

### **Effective Date**

This bill takes effect July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>21</sup> Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

<sup>22</sup> See footnote 19.

D. Other Constitutional Issues:

**Retroactivity of Provisions Relating to *Miller* (Section 1 of the bill)**

The bill does not specify whether its provisions are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999).

Article X, section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So. 2d 330 (Fla. 2007). The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature.

It is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. State*, 330 So. 2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change). However, it is likely that the provisions of the Savings Clause in the Florida Constitution would be trumped by a constitutional imperative of the United States Constitution if there is no way to satisfy both clauses.

Florida District Courts of Appeal are split on the issue of whether *Miller* applies retroactively to juvenile offenders who were sentenced to a mandatory life sentence for murder if their appeals were final before the *Miller* opinion was issued.<sup>23</sup> The Florida Supreme Court will consider this issue in the appeal of *Falcon v. State*, 111 So. 3d 973 (Fla. 1st DCA 2013). If the Court holds that *Miller* applies retroactively to this group of offenders, it appears that the constitutional requirement to comply with *Miller* would override the Savings Clause. In that situation, the courts might find that the Legislature intended for Section 1 of the bill to apply retroactively in order to resolve the current lack of a constitutional sentencing alternative to mandatory life imprisonment. Alternatively, the courts could find that the bill does not apply retroactively and apply the principle of statutory revival to comply with *Miller*.<sup>24</sup>

If the Court holds that *Miller* does not apply retroactively, arguably the Savings Clause would prevent either express or implied retroactive application of the bill to juvenile offenders whose appeals were final before the *Miller* opinion was issued. For those offenders, there would be no federal constitution imperative that could override the Savings Clause. However, *Miller* does apply to juvenile offenders whose appeals were

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<sup>23</sup> See footnotes 12 and 13.

<sup>24</sup> See footnote 10.



not final before *Miller*, or whose offenses were or will be committed after the opinion was issued but before the bill's effective date. For this limited group of juvenile offenders, the courts might find implied legislative intent to apply the bill retroactively or rely on statutory revival to apply the repealed 1993 statute that allowed for parole consideration after 25 years.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that SB 384 has no impact on prison beds. It does not appear that the changes in the committee substitute would affect this determination. The bill may have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill will require more time and resources. However, according to the Office of the State Courts Administrator, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 775.082 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes to conform to cross-references: 316.3026, 373.430, 403.161, and 648.571.

This bill creates an undesignated section of the Florida law.

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<sup>25</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement* (December 30 2013) (on file with the Senate Committee on Judiciary).

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on March 5, 2014:**

- Provides that a juvenile offender who is sentenced to imprisonment for more than 25 years for felony murder is entitled to a sentence review hearing after 25 years if the offender was not the person who actually killed the victim.
- Provides that a juvenile offender who is sentenced to imprisonment for more than 20 years for a non-homicide offense is entitled to a sentence review hearing after 20 years and, if not released sooner, after 30 years.

- B. **Amendments:**

None.



576-02159-14

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to juvenile sentencing; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense; providing requirements and procedures for such reviews; amending ss. 316.3026, 373.430, 403.161, and 648.571, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be



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ineligible for parole.

(b) For offenses committed before the offender attained 18 years of age, a person who is convicted of a capital felony or an offense that was reclassified as a capital felony shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

4. The defendant's background, including his or her family, home, and community environment.

5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

6. The extent of the defendant's participation in the offense.

7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.

8. The nature and extent of the defendant's prior criminal history.

9. The effect, if any, of characteristics attributable to



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57 the defendant's youth on the defendant's judgment.  
58 10. The possibility of rehabilitating the defendant.  
59

60 If the judge concludes that life imprisonment is not an  
61 appropriate sentence, the defendant shall be punished by  
62 imprisonment for a term of not less than 35 years.

63 (3) A person who has been convicted of any other designated  
64 felony may be punished as follows:

65 (a)1. For a life felony committed ~~before~~ ~~prior to~~ October  
66 1, 1983, by a term of imprisonment for life or for a term of  
67 years not less than 30.

68 2. For a life felony committed on or after October 1, 1983,  
69 by a term of imprisonment for life or by a term of imprisonment  
70 not exceeding 40 years.

71 3. Except as provided in subparagraph 4., for a life felony  
72 committed on or after July 1, 1995, by a term of imprisonment  
73 for life or by imprisonment for a term of years not exceeding  
74 life imprisonment.

75 4.a. Except as provided in sub-subparagraph b., for a life  
76 felony committed on or after September 1, 2005, which is a  
77 violation of s. 800.04(5)(b), by:

78 (I) A term of imprisonment for life; or

79 (II) A split sentence that is a term of not less than 25  
80 years' imprisonment and not exceeding life imprisonment,  
81 followed by probation or community control for the remainder of  
82 the person's natural life, as provided in s. 948.012(4).

83 b. For a life felony committed on or after July 1, 2008,  
84 which is a person's second or subsequent violation of s.  
85 800.04(5)(b), by a term of imprisonment for life.



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86 (b) Notwithstanding paragraph (a), for offenses committed  
87 before the offender attained 18 years of age, a person convicted  
88 under s. 782.04 of an offense that was reclassified as a life  
89 felony is eligible to be punished by life imprisonment or by  
90 imprisonment for a term of years equal to life imprisonment if  
91 the judge at a mandatory sentencing hearing considers factors  
92 relevant to the offense and to the defendant's youth and  
93 attendant circumstances, including, but not limited to, the  
94 factors listed in paragraph (1)(b), and concludes that  
95 imprisonment for life or a term of years equal to life  
96 imprisonment is an appropriate sentence.

97 (c)(b) For a felony of the first degree, by a term of  
98 imprisonment not exceeding 30 years or, when specifically  
99 provided by statute, by imprisonment for a term of years not  
100 exceeding life imprisonment. However, for offenses committed  
101 before the offender attained 18 years of age, a person convicted  
102 under s. 782.04 of a first-degree felony punishable by a term of  
103 years not exceeding life imprisonment or an offense that was  
104 reclassified as a first-degree felony punishable by a term of  
105 years not exceeding life imprisonment is eligible for a term of  
106 years equal to life imprisonment only if the judge at a  
107 mandatory sentencing hearing considers factors relevant to the  
108 offense and to the defendant's youth and attendant  
109 circumstances, including, but not limited to, the factors  
110 specified in paragraph (1)(b), and concludes that a term of  
111 years equal to life imprisonment is an appropriate sentence.

112 (d)(e) For a felony of the second degree, by a term of  
113 imprisonment not exceeding 15 years.

114 (e)(d) For a felony of the third degree, by a term of



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115 imprisonment not exceeding 5 years.

116 Section 2. (1) A person who is sentenced to imprisonment  
117 for committing an offense before attaining 18 years of age is  
118 entitled to review of his or her sentence in the following  
119 circumstances:

120 (a) A person who is sentenced to life imprisonment,  
121 imprisonment for life, or imprisonment for a term of more than  
122 25 years for any offense that is included in s. 782.04, Florida  
123 Statutes, but for which he or she was not the person who  
124 actually killed the victim, is entitled to a review of his or  
125 her sentence after 25 years. The sentencing court shall retain  
126 original jurisdiction for the duration of the sentence for this  
127 purpose.

128 (b) A person who is sentenced to life imprisonment,  
129 imprisonment for life, or imprisonment for a term of more than  
130 20 years for any offense that is not included in s. 782.04,  
131 Florida Statutes, is entitled to a review of his or her sentence  
132 after 20 years. If the court does not modify the person's  
133 sentence in accordance with subsection (5) and the person is  
134 -serving a sentence of imprisonment for a term of more than 30  
135 years, the person is entitled to another review of his or her  
136 sentence after serving 30 years of the sentence. The sentencing  
137 court shall retain original jurisdiction for the duration of the  
138 sentence for this purpose.

139 (2) The Department of Corrections shall notify a juvenile  
140 offender who is committed to the department of his or her  
141 eligibility to participate in a resentencing hearing 30 months  
142 before the date that he or she will be eligible for the  
143 resentencing hearing. The juvenile offender may apply to the



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144 court of original jurisdiction requesting that a resentencing  
145 hearing be held.

146 (3) An offender is entitled to be represented by counsel,  
147 and the court shall appoint a public defender to represent the  
148 offender if the offender cannot afford an attorney.

149 (4) The court shall hold a resentencing hearing to  
150 determine whether the offender's sentence should be modified.  
151 The resentencing court shall consider all of the following:

152 (a) Whether the offender demonstrates maturity and  
153 rehabilitation.

154 (b) Whether the offender remains at the same level of risk  
155 to society as he or she did at the time of the initial  
156 sentencing.

157 (c) The opinion of the victim or the victim's next of kin.  
158 The absence of the victim or the victim's next of kin from the  
159 resentencing hearing may not be a factor in the court's  
160 determination under this section. If the victim or the victim's  
161 next of kin chooses not to participate in the hearing, the court  
162 may consider previous statements made by the victim or the  
163 victim's next of kin during the trial or initial sentencing  
164 phase.

165 (d) Whether the offender was a relatively minor participant  
166 in the criminal offense or acted under extreme duress or the  
167 domination of another person.

168 (e) Whether the offender has shown sincere and sustained  
169 remorse for the criminal offense.

170 (f) Whether the offender's age, maturity, and psychological  
171 development at the time of the offense affected his or her  
172 behavior.



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173 (g) Whether the offender has successfully obtained a  
174 general educational development certificate or completed another  
175 educational, technical, work, vocational, or self-rehabilitation  
176 program, if such a program is available.

177 (h) Whether the offender was a victim of sexual, physical,  
178 or emotional abuse before he or she committed the offense.

179 (i) The results of any mental health assessment, risk  
180 assessment, or evaluation of the offender as to rehabilitation.

181 (5) If the court determines at the resentencing hearing  
182 that the offender has been rehabilitated and is reasonably  
183 believed to be fit to reenter society based on these factors, a  
184 term of probation of at least 5 years shall be imposed. If the  
185 court determines that the offender has not demonstrated  
186 rehabilitation and is not fit to reenter society based on these  
187 factors, the court shall issue an order in writing stating the  
188 reasons why the sentence is not being modified.

189 Section 3. Subsection (2) of section 316.3026, Florida  
190 Statutes, is amended to read:

191 316.3026 Unlawful operation of motor carriers.—

192 (2) Any motor carrier enjoined or prohibited from operating  
193 by an out-of-service order by this state, any other state, or  
194 the Federal Motor Carrier Safety Administration may not operate  
195 on the roadways of this state until the motor carrier has been  
196 authorized to resume operations by the originating enforcement  
197 jurisdiction. Commercial motor vehicles owned or operated by any  
198 motor carrier prohibited from operation found on the roadways of  
199 this state shall be placed out of service by law enforcement  
200 officers of the Department of Highway Safety and Motor Vehicles,  
201 and the motor carrier assessed a \$10,000 civil penalty pursuant



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202 to 49 C.F.R. s. 383.53, in addition to any other penalties  
203 imposed on the driver or other responsible person. Any person  
204 who knowingly drives, operates, or causes to be operated any  
205 commercial motor vehicle in violation of an out-of-service order  
206 issued by the department in accordance with this section commits  
207 a felony of the third degree, punishable as provided in s.  
208 775.082(3)(e) ~~775.082(3)(d)~~. Any costs associated with the  
209 impoundment or storage of such vehicles are the responsibility  
210 of the motor carrier. Vehicle out-of-service orders may be  
211 rescinded when the department receives proof of authorization  
212 for the motor carrier to resume operation.

213 Section 4. Subsection (3) of section 373.430, Florida  
214 Statutes, is amended to read:

215 373.430 Prohibitions, violation, penalty, intent.—

216 (3) Any person who willfully commits a violation specified  
217 in paragraph (1)(a) is guilty of a felony of the third degree,  
218 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
219 775.083(1)(g), by a fine of not more than \$50,000 or by  
220 imprisonment for 5 years, or by both, for each offense. Each day  
221 during any portion of which such violation occurs constitutes a  
222 separate offense.

223 Section 5. Subsection (3) of section 403.161, Florida  
224 Statutes, is amended to read:

225 403.161 Prohibitions, violation, penalty, intent.—

226 (3) Any person who willfully commits a violation specified  
227 in paragraph (1)(a) is guilty of a felony of the third degree  
228 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
229 775.083(1)(g) by a fine of not more than \$50,000 or by  
230 imprisonment for 5 years, or by both, for each offense. Each day



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231 during any portion of which such violation occurs constitutes a  
232 separate offense.

233 Section 6. Paragraph (c) of subsection (3) of section  
234 648.571, Florida Statutes, is amended to read:

235 648.571 Failure to return collateral; penalty.—  
236 (3)

237 (c) Allowable expenses incurred in apprehending a defendant  
238 because of a bond forfeiture or judgment under s. 903.29 may be  
239 deducted if such expenses are accounted for. The failure to  
240 return collateral under these terms is punishable as follows:

241 1. If the collateral is of a value less than \$100, as  
242 provided in s. 775.082(4)(a).

243 2. If the collateral is of a value of \$100 or more, as  
244 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.

245 3. If the collateral is of a value of \$1,500 or more, as  
246 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.

247 4. If the collateral is of a value of \$10,000 or more, as  
248 provided in s. 775.082(3)(c) ~~775.082(3)(b)~~.

249 Section 7. This act shall take effect July 1, 2014.

**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.)

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Prepared By: The Professional Staff of the Appropriations Committee

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**BILL:** CS/SB 384

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Bradley

**SUBJECT:** Juvenile Sentencing

**DATE:** March 17, 2014

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Fav/CS</b>
4.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 384 conforms Florida law to recent United States Supreme Court decisions involving the sentencing of juvenile offenders. The bill provides that any offender who is convicted of murder that was committed before he or she was 18 years old may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers certain factors relative to the offender's age and attendant circumstances. For capital offenses, the judge must impose a minimum sentence of at least 35 years if life imprisonment is not appropriate.

The bill also provides for a judicial hearing to review the sentences of certain juvenile offenders. An offender who is sentenced to more than 25 years for felony murder is entitled to a sentence review hearing after 25 years if the offender was not the person who actually killed the victim. An offender who is sentenced to more than 20 years for a non-homicide offense is entitled to a sentence review hearing after 20 years and is entitled to another hearing after 30 years if not released sooner. If the court that conducts any sentence review hearing determines that the offender has been rehabilitated and is fit to reenter society, the offender must be released with a modified sentence that requires serving a minimum term of 5 years of probation. Otherwise, the court must enter a written order stating the reasons for not modifying the sentence.

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill as originally filed has no impact on prison beds. It does not appear that the changes in the



committee substitute would affect this determination. The bill may have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill will require more time and resources. However, according to the Office of the State Courts Administrator, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.

## II. Present Situation:

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

### **Graham v. Florida**

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."<sup>2</sup> Because Florida abolished parole<sup>3</sup> and the Court deems the possibility of executive clemency to be remote,<sup>4</sup> a juvenile offender in Florida cannot presently be given a life sentence for a non-homicide offense.

*Graham* applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.<sup>5</sup> Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The U.S. Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the District Courts in reviewing sentences for a lengthy term of years. The Florida First District Court of Appeal recognizes that a lengthy term of years is a *de*

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<sup>1</sup> The term "juvenile offender" refers to an offender who was less than 18 years of age at the time the offense was committed for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 years may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

<sup>2</sup> *Graham* at 82.

<sup>3</sup> Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

<sup>4</sup> *Graham* at 70.

<sup>5</sup> See, e.g., *St. Val v. State*, 107 So. 3d 553 (Fla. 4th DCA 2013); *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010).

*facto* life sentence if it exceeds the juvenile offender's life expectancy.<sup>6</sup> On the other hand, the Florida Fourth and Fifth District Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.<sup>7</sup>

On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So. 3d 1084 (Fla. 5th DCA 2012). In *Gridine*, the First District Court of Appeal found that a 70 year sentence was not the equivalent of life. In *Henry*, the Fifth District Court of Appeal upheld a sentence of 90 years because *Graham* does not prohibit a lengthy term of years.

### **Miller v. Alabama**

In *Miller*, the U.S. Supreme Court held that juvenile offenders who commit homicide may not be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized factors related to the offender's age must be considered before a life without parole sentence may be imposed. The Court also indicated that it expects few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted mandatory life-without-parole sentences “preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it.”<sup>8</sup> Although the Court did not require consideration of specific factors, it highlighted the following concerns:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U.S., at —, —, 130 S.Ct., at 2032 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct.

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<sup>6</sup> *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams*) and 80 years (*Floyd v. State*, 87 So. 3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So. 3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011)).

<sup>7</sup> See *Guzman v. State*, 110 So. 3d 480 (Fla. 4th DCA 2013); [Henry v. State](#), 82 So. 3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning: see *Young v. State*, 110 So. 3d 931 (Fla. 2d DCA 2013).

<sup>8</sup> *Miller* at 2467.

2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children’s responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.<sup>9</sup>

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the U.S. Supreme Court’s holdings in *Roper*, which invalidated the death penalty for juvenile offenders, and *Miller*, the statutory punishment for a juvenile who commits capital murder is not clear. In *Horsley v. State*, 121 So. 3d 1130 (Fla. 5th DCA 2013), the Fifth District Court of Appeal applied the principle of statutory revival in concluding that the only possible sentence for a juvenile convicted of capital murder is life with the possibility of parole after 25 years.<sup>10</sup> The Florida Supreme Court has accepted jurisdiction of *Horsley* to address the question of whether *Miller* operates to revive this earlier sentence previously contained in the 1993 statute.<sup>11</sup>

Other state and federal courts have issued differing opinions as to whether *Miller* applies retroactively. The First and Third District Courts of Appeal view *Miller* as a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued.<sup>12</sup> The Second District Court of Appeal, in contrast, recently held that *Miller* is retroactive because it was an opinion of fundamental significance.<sup>13</sup> The Fourth and Fifth District Courts of Appeal and the Florida Supreme Court have not addressed the retroactivity issue.<sup>14</sup> However, the Supreme Court has scheduled oral argument on March 6, 2014, to address the question of whether *Miller* should be given retroactive effect.

### **Graham and Miller Inmates**

The Department of Corrections reports that in March 2013 it had custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);<sup>15</sup> and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.<sup>16</sup>

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<sup>9</sup> *Miller* at 2468.

<sup>10</sup> Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that is constitutional under *Miller* when applied to a juvenile offender.

<sup>11</sup> *Horsley v. State*, 2013 WL 6224657 (Table) (Fla. 2013).

<sup>12</sup> See *Gonzalez v. State*, 101 So. 3d 886 (Fla. 1st DCA 2012); *Geter v. State*, 115 So. 3d 385 (Fla. 3d DCA 2013).

<sup>13</sup> See *Toye v. State*, 2014 WL 228639 (Fla. 2d DCA 2014).

<sup>14</sup> The United States Court of Appeals for the Eleventh Circuit, whose geographical jurisdiction includes cases arising in Florida, has also held that *Miller* does not apply retroactively to cases that are not on direct appeal (*In re Morgan*, 713 F.3d 1365 (11th Cir. 2013)).

<sup>15</sup> This includes inmates who were sentenced for attempted murder. In *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

<sup>16</sup> The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections (DOC) staff to Senate Criminal Justice Committee staff, which is on file with the Senate Committee on Judiciary. A follow-up e-mail dated January 3, 2014, from DOC staff to the Senate Criminal Justice Committee staff (on file with Senate Committee on Judiciary) indicates there have been no significant changes in this information.

## Life Expectancy

The Center for Disease Control’s United States Life Tables for 2009 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:<sup>17</sup>

<b>Remaining Life Expectancy: 17-18 Year Old Persons in the United States</b>	
Hispanic Females	67.1 years
White Females	64.8 years
Hispanic Males	62.4 years
Black Females	61.8 years
White Males	60.1 years
Black Males	55.4 years

## Parole

A January 2008 Blueprint Commission and Department of Juvenile Justice report, “*Getting Smart about Juvenile Justice in Florida*,” included a recommendation that juveniles who received more than a 10-year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.<sup>18</sup>

## Felony Murder Rule

Under common law, the felony murder rule held that if a person is killed during the commission of a felony, the person or persons responsible for the felony can be charged with murder. Florida has codified the felony murder rule in the s. 782.04, F.S. There are three types of felony murder:

- First degree felony murder (s. 782.04(1)(a), F.S.) applies to a killing that is committed by a person engaged in the perpetration or attempted perpetration of one of eighteen specified felonies. First degree felony murder is a capital felony, punishable by death or life imprisonment without the possibility of parole.
- Second degree felony murder (s. 782.04(3), F.S.) applies to a killing that is committed during the perpetration of one of the eighteen specified felonies if the killing was committed by someone other than a perpetrator of the felony. Second degree felony murder is a first degree felony punishable by imprisonment for a term of years not exceeding life.
- Third degree felony murder (s. 782.04(4), F.S.) applies to a killing that: (1) is perpetrated without any design to effect death, and (2) is committed by a person engaged in the perpetration of a felony other than one of the eighteen specified felonies or unlawful distribution of certain controlled substances. Third degree felony murder is a second degree felony, punishable by a term of imprisonment not exceeding 15 years.

<sup>17</sup> The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2009*, National Vital Statistics Reports, Volume 62, Number 7 (January 6, 2014), available at [http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62\\_07.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_07.pdf) (last visited on February 26, 2014).

<sup>18</sup> Florida Tax Watch, *Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion*, 47 (March 2010).

Section 777.011, F.S., codifies the law of principals, which provides that a person who “aids, abets, counsels, hires, or otherwise procures” the commission of an offense is a principal in the first degree in committing the offense. A principal in the first degree may be charged, convicted, and punished as if he or she was the actual perpetrator of the offense even if not actually present. The law of principals in s. 777.011, F.S., and the felony murder rule in s. 782.04, F.S., combine to make an offender liable for murder even if he or she was not the person who actually killed the victim.

### III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012). It does so by: (1) making procedural changes at the sentencing phase for juvenile offenders who are convicted of a murder for which they can be imprisoned for life; (2) providing for a sentence review after 25 years for a juvenile offender who is convicted of felony murder if the offender was not the person who actually killed the victim; and (3) creating a procedure to review the sentence of juvenile offenders after they are incarcerated for 20 years and, if necessary, after 30 years if they are serving a sentence for committing a non-homicide offense.

#### ***Graham* Defendants**

The bill does not change the procedure for original sentencing of juvenile offenders for non-homicide offenses. However, it gives juvenile offenders who are sentenced to more than 20 years, including those sentenced to life, the opportunity to have a sentence review hearing after 20 years of incarceration. The bill allows the offender to have another sentence review hearing after serving 30 years if he or she is still imprisoned at that time. The Department of Corrections is required to notify the offender of the right to have a sentence review hearing 30 months before the date on which the offender would be eligible for a hearing. If the offender requests the sentence review hearing, the sentencing court must hold a hearing during which it considers:

- Whether the offender demonstrates maturity and rehabilitation.
- Whether the offender is at the same level of risk to society as at the time of the initial sentencing.
- The opinion of the victim or the victim’s next of kin, including previous statements made during the trial or initial sentencing phase if the victim or the next of kin chooses not to participate in the resentencing hearing.
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.
- Whether the offender has shown sincere and sustained remorse for the criminal offense.
- Whether the offender’s age, maturity, and psychological development at the time of the offense affected his or her behavior.
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if available.
- Whether the offender was a victim of sexual, physical, or emotional abuse before committing the offense.

- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If the court finds that the offender has been rehabilitated and reasonably believes that the offender is fit to reenter society, it must impose a probationary term of at least five years. Otherwise, it must enter a written order stating the reasons for not modifying the sentence.

The bill does not expressly state whether its provision relating to sentence review hearings for non-homicide offenders is intended to apply retroactively. Therefore, it is presumed to apply prospectively.<sup>19</sup>

### ***Miller* defendants and other juvenile offenders who commit homicide**

The bill provides for a mandatory sentencing hearing to determine whether a juvenile offender who is convicted of a capital felony (or an offense that is reclassified as a capital felony) will be sentenced to life imprisonment. The bill requires the court to sentence the juvenile offender to life imprisonment if it concludes that life imprisonment is appropriate. In making its determination, the court must consider the following factors that reflect the areas of concern expressed by the United States Supreme Court in *Miller*:

- The nature and circumstances of the offense committed by the defendant.
- The effect of the crime on the victim's family and on the community.
- The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- The defendant's background, including his or her family, home, and community environment.
- The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- The extent of the defendant's participation in the offense.
- The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- The nature and extent of the defendant's prior criminal history.
- The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- The possibility of rehabilitating the defendant.

If the sentencing court concludes life imprisonment is not appropriate, it must sentence the offender to imprisonment for a term of at least 35 years.

The sentencing court must also consider the above factors in sentencing a juvenile offender who has been convicted of murder under s. 782.04, F.S., which is classified as a life felony or a first-degree felony punishable by a term of years not exceeding life imprisonment. Such an offender may only be sentenced to life imprisonment, or to imprisonment for a term of years equal to life imprisonment,<sup>20</sup> if the court considers the factors and concludes that a life sentence is

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<sup>19</sup> See *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999).

<sup>20</sup> The bill creates the phrase "term of years equal to life imprisonment," leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

appropriate.<sup>21</sup> If the court concludes that a life sentence is not appropriate, there is not a 35 year minimum sentence requirement as there is in capital cases.

A juvenile offender who is sentenced to more than 25 years for committing felony murder is entitled to a sentence review hearing after 25 years if the offender was not the person who actually killed the victim. The procedures for notifying the offender of eligibility, conducting the hearing, and determining whether to modify the sentence are the same as those in a sentence review hearing for a non-murder offense. However, a felony murderer is only entitled to one sentence review hearing.

The bill does not state whether this provision relating to juvenile murderers is intended to apply retroactively. Therefore, it is presumed to apply prospectively.<sup>22</sup> The implications of this with regard to those convicted of murders for which a life sentence is mandatory are discussed in paragraph D of the “Constitutional Issues” section of this analysis.

### **Correction of Cross-references**

Sections 3, 4, 5, and 6 of the bill conform cross-references to s. 775.082(3), F.S., that are found in ss. 316.3026(2), 373.430(3), 403.161(3), and 648.571(3), F.S., respectively. The corrections are non-substantive and are required by the redesignating of paragraphs in s. 775.082(3), F.S., due to the insertion of a new paragraph (b).

### **Effective Date**

This bill takes effect July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>21</sup> Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

<sup>22</sup> See footnote 19.

D. Other Constitutional Issues:

**Retroactivity of Provisions Relating to *Miller* (Section 1 of the bill)**

The bill does not specify whether its provisions are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999).

Article X, section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So. 2d 330 (Fla. 2007). The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature.

It is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. State*, 330 So. 2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change). However, it is likely that the provisions of the Savings Clause in the Florida Constitution would be trumped by a constitutional imperative of the United States Constitution if there is no way to satisfy both clauses.

Florida District Courts of Appeal are split on the issue of whether *Miller* applies retroactively to juvenile offenders who were sentenced to a mandatory life sentence for murder if their appeals were final before the *Miller* opinion was issued.<sup>23</sup> The Florida Supreme Court will consider this issue in the appeal of *Falcon v. State*, 111 So. 3d 973 (Fla. 1st DCA 2013). If the Court holds that *Miller* applies retroactively to this group of offenders, it appears that the constitutional requirement to comply with *Miller* would override the Savings Clause. In that situation, the courts might find that the Legislature intended for Section 1 of the bill to apply retroactively in order to resolve the current lack of a constitutional sentencing alternative to mandatory life imprisonment. Alternatively, the courts could find that the bill does not apply retroactively and apply the principle of statutory revival to comply with *Miller*.<sup>24</sup>

If the Court holds that *Miller* does not apply retroactively, arguably the Savings Clause would prevent either express or implied retroactive application of the bill to juvenile offenders whose appeals were final before the *Miller* opinion was issued. For those offenders, there would be no federal constitution imperative that could override the Savings Clause. However, *Miller* does apply to juvenile offenders whose appeals were

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<sup>23</sup> See footnotes 12 and 13.

<sup>24</sup> See footnote 10.



not final before *Miller*, or whose offenses were or will be committed after the opinion was issued but before the bill's effective date. For this limited group of juvenile offenders, the courts might find implied legislative intent to apply the bill retroactively or rely on statutory revival to apply the repealed 1993 statute that allowed for parole consideration after 25 years.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that SB 384 has no impact on prison beds. It does not appear that the changes in the committee substitute would affect this determination. The bill may have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill will require more time and resources. However, according to the Office of the State Courts Administrator, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 775.082 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes to conform to cross-references: 316.3026, 373.430, 403.161, and 648.571.

This bill creates an undesignated section of the Florida law.

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<sup>25</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement* (December 30 2013) (on file with the Senate Committee on Judiciary).

**IX. Additional Information:**

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

**CS by Appropriations on March 13, 2014:**

- Provides that a juvenile offender who is sentenced to imprisonment for more than 25 years for felony murder is entitled to a sentence review hearing after 25 years if the offender was not the person who actually killed the victim.
- Provides that a juvenile offender who is sentenced to imprisonment for more than 20 years for a non-homicide offense is entitled to a sentence review hearing after 20 years and, if not released sooner, after 30 years.

- B. **Amendments:**

None.

By Senator Bradley

7-00151B-14

2014384\_\_

A bill to be entitled

An act relating to juvenile sentencing; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense; providing requirements and procedures for such reviews; amending ss. 316.3026, 373.430, 403.161, and 648.571, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) For offenses committed before the offender attained 18

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years of age, a person who is convicted of a capital felony or an offense that was reclassified as a capital felony shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

4. The defendant's background, including his or her family, home, and community environment.

5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

6. The extent of the defendant's participation in the offense.

7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.

8. The nature and extent of the defendant's prior criminal history.

9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

10. The possibility of rehabilitating the defendant.

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59  
60 If the judge concludes that life imprisonment is not an  
61 appropriate sentence, the defendant shall be punished by  
62 imprisonment for a term of not less than 35 years.

63 (3) A person who has been convicted of any other designated  
64 felony may be punished as follows:

65 (a)1. For a life felony committed ~~before~~ ~~prior to~~ October  
66 1, 1983, by a term of imprisonment for life or for a term of  
67 years not less than 30.

68 2. For a life felony committed on or after October 1, 1983,  
69 by a term of imprisonment for life or by a term of imprisonment  
70 not exceeding 40 years.

71 3. Except as provided in subparagraph 4., for a life felony  
72 committed on or after July 1, 1995, by a term of imprisonment  
73 for life or by imprisonment for a term of years not exceeding  
74 life imprisonment.

75 4.a. Except as provided in sub-subparagraph b., for a life  
76 felony committed on or after September 1, 2005, which is a  
77 violation of s. 800.04(5)(b), by:

78 (I) A term of imprisonment for life; or

79 (II) A split sentence that is a term of not less than 25  
80 years' imprisonment and not exceeding life imprisonment,  
81 followed by probation or community control for the remainder of  
82 the person's natural life, as provided in s. 948.012(4).

83 b. For a life felony committed on or after July 1, 2008,  
84 which is a person's second or subsequent violation of s.  
85 800.04(5)(b), by a term of imprisonment for life.

86 (b) Notwithstanding paragraph (a), for offenses committed  
87 before the offender attained 18 years of age, a person convicted

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88 under s. 782.04 of an offense that was reclassified as a life  
89 felony is eligible to be punished by life imprisonment or by  
90 imprisonment for a term of years equal to life imprisonment if  
91 the judge at a mandatory sentencing hearing considers factors  
92 relevant to the offense and to the defendant's youth and  
93 attendant circumstances, including, but not limited to, the  
94 factors listed in paragraph (1)(b), and concludes that  
95 imprisonment for life or a term of years equal to life  
96 imprisonment is an appropriate sentence.

97 ~~(c)(b)~~ For a felony of the first degree, by a term of  
98 imprisonment not exceeding 30 years or, when specifically  
99 provided by statute, by imprisonment for a term of years not  
100 exceeding life imprisonment. However, for offenses committed  
101 before the offender attained 18 years of age, a person convicted  
102 under s. 782.04 of a first-degree felony punishable by a term of  
103 years not exceeding life imprisonment or an offense that was  
104 reclassified as a first-degree felony punishable by a term of  
105 years not exceeding life imprisonment is eligible for a term of  
106 years equal to life imprisonment only if the judge at a  
107 mandatory sentencing hearing considers factors relevant to the  
108 offense and to the defendant's youth and attendant  
109 circumstances, including, but not limited to, the factors  
110 specified in paragraph (1)(b), and concludes that a term of  
111 years equal to life imprisonment is an appropriate sentence.

112 ~~(d)(e)~~ For a felony of the second degree, by a term of  
113 imprisonment not exceeding 15 years.

114 ~~(e)(d)~~ For a felony of the third degree, by a term of  
115 imprisonment not exceeding 5 years.

116 Section 2. (1) For offenses committed before the offender

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117 attained 18 years of age, a person who is sentenced to life  
 118 imprisonment, imprisonment for life, or imprisonment for a term  
 119 of more than 25 years for any offense that is not included in s.  
 120 782.04, Florida Statutes, is entitled to a review of his or her  
 121 sentence after 25 years. The sentencing court shall retain  
 122 original jurisdiction for the duration of the sentence for this  
 123 purpose.

124 (2) The Department of Corrections shall notify a juvenile  
 125 offender who is committed to the department of his or her  
 126 eligibility to participate in a resentencing hearing 18 months  
 127 before the beginning of his or her 25th year of incarceration.  
 128 The juvenile offender may apply to the court of original  
 129 jurisdiction requesting that a resentencing hearing be held.

130 (3) An offender is entitled to be represented by counsel,  
 131 and the court shall appoint a public defender to represent the  
 132 offender if the offender cannot afford an attorney.

133 (4) The court shall hold a resentencing hearing to  
 134 determine whether the offender's sentence should be modified.  
 135 The resentencing court shall consider all of the following:

136 (a) Whether the offender demonstrates maturity and  
 137 rehabilitation.

138 (b) Whether the offender remains at the same level of risk  
 139 to society as he or she did at the time of the initial  
 140 sentencing.

141 (c) The opinion of the victim or the victim's next of kin.  
 142 The absence of the victim or the victim's next of kin from the  
 143 resentencing hearing may not be a factor in the court's  
 144 determination under this section. If the victim or the victim's  
 145 next of kin chooses not to participate in the hearing, the court

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146 may consider previous statements made by the victim or the  
 147 victim's next of kin during the trial or initial sentencing  
 148 phase.

149 (d) Whether the offender was a relatively minor participant  
 150 in the criminal offense or acted under extreme duress or the  
 151 domination of another person.

152 (e) Whether the offender has shown sincere and sustained  
 153 remorse for the criminal offense.

154 (f) Whether the offender's age, maturity, and psychological  
 155 development at the time of the offense affected his or her  
 156 behavior.

157 (g) Whether the offender has successfully obtained a  
 158 general educational development certificate or completed another  
 159 educational, technical, work, vocational, or self-rehabilitation  
 160 program, if such a program is available.

161 (h) Whether the offender was a victim of sexual, physical,  
 162 or emotional abuse before he or she committed the offense.

163 (i) The results of any mental health assessment, risk  
 164 assessment, or evaluation of the offender as to rehabilitation.

165 (5) If the court determines at the resentencing hearing  
 166 that the offender has been rehabilitated and is reasonably  
 167 believed to be fit to reenter society based on these factors, a  
 168 term of probation of at least 5 years shall be imposed. If the  
 169 court determines that the offender has not demonstrated  
 170 rehabilitation and is not fit to reenter society based on these  
 171 factors, the court shall issue an order in writing stating the  
 172 reasons why the sentence is not being modified.

173 Section 3. Subsection (2) of section 316.3026, Florida  
 174 Statutes, is amended to read:

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175 316.3026 Unlawful operation of motor carriers.-  
 176 (2) Any motor carrier enjoined or prohibited from operating  
 177 by an out-of-service order by this state, any other state, or  
 178 the Federal Motor Carrier Safety Administration may not operate  
 179 on the roadways of this state until the motor carrier has been  
 180 authorized to resume operations by the originating enforcement  
 181 jurisdiction. Commercial motor vehicles owned or operated by any  
 182 motor carrier prohibited from operation found on the roadways of  
 183 this state shall be placed out of service by law enforcement  
 184 officers of the Department of Highway Safety and Motor Vehicles,  
 185 and the motor carrier assessed a \$10,000 civil penalty pursuant  
 186 to 49 C.F.R. s. 383.53, in addition to any other penalties  
 187 imposed on the driver or other responsible person. Any person  
 188 who knowingly drives, operates, or causes to be operated any  
 189 commercial motor vehicle in violation of an out-of-service order  
 190 issued by the department in accordance with this section commits  
 191 a felony of the third degree, punishable as provided in s.  
 192 775.082(3)(e) ~~775.082(3)(d)~~. Any costs associated with the  
 193 impoundment or storage of such vehicles are the responsibility  
 194 of the motor carrier. Vehicle out-of-service orders may be  
 195 rescinded when the department receives proof of authorization  
 196 for the motor carrier to resume operation.  
 197 Section 4. Subsection (3) of section 373.430, Florida  
 198 Statutes, is amended to read:  
 199 373.430 Prohibitions, violation, penalty, intent.-  
 200 (3) Any person who willfully commits a violation specified  
 201 in paragraph (1)(a) is guilty of a felony of the third degree,  
 202 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
 203 775.083(1)(g), by a fine of not more than \$50,000 or by

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204 imprisonment for 5 years, or by both, for each offense. Each day  
 205 during any portion of which such violation occurs constitutes a  
 206 separate offense.  
 207 Section 5. Subsection (3) of section 403.161, Florida  
 208 Statutes, is amended to read:  
 209 403.161 Prohibitions, violation, penalty, intent.-  
 210 (3) Any person who willfully commits a violation specified  
 211 in paragraph (1)(a) is guilty of a felony of the third degree  
 212 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
 213 775.083(1)(g) by a fine of not more than \$50,000 or by  
 214 imprisonment for 5 years, or by both, for each offense. Each day  
 215 during any portion of which such violation occurs constitutes a  
 216 separate offense.  
 217 Section 6. Paragraph (c) of subsection (3) of section  
 218 648.571, Florida Statutes, is amended to read:  
 219 648.571 Failure to return collateral; penalty.-  
 220 (3)  
 221 (c) Allowable expenses incurred in apprehending a defendant  
 222 because of a bond forfeiture or judgment under s. 903.29 may be  
 223 deducted if such expenses are accounted for. The failure to  
 224 return collateral under these terms is punishable as follows:  
 225 1. If the collateral is of a value less than \$100, as  
 226 provided in s. 775.082(4)(a).  
 227 2. If the collateral is of a value of \$100 or more, as  
 228 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.  
 229 3. If the collateral is of a value of \$1,500 or more, as  
 230 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.  
 231 4. If the collateral is of a value of \$10,000 or more, as  
 232 provided in s. 775.082(3)(c) ~~775.082(3)(b)~~.

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2014384\_\_

233

Section 7. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 387  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2014

Meeting Date

Topic GRAHAM-MILLER

Bill Number 384  
*(if applicable)*

Name NANCY DANIELS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title PUBLIC DEFENDER, 2<sup>ND</sup> CIRCUIT

Address 301 S. MOYDORF ST.

Phone 850.606.1000

Street

TALLAHASSEE FL 32301

City

State

Zip

E-mail NANCY.DANIELS@FLPDIA.COM

Speaking:  For  Against  Information

Representing FLORIDA PUBLIC DEFENDER ASSOC., INC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

# APPEARANCE RECORD

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

3/13/14  
Meeting Date

Topic Juvenile sentencing

Bill Number SB 384  
*(if applicable)*

Name David Utter

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy + Legislative Director, SPLC-FL

Address PO Box 370037

Phone 334-296-0727

Miami FL 33137  
City State Zip

E-mail david.utter@splcenter.org

Speaking:  For  Against  Information

Representing Southern Poverty Law Center

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 450

INTRODUCER: Appropriations Committee; Agriculture Committee; and Senator Clemens

SUBJECT: Telephone Solicitation

DATE: March 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	<b>Fav/CS</b>
2.	<u>Telotte/Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<b>Favorable</b>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 450 expands the definition of the term, “telephonic sales call” to include text messaging in the type of unsolicited telephone calls that are prohibited by the Do Not Call program. In addition, the bill prohibits a telephone solicitor from sending text messages to a consumer who has previously communicated that he or she does not wish to be contacted.

The Department of Agriculture and Consumer Services (department) administers the Do Not Call program. The bill provides three positions and \$168,278 from the General Inspection Trust Fund to the department for the 2014-2015 fiscal year to implement the provisions in this act.

**II. Present Situation:**

The Department of Agriculture and Consumer Services maintains the state's "Do Not Call" list, also known as the “no sales solicitation calls” list. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.<sup>1</sup> A “telephonic sales call” is defined as a call made by a telephone solicitor to a consumer to solicit the sale of consumer goods or services. The call may be to solicit an extension of credit or to obtain information that will be used to sell consumer goods or services.

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<sup>1</sup> <https://www.fldnc.com/About.aspx>

Telephone solicitors<sup>2</sup> are prohibited from making telephonic sales calls to consumers who register for the Do Not Call program. There are exceptions to this prohibition which include calls made:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contact, payment or performance of which has not been completed at the time of the call;
- To any individual with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.

In addition to those consumers registered for the Do Not Call program, a telephone solicitor may not call a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted.

A telephone solicitor that contacts a person whose number is on the Do Not Call list, contacts a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted, or makes a call that does not fall into one of the four exceptions is subject to penalties. The penalty may include a civil penalty<sup>3</sup> with a maximum fine of \$10,000 per violation, or an administrative fine<sup>4</sup> with a maximum of \$1000 per violation, in addition to payment of the consumer's attorney fees and costs.

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone. The state's language is consistent with the federal law.

### **III. Effect of Proposed Changes:**

The bill expands the term "telephonic sales calls" to include text messages, made by a solicitor to a consumer, for the purpose of the Do Not Call prohibition.

The bill also prohibits a telephone solicitor from contacting by text message consumers who have previously communicated that they do not wish to be contacted.

The bill takes effect July 1, 2014.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>2</sup> "Telephone solicitor" means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

<sup>3</sup> Section 501.059(9)(a), F.S.

<sup>4</sup> Section 501.059(9)(b), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals and entities will be prohibited from sending unsolicited text messages to persons who register for the Do Not Call program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted by a telephone solicitor.

C. Government Sector Impact:

For Fiscal Year 2014-2015, the CS/CS/SB 450 appropriates three positions and \$168,278 from the General Inspection Trust fund to the department to implement the provisions in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 501.059 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Appropriations on March 13, 2014:**

The CS/CS appropriates three positions and \$168,278 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services for the 2014-2015 fiscal year.

**CS by Agriculture on January 14, 2014:**

The CS clarifies that only telephone calls and text messages are “telephonic sales calls.” This term is used in the administration of the “no sales solicitation calls” list maintained by the department under the Do Not Call program, which presently only applies to a “call made by a telephone solicitor.”

**B. Amendments:**

None.



269442

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 69 and 70  
insert:

Section 2. For the 2014-2015 fiscal year, there is appropriated to the Department of Agriculture and Consumer Services, the sums of \$152,175 in recurring funds and \$16,103 in nonrecurring funds from the General Inspection Trust Fund, and three full-time equivalent positions with associated salary rate of \$87,262 are authorized for the purpose of implementing this



269442

11 act.

12

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

14 And the title is amended as follows:

15       Delete line 10

16 and insert:

17       the telephone solicitor; making an appropriation;

18       providing an effective date.



By the Committee on Agriculture; and Senator Clemens

575-01049-14

2014450c1

1 A bill to be entitled  
 2 An act relating to telephone solicitation; reordering  
 3 and amending s. 501.059, F.S.; redefining the term  
 4 "telephonic sales call"; prohibiting a telephone  
 5 solicitor from transmitting certain text messages to a  
 6 consumer if the consumer is on the "no sales  
 7 solicitation calls" list maintained by the Department  
 8 of Agriculture and Consumer Services or if the  
 9 consumer has previously communicated such a request to  
 10 the telephone solicitor; providing an effective date.

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

14 Section 1. Subsection (1) of section 501.059, Florida  
 15 Statutes, is reordered and amended, and subsection (5) of that  
 16 section is amended, to read:

17 501.059 Telephone solicitation.—

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

19 (g)(a) "Telephonic sales call" means a telephone call or  
 20 text message call made by a telephone solicitor to a consumer,  
 21 for the purpose of soliciting a sale of any consumer goods or  
 22 services, ~~or for the purpose of~~ soliciting an extension of  
 23 credit for consumer goods or services, ~~or for the purpose of~~  
 24 obtaining information that will or may be used for the direct  
 25 solicitation of a sale of consumer goods or services or an  
 26 extension of credit for such purposes.

27 (b) "Consumer goods or services" means ~~any~~ real property or  
 28 ~~any~~ tangible or intangible personal property that which is  
 29 normally used for personal, family, or household purposes,

Page 1 of 3

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

575-01049-14

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30 including, but not limited to ~~without limitation~~, any such  
 31 property intended to be attached to or installed in any real  
 32 property without regard to whether it is so attached or  
 33 installed, as well as cemetery lots and timeshare estates, and  
 34 any services related to such property.

35 (h)(e) "Unsolicited telephonic sales call" means a  
 36 telephonic sales call other than a call made:

37 1. In response to an express request of the person called;

38 2. Primarily in connection with an existing debt or  
 39 contract, if payment or performance of such debt or contract  
 40 ~~which~~ has not been completed at the time of such call;

41 3. To a ~~any~~ person with whom the telephone solicitor has a  
 42 prior or existing business relationship; or

43 4. By a newspaper publisher or his or her agent or employee  
 44 in connection with his or her business.

45 (f)(d) "Telephone solicitor" means a ~~any~~ natural person,  
 46 firm, organization, partnership, association, or corporation, or  
 47 a subsidiary or affiliate thereof, doing business in this state,  
 48 who makes or causes to be made a telephonic sales call,  
 49 including, but not limited to, calls made by use of automated  
 50 dialing or recorded message devices.

51 (a)(e) "Consumer" means an actual or prospective purchaser,  
 52 lessee, or recipient of consumer goods or services.

53 (e)(f) "Merchant" means a person who, directly or  
 54 indirectly, offers or makes available to consumers any consumer  
 55 goods or services.

56 (d)(g) "Doing business in this state" means ~~refers to~~  
 57 businesses that who conduct telephonic sales calls from a  
 58 location in Florida or from other states or nations to consumers

Page 2 of 3

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

575-01049-14

2014450c1

59 located in Florida.

60 ~~(c)(4)~~ "Department" means the Department of Agriculture and  
61 Consumer Services.

62 (5) A telephone solicitor may not initiate an outbound  
63 telephone call or text message to a consumer who has previously  
64 communicated to the telephone solicitor that he or she does not  
65 wish to receive an outbound telephone call or text message:

66 (a) Made by or on behalf of the seller whose goods or  
67 services are being offered; or

68 (b) Made on behalf of a charitable organization for which a  
69 charitable contribution is being solicited.

70 Section 2. This act shall take effect July 1, 2014.



**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Banking and Insurance, *Vice Chair*  
Appropriations Subcommittee on Criminal and Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Ethics and Elections  
Gaming  
Transportation

**SENATOR JEFF CLEMENS**

27th District

February 18, 2014

Senator Joe Negron, Chair  
Committee on Appropriations  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Negron:

I respectfully request that SB 450 – Telephone Solicitation be added to the agenda for the next Committee on Appropriations meeting.

Senate Bill 450 will expand the “no sales solicitation calls” list maintained by the Department of Agriculture and Consumer Services to include voice, text, or electronic communication through a landline, mobile, or internet telephone service.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

Senator Jeff Clemens  
Florida Senate District 27

cc: Cindy Kynoch, Staff Director

SENT TO CHAIRMAN  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_  
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**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 450  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 708

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senator Bean

SUBJECT: Insurance Claims

DATE: March 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 708 revises the law relating to property insurance claims. The bill gives the Department of Financial Services (DFS) the ability to investigate mediators and neutral evaluators in a manner similar to how it investigates agents and agencies. It allows the DFS and the Office of Insurance Regulation (OIR) to share information with other regulatory bodies while any investigation is ongoing. The bill gives the DFS increased power to take disciplinary action against mediators and neutral evaluators.

The bill prohibits insurers from denying claims or canceling an insurance policy or contract based on credit information available in the public record if the insurance policy or contract has been in effect for more than 90 days.

Insurance contracts often contain an appraisal provision allowing parties who agree that there is a covered loss to use an umpire to determine the amount of the loss. This bill allows parties to disqualify an umpire for specified conflicts of interest such as where the umpire is related to one of the parties or has been employed by one of the parties.

The bill creates a "Homeowner Claim Bill of Rights," describing some of the rights held by insurance policyholders and requires the insurer to provide a copy to the policyholder within 14 days of a claim. It does not create a new civil cause of action.

This bill creates new requirements for agreements between insureds and providers of services needed to mitigate the damage caused by fire, water, or catastrophic events.

There is no fiscal impact to the state.

This bill is effective July 1, 2014.

## II. Present Situation:

### **Ability of the Department of Financial Services to Investigate Licensees**

The Department of Financial Services (DFS) is the agency charged with the regulation of insurance agents, insurance agencies, insurance adjusters,<sup>1</sup> insurance school officials, and insurance school instructors.<sup>2,3</sup> Section 626.601, Florida Statutes, allows the DFS to investigate licensed insurance agencies, agents, adjusters, service representatives, managing general agents, customer representatives, title insurance agents and agencies, continuing education course providers, instructors, school officials, and monitor groups. During the investigation, the DFS may contact the person being investigated and may inspect the person's books and records.<sup>4</sup> Investigations may be initiated by the DFS independently or may be initiated based on a complaint received by the DFS.<sup>5</sup>

Section 626.601(6), F.S., provides that a complaint and any information obtained pursuant to an investigation by the DFS or the OIR are confidential and exempt from disclosure unless the DFS or OIR files an administrative complaint, emergency order, or consent order against the licensee. The DFS or OIR may disclose information to any law enforcement agency prior to the filing of an administrative complaint, consent order, or emergency order.

### **Alternative Dispute Resolution Programs**

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance<sup>6</sup> and automobile insurance<sup>7</sup> claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.<sup>8</sup> The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.<sup>9</sup>

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.<sup>10</sup> In addition, an applicant must complete a training program approved by the DFS.<sup>11</sup>

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<sup>1</sup> See s. 624.317, F.S.

<sup>2</sup> See ss. 626.2816, 626.2817, F.S.

<sup>3</sup> Insurance schools provide instruction for students seeking licensure as insurance agents.

<sup>4</sup> See s. 626.601(1), (2), F.S.

<sup>5</sup> See s. 626.601(1), F.S.

<sup>6</sup> See s. 627.7015, F.S.

<sup>7</sup> See s. 626.745, F.S.

<sup>8</sup> See s. 627.7074, F.S.

<sup>9</sup> See ss. 627.7015, 627.7074, and 627.745, F.S.

<sup>10</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>11</sup> See ss. 627.7015, 627.745(3), F.S.

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.<sup>12</sup>

According to an analysis provided by the DFS,<sup>13</sup> the number of reported mediations and neutral evaluations is:

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

### **Misrepresentations on Insurance Applications and Cancellation of Insurance Policies**

Section 627.409, F.S., provides that recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance: (1) is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer; or (2) if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance Company v. Kramer*,<sup>14</sup> an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,<sup>15</sup> an insurance company refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson*,<sup>16</sup> an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.<sup>17</sup>

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing of the notice ranges from 10 days for nonpayment of premium to 120 days for certain

<sup>12</sup> See s. 627.706, F.S.

<sup>13</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

<sup>14</sup> 725 So.2d 1141 (Fla. 2<sup>d</sup> DCA 1998).

<sup>15</sup> 712 So.2d 1261 (Fla. 1<sup>st</sup> DCA 1998).

<sup>16</sup> 114 So.3d 1031 (Fla. 1<sup>st</sup> DCA 2013).

<sup>17</sup> *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.

policyholders.<sup>18</sup> After the policy has been in effect for 90 days, such a policy cannot be canceled unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements with 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.<sup>19</sup> According to the DFS, there are instances of insurance companies reviewing a policyholder's application for insurance after a claim has been filed and denying coverage based on misrepresentations about credit history.<sup>20</sup>

## **Appraisal**

Property insurance contracts often contain "appraisal" provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss.<sup>21</sup> Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute.<sup>22</sup> Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

## **Homeowner Rights in Property Insurance Claims**

Property insurance policy holders have a number of rights pursuant to statute or rule. Section 627.70131, F.S., and rule 69O-166.024, Florida Administrative Code, require an insurer to review and acknowledge receipt of communication with respect to a claim within 14 days of receipt. Section 626.9541(1)(i), F.S., requires an insurer to affirm or deny full or partial coverage of claims or provide a written statement that the claim is being investigated upon the written request of the insured within 30 days after proof-of-loss statements have been completed. An insurer must pay or deny the claim within 90 days.<sup>23</sup>

The DFS provides services to insurers and consumers such as the mediation of property insurance claims<sup>24</sup> and neutral evaluation<sup>25</sup> of sinkhole claims. In addition, the DFS has a Division of Consumer Services that can assist consumers in the claims process.<sup>26</sup>

## **Emergency Mitigation Services**

Homeowners can experience significant damage to their homes in situations that require immediate action to prevent further damage. There are companies that provide services such as "drying" a structure after a loss caused by water. These companies are not regulated by the state.

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<sup>18</sup> See s. 627.4133(2), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

<sup>21</sup> See Fla.Jur. Insurance §3292.

<sup>22</sup> *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

<sup>23</sup> See s. 627.70131, F.S.

<sup>24</sup> See s. 627.7015, F.S.

<sup>25</sup> See s. 627.7074, F.S.

<sup>26</sup> See <http://www.myfloridacfo.com/division/consumers/#.UvTI9vldUeE> (last accessed on February 7, 2014).



According to the DFS, consumers have no guarantee or protection in place to ensure their homes will be repaired by an accredited professional.<sup>27</sup>

### III. Effect of Proposed Changes:

#### Disclosure of Information Obtained During an Investigation

Section 1 allows the DFS or the OIR to share information obtained during an investigation with other regulatory bodies in cases where no administrative complaint, emergency order, or consent order is filed. This will allow the DFS to share information with federal and state regulators during the course of an investigation. It will also allow the sharing of information with private regulatory bodies such as FINRA.<sup>28</sup> According to the DFS staff, there can be investigations where an agent is licensed in Florida and also licensed in another state. Being able to share information with other regulators can aid the investigation.<sup>29</sup>

#### Mediators and Neutral Evaluators

Section 1 gives the DFS the authority to investigate mediators and neutral evaluators in the same manner it investigates agencies and agents. This bill allows the DFS to initiate investigations of neutral evaluators and mediators on its own authority or after a complaint is received. The DFS may require a neutral evaluator or mediator to open its books and records for inspection. The bill gives the DFS the authority to discipline mediators and neutral evaluators. Section 6 of the bill requires the DFS to adopt rules for the denial of application, suspension, and other penalties for mediators. Section 9 requires the DFS to adopt rules for certifying, denying certification, and revoking the certification as a neutral evaluator.

Section 9 provides that the DFS must deny an application for a neutral evaluator or suspend or revoke the approval of a neutral evaluator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval;
- A demonstrated lack of fitness and trustworthiness to act as a neutral evaluator; and
- Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of financial services business, or violations of statutes, DFS rules, or DFS orders.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 12 provides that the DFS must deny an application as a mediator or suspend or revoke the certification of a mediator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval or certification;
- A demonstrated lack of fitness and trustworthiness to act as a mediator;
- Fraudulent or dishonest practices in the conduct of mediation or financial services business; and

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<sup>27</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) at p. 4 (on file with the Committee on Banking and Insurance).

<sup>28</sup> FINRA is the "Financial Industry Regulatory Authority." See <http://www.finra.org/AboutFINRA/>

<sup>29</sup> Interview with DFS staff, February 7, 2014.

- A violation of statutes, DFS rules, DFS orders, or the Florida Rules for Certified and Court-Appointed Mediators.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 12 replaces the DFS mediator education, experience, and training program requirements. The bill provides that an individual with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. An individual not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014, and has conducted at least one DFS mediation from July 1, 2010, through July 1, 2014. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.<sup>30</sup>

### **Misrepresentations on Insurance Applications and Cancellation of Insurance Policies**

Section 3 amends s. 627.409, F.S., to provide that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied based on credit information available in the public record. The bill does not change the law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history).

Section 4 provides after a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

### **Standards for Disqualification of an Appraisal Umpire**

Section 7 creates requirements for challenging the selection of an umpire when an appraisal provision is used to resolve a dispute. This bill allows an insurer or policyholder to challenge an umpire's impartiality and disqualify the proposed umpire only if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire has previously represented a party or a representative of a party in a professional capacity in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same or a substantially related matter that includes the claim or the same property, and the other person's interests are materially adverse to the interests of a party; or
- The umpire has worked as an employer or employee of a party within the preceding five years.

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<sup>30</sup> See <http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf> (last accessed February 7, 2014).

## Homeowner Claims Bill of Rights

Section 10 creates a “Homeowner Claims Bill of Rights.” It requires an insurer issuing a personal lines residential property insurance policy to provide a copy of the Homeowner Claims Bill of Rights (“Bill of Rights”) to a policyholder within 14 calendar days after receiving an initial communication with respect to a claim unless the claim follows an event that is the subject of a declaration of state of emergency by the Governor.

The bill provides that the purpose of the Bill of Rights is to explain the existing state law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The bill further provides that the Bill of Rights does not create a civil cause of action by a policyholder or class of policyholders against an insurer or insurers and does not enlarge, modify, or contravene statutory requirements. The Bill of Rights informs policyholders that they have the right to:

- Receive acknowledgment of the reported claim within 14 days after the claim is communicated to the insurance company.
- Receive confirmation that a claim is covered in full, partially covered, or denied, or receive a written statement that a claim is being investigated within 30 days.
- Receive full settlement payment for the claim or payment of the undisputed portion of the claim or the insurance company’s denial of the claim within 90 days.
- Receive free mediation of the claim by the DFS under most circumstances and subject to certain restrictions.
- Receive a neutral evaluation of a disputed sinkhole claim covered by the policy.

The Bill of Rights:

- Informs consumers of services provided by the DFS, such as the Division of Consumer Services helpline.
- Advises policyholders to contact the insurance company before entering into any contract for repairs, to make and document emergency repairs that are necessary to prevent further damage, to read any contract that requires a payment of out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds, and to confirm that the contractor is licensed to do business in Florida.
- Informs policyholders that it does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an individual insurer or insurers.
- Informs policyholders that it does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable insurance policy.

## Emergency Mitigation Services

Section 11 provides conditions upon which an agreement for emergency mitigation services will be valid. The bill defines “emergency mitigation services” as the delivery of goods or services<sup>31</sup> that are needed to mitigate damage caused by fire, water, or catastrophic events when delay may exacerbate the damage to the covered property. An agreement for emergency mitigation services to which insurance proceeds may be applied is valid only if:

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<sup>31</sup> Services include the removal of contents, removal of water or other contaminants, cleaning, sanitizing, incidental demolition, or other treatment, including preventive activities.

- The agreement specifies in writing the estimated scope and price of the work before it is performed;
- The agreement is in compliance with any repair provisions that are contained within the policy;
- Any change from the original estimated scope and price of the work is preapproved by the policyholder; and
- The work is performed by an individual or company possessing a valid certification consistent with the most recent Standard and Reference Guide for Professional Water Damage Restoration, as developed by the Institute of Inspection, Cleaning and Restoration Certification and approved by the American National Standards Institute, or by a company that possesses a valid Division I license under chapter 489, which is providing services within the scope of that license.<sup>32</sup>

Section 13 provides an effective date of July 1, 2014.

#### **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:**

According to the DFS and the OIR, there is no fiscal impact.

#### **VI. Technical Deficiencies:**

On line 12, the title should state that a policy or contract may not be cancelled based on certain credit information.

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<sup>32</sup> A Division 1 license includes general contractors, building contractors, and residential contractors. *See* s. 489.105(3), F.S.

On line 31, the title should state that the bill revises qualifications for mediators of specified motor vehicle insurance claims.

On line 137, the word “record” should be plural.

Lines 320-333 refer to the “approval” of neutral evaluators. Neutral evaluators are not approved; they are certified by the DFS. Section 627.7074(1)(a), F.S., provides that the DFS “shall certify and maintain a list of persons who are neutral evaluators.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.601, 627.3518, 627.409, 627.4133, 627.422, 627.7015, 627.706, 627.7074, and 627.745.

This bill creates the following sections of the Florida Statutes: 627.70151, 627.7142, and 627.715.

**IX. 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 Appropriations on March 13, 2014:**

The committee adopted amendments to remove provisions of the bill relating to assignment of benefits, to provide that agreements for emergency mitigation services must comply with any repair provisions contained in the insurance policy, and to include in the Bill of Rights a notice that it does not prohibit an insurer from exercising its right to repair damaged property.

**CS by Banking and Insurance on February 11, 2014:**

The committee adopted an amendment providing that the Claims Bill of Rights must be distributed within 14 calendar days after receiving an initial communication with respect to a claim and providing that the Claims Bill of Rights must be provided to personal lines residential policyholders.

- B. **Amendments:**

None.



850798

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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	.	

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The Committee on Appropriations (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 246 - 286.

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

And the title is amended as follows:

Delete lines 13 - 17

and insert:

certain credit information; amending s. 627.7015,  
F.S.; revising the



622240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Bean) recommended the following:

**Senate Amendment**

Delete lines 409 - 436  
and insert:  
emergency by the Governor. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing state law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law







797434

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/13/2014	.	
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	.	
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The Committee on Appropriations (Bean) recommended the following:

**Senate Amendment**

Delete lines 501 - 508

and insert:

(2) For residential property insurance, an agreement entered into by a policyholder for emergency mitigation services to which insurance proceeds may be applied is valid only if:

(a) The agreement is in compliance with any managed repair or preferred vendor policy provisions;

(b) The agreement specifies in writing the estimated scope



797434

11 and price of the work before it is performed;

12 (c) Any change from the original estimated scope and price  
13 of the work is preapproved by the policyholder; and

14 (d) The work is performed by an individual or company



608348

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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The Committee on Appropriations (Bean) recommended the following:

**Senate Substitute for Amendment (797434)**

Delete lines 501 - 508

and insert:

(2) For residential property insurance, an agreement entered into by a policyholder for emergency mitigation services to which insurance proceeds may be applied is valid only if:

(a) The agreement is in compliance with any repair provisions that are contained in the policy;

(b) The agreement specifies in writing the estimated scope



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11 and price of the work before the work is performed;  
12 (c) Any change from the original estimated scope and price  
13 of the work is preapproved by the policyholder; and  
14 (d) The work is performed by an individual or company

By the Committee on Banking and Insurance; and Senator Bean

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1 A bill to be entitled  
 2 An act relating to insurance claims; amending s.  
 3 626.601, F.S.; adding mediators and neutral evaluators  
 4 to the list of individuals or entities that the  
 5 Department of Financial Services or the Office of  
 6 Insurance Regulation may investigate for alleged  
 7 improper conduct; amending s. 627.3518, F.S.;  
 8 conforming a cross-reference; amending s. 627.409,  
 9 F.S.; providing that a claim for residential property  
 10 insurance cannot be denied based on certain credit  
 11 information; amending s. 627.4133, F.S.; providing  
 12 that a policy or contract be cancelled based on  
 13 certain credit information; amending s. 627.422, F.S.;  
 14 providing for the assignment of property insurance  
 15 policy benefits; specifying requirements for the  
 16 assignment of post-loss benefits in a valid agreement  
 17 for services; amending s. 627.7015, F.S.; revising the  
 18 rule requirements relating to the property insurance  
 19 mediation program administered by the department;  
 20 creating s. 627.70151, F.S.; providing grounds for  
 21 challenging an umpire's impartiality in estimating the  
 22 amount of a property loss; amending s. 627.706, F.S.;  
 23 redefining the term "neutral evaluator"; amending s.  
 24 627.7074, F.S.; specifying grounds for denying,  
 25 suspending, or revoking approval of a neutral  
 26 evaluator; creating s. 627.7142, F.S.; establishing a  
 27 Claims Bill of Rights for residential property  
 28 insurance policyholders; providing that such bill of  
 29 rights does not provide a cause of action; creating s.

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30 627.715, F.S.; defining terms; providing requirements  
 31 for emergency mitigation repair agreements; requiring  
 32 an emergency mitigation contractor to be appropriately  
 33 certified or to possess a contracting license;  
 34 amending s. 627.745, F.S.; revising qualifications for  
 35 mediators of personal injury claims; providing grounds  
 36 for denying, suspending, or revoking the application  
 37 or approval of a mediator; providing an effective  
 38 date.

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

41

42 Section 1. Section 626.601, Florida Statutes, is amended to  
 43 read:

44 626.601 Improper conduct; investigation inquiry;  
 45 ~~fingerprinting.~~

46 (1) The department or office may, upon its own motion or  
 47 upon a written complaint signed by an ~~any~~ interested person and  
 48 filed with the department or office, inquire into the ~~any~~  
 49 alleged improper conduct of an approved, certified, or ~~any~~  
 50 licensed insurance agency, agent, adjuster, service  
 51 representative, managing general agent, customer representative,  
 52 title insurance agent, title insurance agency, mediator, neutral  
 53 evaluator, continuing education course provider, instructor,  
 54 school official, or monitor group under this code. The  
 55 department or office may thereafter initiate an investigation of  
 56 ~~any~~ such individual or entity licensee if it has reasonable  
 57 cause to believe that the individual or entity licensee has  
 58 violated any provision of the insurance code. During the course

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59 of its investigation, the department or office shall contact the  
60 individual or entity licensee being investigated unless it  
61 determines that contacting such individual or entity person  
62 could jeopardize the successful completion of the investigation  
63 or cause injury to the public.

64 (2) In the investigation by the department or office of the  
65 alleged misconduct, the individual or entity licensee shall, if  
66 ~~whenever so~~ required by the department or office, open the  
67 individual's or entity's ~~cause his or her~~ books and records ~~to~~  
68 ~~be open~~ for inspection ~~for the purpose of such inquiries.~~

69 (3) ~~The~~ Complaints against an individual or entity any  
70 licensee may be informally alleged and are not required to  
71 include language ~~need not be in any such language as is~~  
72 necessary to charge a crime on an indictment or information.

73 (4) The expense for ~~any~~ hearings or investigations  
74 conducted pursuant to ~~under~~ this section law, as well as the  
75 fees and mileage of witnesses, may be paid out of the  
76 appropriate fund.

77 (5) ~~If the department or office,~~ after investigation, the  
78 department or office has reason to believe that an individual a  
79 licensee may have been found guilty of or pleaded guilty or nolo  
80 contendere to a felony or a crime related to the business of  
81 insurance in this or any other state or jurisdiction, the  
82 department or office may require the individual licensee to file  
83 with the department or office a complete set of his or her  
84 fingerprints, ~~which shall be~~ accompanied by the fingerprint  
85 processing fee specified set forth in s. 624.501. The  
86 fingerprints must shall be taken by an authorized law  
87 enforcement agency or other department-approved entity.

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88 (6) The complaint and ~~any~~ information obtained pursuant to  
89 the investigation by the department or office are confidential  
90 and ~~are~~ exempt from ~~the provisions of~~ s. 119.07, unless the  
91 department or office files a formal administrative complaint,  
92 emergency order, or consent order against the individual or  
93 entity licensee. ~~Nothing in~~ This subsection does not shall be  
94 ~~construed to~~ prevent the department or office from disclosing  
95 the complaint or such information as it deems necessary to  
96 conduct the investigation, to update the complainant as to the  
97 status and outcome of the complaint, or to share such  
98 information with a any law enforcement agency or other  
99 regulatory body.

100 Section 2. Subsection (9) of section 627.3518, Florida  
101 Statutes, is amended to read:

102 627.3518 Citizens Property Insurance Corporation  
103 policyholder eligibility clearinghouse program.—The purpose of  
104 this section is to provide a framework for the corporation to  
105 implement a clearinghouse program by January 1, 2014.

106 (9) The 45-day notice of nonrenewal requirement set forth  
107 in s. 627.4133(2)(b)5.b. ~~s. 627.4133(2)(b)4.b.~~ applies when a  
108 policy is nonrenewed by the corporation because the risk has  
109 received an offer of coverage pursuant to this section which  
110 renders the risk ineligible for coverage by the corporation.

111 Section 3. Section 627.409, Florida Statutes, is amended to  
112 read:

113 627.409 Representations in applications; warranties.—

114 (1) Any statement or description made by or on behalf of an  
115 insured or annuitant in an application for an insurance policy  
116 or annuity contract, or in negotiations for a policy or

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117 contract, is a representation and ~~is~~ not a warranty. Except as  
 118 provided in subsection (3), a misrepresentation, omission,  
 119 concealment of fact, or incorrect statement may prevent recovery  
 120 under the contract or policy only if any of the following apply:

121 (a) The misrepresentation, omission, concealment, or  
 122 statement is fraudulent or is material ~~either~~ to the acceptance  
 123 of the risk or to the hazard assumed by the insurer.

124 (b) If the true facts had been known to the insurer  
 125 pursuant to a policy requirement or other requirement, the  
 126 insurer in good faith would not have issued the policy or  
 127 contract, would not have issued it at the same premium rate,  
 128 would not have issued a policy or contract in as large an  
 129 amount, or would not have provided coverage with respect to the  
 130 hazard resulting in the loss.

131 (2) A breach or violation by the insured of a ~~any~~ warranty,  
 132 condition, or provision of a ~~any~~ wet marine or transportation  
 133 insurance policy, contract of insurance, endorsement, or  
 134 application ~~therefor~~ does not void the policy or contract, or  
 135 constitute a defense to a loss thereon, unless such breach or  
 136 violation increased the hazard by any means within the control  
 137 of the insured.

138 (3) For residential property insurance, if a policy or  
 139 contract has been in effect for more than 90 days, a claim filed  
 140 by the insured cannot be denied based on credit information  
 141 available in public record.

142 Section 4. Paragraph (b) of subsection (2) of section  
 143 627.4133, Florida Statutes, is amended to read:

144 627.4133 Notice of cancellation, nonrenewal, or renewal  
 145 premium.—

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

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

161 1. The insurer shall give the first-named insured written  
 162 notice of nonrenewal, cancellation, or termination at least 120  
 163 days before ~~prior to~~ the effective date of the nonrenewal,  
 164 cancellation, or termination for a first-named insured whose  
 165 residential structure has been insured by that insurer or an  
 166 affiliated insurer for at least 5 years before ~~a 5-year period~~  
 167 ~~immediately prior to~~ the date of the written notice.

168 2. If cancellation is for nonpayment of premium, at least  
 169 10 days' written notice of cancellation accompanied by the  
 170 reason therefor must be given. As used in this subparagraph, the  
 171 term "nonpayment of premium" means failure of the named insured  
 172 to discharge when due her or his obligations for paying the  
 173 premium in connection with the payment of premiums on a policy  
 174 or an ~~any~~ installment of such premium, whether the premium is

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175 payable directly to the insurer or its agent or indirectly under  
 176 ~~a any~~ premium finance plan or extension of credit, or failure to  
 177 maintain membership in an organization if such membership is a  
 178 condition precedent to insurance coverage. The term also means  
 179 the failure of a financial institution to honor an insurance  
 180 applicant's check after delivery to a licensed agent for payment  
 181 of a premium, even if the agent has previously delivered or  
 182 transferred the premium to the insurer. If a dishonored check  
 183 represents the initial premium payment, the contract and all  
 184 contractual obligations are void ab initio unless the nonpayment  
 185 is cured within the earlier of 5 days after actual notice by  
 186 certified mail is received by the applicant or 15 days after  
 187 notice is sent to the applicant by certified mail or registered  
 188 mail. ~~and~~ If the contract is void, any premium received by the  
 189 insurer from a third party must be refunded to that party in  
 190 full.

191 3. If ~~such~~ cancellation or termination occurs during the  
 192 first 90 days the insurance is in force and the insurance is  
 193 canceled or terminated for reasons other than nonpayment of  
 194 premium, at least 20 days' written notice of cancellation or  
 195 termination accompanied by the reason therefor must be given  
 196 unless there has been a material misstatement or  
 197 misrepresentation or a failure to comply with the underwriting  
 198 requirements established by the insurer.

199 4. After a policy or contract has been in effect for more  
 200 than 90 days, the insurer may not cancel or terminate the policy  
 201 or contract based on credit information available in public  
 202 records.

203 ~~5.4.~~ The requirement for providing written notice by June 1

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204 of any nonrenewal that would be effective between June 1 and  
 205 November 30 does not apply to the following situations, but the  
 206 insurer remains subject to the requirement to provide such  
 207 notice at least 100 days before the effective date of  
 208 nonrenewal:

209 a. A policy that is nonrenewed due to a revision in the  
 210 coverage for sinkhole losses and catastrophic ground cover  
 211 collapse pursuant to s. 627.706.

212 b. A policy that is nonrenewed by Citizens Property  
 213 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
 214 that has been assumed by an authorized insurer offering  
 215 replacement coverage to the policyholder is exempt from the  
 216 notice requirements of paragraph (a) and this paragraph. In such  
 217 cases, the corporation must give the named insured written  
 218 notice of nonrenewal at least 45 days before the effective date  
 219 of the nonrenewal.

220  
 221 After the policy has been in effect for 90 days, the policy may  
 222 not be canceled by the insurer unless there has been a material  
 223 misstatement, a nonpayment of premium, a failure to comply with  
 224 underwriting requirements established by the insurer within 90  
 225 days after the date of effectuation of coverage, ~~or~~ a  
 226 substantial change in the risk covered by the policy, ~~or if~~ the  
 227 cancellation is for all insureds under such policies for a given  
 228 class of insureds. This paragraph does not apply to individually  
 229 rated risks that have ~~having~~ a policy term of less than 90 days.

230 ~~6.5.~~ Notwithstanding any other provision of law, an insurer  
 231 may cancel or nonrenew a property insurance policy after at  
 232 least 45 days' notice if the office finds that the early



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233 cancellation of some or all of the insurer's policies is  
 234 necessary to protect the best interests of the public or  
 235 policyholders and the office approves the insurer's plan for  
 236 early cancellation or nonrenewal of some or all of its policies.  
 237 The office may base such finding upon the financial condition of  
 238 the insurer, lack of adequate reinsurance coverage for hurricane  
 239 risk, or other relevant factors. The office may condition its  
 240 finding on the consent of the insurer to be placed under  
 241 administrative supervision pursuant to s. 624.81 or to the  
 242 appointment of a receiver under chapter 631.

243 ~~7.6-~~ A policy covering both a home and a motor vehicle may  
 244 be nonrenewed for any reason applicable to either the property  
 245 or motor vehicle insurance after providing 90 days' notice.

246 Section 5. Section 627.422, Florida Statutes, is amended to  
 247 read:

248 627.422 Assignment of policies.—A policy may be assignable,  
 249 or not assignable, as provided by its terms.

250 (1) Subject to its ~~terms relating to~~ assignability, a any  
 251 life or health insurance policy, under the terms of which the  
 252 beneficiary may be changed only upon the ~~sole~~ request of the  
 253 policyowner, may be assigned ~~either~~ by pledge or transfer of  
 254 title, by an assignment executed by the policyowner alone and  
 255 delivered to the insurer, regardless of whether ~~or not~~ the  
 256 pledgee or assignee is the insurer. Any such assignment entitles  
 257 ~~shall entitle~~ the insurer to deal with the assignee as the owner  
 258 or pledgee of the policy in accordance with the terms of the  
 259 assignment, until the insurer has received at its home office  
 260 written notice of termination of the assignment or pledge or  
 261 written notice by or on behalf of some other person claiming

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262 some interest in the policy in conflict with the assignment.

263 (2) For a residential property insurance policy, an  
 264 agreement purporting to assign post-loss benefits for repair or  
 265 replacement is a valid assignment only if the agreement:

266 (a) Requires the assignee to notify the insurance company  
 267 within 48 hours of the assignment. If the contact information  
 268 for the insurer is unavailable for the first 48 hours, the  
 269 assignee shall contact the company as soon as practicable;

270 (b) Limits the assignment to the contracted work to be  
 271 performed and is restricted to claims for damage to structures  
 272 covered under the policy;

273 (c) Specifies the estimated scope and price of the work  
 274 before it is performed;

275 (d) Prohibits the assignee from charging the policyowner  
 276 for any portion of the repair or replacement beyond the  
 277 applicable deductible contained in the insurance policy;

278 (e) Prohibits a person performing any portion of the repair  
 279 or replacement on behalf of the assignee from charging the  
 280 policyowner;

281 (f) Prohibits the assignee from retaining insurance  
 282 proceeds that are earmarked by the insurer for payment of work  
 283 to be performed by vendors other than the assignee; and

284 (g) Requires the assignee to guarantee that the work  
 285 performed for the loss event conforms to the most recent,  
 286 accepted industry standards.

287 Section 6. Paragraph (b) of subsection (4) of section  
 288 627.7015, Florida Statutes, is amended to read:

289 627.7015 Alternative procedure for resolution of disputed  
 290 property insurance claims.—

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291 (4) The department shall adopt by rule a property insurance  
 292 mediation program to be administered by the department or its  
 293 designee. The department may also adopt special rules which are  
 294 applicable in cases of an emergency within the state. The rules  
 295 shall be modeled after practices and procedures set forth in  
 296 mediation rules of procedure adopted by the Supreme Court. The  
 297 rules shall provide for:

298 (b) Qualifications, denial of application, suspension,  
 299 revocation, and other penalties for ~~of~~ mediators as provided in  
 300 s. 627.745 and ~~in~~ the Florida Rules for ~~of~~ Certified and Court-  
 301 Appointed ~~Court Appointed~~ Mediators, ~~and for such other~~  
 302 ~~individuals as are qualified by education, training, or~~  
 303 ~~experience as the department determines to be appropriate.~~

304 Section 7. Section 627.70151, Florida Statutes, is created  
 305 to read:

306 627.70151 Appraisal; conflicts of interest.—An insurer that  
 307 offers residential coverage as defined in s. 627.4025, or a  
 308 policyholder that uses an appraisal clause in a property  
 309 insurance contract to establish a process for using an impartial  
 310 umpire to estimate or evaluate the amount of loss, may challenge  
 311 an umpire's impartiality and disqualify the proposed umpire only  
 312 if:

313 (1) A familial relationship within the third degree exists  
 314 between the umpire and a party or a representative of a party;

315 (2) The umpire has previously represented a party or a  
 316 representative of a party in a professional capacity in the same  
 317 or a substantially related matter;

318 (3) The umpire has represented another person in a  
 319 professional capacity on the same or a substantially related

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320 matter that includes the claim or the same property, and the  
 321 other person's interests are materially adverse to the interests  
 322 of a party; or

323 (4) The umpire has worked as an employer or employee of a  
 324 party within the preceding 5 years.

325 Section 8. Paragraph (c) of subsection (2) of section  
 326 627.706, Florida Statutes, is amended to read:

327 627.706 Sinkhole insurance; catastrophic ground cover  
 328 collapse; definitions.—

329 (2) As used in ss. 627.706-627.7074, and as used in  
 330 connection with any policy providing coverage for a catastrophic  
 331 ground cover collapse or for sinkhole losses, the term:

332 (c) "Neutral evaluator" means a professional engineer or a  
 333 professional geologist who has completed a course of study in  
 334 alternative dispute resolution designed or approved by the  
 335 department for use in the neutral evaluation process, ~~and~~ who is  
 336 determined by the department to be fair and impartial, and who  
 337 is not otherwise ineligible for certification under s. 627.7074.

338 Section 9. Subsections (7) and (18) of section 627.7074,  
 339 Florida Statutes, are amended to read:

340 627.7074 Alternative procedure for resolution of disputed  
 341 sinkhole insurance claims.—

342 (7) Upon receipt of a request for neutral evaluation, the  
 343 department shall provide the parties a list of certified neutral  
 344 evaluators. The department shall allow the parties to submit  
 345 requests to disqualify evaluators on the list for cause.

346 (a) The department shall disqualify neutral evaluators for  
 347 cause based only on any of the following grounds:

348 1. A familial relationship within the third degree exists

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349 between the neutral evaluator and either party or a  
350 representative of either party ~~within the third degree.~~

351 2. The proposed neutral evaluator has, in a professional  
352 capacity, previously represented either party or a  
353 representative of either party, ~~in the same or a substantially~~  
354 related matter.

355 3. The proposed neutral evaluator has, in a professional  
356 capacity, represented another person in the same or a  
357 substantially related matter and that person's interests are  
358 materially adverse to the interests of the parties. The term  
359 "substantially related matter" means participation by the  
360 neutral evaluator on the same claim, property, or adjacent  
361 property.

362 4. The proposed neutral evaluator has, within the preceding  
363 5 years, worked as an employer or employee of any party to the  
364 case.

365 (b) The department shall deny an application for, or  
366 suspend or revoke its approval of, a neutral evaluator if the  
367 department finds that any of the following grounds exist:

368 1. Lack of one or more of the qualifications specified in  
369 this section for approval or certification.

370 2. Material misstatement, misrepresentation, or fraud in  
371 obtaining or attempting to obtain approval or certification.

372 3. Demonstrated lack of fitness or trustworthiness to act  
373 as a neutral evaluator.

374 4. Fraudulent or dishonest practices in the conduct of an  
375 evaluation or in the conduct of financial services business.

376 5. Violation of any provision of this code or of a lawful  
377 order or rule of the department, or aiding, instructing, or

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378 encouraging another party in committing such a violation.

379 (c)(b) The parties shall appoint a neutral evaluator from  
380 the department list and promptly inform the department. If the  
381 parties cannot agree to a neutral evaluator within 14 business  
382 days, the department shall appoint a neutral evaluator from the  
383 list of certified neutral evaluators. The department shall allow  
384 each party to disqualify two neutral evaluators without cause.  
385 Upon selection or appointment, the department shall promptly  
386 refer the request to the neutral evaluator.

387 (d)(e) Within 14 business days after ~~the~~ referral, the  
388 neutral evaluator shall notify the policyholder and the insurer  
389 of the date, time, and place of the neutral evaluation  
390 conference. The conference may be held by telephone, if feasible  
391 and desirable. The neutral evaluator shall make reasonable  
392 efforts to hold the conference within 90 days after the receipt  
393 of the request by the department. Failure of the neutral  
394 evaluator to hold the conference within 90 days does not  
395 invalidate either party's right to neutral evaluation or to a  
396 neutral evaluation conference held outside this timeframe.

397 (18) The department shall adopt rules of procedure for the  
398 neutral evaluation process and for certifying, denying  
399 certification, suspending certification, and revoking the  
400 certification of a neutral evaluator.

401 Section 10. Section 627.7142, Florida Statutes, is created  
402 to read:

403 627.7142 Homeowner Claims Bill of Rights.—An insurer  
404 issuing a personal lines residential property insurance policy  
405 in this state must provide a Claims Bill of Rights to a  
406 policyholder within 14 calendar days after receiving an initial

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407 communication with respect to a claim, unless the claim follows  
 408 an event that is the subject of a declaration of a state of  
 409 emergency by the Governor. The purpose of the bill of rights is  
 410 to explain, in simple, nontechnical terms, the rights of a  
 411 residential property insurance policyholder who files a claim of  
 412 loss. The Claims Bill of Rights is specific to the claims  
 413 process and does not represent all of a policyholder's rights  
 414 under Florida law regarding the insurance policy. The Claims  
 415 Bill of Rights does not create a civil cause of action by any  
 416 individual policyholder or class of policyholders against an  
 417 individual insurer. The Claims Bill of Rights shall state:

419 HOMEOWNER CLAIMS

420 BILL OF RIGHTS

421 This Bill of Rights is specific to the claims process  
 422 and does not represent all of your rights under  
 423 Florida law regarding your policy. There are also  
 424 exceptions to the stated timelines when conditions are  
 425 beyond your insurance company's control. This document  
 426 does not create a civil cause of action by an  
 427 individual policyholder, or a class of policyholders,  
 428 against an individual insurer.

429 YOU HAVE THE RIGHT TO:

430  
 431 1. Receive from your insurance company an  
 432 acknowledgment of your reported claim within 14 days  
 433 after the time you communicated the claim, along with  
 434 necessary claim forms, including a proof-of-loss form,  
 435 instructions, and appropriate, up-to-date contact

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436 information.

437 2. Upon written request, receive from your  
 438 insurance company within 30 days after you have  
 439 completed a proof-of-loss statement to your insurance  
 440 company, confirmation that your claim is covered in  
 441 full, partially covered, or denied, or receive a  
 442 written statement that your claim is being  
 443 investigated.

444 3. Within 90 days, receive full settlement  
 445 payment for your claim or payment of the undisputed  
 446 portion of your claim, or your insurance company's  
 447 denial of your claim.

448 4. Free mediation of your disputed claim by the  
 449 Division of Consumer Services, under most  
 450 circumstances and subject to certain restrictions.

451 5. Neutral evaluation of your disputed claim, if  
 452 your claim is for damage caused by a sinkhole and is  
 453 covered by your policy.

454 6. Contact the Florida Department of Financial  
 455 Services Division of Consumer Services' toll-free  
 456 helpline for assistance with any insurance claim or  
 457 questions pertaining to the handling of your claim.  
 458 You can reach the Helpline by phone at...toll free  
 459 phone number..., or you can seek assistance online at  
 460 the Florida Department of Financial Services Division  
 461 of Consumer Services' website at...website address....

462 YOU ARE ADVISED TO:

463 1. Contact your insurance company before entering  
 464

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465 into any contract for repairs to confirm any managed  
 466 repair policy provisions or optional preferred  
 467 vendors.

468 2. Make and document emergency repairs that are  
 469 necessary to prevent further damage. Keep the damaged  
 470 property, if feasible, keep all receipts, and take  
 471 photographs of damage before and after any repairs.

472 3. Carefully read any contract that requires you  
 473 to pay out-of-pocket expenses or a fee that is based  
 474 on a percentage of the insurance proceeds that you  
 475 will receive for repairing or replacing your property.

476 4. Confirm that the contractor you choose is  
 477 licensed to do business in Florida. You can verify a  
 478 contractor's license and check to see if there are any  
 479 complaints against him or her by calling the Florida  
 480 Department of Business and Professional Regulation.  
 481 You should also ask the contractor for references from  
 482 previous work.

483 5. Require all contractors to provide proof of  
 484 insurance before beginning repairs.

485 6. Take precautions if the damage requires you to  
 486 leave your home, including securing your property and  
 487 turning off your gas, water, and electricity, and  
 488 contacting your insurance company and provide a phone  
 489 number where you can be reached.

491 Section 11. Section 627.715, Florida Statutes, is created  
 492 to read:

493 627.715 Emergency mitigation services; agreements.—

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494 (1) As used in this section, the term "emergency mitigation  
 495 services" means the delivery of goods or services that are  
 496 needed to mitigate damage caused by fire, water, or catastrophic  
 497 events when delay may exacerbate the damage to the covered  
 498 property. Services include the removal of contents, removal of  
 499 water or other contaminants, cleaning, sanitizing, incidental  
 500 demolition, or other treatment, including preventive activities.

501 (2) For residential property insurance, an agreement for  
 502 emergency mitigation services to which insurance proceeds may be  
 503 applied is valid only if:

504 (a) The agreement specifies in writing the estimated scope  
 505 and price of the work before it is performed;

506 (b) Any change from the original estimated scope and price  
 507 of the work is preapproved by the policyholder; and

508 (c) The work is performed by an individual or company  
 509 possessing a valid certification consistent with the most recent  
 510 Standard and Reference Guide for Professional Water Damage  
 511 Restoration, as developed by the Institute of Inspection,  
 512 Cleaning and Restoration Certification and approved by the  
 513 American National Standards Institute, or by a company that  
 514 possesses a valid Division I license under chapter 489, which is  
 515 providing services within the scope of that license. A company  
 516 is considered to be certified for the purposes of this paragraph  
 517 if the company representative who possesses a valid  
 518 certification personally supervises the emergency mitigation  
 519 services performed.

520 Section 12. Present subsections (3) through (5) of section  
 521 627.745, Florida Statutes, are amended, and a new subsection (4)  
 522 is added to that section, to read:

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2014708c1

523 627.745 Mediation of claims.-

524 (3)(a) The department shall approve mediators to conduct  
525 mediations pursuant to this section.

526 (a) All mediators must file an application under oath for  
527 approval as a mediator.

528 (b) To qualify for approval as a mediator, an individual a  
529 ~~person~~ must meet one of the following qualifications:

530 1. Possess active certification by the Florida Supreme  
531 Court as a circuit court mediator. A certified circuit court  
532 mediator in a lapsed, suspended, sanctioned, or decertified  
533 status is not eligible to participate in the mediation program a  
534 masters or doctorate degree in psychology, counseling, business,  
535 accounting, or economics, be a member of The Florida Bar, be  
536 licensed as a certified public accountant, or demonstrate that  
537 the applicant for approval has been actively engaged as a  
538 qualified mediator for at least 4 years prior to July 1, 1990.

539 2. Be an approved department mediator as of July 1, 2014,  
540 and have conducted at least one mediation on behalf of the  
541 department within the 4 years immediately preceding that the  
542 date. the application for approval is filed with the department,  
543 have completed a minimum of a 40-hour training program approved  
544 by the department and successfully passed a final examination  
545 included in the training program and approved by the department.  
546 The training program shall include and address all of the  
547 following:

548 ~~a. Mediation theory.~~

549 ~~b. Mediation process and techniques.~~

550 ~~c. Standards of conduct for mediators.~~

551 ~~d. Conflict management and intervention skills.~~

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552 ~~e. Insurance nomenclature.~~

553 (4) The department shall deny an application, or suspend or  
554 revoke its approval of a mediator, or the certification of a  
555 neutral evaluator to serve as a mediator, if the department  
556 finds that any of the following grounds exists:

557 (a) Lack of one or more of the qualifications specified in  
558 this section for approval or certification.

559 (b) Material misstatement, misrepresentation, or fraud in  
560 obtaining or attempting to obtain approval or certification.

561 (c) Demonstrated lack of fitness or trustworthiness to act  
562 as a mediator or neutral evaluator.

563 (d) Fraudulent or dishonest practices in the conduct of  
564 mediation or neutral evaluation or in the conduct of financial  
565 services business.

566 (e) Violation of this code, of a lawful order or rule of  
567 the department, or of the Florida Rules for Certified and Court-  
568 Appointed Mediators, or the aiding, instructing, or encouraging  
569 of another to commit such violation.

570 (5)(4) The department shall ~~must~~ adopt rules to administer  
571 this section, including rules of procedure for claims mediation,  
572 taking into consideration a system that ~~which~~:

573 (a) Is fair.

574 (b) Promotes settlement.

575 (c) Avoids delay.

576 (d) Is nonadversarial.

577 (e) Uses a framework for modern mediating technique.

578 (f) Controls costs and expenses of mediation.

579 (6)(5) Disclosures and information divulged in the  
580 mediation process are not admissible in any subsequent action or

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581 proceeding relating to the claim or to the cause of action  
582 giving rise to the claim. A person demanding mediation under  
583 this section may not demand or request mediation after a suit ~~is~~  
584 ~~filed~~ relating to the same facts already mediated is filed.  
585 Section 13. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13  
Meeting Date

Topic Assignment of Benefits

Bill Number 708  
*(if applicable)*

Name Mikal Rogers

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Technician

Address 5108 sylvan oaks dr Valrico 33596 Phone 210-663-8192  
*Street*

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
E-mail Mikalr104@gmail.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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100% Insurance Claim - 1st Keen amend?

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/15  
Meeting Date

Topic Assignment

Bill Number 708  
*(if applicable)*

Name Joe Suszko

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Disabled Investor

Address 5108 SYLVAN OAKS DR  
*Street*  
JANISIA FL 33596  
*City State Zip*

Phone 727-409-0228

E-mail Drywood@yahoo.com

Speaking:  For  Against  Information

Representing Restoration Industry

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

March 13, 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number CS/SB 708  
(if applicable)

Name Mark Delegal

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Retained Counsel

Address 315 S. Calhoun Street, #600

Phone 224-7000

Tallahassee FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing State Farm Florida Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB708  
(if applicable)

Name Michael Esposito

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Operation's Manager

Address 2099 Bishop Rd.  
Street

Phone \_\_\_\_\_

Spring Hill FL 38608  
City State Zip

E-mail Michael@UnitedWaterEsposito.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14

Meeting Date

Topic Assignment of Benefits

Bill Number 708

Name Jon Lavender

Amendment Barcode 850-798  
(if applicable)

Job Title Owner

Address 2151 Andrea Lane

Phone 239-872-4251

Street

Fort Myers

FL

33912

City

State

Zip

E-mail jlavender@ifwrrestorations

Speaking:  For  Against  Information

Representing Insurance fire + water Restorations + FLARS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2014

Meeting Date

Topic Assignment of Baeritz

Bill Number 708  
*(if applicable)*

Name Calch Suszko

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Project Supervisor

Address 3433 Lithia Pinecrest Rd

Phone 813.317.3838

Street

Volusia  
City

FL  
State

33546  
Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Dynatard

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S 001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14  
Meeting Date

Topic Assignment of Benefits

Bill Number 708  
*(if applicable)*

Name Kelsey Noll

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Manager

Address ~~Spring~~ 4315 Goldcoast Av  
*Street*

Phone 352-345-0162

Spring Hill FL 34609  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13

Meeting Date

Topic

~~SP~~ CFO'S Bill of Rights

Bill Number

CS/SB 708

Name

Reggie Jance

Amendment Barcode

850798 (if applicable)

Job Title

Senator Been's ↑ (if applicable)

Address

PO BOX 11069

Phone

933-7150

Street

Tall

Fl 32302

E-mail

—

City

State

Zip

Speaking:

For

Against

Information

Representing

Fla. Justice Assoc

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name JIMMY KAY

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title OWNER

Address 2665 N ATLANTIC<sup>AV</sup> #314  
Street

Phone 386-597-1132

DAYTONA BEACH FL 32164  
City State Zip

E-mail EMERGENCY RESTORATION  
@GMAIL.COM

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

03/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Graciela Leal

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead Tech

Address 5563 SYCAMORE CANYON

Phone 407-860-7439

KISSIMMEE FL 34758  
*Street City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing EMERGENCY SERVICES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

03/3/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Clara Flores

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TECHNITION

Address 1307 Keston Ct Kissimmee FL  
*Street*

Phone 407-508-1361

*City State Zip*

E-mail Clara Flores@hotmail.com

Speaking:  For  Against  Information

Representing Emergency Service 24

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/1  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name ANGEL PASCUAL DIAZ SANCHEZ

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 599 CASADOL REY CIR  
*Street*

Phone 407 300 6245

OKLAHOMA  
*City*

FL  
*State*

32809  
*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service 24

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3-13-14  
Meeting Date

Topic \_\_\_\_\_ Bill Number 708  
*(if applicable)*

Name Diana Baez Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Tech

Address 1311 Keston ct Phone 321-682-8625

*Street*  
Kissimmee FL 34744  
*City* *State* *Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Francisco Tapia

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 189 Toluca drive  
*Street*

Phone 954-391-2987

Kusinmee FL 34743  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
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03/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Jeremi Adarai

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead. train.

Address 101 Meadowglen ct.

Phone (352)-900-9407

Mimuda Fl 34715  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service 24 hr

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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03/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Angel Vargas.

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead Tech

Address 101 Meadow Glen Ct.

Phone (352)-223-9192

Minneola FL 34715  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Services 24 Inc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
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03/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Magaly Perez

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead. Gen

Address 563 w mostroce st

Phone (352) - 490-8398

clermont FL 3474  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Energy Service 24 Inc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3-13-14  
Meeting Date

Topic \_\_\_\_\_ Bill Number 708  
*(if applicable)*

Name Vidal Estrada Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead tech

Address 563 west monstro st Phone 305-7097495

*Street*  
Clearmont fl 34711  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service 24 inc

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3-13-2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
(if applicable)

Name E. O. Moreno

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title tech

Address 1307 Weston Ct  
Street

Phone 754 368 5991

L. Simms \_\_\_\_\_  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Jackey Espinal

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Project Manager

Address 2628 Sunnydale dr  
*Street*  
Missouri A 34746  
*City State Zip*

Phone 321 437-9262

E-mail Jespinal@waterdamage  
fla.co

Speaking:  For  Against  Information

Representing Emergency Service 24

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3-13-14  
Meeting Date

Topic \_\_\_\_\_ Bill Number 708  
*(if applicable)*

Name Maria Guesada Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead Tech

Address 189 Poluca Dr Phone 954-391-2987

Cissimmee Fl 34793 E-mail \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Representing Emergency Service 24

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

03/13/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name LUISA DE LEON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead Tech

Address 5563 SYCAMORE CANYON

Phone 407-952-6335

Street

KISSIMEE FL 34758

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing EMERGENCY SERVICE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-13-2014  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
(if applicable)

Name Milly Nunez

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Tech

Address 1307 Keston Ct  
Street  
Kissimmee State Zip

Phone 407 414 2584

E-mail millynunez24@gmail.com

Speaking:  For  Against  Information

Representing Emergency Service 24

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Mercedes Caba

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title lead tech

Address 2628 Sunningdale dr

Phone 631-745-1252

Street

Kissimmee fl 34746

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing Emergency Service

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Paola Tapia

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 189 Toluca drive

Phone 407 300 5163

Street

Kissimmee FL 34743

E-mail Paolatsquezada@gmail.com

City

State

Zip

Speaking:  For  Against  Information

Representing Emergency Service

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-13-14 Meeting Date

Topic \_\_\_\_\_

Bill Number 768 (if applicable)

Name Catalina Rodriguez

Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Tech

Address 1309 Keston Ct Street

Phone 631-365-0282

Kissimmee FL 34744 City State Zip

E-mail \_\_\_\_\_

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

Representing Emergency Service 24

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

03-13-14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
(if applicable)

Name Rosa Baez

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Tech

Address 1309 Keston Ct Kiss  
Street

Phone 631-365-0982

Kissimmee FL 34744  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Vvan B Cortaya

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lead Tech

Address 305 FAIRLANE AVE

Phone 321 276 1152

*Street*  
Orlando FL 32809  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Emergency Service

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB708  
*(if applicable)*

Name Brian T. Christensen

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Owner

Address 2202 Hoffner Ave  
Street

Phone (407) 516-7277

Orlando FL 32809  
City State Zip

E-mail Restoration-1CFL@gmail.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14

Meeting Date

Topic SB 708

Bill Number SB 708  
*(if applicable)*

Name Steve Burgess

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Insurance Consumer Advocate

Address 400 N Monroe St

Phone 850-413-2863

Street

Tallahassee

FL

32309

City

State

Zip

E-mail Steve.Burgess@myfloridacfo.com

Speaking:  For  Against  Information

Representing Insurance Consumer Advocate

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14

Meeting Date

Topic Insurance Claims

Bill Number SB 708  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 130 S Bronaugh St  
Street

Phone 521-1235

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB708  
*(if applicable)*

Name Ricardo Gonzalez

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Quality control

Address 7006 Stairpoint ct  
Street

Phone 386 589-7667

Winter park FL 37792  
City State Zip

E-mail Ricky.g@emtek.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14

Meeting Date

Topic Senate Bill 708

Bill Number 708  
*(if applicable)*

Name Jacob Dunbar

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Tech

Address 7660 SE 34472

Phone 352-287-4883

Street

Ocala, FL

City

State

Zip

E-mail Jacob D @ united water  
Restoration.com

Speaking:  For  Against  Information

Representing United Water Restoration Group Inc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)





THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14

Meeting Date

Topic Senate Bill 708

Bill Number 708  
*(if applicable)*

Name Casey Doyle

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title MANAGER

Address 7660 SE 59th Ct  
*Street*

Phone 302 693-8038

Ocala FL 34472  
*City State Zip*

E-mail casey.d@unitedwaterrestoration.com

Speaking:  For  Against  Information

Representing United Water Restoration

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name MARK FISHER

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title MARKETING

Address 7006 STAPPOINT COURT  
*Street*

Phone 407-

WINTER PARK FL 32792  
*City State Zip*

E-mail MARK@UNATEDWATER  
RESTORATION.COM  
*Waive for*

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-13-14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB708  
*(if applicable)*

Name Rob Brinker

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title owner - Steam Pro of Tallahassee

Address 8225 Bridge Water Trail

Phone 850-688-8257

Street

Tallahassee

Florida

32312

City

State

Zip

E-mail rob@steamprotallahassee.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-13-14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB708  
*(if applicable)*

Name Jeff Gant

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title President

Address 1285 Smoke Rose Lane

Phone 878-6469

Tallahassee FL 32317  
*Street City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
*(if applicable)*

Name Harry Pelzer

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Owner / Contractor

Address 3401 South Saint Lucie Dr  
*Street*

Phone 407-497-1393

Casselberry FL 32707  
*City State Zip*

E-mail speeddry1@aol.com

Speaking:  For  Against  Information

Representing Speed Dry Inc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

March 13, 2014  
*Meeting Date*

Topic \_\_\_\_\_

Bill Number SB 708  
*(if applicable)*

Name Shawn Jones

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Technician

Address 1109 Loblolly Ln  
*Street*

Phone \_\_\_\_\_

Port Orange FL 32129  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 708  
*(if applicable)*

Name Paul Eagle

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone 386 275 5221

Street

Daytona fl  
City State Zip

E-mail EK478@Hotmail.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic

~~Lisa Miller~~ Amendment 850 798

Bill Number

Name

LISA Miller

Amendment Barcode

850 798

(if applicable)

Job Title

CEO, Lisa Miller + Associates

(if applicable)

Address

B

Phone

850 528 9229

Street

E-mail

City

State

Zip

Speaking:

For

Against

Information

Representing

FLORIDA INS CO'S

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic Assignment of Benefits

Bill Number 708 (if applicable)

Name Carolyn Johnson

Amendment Barcode 850798 (if applicable)

Job Title Policy Director

Address 120 S Bronough St

Phone 521-1235

City

State

Zip

E-mail

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

Representing FL Chamber of Commerce

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Assignment

Bill Number CS/SB 708  
(if applicable)

Name Mark DeLeon

Amendment Barcode 850798  
(if applicable)

Job Title Retained Counsel

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing State Farm Florida Ins. Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Assignment of Benefits

Bill Number SB 708  
*(if applicable)*

Name Sean Gallagher

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Sales Manager

Address 467 Forest Ave, suite 115

Phone 850.218.1718

Cocoa Fl. 32922  
*City State Zip*

E-mail Sean@esroofingpro.com

Speaking:  For  Against  Information

Representing Alcon Construction and the restoration industry

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Committee

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BILL: SB 732

INTRODUCER: Senator Galvano

SUBJECT: Stanley G. Tate Florida Prepaid College Program

DATE: March 13, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Favorable</b>
3.	<u>Sikes</u>	<u>Kynock</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 732 specifies that for an advanced payment contract purchased before July 1, 2024, the amount assessed and paid by the Florida Prepaid College Board (Prepaid Board) to the universities will follow the methodology previously utilized by the Prepaid Board for contracts purchased prior to July 1, 2009. This methodology requires the Prepaid Board to increase payments to the state universities between 5% and 7% annually, depending on the type of fee and the Florida Prepaid College Trust Fund's (Prepaid Trust Fund) actuarial reserve level, which provides the Prepaid Board with better predictability of future tuition and fees. The maximum assessment and payment for state university registration fees, tuition differential fees, local fees, and dormitory fees is capped at no more than the actual cost charged by the state universities for such fees.

The Prepaid Board estimates the change in payment methodology will reduce the cost of a new 4-Year Florida University Plan by \$10,000 and result in \$50 million in refunds to families with an existing 4-Year Florida University Plan.<sup>1</sup>

The fiscal impact of the bill on the state universities is indeterminate, but may reduce the tuition fees, tuition differential fees, local fees, and dormitory fees that will be paid by the Prepaid Board to the state universities on behalf of qualified beneficiaries of Prepaid Plans purchased prior to July 1, 2024.

The bill takes effect on July 1, 2014.

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<sup>1</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2014), at 3, on file with the Committee on Education staff.

## II. Present Situation:

The Legislature created the Stanley G. Tate Florida Prepaid College Program (Prepaid Program) in 1987<sup>2</sup> to provide Florida's families, affordable means to plan and save for their children's college education.<sup>3</sup> The Prepaid Program is administered by the Florida Prepaid College Board (Prepaid Board).<sup>4</sup> Florida's families have purchased more than 1.5 million Prepaid Program contracts.<sup>5</sup>

The Prepaid Program provides for the purchase of advanced payment contracts for postsecondary education. The contracts, which are financially guaranteed by the State of Florida,<sup>6</sup> lock-in many of the costs associated with enrollment in state universities and Florida College System (FCS) institutions (e.g., registration fees, tuition differential fees, local fees, and dormitory fees) at the time such contracts are purchased.<sup>7</sup> Families may choose from the following Prepaid Program options:<sup>8</sup>

- 2-Year Florida College Plan
- 4-Year Florida College Plan
- 2+2 Florida Plan
- 4-Year Florida University Plan

A qualified beneficiary<sup>9</sup> with a Prepaid Plan choosing to attend an out-of-state or private institution may have the full value of the Plan, which would have been paid to a Florida state university or a Florida college for that beneficiary, transferred semester by semester to the private or out-of-state institution.<sup>10</sup>

Each year, the Prepaid Board conducts an analysis of the actuarial adequacy of the Prepaid Trust Fund. In order to conduct this analysis, a series of assumptions are made regarding investment yield, tuition increases, tuition differential fee increases, local fee increases, and dormitory fee increases. The result of the analysis is a determination of the actuarial reserve, which means the amount by which the expected value of the assets in the Prepaid Trust Fund exceeds the value of

---

<sup>2</sup> Section 1, ch. 1987-132, L.O.F.; see also Florida Prepaid College Board, *Our History*, <http://www.myfloridaprepaid.com/who-we-are/> (last visited Feb. 15, 2014).

<sup>3</sup> Section 1009.98(1), F.S.

<sup>4</sup> Section 1009.971(1), F.S.

<sup>5</sup> Florida Prepaid College Board, *Annual Report* (2012), available at <http://www.myfloridaprepaid.com/wp-content/uploads/2012-annual-report.pdf>, at 1.

<sup>6</sup> Section 1009.98(7), F.S.

<sup>7</sup> Section 1009.98(2), F.S.

<sup>8</sup> Florida Prepaid College Board, *Explore Your Options*, <http://www.myfloridaprepaid.com/what-we-offer/> (last visited Feb. 15, 2014).

<sup>9</sup> A qualified beneficiary is "a resident of [Florida] at the time a purchaser enters into an advance payment contract on behalf of the resident; a nonresident who is the child of a noncustodial parent who is a resident of [Florida] at the time that such parent enters into an advance payment contract on behalf of the child;" or "a graduate of an accredited high school in [Florida] who is a resident of [Florida] at the time he or she is designated to receive benefits of the advance payment contract." Section 1009.97(3)(f), F.S.

<sup>10</sup> Florida Prepaid College Board, *Annual Report* (2012), available at <http://www.myfloridaprepaid.com/wp-content/uploads/2012-annual-report.pdf>, at 10.

the expected liabilities. The table below shows showing a recent history of the actuarial reserve.<sup>11</sup>

<b>Actuarial Information</b>				
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Actuarial Reserve</b>	\$482,626,581	\$589,408,656	\$569,458,560	\$834,449,416
As Percentage of Expected Liabilities	5.1%	6.0%	4.9%	7.6%

The Prepaid Plan payment methodology (tuition and fee caps) established for advanced payment contracts purchased before July 1, 2009, specifies the annual percentage increase above the fees assessed in the previous fiscal year that the Prepaid Board will pay universities for registration fees and tuition differential fees, based on actuarial reserve of the Prepaid Trust Fund. The table below shows the methodology.<sup>12</sup>

<b>Registration &amp; Tuition Differential Fee Payment Scenarios</b>				
<b>Actuarial Reserve, as a Percentage of Expected Liabilities</b>	<b>&lt;5%</b>	<b>5% - 6%</b>	<b>6% - 7%</b>	<b>≥7.5%</b>
Prepaid Board Payment to Universities above Fee Assessed Previous Year	5.5%	6.0%	6.5%	7.0%

The Prepaid Board pays state universities five percent above the amount assessed in the previous fiscal year for local fees and six percent above the amount assessed in the previous fiscal year for dormitory fees.<sup>13</sup>

For advanced payment contracts purchased on or after July 1, 2009, with regards to registration, tuition differential, local, and dormitory fees, the Prepaid Board must pay the university the actual amount charged for these fees.<sup>14</sup> For actuarial planning purposes, the Prepaid Board must price the Prepaid Plan with the assumption that universities will assess the maximum allowable fees each year.

**III. Effect of Proposed Changes:**

This bill specifies that for an advanced payment contract purchased before July 1, 2024, the amount assessed and paid by the Prepaid Board to the universities will follow the methodology previously utilized by the Prepaid Board for contracts purchased prior to July 1, 2009.

<sup>11</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2014), at 1-2, on file with the Committee on Education staff.

<sup>12</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2014), at 2, on file with the Committee on Education staff.

<sup>13</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2014), at 2, on file with the Committee on Education staff.

<sup>14</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2014), at 2, on file with the Committee on Education staff.

<b>Registration &amp; Tuition Differential Fee Payment Scenarios</b>				
<b>Actuarial Reserve, as a Percentage of Expected Liabilities</b>	<b>&lt;5%</b>	<b>5% - 6%</b>	<b>6% - 7%</b>	<b>≥7.5%</b>
Prepaid Board Payment to Universities above Fee Assessed Previous Year	5.5%	6.0%	6.5%	7.0%

The bill also creates a cap on the aggregate sum the Prepaid Program pays state universities for registration, tuition differential, and local fees, equal to the actual amounts charged for those fees as well as a cap on dormitory fees equal to the actual amount charged for that fee.

The bill takes effect on July 1, 2014.

**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 Prepaid Board estimates that SB 732 will reduce the cost for individuals to purchase Prepaid Program contracts. The new lump-sum price for the 4-Year Florida University Plan would be reduced by approximately \$10,000,<sup>15</sup> from \$53,729 to less than \$43,000<sup>16</sup>. Over 26,000 Florida families who purchased plans at higher prices in recent years would be entitled to refunds of approximately \$50 million. In addition, future monthly payments would be reduced for those purchasing a Prepaid contract and paying on a monthly basis. A Florida family enrolling a newborn during 2012-13 in a 4-Year Florida University Plan is currently paying \$332 per month under the monthly payment option.<sup>17</sup> These monthly payments are estimated to drop to \$255 per payment - a savings

<sup>15</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2014), at 3, on file with the Committee on Education staff.

<sup>16</sup> Email, Florida Prepaid College Board (Jan. 15, 2014), on file with Committee on Education staff.

<sup>17</sup> Email, Florida Prepaid College Board (Jan. 15, 2014), on file with Committee on Education staff.



of over \$75 per month for 223 months<sup>18</sup> totaling approximately \$17,000 over the life of the contract.

**C. Government Sector Impact:**

For advanced payment contracts purchased on or after July 1, 2009, with regard to tuition and tuition differential, the Prepaid Board must pay the university the actual amount charged for these fees. For actuarial planning purposes, the Prepaid Board must price the Prepaid Plan with the assumption that universities will assess the maximum allowable fee increase of 15 percent each year. This has led to a higher cost for the 4-Year Florida University Plan and 2+2 Florida Plan. This bill will provide an improved forecast methodology allowing the Prepaid Board to more accurately price the 4-Year Florida University Plan and 2+2 Florida Plan.

The fiscal impact of the bill on the state universities is indeterminate, but may reduce the tuition fees, tuition differential fees, local fees, and dormitory fees that will be paid by the Prepaid Board to the state universities on behalf of qualified beneficiaries of Prepaid Plans purchased prior to July 1, 2024.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1009.98 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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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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<sup>18</sup> Email, Florida Prepaid College Board (Jan. 15, 2014), on file with Committee on Education staff.

By Senator Galvano

26-00823-14

2014732\_\_

A bill to be entitled

An act relating to the Stanley G. Tate Florida Prepaid College Program; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, and local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

Page 1 of 4

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

26-00823-14

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1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2) (d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2) (b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2) (b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at \$37.03 per credit hour. The base rate for the tuition differential in subsequent years is the amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If

Page 2 of 4

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

26-00823-14

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59 the actuarial reserve is between 6 percent and 7.5 percent of  
 60 the expected liabilities of the trust fund, the board shall pay  
 61 the state universities 6.5 percent above the amount assessed for  
 62 registration fees in the preceding fiscal year. If the actuarial  
 63 reserve is equal to or greater than 7.5 percent of the expected  
 64 liabilities of the trust fund, the board shall pay the state  
 65 universities 7 percent above the amount assessed for  
 66 registration fees in the preceding fiscal year, whichever is  
 67 greater.

68 2. As to the tuition differential, if the actuarial reserve  
 69 is less than 5 percent of the expected liabilities of the trust  
 70 fund, the board shall pay the state universities 5.5 percent  
 71 above the base rate for the tuition differential fee in the  
 72 preceding fiscal year. If the actuarial reserve is between 5  
 73 percent and 6 percent of the expected liabilities of the trust  
 74 fund, the board shall pay the state universities 6 percent above  
 75 the base rate for the tuition differential fee in the preceding  
 76 fiscal year. If the actuarial reserve is between 6 percent and  
 77 7.5 percent of the expected liabilities of the trust fund, the  
 78 board shall pay the state universities 6.5 percent above the  
 79 base rate for the tuition differential fee in the preceding  
 80 fiscal year. If the actuarial reserve is equal to or greater  
 81 than 7.5 percent of the expected liabilities of the trust fund,  
 82 the board shall pay the state universities 7 percent above the  
 83 base rate for the tuition differential fee in the preceding  
 84 fiscal year.

85 3. As to local fees, the board shall pay the state  
 86 universities 5 percent above the amount assessed for local fees  
 87 in the preceding fiscal year.

Page 3 of 4

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

26-00823-14

2014732\_\_

88 4. As to dormitory fees, the board shall pay the state  
 89 universities 6 percent above the amount assessed for dormitory  
 90 fees in the preceding fiscal year.

91 5. Qualified beneficiaries of advance payment contracts  
 92 purchased before July 1, 2007, are exempt from paying any  
 93 tuition differential fee.

94 (c) Notwithstanding the amount assessed for registration  
 95 fees, the tuition differential fee, or local fees, the amount  
 96 paid by the board to any state university on behalf of a  
 97 qualified beneficiary of an advance payment contract purchased  
 98 before July 1, 2024, may not exceed 100 percent of the amount  
 99 charged by the state university for the aggregate sum of those  
 100 fees.

101 (d) Notwithstanding the amount assessed for dormitory fees,  
 102 the amount paid by the board to any state university on behalf  
 103 of a qualified beneficiary of an advance payment contract  
 104 purchased before July 1, 2024, may not exceed 100 percent of the  
 105 amount charged by the state university for dormitory fees.

106 (e)-(e) The board shall pay state universities the actual  
 107 amount assessed in accordance with law for registration fees,  
 108 the tuition differential, local fees, and dormitory fees for  
 109 advance payment contracts purchased on or after July 1, 2024  
 110 2009.

111 (f)-(d) The board shall annually evaluate or cause to be  
 112 evaluated the actuarial soundness of the trust fund.

113 Section 2. This act shall take effect July 1, 2014.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Education, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Gaming  
Health Policy  
Regulated Industries  
Rules

### SENATOR BILL GALVANO

26th District

March 5, 2014

Senator Joe Negron  
201 Capitol  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that SB 732, Stanley G. Tate Prepaid College Program, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Cindy Kynoch  
Alicia Weiss

#### REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-13-14

*Meeting Date*

Topic Waive in support

Bill Number 732  
*(if applicable)*

Name Ashley Spicola

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Education Policy Chief

Address The Capitol

Phone 717-9503

*Street*

Tallahassee                      FL                      32399

E-mail ashley.spicola@laspbs.state.fl.us

*City*

*State*

*Zip*

Speaking:     For     Against     Information

Representing The Governor's Office

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/3/14

Meeting Date

Topic Stanley G. Tate FL Prepaid Payment Cap

Bill Number 732  
*(if applicable)*

Name Kevin Thompson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Exec. Dir.

Address 1800 Hermitage  
Street

Phone 950.498.8514

Tall FL 32308  
City State Zip

E-mail Kevin.Thompson@myflorida  
prepaid.com

Speaking:  For  Against  Information

Representing FL Prepaid

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: PCS/SB 928 (290876)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Governmental Oversight and Accountability Committee

SUBJECT: State Technology

DATE: March 12, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>McKay</u>	<u>McVaney</u>		<b>GO SPB 7024 as introduced</b>
1.	<u>Wilson</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Fav/CS</b>
2.	<u>Wilson</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 928 substantially revises how the state establishes information technology (IT) policy and procedures. The bill creates the Agency for State Technology (AST), administratively housed in the Department of Management Services. The defunct Agency for Enterprise Information Technology is abolished by the bill, and its duties are transferred to the AST. The AST is given extensive authority to set state technology policy and perform project oversight of large IT projects. The Northwood and Southwood shared resource centers are transferred to the AST.

For the 2014-2015 fiscal year, \$2,865,108 in recurring general revenue funds, \$2,134,892 in nonrecurring general revenue funds, and 25 full time equivalent positions with associated salary rate of 2,010,951 are appropriated to the AST, in this bill.

Except as otherwise provided, the bill is effective July 1, 2014.

## II. Present Situation:

### Agency for Enterprise Information Technology

#### *Duties*

In 2007, the Florida Legislature created the Agency for Enterprise Information Technology (AEIT) to oversee policies for the design, planning, project management, and implementation of enterprise information technology services, to include information technology security.<sup>1</sup> The AEIT is administratively housed within the Executive Office of the Governor, with the Governor and Cabinet as the head of the agency.

The AEIT is required to<sup>2</sup>:

- Submit an annual work plan for approval by the Governor and Cabinet;
- Monitor the implementation, delivery, and management of the enterprise information technology services established in law;
- Make recommendations to the agency head and Legislature concerning other information technology services that should be designed, delivered, and managed as enterprise information technology services;
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services;
- Biennially publish a long-term strategic enterprise information technology plan;
- Perform duties related to enterprise information technology services including the state data center system, information technology security, and the statewide e-mail service;
- Coordinate with the Division of Purchasing in the DMS on the planning and acquisition of information technology products and work with the division in the establishment of best practices for procuring such products;
- Develop information technology standards;
- Submit a comprehensive transition plan for the consolidation of agency data centers into a primary data center; and
- Annually provide the Legislature with recommendations for consolidating the purchase of information technology commodities and contractual services.

Part I of ch. 282, F.S., specifies the duties of the AEIT and state agencies regarding IT management. Section 282.0041(1), F.S., defines “agency” the same as ins. 216.011(1)(qq), F.S.:

“state agency” or “agency” as any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of chapter 216 and chapter 215, “state agency” or “agency” includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission.

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<sup>1</sup> Chapter 2007-105, Laws of Florida.

<sup>2</sup> Section 14.204, Florida Statutes.



In 2008, specific duties and responsibilities pertaining to information technology security were assigned to the AEIT,<sup>3</sup> but the Office of Information Security was housed within the DMS. In 2009, the Office of Information Security was created within the AEIT,<sup>4</sup> and 8 full-time equivalents (FTE) were transferred from the DMS budget to the AEIT in the Fiscal Year 2009-2010 General Appropriations Act.

### *Administrative Rules*

The AEIT was authorized to adopt rules to carry out its statutory duties<sup>5</sup> and to specifically adopt rules relating to:

- Information security;<sup>6</sup> and
- State data center system.<sup>7</sup>

The AEIT adopted 34 administrative rules under the following chapters:

- Chapter 71-1, F.A.C., *Confirmation and Delegation of Authority*, effective July 13, 2009;
- Chapter 71A-1, F.A.C., *Florida Information Technology Resource Security Policies and Standards*, effective November 15, 2010; and
- Chapter 71A-2, F.A.C., *Florida Information Resource Security Policies and Standards*, effective August 10, 2004. These rules were promulgated by the Department of Management Services State Technology Office division.

The AEIT initiated, but never completed, the rule adoption process for two sets of rules:

- Chapter 71B-1, F.A.C., *Enterprise E-mail Service*; and
- Chapter 71B-2, F.A.C., *Data Center System*.

### *Defunding the AEIT*

In 2012, the Governor vetoed HB 5011, legislation that abolished the AEIT and transferred some of AEIT's duties to a new agency created in that bill. Because HB 5011 transferred the salary and positions from the AEIT to the new agency, the effect of the veto was the elimination of funding for AEIT, though some of its duties still exist in statute.

### **Primary Data Centers and Data Center Consolidation**

The state data center system was created by the Legislature in 2008.<sup>8</sup> The system is composed of primary data centers (Southwood Shared Resource Center, Northwood Shared Resource Center, and the Northwest Regional Data Center), other nonprimary data centers, and computing facilities serving state agencies. A "primary data center" is a data center that is a recipient entity for consolidation of nonprimary data centers and computing facilities and that is established by law.<sup>9</sup> A "computing facility" is an agency space containing fewer than 10 servers, any of which

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<sup>3</sup> Chapter 2008-116, Laws of Florida.

<sup>4</sup> Chapter 2009-80, Laws of Florida.

<sup>5</sup> Section 14.204(7), F.S.

<sup>6</sup> Section 282.318(6), F.S.

<sup>7</sup> Section 282.201(2)(e), F.S.

<sup>8</sup> Chapter 2008-116, L.O.F.

<sup>9</sup> Section 282.0041(17), F.S.

supports a strategic or nonstrategic information technology service, as described in budget instructions developed pursuant to s. 216.023, F.S., but excludes single-server installations that exclusively perform a utility function such as file and print servers.<sup>10</sup> The AEIT is responsible for developing policies for the system.<sup>11</sup>

As defined by law, Wave 1 of data center consolidation was initiated in 2009 with proviso included in the Fiscal Year 2009-2010 General Appropriations Act that required the:

- Florida Parole Commission to transfer its information technology services, to include its data center functions, to the Department of Corrections by July 1, 2009;
- Department of Juvenile Justice to consolidate its data center functions into the Northwood Shared Resource Center (NSRC) by July 1, 2010; and
- Department of Business and Professional Regulation to consolidate its data center functions into the NSRC by November 30, 2010.

Beginning in 2009, on October 1st of each calendar year, the AEIT is required to recommend to the Governor and Legislature at least two agency data centers or computing facilities for consolidation into a primary data center.<sup>12</sup> The AEIT submitted its recommendations on September 30, 2009,<sup>13</sup> for the Wave 2 consolidations and the Legislature directed, via proviso in the Fiscal Year 2010-2011 General Appropriations Act, the following consolidations:

- To the Northwood Shared Resource Center (NSRC)
  - Department of Juvenile Justice by July 1, 2010;
  - Department of Business and Professional Regulation by November 30, 2010;
  - Department of Children and Families' Winewood Office Complex by June 30, 2012; and
  - Department of Transportation's Motor Carrier Compliance Office by July 1, 2011.
- To the Southwood Shared Resource Center (SSRC)
  - Department of Transportation Burns Office Building by March 31, 2012; and
  - Department of Transportation Survey and Mapping Office by March 31, 2012.
- To the Northwest Regional Data Center (NWRDC)
  - Department of Education by December 31, 2011;
  - College Center for Library Automation by December 31, 2011; and
  - Florida Center for Library Automation by December 31, 2011.
- To the NSRC or SSRC
  - Agency for Health Care Administration by June 30, 2012; and
  - Department of Highway Safety and Motor Vehicles by December 31, 2011.

On December 23, 2010, the AEIT submitted a report "*Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers by 2019.*" The report provides recommendations for the consolidation of the remaining agency data centers and computing facilities after Wave 2. In 2011, the Legislature codified in statute the recommendations included

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<sup>10</sup> Section 282.0041(7), F.S.

<sup>11</sup> Section 282.201(2), F.S.

<sup>12</sup> s. 282.201(2), F.S.

<sup>13</sup> *Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers.* Agency for Enterprise Information Technology, September 30, 2009.

in AEIT's December 23, 2010, report identifying the agencies required to consolidate into a primary data center within that fiscal year.<sup>14</sup>

In 2012, the Legislature amended the data center consolidation schedule as follows:<sup>15</sup>

- To the NSRC:
  - Department of Highway Safety and Motor Vehicles' Office of Motor Carrier Compliance by July 1, 2012;
  - Department of Highway Safety and Motor Vehicles by August 31, 2012;
  - Department of Health's Test and Development Lab and all remaining data center resources located at the Capital Circle Office Complex by December 31, 2012;
  - Department of Veterans' Affairs by July 1, 2013;
  - Department of Legal Affairs by December 31, 2013; and
  - Department of Agriculture and Consumer Services' Agriculture Management Information Center in the Mayo Building and the Division of Licensing by March 31, 2014.
- To the SSRC:
  - Fish and Wildlife Conservation Commission, except for the commission's Fish and Wildlife Research Institute in St. Petersburg, by July 1, 2013;
  - Department of Economic Opportunity by October 31, 2013;
  - Executive Office of the Governor, to include the Division of Emergency Management except for the Emergency Operation Center's management system in Tallahassee and the Camp Blanding Emergency Operations Center in Starke, by December 31, 2013; and
  - Department of Elderly Affairs by March 31, 2014.
- To the NWRDC:
  - Department of Revenue's Carlton Building and Imaging Center locations by September 30, 2012.

The following entities are exempted from data center consolidation:

- Florida Department of Law Enforcement;
- Department of Lottery's Gaming System and the department's Backup Data Center in Orlando;
- Systems Design and Development in the Office of Policy and Budget;
- State Board of Administration;
- State Attorneys;
- Public Defenders Office;
- Criminal Conflict and Civil Regional Counsel;
- Capital Collateral Regional Counsel;
- Florida Clerks of Court Operations Corporation; and
- Florida Housing Finance Corporation

The Department of Financial Services must consolidate in Fiscal Year 2015-2016.

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<sup>14</sup> Chapter 2011-50, L.O.F.

<sup>15</sup> Chapter 2012-142, L.O.F.

The Implementing Bill for the 2013-2014 General Appropriations Act<sup>16</sup> modified the consolidation schedule in s. 282.201(4), F.S., to require that the Fish and Wildlife Conservation Commission, except for the commission's Fish and Wildlife Research Institute in St. Petersburg, be consolidated into the NSRC by October 30, 2013. The bill also deleted the consolidation schedule for the Department of Veterans' Affairs, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services' Agriculture Management Information Center.<sup>17</sup>

Each agency identified for consolidation into a primary data center must submit with its respective legislative budget request the specific recurring and nonrecurring budget adjustments of resources by appropriation category into the appropriate data processing category pursuant to the legislative budget request instructions in s. 216.023, F.S.

### **The Financial Management Information System Act<sup>18</sup>**

The Florida Financial Management Information System (FFMIS) Act, authorized in ss. 215.90 through 215.96, F.S., was established to plan, implement, and manage a unified information system which provides fiscal, management, and accounting information. The FFMIS Act established the Florida Management Information Board (FMIB) and the FFMIS Coordinating Council. The FMIB is comprised of the Governor and Cabinet and has overall responsibility for managing and overseeing the development of Florida Financial Management Information System pursuant to s. 215.95, F.S., including establishing financial management policies and procedures for executive branch agencies. The Council is comprised of the members of the Cabinet, the secretary of the Department of Management Services, and the director of the Governor's Office of Policy and Budget. Among other duties, the Council is to approve all FFMIS subsystem designs and modifications prior to implementation and to make recommendations to the FMIB on policy alternatives to ensure coordination between the subsystems, as defined in ss. 215.93 and 215.96, F.S.

There are five FFMIS subsystems which must be designed, implemented, and operated pursuant to the act. Each has a statutorily-identified functional owner as well as additional statutory requirements as follows:

- Planning and Budgeting – The Executive Office of the Governor is the functional owner. The system must also be designed, implemented, and operated pursuant to ch. 216, F.S.;
- Florida Accounting Information Resource (FLAIR) – The Department of Financial Services is the functional owner. The system must also be designed, implemented, and operated pursuant to ss. 17.03, 215.86, 216.141, and 216.151, F.S.;
- Cash Management System (CMS) – The Chief Financial Officer is the functional owner;
- Purchasing (MyFloridaMarketplace) – The Department of Management Services is the functional owner;

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<sup>16</sup> Senate Bill 1502, section 47.

<sup>17</sup> Pursuant to section 48 of SB 1502, this amendment expires July 1, 2014, and the text of s. 282.201(4), F.S., reverts to the text in effect on June 30, 2013.

<sup>18</sup> All the information in this section comes from Florida Senate Issue Brief 2009-321, *Florida Financial Management Information System (FFMIS) Act*, pp. 2-3.

- Personnel Information (PeopleFirst) – The Department of Management Services is the functional owner. The system must also be designed, implemented, and operated pursuant to s. 110.116, F.S.

The FFMIS Act identifies each subsystem's general functional requirements but allows each functional owner to establish additional functions unless they are specifically prohibited by the FFMIS Act. Functional owners may not establish or maintain additional subsystems which duplicate any of the FFMIS subsystems.

The FMIB approved a strategic plan on March 14, 2000, that authorized the replacement of the FFMIS subsystems with an enterprise-wide financial management system that integrates financial information and standardizes policies and information. This system has never been implemented. The FMIB has not made any decisions relating to policy or the FFMIS subsystems since February 2001 when it modified the strategic plan to allow the use of outsourcing as a means to replace or enhance the functionality of the FFMIS subsystems. No subsystem designs or modifications have been brought to the FMIB for review or approval since that time. As a result, the overall governance and management of each FFMIS subsystem has been "unofficially delegated" to each functional owner and each functional owner has autonomously pursued an independent path for development and enhancement of its subsystem. The FMIB has been inactive since February 2005.

### **Method of Reorganization for the Executive Branch**

Pursuant to s. 20.06, F.S., the executive branch of state government must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such a transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding.

A type one transfer is the transferring intact of an existing agency or department so that the agency or department becomes a unit of another agency or a department. Any agency or department transferred to another agency or department by a type one transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made, unless otherwise provided by law. Any agency or department transferred by a type one transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, transferred to the agency or department to which it is transferred. Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed

therefrom or abolished. Any agency or department or a program, activity, or function transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided. Unless otherwise provided, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions. Unless otherwise provided, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

### III. Effect of Proposed Changes:

**Section 1** repeals s. 14.204, F.S., which creates and provides the duties for the now-defunct Agency for Enterprise Information Technology (AEIT).

**Section 2** creates in s. 20.61, F.S., the Agency for State Technology (AST) within the Department of Management Services (DMS) for administrative purposes only. The AST must develop, implement, and manage state enterprise information technology services. The executive director of the AST, who will be the state's Chief Information Officer (CIO), must be appointed by the Governor, and confirmed by the Senate.

The bill creates a Technology Advisory Council to make recommendations to the executive director on enterprise information technology policy and standards. The council must comply with the code of ethics for public officers, and each member must file statements of financial interests.

**Section 3** amends the definitions in s. 282.0041, F.S., by modifying, adding, and deleting some definitions, and changing references from the AEIT to the AST.

The bill creates a new definition for "state agency" to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, and the Justice Administration Commission and the Public Service Commission. This new definition of "state agency" is not linked to the definition in Chapter 216, F.S., to avoid conflicting interpretations on whether state attorneys, public defenders, criminal conflict and civil regional counsel, and capital collateral regional counsel are to be subject to the authority of the AST. If these entities are not executive branch entities, they are not subject to the authority of the AST.

**Section 4** creates s. 282.0051, F.S., to specify the duties and functions of the AST. Specific duties and functions of the AST are as follows:

- Develop state technology policy for the management of state information technology (IT) services;
- Establish architecture standards for the state's technology infrastructure;
- Establish project management and project oversight standards for IT projects;
- Provide project oversight for all technology projects exceeding \$10 million;

- Identify opportunities for standardizing and consolidating IT services;
- Collaborate with the DMS in establishing best practices for the procurement of IT products and services;
- Collaborate with the DMS in conducting procurement negotiations for IT products and services;
- Encourage state agencies to use public-private partnerships;
- Establish standards for state agency IT reporting;
- Assist state agencies with legislative budget requests, upon request;
- Conduct annual assessments of state agencies for compliance with statewide IT standards;
- Manage the state data center;
- Recommend other IT services that should be managed at the enterprise level;
- Recommend any further data center consolidations into the state data center;
- Propose methodology for collecting current and planned state agency IT expenditure data;
- Provide alternatives for state agencies where compliance with AST standards, policies or requirements risk loss of federal funding; and
- Adopt rules.

The Department of Financial Services, Department of Legal Affairs, and Department of Agriculture and Consumer Services are not subject to the standards, services, and functions established by the AST, but each of these agencies may contract separately with AST to perform any of those services and functions. However, these three agencies must adopt the AST standards with regard to IT architecture standards, project management standards, and IT reporting, or adopt alternative standards based on industry best practices in these three areas. If the three agencies implement a technology project with a total cost of \$25 million or more that affects another state agency, they are also subject to the oversight IT architecture standards, project management standards, and IT reporting standards of the AST. If an IT project administered by an agency subject to the authority of the AST will interface with an IT system administered by the Department of Financial Services, Department of Legal Affairs, or Department of Agriculture and Consumer Services, the AST must consult on the project with those three agencies.

**Sections 5 and 6** repeal ss. 282.0055 and 282.0056, F.S., which specified AEIT duties with regards to the assignment of information technology resources, and development of a work plan, respectively.

**Section 7** amends s. 282.201, F.S., relating to the state data center system, by deleting duties of AEIT, and creating within AST the state data center, consisting of the Northwood Shared Resource Center (NSRC) and the Southwood Shared Resource Center (SSRC). The state data center must:

- Offer and support the services and applications provided to customer entities;
- Maintain the performance of the state data center;
- Develop a business continuity plan and a disaster recovery plan;
- Enter into service level agreements with customer entities, which must contain certain provisions;
- Be the custodian of resources and equipment that are located, operated, supported, and managed by the state data center; and

- Assume administrative access rights to the resources and equipment, such as servers, network components, and other devices that are consolidated into the state data center.

The bill repeals the current schedule for consolidation of agency data centers, and specifies that the Department of Financial Services, Department of Legal Affairs, Department of Agriculture and Consumer Services, the regional traffic management centers, and the Office of Toll Operations of the Department of Transportation are exempt from data center consolidation.

The bill removes an existing exemption from data center consolidation for state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations Corporation, and the Florida Housing Finance Corporation. Any of these entities that are part of the executive branch are subject to the authority of the AST by operation of the definition of “state agency” in the bill; for entities that are not part of the executive branch, the exemption is no longer needed.

**Sections 8, 9, and 10** repeal ss. 282.203, 282.204, and 282.205, F.S., relating to primary data centers, the NSRC, and the SSRC, respectively. The duties under these sections will be subsumed within the duties specified in section 7 of the bill.

**Section 11** amends s. 282.318, F.S., relating to enterprise IT security. The bill generally replaces AEIT with AST in regards to existing enterprise IT security duties. The bill supplements existing duties to require AST to publish an information technology security framework for use by state agencies, to include a risk assessment methodology, protection procedures, threat detection, data recovery, procedures for limiting unauthorized access to IT resources, and establishing asset management procedures. The bill also requires AST to train state agency IT security managers in collaboration with the Cybercrime Office in the Department of Law Enforcement.

State agencies must:

- Designate an information security manager who reports to the agency head;
- Submit security plans which include performance metrics;
- Conduct risk assessments consistent with AST risk assessment methodology;
- Develop procedures for reporting IT security incidents to the Cybercrime Office in the Department of Law Enforcement and, for those agencies under the jurisdiction of the Governor, to the Chief Inspector General;
- Require state agency employees to complete security awareness training offered by AST; and
- Report IT security incidents to the Cybercrime Office and AST.

**Sections 12 and 13** repeal ss. 282.33 and 282.34, F.S., respectively, relating to energy efficiency standards for data centers, and the implementation of a statewide email service.

**Section 14** amends s. 17.0315, F.S., to make terminology changes consistent with shifting duties from AEIT to AST.

**Section 15** amends s. 20.055, F.S., to add the AST into the definition of “state agency,” which has the effect of clarifying that the AST must have an Office of Inspector General.



**Sections 16 and 17** amend ss. 110.205 and 215.322, F.S., respectively, to make terminology changes.

**Section 18** amends s. 215.96 F.S., to add the executive director of the AST to the FMIS coordinating council.

**Section 19** amends s. 216.023, F.S., to require that for legislative budget requests for IT projects over \$10 million in total cost, the governance structure must incorporate the applicable project management and oversight standards established by the AST.

**Sections 20 through 23** amend ss. 287.057, 445.011, 445.045, and 668.50, F.S., respectively, to change terminology to reflect the transfer of technology duties from the AEIT to the AST.

**Section 24** amends s. 943.0415, F.S., to task the Cybercrime Office within the Department of Law Enforcement with the following additional duties:

- Monitor IT resources and provide analysis on information technology security incidents;
- Investigate violations of state law pertaining to IT security incidents, threats, or breaches;
- Provide security awareness training and information to state agency employees; and
- Consult with the AST in the adoption of rules relating to IT security.

**Section 25** amends s. 1004.649, F.S., to clarify that the cost-allocation methodology used at the Northwest Regional Data Center at Florida State University must comply with applicable state and federal requirements. The bill also requires that service level agreements between the Northwest Regional Data Center and its state agency customers must:

- Prohibit the transfer of computing services between the Northwest Regional Data Center and the state data center without at least 180 days' notice of service cancellation;
- Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit; and
- Provide that the service-level agreement may be terminated by either party for cause only after giving notice to the other party.

**Section 26** transfers the AEIT to the AST by a type two transfer. The only rules transferred are chapters 71A-1 and 71A-2 of the Florida Administrative Code, both relating to IT security policies; all other rules adopted by the AEIT are nullified.

**Sections 27 and 28** transfer the NSRC and the SSRC to the AST by type two transfer without Legislative Budget Commission approval.

**Section 29** requires the AST to complete a feasibility study that provides recommendations for managing state government data in a manner that promotes its interoperability and openness and ensures that such data is available to the public if legally permissible and not cost prohibitive. The study must include a clear description of which state government data should be public information, recommended standards for the data, a plan for implementing a single internet website that contains the public information or links to it, and a recommended governance structure. The study must be submitted to legislative leaders and the Executive Office of the Governor by June 1, 2015.

**Section 30** creates a State Data Center Task Force comprised of the members of the boards of trustees of the NSRC and SSRC as of June 30, 2014, for the purpose of assisting in the transition of the NSRC and SSRC into the state data center.

**Section 31** appropriates, for the 2014-2015 fiscal year, \$2,865,108 in recurring general revenue funds and \$2,134,892 in nonrecurring general revenue funds, and authorizes 25 full time equivalent positions with associated salary rate of \$2,010,951 to the AST.

Except as otherwise provided, the bill takes effect July 1, 2014.

**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:

For the 2014-2015 fiscal year, PCS/SB 928 appropriates to the AST \$2,865,108 in recurring general revenue funds, \$2,134,892 in nonrecurring general revenue funds, and 25 full time equivalent positions with associated salary rate of 2,010,951.

**Department of Management Services Administrative Costs**

Currently, the Southwood Shared Resource Center and the Northwood Shared Resource Center are assessed charges for the services they receive from the Department of Management Services. The assessments paid by the centers in the current year are roughly \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Absent clarification on the requirement that the executive director of the AST must be a “proven, effective” administrator, the requirement may be subject to differing interpretations.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 17.0315, 20.055, 110.205, 215.322, 215.96, 216.023, 282.0041, 282.201, 282.318, 287.057, 445.011, 445.045, 668.50, 943.0415, and 1004.649.

This bill creates the following sections of the Florida Statutes: 20.61 and 282.0051.

This bill repeals the following sections of the Florida Statutes: 14.204, 282.0055, 282.0056, 282.203, 282.204, 282.205, 282.33, and 282.34.

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on General Government on March 5, 2014:**

The CS:

- Clarifies the definition of “State Data Center”.
- Provides for AST to work with and provide alternative standards for any state agency that may have a conflict with the AST requirements and federal regulations that impact federal funding.
- Provides AST oversight responsibilities and requires compliance with some AST standards on information technology projects with a total cost over \$25 million implemented by the Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services that affect executive agencies.
- Changes one appointment to the Technology Advisory Council from the Cabinet to the Chief Financial Officer in consultation with the Attorney General and the Commissioner of Agriculture.
- Clarifies the responsibilities of the AST as related to the procurement of information technology products and services.
- Clarifies the Type 2 transfer of the Northwood and Southwood Shared Resource Centers do not require Legislative Budget Commission approval.

**B. Amendments:**

None.

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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	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 79 - 529

and insert:

Section 2. Section 20.61, Florida Statutes, is created to read:

20.61 Agency for State Technology.—The Agency for State Technology is created within the Department of Management Services. The agency is a separate budget program and is not subject to control, supervision, or direction by the Department



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11 of Management Services, including, but not limited to,  
12 purchasing, transactions involving real or personal property,  
13 personnel, or budgetary matters.

14 (1) (a) The executive director of the agency shall serve as  
15 the state's chief information officer and shall be appointed by  
16 the Governor, subject to confirmation by the Senate.

17 (b) The executive director must be a proven, effective  
18 administrator who preferably has executive-level experience in  
19 both the public and private sectors in development and  
20 implementation of information technology strategic planning;  
21 management of enterprise information technology projects,  
22 particularly management of large-scale consolidation projects;  
23 and development and implementation of fiscal and substantive  
24 information technology policy.

25 (2) The following positions are established within the  
26 agency, all of whom shall be appointed by the executive  
27 director:

28 (a) Deputy executive director, who shall serve as the  
29 deputy chief information officer.

30 (b) Chief planning officer and six strategic planning  
31 coordinators. One coordinator shall be assigned to each of the  
32 following major program areas: health and human services,  
33 education, government operations, criminal and civil justice,  
34 agriculture and natural resources, and transportation and  
35 economic development.

36 (c) Chief operations officer.

37 (d) Chief information security officer.

38 (e) Chief technology officer.

39 (3) The Technology Advisory Council, consisting of seven



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40 members, is established within the Agency for State Technology  
41 and shall be maintained pursuant to s. 20.052. Four members of  
42 the council shall be appointed by the Governor, two of whom must  
43 be from the private sector. The President of the Senate and the  
44 Speaker of the House of Representatives shall each appoint one  
45 member of the council. The Attorney General, the Commissioner of  
46 Agriculture and Consumer Services, and the Chief Financial  
47 Officer shall jointly appoint one member by agreement of a  
48 majority of these officers. Upon initial establishment of the  
49 council, two of the Governor's appointments shall be for 2-year  
50 terms. Thereafter, all appointments shall be for 4-year terms.

51 (a) The council shall consider and make recommendations to  
52 the executive director on such matters as enterprise information  
53 technology policies, standards, services, and architecture. The  
54 council may also identify and recommend opportunities for the  
55 establishment of public-private partnerships when considering  
56 technology infrastructure and services in order to accelerate  
57 project delivery and provide a source of new or increased  
58 project funding.

59 (b) The executive director shall consult with the council  
60 with regard to executing the duties and responsibilities of the  
61 agency related to statewide information technology strategic  
62 planning and policy.

63 (c) The council shall be governed by the Code of Ethics for  
64 Public Officers and Employees as set forth in part III of  
65 chapter 112, and each member must file a statement of financial  
66 interests pursuant to s. 112.3145.

67 Section 3. Section 282.0041, Florida Statutes, is amended  
68 to read:



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69 282.0041 Definitions.—As used in this chapter, the term:

70 (1) "Agency data center" means agency space containing 10  
71 or more physical or logical servers ~~"Agency" has the same~~  
72 ~~meaning as in s. 216.011(1)(qq), except that for purposes of~~  
73 ~~this chapter, "agency" does not include university boards of~~  
74 ~~trustees or state universities.~~

75 ~~(2) "Agency for Enterprise Information Technology" means~~  
76 ~~the agency created in s. 14.204.~~

77 ~~(3) "Agency information technology service" means a service~~  
78 ~~that directly helps an agency fulfill its statutory or~~  
79 ~~constitutional responsibilities and policy objectives and is~~  
80 ~~usually associated with the agency's primary or core business~~  
81 ~~functions.~~

82 ~~(4) "Annual budget meeting" means a meeting of the board of~~  
83 ~~trustees of a primary data center to review data center usage to~~  
84 ~~determine the apportionment of board members for the following~~  
85 ~~fiscal year, review rates for each service provided, and~~  
86 ~~determine any other required changes.~~

87 ~~(2)(5) "Breach" means a confirmed event that compromises~~  
88 ~~the confidentiality, integrity, or availability of information~~  
89 ~~or data has the same meaning as in s. 817.5681(4).~~

90 ~~(3)(6) "Business continuity plan" means a collection of~~  
91 ~~procedures and information designed to keep an agency's critical~~  
92 ~~operations running during a period of displacement or~~  
93 ~~interruption of normal operations plan for disaster recovery~~  
94 ~~which provides for the continued functioning of a primary data~~  
95 ~~center during and after a disaster.~~

96 ~~(4)(7) "Computing facility" or "agency computing facility"~~  
97 ~~means agency space containing fewer than a total of 10 physical~~





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98 or logical servers, ~~any of which supports a strategic or~~  
99 ~~nonstrategic information technology service, as described in~~  
100 ~~budget instructions developed pursuant to s. 216.023, but~~  
101 excluding single, logical-server installations that exclusively  
102 perform a utility function such as file and print servers.

103 ~~(5)-(8)~~ "Customer entity" means an entity that obtains  
104 services from the state ~~a primary~~ data center.

105 ~~(9)~~ "Data center" ~~means agency space containing 10 or more~~  
106 ~~physical or logical servers any of which supports a strategic or~~  
107 ~~nonstrategic information technology service, as described in~~  
108 ~~budget instructions developed pursuant to s. 216.023.~~

109 ~~(6)-(10)~~ "Department" means the Department of Management  
110 Services.

111 (7) "Disaster recovery" means the process, policies,  
112 procedures, and infrastructure related to preparing for and  
113 implementing recovery or continuation of an agency's vital  
114 technology infrastructure after a natural or human-induced  
115 disaster.

116 ~~(8)-(11)~~ "Enterprise information technology service" means  
117 an information technology service that is used in all agencies  
118 or a subset of agencies and is established in law to be  
119 designed, delivered, and managed at the enterprise level.

120 (9) "Event" means an observable occurrence in a system or  
121 network.

122 (10) "Incident" means a violation or imminent threat of  
123 violation, whether such violation is accidental or deliberate,  
124 of information technology security policies, acceptable use  
125 policies, or standard security practices. An imminent threat of  
126 violation refers to a situation in which the state agency has a



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127 factual basis for believing that a specific incident is about to  
128 occur.

129 ~~(12) "E-mail, messaging, and calendaring service" means the~~  
130 ~~enterprise information technology service that enables users to~~  
131 ~~send, receive, file, store, manage, and retrieve electronic~~  
132 ~~messages, attachments, appointments, and addresses. The e-mail,~~  
133 ~~messaging, and calendaring service must include e-mail account~~  
134 ~~management; help desk; technical support and user provisioning~~  
135 ~~services; disaster recovery and backup and restore capabilities;~~  
136 ~~antispam and antivirus capabilities; archiving and e-discovery;~~  
137 ~~and remote access and mobile messaging capabilities.~~

138 ~~(13) "Information system utility" means a full-service~~  
139 ~~information processing facility offering hardware, software,~~  
140 ~~operations, integration, networking, and consulting services.~~

141 (11)~~(14)~~ "Information technology" means equipment,  
142 hardware, software, firmware, programs, systems, networks,  
143 infrastructure, media, and related material used to  
144 automatically, electronically, and wirelessly collect, receive,  
145 access, transmit, display, store, record, retrieve, analyze,  
146 evaluate, process, classify, manipulate, manage, assimilate,  
147 control, communicate, exchange, convert, converge, interface,  
148 switch, or disseminate information of any kind or form.

149 (12)~~(15)~~ "Information technology policy" means a definite  
150 course or method of action selected from among one or more  
151 alternatives that guide and determine present and future  
152 decisions ~~statements that describe clear choices for how~~  
153 ~~information technology will deliver effective and efficient~~  
154 ~~government services to residents and improve state agency~~  
155 ~~operations. A policy may relate to investments, business~~



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156 ~~applications, architecture, or infrastructure. A policy~~  
157 ~~describes its rationale, implications of compliance or~~  
158 ~~noncompliance, the timeline for implementation, metrics for~~  
159 ~~determining compliance, and the accountable structure~~  
160 ~~responsible for its implementation.~~

161 (13) "Information technology resources" has the same  
162 meaning as provided in s. 119.011.

163 (14) "Information technology security" means the protection  
164 afforded to an automated information system in order to attain  
165 the applicable objectives of preserving the integrity,  
166 availability, and confidentiality of data, information, and  
167 information technology resources.

168 (15)~~(16)~~ "Performance metrics" means the measures of an  
169 organization's activities and performance.

170 ~~(17) "Primary data center" means a data center that is a~~  
171 ~~recipient entity for consolidation of nonprimary data centers~~  
172 ~~and computing facilities and that is established by law.~~

173 (16)~~(18)~~ "Project" means an endeavor that has a defined  
174 start and end point; is undertaken to create or modify a unique  
175 product, service, or result; and has specific objectives that,  
176 when attained, signify completion.

177 (17) "Project oversight" means an independent review and  
178 analysis of an information technology project that provides  
179 information on the project's scope, completion timeframes, and  
180 budget and that identifies and quantifies issues or risks  
181 affecting the successful and timely completion of the project.

182 (18)~~(19)~~ "Risk assessment analysis" means the process of  
183 identifying security risks, determining their magnitude, and  
184 identifying areas needing safeguards.



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185        ~~(19)-(20)~~ "Service level" means the key performance  
186 indicators (KPI) of an organization or service which must be  
187 regularly performed, monitored, and achieved.

188        ~~(20)-(21)~~ "Service-level agreement" means a written contract  
189 between the state a data center and a customer entity which  
190 specifies the scope of services provided, service level, the  
191 duration of the agreement, the responsible parties, and service  
192 costs. A service-level agreement is not a rule pursuant to  
193 chapter 120.

194        (21) "Stakeholder" means a person, group, organization, or  
195 state agency involved in or affected by a course of action.

196        (22) "Standards" means required practices, controls,  
197 components, or configurations established by an authority.

198        (23) "State agency" means any official, officer,  
199 commission, board, authority, council, committee, or department  
200 of the executive branch of state government; the Justice  
201 Administrative Commission; and the Public Service Commission.  
202 The term does not include university boards of trustees or state  
203 universities. As used in part I of this chapter, except as  
204 otherwise specifically provided, the term does not include the  
205 Department of Legal Affairs, the Department of Agriculture and  
206 Consumer Services, or the Department of Financial Services.

207        ~~(24)-(23)~~ "SUNCOM Network" means the state enterprise  
208 telecommunications system that provides all methods of  
209 electronic or optical telecommunications beyond a single  
210 building or contiguous building complex and used by entities  
211 authorized as network users under this part.

212        ~~(25)-(24)~~ "Telecommunications" means the science and  
213 technology of communication at a distance, including electronic



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214 systems used in the transmission or reception of information.

215 ~~(26)-(25)~~ "Threat" means any circumstance or event that has  
216 the potential to adversely impact a state agency's operations or  
217 assets through an information system via unauthorized access,  
218 destruction, disclosure, or modification of information or  
219 denial of service ~~any circumstance or event that may cause harm~~  
220 ~~to the integrity, availability, or confidentiality of~~  
221 ~~information technology resources.~~

222 (27) "Variance" means a calculated value that illustrates  
223 how far positive or negative a projection has deviated when  
224 measured against documented estimates within a project plan.

225 ~~(26) "Total cost" means all costs associated with~~  
226 ~~information technology projects or initiatives, including, but~~  
227 ~~not limited to, value of hardware, software, service,~~  
228 ~~maintenance, incremental personnel, and facilities. Total cost~~  
229 ~~of a loan or gift of information technology resources to an~~  
230 ~~agency includes the fair market value of the resources.~~

231 ~~(27) "Usage" means the billing amount charged by the~~  
232 ~~primary data center, less any pass-through charges, to the~~  
233 ~~customer entity.~~

234 ~~(28) "Usage rate" means a customer entity's usage or~~  
235 ~~billing amount as a percentage of total usage.~~

236 Section 4. Section 282.0051, Florida Statutes, is created  
237 to read:

238 282.0051 Agency for State Technology; powers, duties, and  
239 functions.—The Agency for State Technology shall have the  
240 following powers, duties, and functions:

241 (1) Develop and publish information technology policy for  
242 the management of the state's information technology resources.



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243           (2) Establish and publish information technology  
244 architecture standards to provide for the most efficient use of  
245 the state's information technology resources and to ensure  
246 compatibility and alignment with the needs of state agencies.  
247 The agency shall assist state agencies in complying with the  
248 standards.

249           (3) By June 30, 2015, establish project management and  
250 oversight standards with which state agencies must comply when  
251 implementing information technology projects. The agency shall  
252 provide training opportunities to state agencies to assist in  
253 the adoption of the project management and oversight standards.  
254 To support data-driven decisionmaking, the standards must  
255 include, but are not limited to:

256           (a) Performance measurements and metrics that objectively  
257 reflect the status of an information technology project based on  
258 a defined and documented project scope, cost, and schedule.

259           (b) Methodologies for calculating acceptable variances in  
260 the projected versus actual scope, schedule, or cost of an  
261 information technology project.

262           (c) Reporting requirements, including requirements designed  
263 to alert all defined stakeholders that an information technology  
264 project has exceeded acceptable variances defined and documented  
265 in a project plan.

266           (d) Content, format, and frequency of project updates.

267           (4) Beginning January 1, 2015, perform project oversight on  
268 all state agency information technology projects that have total  
269 project costs of \$10 million or more and that are funded in the  
270 General Appropriations Act or any other law. The agency shall  
271 report at least quarterly to the Executive Office of the



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272 Governor, the President of the Senate, and the Speaker of the  
273 House of Representatives on any information technology project  
274 that the agency identifies as high-risk due to the project  
275 exceeding acceptable variance ranges defined and documented in a  
276 project plan. The report must include a risk assessment,  
277 including fiscal risks, associated with proceeding to the next  
278 stage of the project, and a recommendation for corrective  
279 actions required, including suspension or termination of the  
280 project.

281 (5) By April 1, 2016, and biennially thereafter, identify  
282 opportunities for standardization and consolidation of  
283 information technology services that support business functions  
284 and operations, including administrative functions such as  
285 purchasing, accounting and reporting, cash management, and  
286 personnel, and that are common across state agencies. The agency  
287 shall provide recommendations for standardization and  
288 consolidation to the Executive Office of the Governor, the  
289 President of the Senate, and the Speaker of the House of  
290 Representatives. The agency is not precluded from providing  
291 recommendations before April 1, 2016.

292 (6) In collaboration with the Department of Management  
293 Services, establish best practices for the procurement of  
294 information technology products in order to reduce costs,  
295 increase productivity, or improve services. Such practices must  
296 include a provision requiring the agency to review all  
297 information technology purchases made by state agencies that  
298 have a total cost of \$250,000 or more, unless a purchase is  
299 specifically mandated by the Legislature, for compliance with  
300 the standards established pursuant to this section.



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301 (7) (a) Participate with the Department of Management  
302 Services in evaluating, conducting, and negotiating competitive  
303 solicitations for state term contracts for information  
304 technology commodities, consultant services, or staff  
305 augmentation contractual services pursuant to s. 287.0591.

306 (b) Collaborate with the Department of Management Services  
307 in information technology resource acquisition planning.

308 (8) Develop standards for information technology reports  
309 and updates, including, but not limited to, operational work  
310 plans, project spend plans, and project status reports, for use  
311 by state agencies.

312 (9) Upon request, assist state agencies in the development  
313 of information technology-related legislative budget requests.

314 (10) Beginning July 1, 2016, and annually thereafter,  
315 conduct annual assessments of state agencies to determine  
316 compliance with all information technology standards and  
317 guidelines developed and published by the agency, and beginning  
318 December 1, 2016, and annually thereafter, provide results of  
319 the assessments to the Executive Office of the Governor, the  
320 President of the Senate, and the Speaker of the House of  
321 Representatives.

322 (11) Provide operational management and oversight of the  
323 state data center established pursuant to s. 282.201, which  
324 includes:

325 (a) Implementing industry standards and best practices for  
326 the state data center's facilities, operations, maintenance,  
327 planning, and management processes.

328 (b) Developing and implementing cost-recovery mechanisms  
329 that recover the full direct and indirect cost of services





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330 through charges to applicable customer entities. Such cost-  
331 recovery mechanisms must comply with applicable state and  
332 federal regulations concerning distribution and use of funds and  
333 must ensure that, for any fiscal year, no service or customer  
334 entity subsidizes another service or customer entity.

335 (c) Developing and implementing appropriate operating  
336 guidelines and procedures necessary for the state data center to  
337 perform its duties pursuant to s. 282.201. The guidelines and  
338 procedures must comply with applicable state and federal laws,  
339 regulations, and policies and conform to generally accepted  
340 governmental accounting and auditing standards. The guidelines  
341 and procedures must include, but not be limited to:

342 1. Implementing a consolidated administrative support  
343 structure responsible for providing financial management,  
344 procurement, transactions involving real or personal property,  
345 human resources, and operational support.

346 2. Implementing an annual reconciliation process to ensure  
347 that each customer entity is paying for the full direct and  
348 indirect cost of each service as determined by the customer  
349 entity's use of each service.

350 3. Providing rebates that may be credited against future  
351 billings to customer entities when revenues exceed costs.

352 4. Requiring customer entities to validate that sufficient  
353 funds exist in the appropriate data processing appropriation  
354 category or will be transferred into the appropriate data  
355 processing appropriation category before implementation of a  
356 customer entity's request for a change in the type or level of  
357 service provided, if such change results in a net increase to  
358 the customer entity's costs for that fiscal year.



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359 5. By September 1 of each year, providing to each customer  
360 entity's agency head the projected costs of providing data  
361 center services for the following fiscal year.

362 6. Providing a plan for consideration by the Legislative  
363 Budget Commission if the cost of a service is increased for a  
364 reason other than a customer entity's request made pursuant to  
365 subparagraph 4. Such a plan is required only if the service cost  
366 increase results in a net increase to a customer entity for that  
367 fiscal year.

368 7. Standardizing and consolidating procurement and  
369 contracting practices.

370 (d) In collaboration with the Department of Law  
371 Enforcement, developing and implementing a process for  
372 detecting, reporting, and responding to information technology  
373 security incidents, breaches, and threats.

374 (e) Adopting rules relating to the operation of the state  
375 data center, including, but not limited to, budgeting and  
376 accounting procedures, cost-recovery methodologies, and  
377 operating procedures.

378 (f) Beginning May 1, 2016, and annually thereafter,  
379 conducting a market analysis to determine whether the state's  
380 approach to the provision of data center services is the most  
381 effective and efficient manner by which its customer entities  
382 can acquire such services, based on federal, state, and local  
383 government trends; best practices in service provision; and the  
384 acquisition of new and emerging technologies. The results of the  
385 market analysis shall assist the state data center in making  
386 adjustments to its data center service offerings.

387 (12) Recommend other information technology services that



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388 should be designed, delivered, and managed as enterprise  
389 information technology services. Recommendations must include  
390 the identification of existing information technology resources  
391 associated with the services, if existing services must be  
392 transferred as a result of being delivered and managed as  
393 enterprise information technology services.

394 (13) Recommend additional consolidations of agency  
395 computing facilities or data centers into the state data center  
396 established pursuant to s. 282.201. Such recommendations shall  
397 include a proposed timeline for consolidation.

398 (14) In consultation with state agencies, propose a  
399 methodology and approach for identifying and collecting both  
400 current and planned information technology expenditure data at  
401 the state agency level.

402 (15) (a) Beginning January 1, 2015, and notwithstanding any  
403 other law, provide project oversight on any information  
404 technology project of the Department of Financial Services, the  
405 Department of Legal Affairs, and the Department of Agriculture  
406 and Consumer Services that has a total project cost of \$25  
407 million or more and that impacts one or more other agencies.  
408 Such information technology projects must also comply with the  
409 applicable information technology architecture, project  
410 management and oversight, and reporting standards established by  
411 the agency.

412 (b) When performing the project oversight function  
413 specified in paragraph (a), report at least quarterly to the  
414 Executive Office of the Governor, the President of the Senate,  
415 and the Speaker of the House of Representatives on any  
416 information technology project that the agency identifies as



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417 high-risk due to the project exceeding acceptable variance  
418 ranges defined and documented in the project plan. The report  
419 shall include a risk assessment, including fiscal risks,  
420 associated with proceeding to the next stage of the project and  
421 a recommendation for corrective actions required, including  
422 suspension or termination of the project.

423 (16) If an information technology project implemented by a  
424 state agency must be connected to or otherwise accommodated by  
425 an information technology system administered by the Department  
426 of Financial Services, the Department of Legal Affairs, or the  
427 Department of Agriculture and Consumer Services, consult with  
428 these departments regarding the risks and other effects of such  
429 projects on their information technology systems and work  
430 cooperatively with these departments regarding the connections,  
431 interfaces, timing, or accommodations required to implement such  
432 projects.

433 (17) If adherence to standards or policies adopted by or  
434 established pursuant to this section causes conflict with  
435 federal regulations or requirements imposed on a state agency  
436 and results in adverse action against the state agency or  
437 federal funding, work with the state agency to provide  
438 alternative standards, policies, or requirements that do not  
439 conflict with the federal regulation or requirement. Beginning  
440 July 1, 2015, the agency shall annually report such alternative  
441 standards to the Governor, the President of the Senate, and the  
442 Speaker of the House of Representatives.

443 (18) Adopt rules to administer this section.

444 Section 5. Section 282.00515, Florida Statutes, is created  
445 to read:



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446           282.00515 Duties of Cabinet agencies.—The Department of  
447 Legal Affairs, the Department of Financial Services, and the  
448 Department of Agriculture and Consumer Services shall adopt the  
449 standards established in s. 282.0051(2), (3), and (8) or adopt  
450 alternative standards based on best practices and industry  
451 standards, and may contract with the Agency for State Technology  
452 to provide or perform any of the services and functions  
453 described in s. 282.0051 for the Department of Legal Affairs,  
454 the Department of Financial Services, or the Department of  
455 Agriculture and Consumer Services.

456           Section 6. Section 287.0591, Florida Statutes, is created  
457 to read:

458           287.0591 Information technology.—

459           (1) Beginning July 1, 2014, any competitive solicitation  
460 issued by the department for a state term contract for  
461 information technology commodities must include a term that does  
462 not exceed 48 months.

463           (2) Beginning September 1, 2015, any competitive  
464 solicitation issued by the department for a state term contract  
465 for information technology consultant services or information  
466 technology staff augmentation contractual services must include  
467 a term that does not exceed 48 months.

468           (3) The department may execute a state term contract for  
469 information technology commodities, consultant services, or  
470 staff augmentation contractual services that exceeds the 48-  
471 month requirement if the Secretary of Management Services and  
472 the executive director of the Agency for State Technology  
473 certify to the Executive Office of the Governor that a longer  
474 contract term is in the best interest of the state.



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475 (4) If the department issues a competitive solicitation for  
476 information technology commodities, consultant services, or  
477 staff augmentation contractual services, the Agency for State  
478 Technology shall participate in such solicitations.

479

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

481 And the title is amended as follows:

482 Delete lines 5 - 16

483 and insert:

484 the Governor; creating s. 20.61, F.S.; creating the  
485 Agency for State Technology; providing that the  
486 executive director shall serve as the state's chief  
487 information officer; establishing certain agency  
488 positions; establishing the Technology Advisory  
489 Council; providing for membership and duties of the  
490 council; providing that members of the council are  
491 governed by the Code of Ethics for Public Officers and  
492 Employees; amending s. 282.0041, F.S.; revising,  
493 creating, and deleting definitions used in the  
494 Enterprise Information Technology Services Management  
495 Act; creating s. 282.0051, F.S.; providing powers,  
496 duties, and functions of the Agency for State  
497 Technology; authorizing the agency to adopt rules;  
498 creating s. 282.00515, F.S.; requiring the Department  
499 of Legal Affairs, the Department of Financial  
500 Services, and the Department of Agriculture and  
501 Consumer Services to adopt certain technical standards  
502 or alternatives to those standards and authorizing  
503 such departments to contract with the Agency for State



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504 Technology for certain purposes; creating s. 287.0591,  
505 F.S.; limiting the terms of certain competitive  
506 solicitations for information technology commodities;  
507 providing an exception; repealing s.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 987 - 1189

and insert:

Section 11. Section 282.318, Florida Statutes, is amended to read:

282.318 ~~Enterprise~~ Security of data and information technology.—

(1) This section may be cited as the "~~Enterprise Security of Data and Information Technology~~ Security Act."





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11           (2) As used in this section, the term "state agency" has  
12 the same meaning as provided in s. 282.0041, except that the  
13 term includes the Department of Legal Affairs, the Department of  
14 Agriculture and Consumer Services, and the Department of  
15 Financial Services.

16           ~~(2) Information technology security is established as an~~  
17 ~~enterprise information technology service as defined in s.~~  
18 ~~282.0041.~~

19           (3) The Agency for State Enterprise Information Technology  
20 is responsible for establishing standards and processes  
21 consistent with generally accepted best practices for  
22 information technology security and adopting rules that  
23 safeguard an agency's data, information, and information  
24 technology resources to ensure availability, confidentiality,  
25 and integrity and publishing guidelines for ensuring an  
26 appropriate level of security for all data and information  
27 technology resources for executive branch agencies. The agency  
28 shall also ~~perform the following duties and responsibilities:~~

29           (a) Develop, and annually update by February 1, a statewide  
30 ~~an enterprise~~ information technology security strategic plan  
31 that includes security goals and objectives for the strategic  
32 issues of information technology security policy, risk  
33 management, training, incident management, and disaster recovery  
34 survivability planning.

35           (b) Develop and publish for use by state agencies an  
36 information technology security framework that, at a minimum,  
37 includes enterprise security rules and published guidelines and  
38 processes for:

39           1. Establishing asset management procedures to ensure that



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40 an agency's information technology resources are identified and  
41 managed consistent with their relative importance to the  
42 agency's business objectives.

43 2. Using a standard risk assessment methodology that  
44 includes the identification of an agency's priorities,  
45 constraints, risk tolerances, and assumptions necessary to  
46 support operational risk decisions.

47 3.1. Completing comprehensive risk assessments analyses and  
48 information technology security audits and submitting completed  
49 assessments and audits to the Agency for State Technology  
50 conducted by state agencies.

51 4. Identifying protection procedures to manage the  
52 protection of an agency's information, data, and information  
53 technology resources.

54 5. Establishing procedures for accessing information and  
55 data to ensure the confidentiality, integrity, and availability  
56 of such information and data.

57 6. Detecting threats through proactive monitoring of  
58 events, continuous security monitoring, and defined detection  
59 processes.

60 7.2. Responding to information technology suspected or  
61 confirmed information security incidents, including suspected or  
62 confirmed breaches of personal information containing  
63 confidential or exempt data.

64 8. Recovering information and data in response to an  
65 information technology security incident. The recovery may  
66 include recommended improvements to the agency processes,  
67 policies, or guidelines.

68 9.3. Developing agency strategic and operational



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69 information technology security plans required pursuant to this  
70 section, including strategic security plans and security program  
71 plans.

72 ~~4. The recovery of information technology and data~~  
73 ~~following a disaster.~~

74 10.5. Establishing the managerial, operational, and  
75 technical safeguards for protecting state government data and  
76 information technology resources that align with the state  
77 agency risk management strategy and that protect the  
78 confidentiality, integrity, and availability of information and  
79 data.

80 (c) Assist state agencies in complying with ~~the provisions~~  
81 ~~of~~ this section.

82 ~~(d) Pursue appropriate funding for the purpose of enhancing~~  
83 ~~domestic security.~~

84 ~~(d)(e)~~ In collaboration with the Cybercrime Office of the  
85 Department of Law Enforcement, provide training for state agency  
86 information security managers.

87 ~~(e)(f)~~ Annually review the strategic and operational  
88 information technology security plans of executive branch  
89 agencies.

90 ~~(4) To assist the Agency for Enterprise Information~~  
91 ~~Technology in carrying out its responsibilities, Each state~~  
92 ~~agency head shall, at a minimum:~~

93 (a) Designate an information security manager to administer  
94 the information technology security program of the state agency  
95 ~~for its data and information technology resources.~~ This  
96 designation must be provided annually in writing to the Agency  
97 for State Enterprise Information Technology by January 1. A



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98 state agency's information security manager, for purposes of  
99 these information security duties, shall report directly to the  
100 agency head.

101 (b) Submit to the Agency for State Enterprise Information  
102 Technology annually by July 31, the state agency's strategic and  
103 operational information technology security plans developed  
104 pursuant to ~~the~~ rules and guidelines established by the Agency  
105 for State Enterprise Information Technology.

106 1. The state agency strategic information technology  
107 security plan must cover a 3-year period and, at a minimum,  
108 define security goals, intermediate objectives, and projected  
109 agency costs for the strategic issues of agency information  
110 security policy, risk management, security training, security  
111 incident response, and disaster recovery survivability. The plan  
112 must be based on the statewide enterprise strategic information  
113 technology security strategic plan created by the Agency for  
114 State Enterprise Information Technology and include performance  
115 metrics that can be objectively measured to reflect the status  
116 of the state agency's progress in meeting security goals and  
117 objectives identified in the agency's strategic information  
118 security plan. Additional issues may be included.

119 2. The state agency operational information technology  
120 security plan must include a progress report that objectively  
121 measures progress made towards ~~for~~ the prior operational  
122 information technology security plan and a project plan that  
123 includes activities, timelines, and deliverables for security  
124 objectives that, ~~subject to current resources,~~ the state agency  
125 will implement during the current fiscal year. ~~The cost of~~  
126 ~~implementing the portions of the plan which cannot be funded~~



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127 ~~from current resources must be identified in the plan.~~

128 (c) Conduct, and update every 3 years, a comprehensive risk  
129 assessment analysis to determine the security threats to the  
130 data, information, and information technology resources of the  
131 agency. The risk assessment must comply with the risk assessment  
132 methodology developed by the Agency for State Technology and  
133 analysis information is confidential and exempt from ~~the~~  
134 ~~provisions of s. 119.07(1)~~, except that such information shall  
135 be available to the Auditor General, and the Agency for State  
136 Enterprise Information Technology, the Cybercrime Office of the  
137 Department of Law Enforcement, and, for state agencies under the  
138 jurisdiction of the Governor, the Chief Inspector General ~~for~~  
139 ~~performing postauditing duties.~~

140 (d) Develop, and periodically update, written internal  
141 policies and procedures, which include procedures for reporting  
142 information technology security incidents and breaches to the  
143 Cybercrime Office of the Department of Law Enforcement and-  
144 ~~notifying the Agency for State Enterprise Information Technology~~  
145 ~~when a suspected or confirmed breach, or an information security~~  
146 ~~incident, occurs.~~ Such policies and procedures must be  
147 consistent with the rules, and guidelines, and processes  
148 established by the Agency for State Enterprise Information  
149 Technology to ensure the security of the data, information, and  
150 information technology resources of the agency. The internal  
151 policies and procedures that, if disclosed, could facilitate the  
152 unauthorized modification, disclosure, or destruction of data or  
153 information technology resources are confidential information  
154 and exempt from s. 119.07(1), except that such information shall  
155 be available to the Auditor General, the Cybercrime Office of



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156 the Department of Law Enforcement, and the Agency for State  
157 Enterprise Information Technology, and, for state agencies under  
158 the jurisdiction of the Governor, the Chief Inspector General  
159 for performing postauditing duties.

160 (e) Implement managerial, operational, and technical  
161 appropriate cost-effective safeguards established by the Agency  
162 for State Technology to address identified risks to the data,  
163 information, and information technology resources of the agency.

164 (f) Ensure that periodic internal audits and evaluations of  
165 the agency's information technology security program for the  
166 data, information, and information technology resources of the  
167 agency are conducted. The results of such audits and evaluations  
168 are confidential information and exempt from s. 119.07(1),  
169 except that such information shall be available to the Auditor  
170 General, the Cybercrime Office of the Department of Law  
171 Enforcement, and the Agency for State Enterprise Information  
172 Technology, and, for agencies under the jurisdiction of the  
173 Governor, the Chief Inspector General for performing  
174 postauditing duties.

175 (g) Include appropriate information technology security  
176 requirements in the written specifications for the solicitation  
177 of information technology and information technology resources  
178 and services, which are consistent with the rules and guidelines  
179 established by the Agency for State Enterprise Information  
180 Technology in collaboration with the Department of Management  
181 Services.

182 (h) Provide information technology security awareness  
183 training to all state agency employees ~~and users of the agency's~~  
184 ~~communication and information resources~~ concerning information



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185 technology security risks and the responsibility of employees  
186 ~~and users~~ to comply with policies, standards, guidelines, and  
187 operating procedures adopted by the state agency to reduce those  
188 risks. The training may be provided in collaboration with the  
189 Cybercrime Office of the Department of Law Enforcement.

190 (i) Develop a process for detecting, reporting, and  
191 responding to threats, breaches, or information technology  
192 security suspected or confirmed security incidents that are,  
193 ~~including suspected or confirmed breaches~~ consistent with the  
194 security rules, and guidelines, and processes established by the  
195 Agency for State Enterprise Information Technology.

196 1. All information technology Suspected or confirmed  
197 ~~information~~ security incidents and breaches must be ~~immediately~~  
198 reported to the Agency for State Enterprise Information  
199 Technology.

200 2. For information technology security incidents involving  
201 breaches, state agencies shall provide notice in accordance with  
202 s. 817.5681 ~~and to the Agency for Enterprise Information~~  
203 ~~Technology in accordance with this subsection.~~

204 ~~(5) Each state agency shall include appropriate security~~  
205 ~~requirements in the specifications for the solicitation of~~  
206 ~~contracts for procuring information technology or information~~  
207 ~~technology resources or services which are consistent with the~~  
208 ~~rules and guidelines established by the Agency for Enterprise~~  
209 ~~Information Technology.~~

210 ~~(5)-(6)~~ The Agency for State Enterprise Information  
211 Technology shall ~~may~~ adopt rules relating to information  
212 technology security and to administer ~~the provisions of this~~  
213 section.



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

And the title is amended as follows:

Delete lines 33 - 36

and insert:

to the Southwood Shared Resource Center; amending s.  
282.318, F.S.; changing the name of the Enterprise  
Security of Data and Information Technology Act;  
defining the term "agency" as used in the act;  
requiring the Agency for State Technology to establish  
and publish certain security standards and processes;  
requiring state agencies to perform certain security-  
related duties; requiring the agency to adopt rules;  
conforming provisions;





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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

**Senate Amendment**

Delete lines 1618 - 1695  
and insert:

Section 26. (1) All records, property, pending issues and existing contracts, administrative authority, administrative rules in chapters 71A-1 and 71A-2, Florida Administrative Code, in effect as of November 15, 2010, trust funds, and unexpended balances of appropriations, allocations, and other funds of the Agency for Enterprise Information Technology are transferred by



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11 a type two transfer pursuant to s. 20.06(2), Florida Statutes,  
12 to the Agency for State Technology established pursuant to s.  
13 20.61, Florida Statutes, as created by this act.

14 (2) Except for those rules in chapters 71A-1 and 71A-2,  
15 Florida Administrative Code, transferred pursuant to subsection  
16 (1), any other rules adopted by the Agency for Enterprise  
17 Information Technology, if any, are void.

18 Section 27. The Northwood Shared Resource Center is  
19 transferred by a type two transfer, pursuant to s. 20.06,  
20 Florida Statutes, from the Department of Management Services to  
21 the Agency for State Technology. Any binding contract or  
22 interagency agreement entered into and between the Northwood  
23 Shared Resource Center or an entity or agent of the center and  
24 any other agency, entity, or person shall continue as a binding  
25 contract or agreement of the Agency for State Technology for the  
26 remainder of the term of such contract or agreement.

27 Section 28. The Southwood Shared Resource Center is  
28 transferred by a type two transfer, pursuant to s. 20.06,  
29 Florida Statutes, from the Department of Management Services to  
30 the Agency for State Technology. Any binding contract or  
31 interagency agreement entered into and between the Southwood  
32 Shared Resource Center or an entity or agent of the center and  
33 any other agency, entity, or person shall continue as a binding  
34 contract or agreement of the Agency for State Technology for the  
35 remainder of the term of such contract or agreement.

36 Section 29. (1) The Agency for State Technology shall  
37 conduct a feasibility study that analyzes, evaluates, and  
38 provides recommendations for managing state government data in a  
39 manner that promotes interoperability and openness; ensures



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40 that, wherever legally permissible and not cost prohibitive,  
41 such data is available to the public in ways that make the data  
42 easy to find and use; and complies with the provisions of  
43 chapter 119, Florida Statutes.

44 (2) By June 1, 2015, the Agency for State Technology shall  
45 submit a report on the feasibility study to the Governor, the  
46 President of the Senate, and the Speaker of the House of  
47 Representatives. The report, at a minimum, shall include the  
48 following components:

49 (a) A clear description of what state government data is  
50 public information. The guiding principle for this component is  
51 a presumption of openness to the extent permitted by law and  
52 subject to privacy, confidentiality, security, and other fiscal  
53 and legal restrictions.

54 (b) A fiscal analysis that identifies the impact to any  
55 agency that is authorized to assess a fee for providing certain  
56 state government data to the public if the description in  
57 paragraph (a) includes that data.

58 (c) Recommended standards to make uniform the format and  
59 accessibility of public information and to ensure that the data  
60 is published in a nonproprietary, searchable, sortable,  
61 platform-independent, and machine-readable format. The report  
62 shall include the projected cost to state agencies to implement  
63 and maintain the standards.

64 (d) A project plan for implementing a single Internet  
65 website that contains the public information or links to the  
66 public information. The plan shall include a timeline and  
67 benchmarks for making public information available online and  
68 shall identify costs associated with the development and ongoing



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69 maintenance of the website.

70 (e) A recommended governance structure and a review and  
71 compliance process to ensure accountability on the part of those  
72 who create, maintain, manage, or store public information or  
73 post it on the single Internet website. The report shall include  
74 associated costs to implement and maintain the recommended  
75 governance structure and the review and compliance process.

76 Section 30. Effective June 30, 2014, there is created the  
77 state data center task force comprised of all individuals who,  
78 upon that date are members of the boards of trustees of the  
79 Northwood Shared Resource Center or the Southwood Shared  
80 Resource Center, and agree to serve on the task force. The  
81 members of the task force shall elect a chair. The purpose of  
82 the task force is to assist with the transfer of the Northwood  
83 Shared Resource Center and Southwood Shared Resource Center to  
84 the Agency for State Technology and the transition to the state  
85 data center established pursuant to s. 282.201, Florida  
86 Statutes. The task force shall identify any operational or  
87 fiscal issues impacting the transition and provide  
88 recommendations to the Agency for State Technology for  
89 resolution of such issues. The task force does not have  
90 authority to make decisions regarding the state data center or  
91 the former Northwood Shared Resource Center or Southwood Shared  
92 Resource Center. The task force is abolished June 30, 2015, or  
93 at an earlier date as provided by the task force.

94 Section 31. (1) For the 2014-2015 fiscal year, the sums of  
95 \$3,563,573 in recurring funds and \$1,095,005 in nonrecurring  
96 funds are appropriated from the General Revenue Fund to the  
97 Agency for State Technology, and 25 full-time equivalent



98 positions and associated salary rate of 2,083,482 are  
99 authorized, for the purpose of implementing this act.

100 (2) (a) The recurring general revenue funds shall be  
101 allocated to an Executive Direction and Support Services budget  
102 entity in specific appropriation categories: \$2,851,452 in  
103 Salaries and Benefits, \$252,894 in Expenses, \$115,000 in  
104 Administrative Overhead, \$10,000 in Operating Capital Outlay,  
105 \$317,627 in Contracted Services, \$3,000 in Risk Management  
106 Insurance, \$8,600 in Transfer to Department of Management  
107 Services/Statewide Human Resources Contract, and \$5,000 in Data  
108 Processing Services/Southwood Shared Resource Center.

109 (b) The nonrecurring general revenue funds shall be  
110 allocated to an Executive Direction and Support Services budget  
111 entity in specific appropriation categories: \$95,005 in Expenses  
112 and \$1,000,000 in Contracted Services.

113 Section 32. A Data Center Administration budget entity is  
114 created within the Agency for State Technology. Appropriations  
115 to the Data Center Administration budget entity shall reflect  
116 the indirect data center costs allocated to customer agencies.

117 Section 33. For the 2014-2015 fiscal year only, the  
118 Northwood Shared Resource Center budget entity is created within  
119 the Agency for State Technology. Effective July 1, 2014, the  
120 appropriations provided for the Northwood Shared Resource Center  
121 in the General Appropriations Act for the 2014-2015 fiscal year  
122 shall be transferred to the Northwood Shared Resource Center  
123 budget entity within the Agency for State Technology.

124 Section 34. For the 2014-2015 fiscal year only, the  
125 Southwood Shared Resource Center budget entity is created within  
126 the Agency for State Technology. Effective July 1, 2014, the



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127 appropriations provided for the Southwood Shared Resource Center  
128 in the General Appropriations Act for the 2014-2015 fiscal year  
129 shall be transferred to the Southwood Shared Resource Center  
130 budget entity within the Agency for State Technology.

131 Section 35. (1) For the 2014-2015 fiscal year, the sums of  
132 \$144,870 in recurring funds and \$7,546 in nonrecurring funds are  
133 appropriated from the General Revenue Fund to the Department of  
134 Law Enforcement, and 2 full-time equivalent positions and  
135 associated salary rate of 93,120 are authorized, for the purpose  
136 of implementing the sections of this act related to cybercrime  
137 capacity and capability.

138 (2) (a) The recurring general revenue funds shall be  
139 allocated to the Provide Investigative Services budget entity in  
140 specific appropriation categories: \$131,660 in Salaries and  
141 Benefits, \$12,522 in Expenses, and \$688 in Transfer to  
142 Department of Management Services/Statewide Human Resources  
143 Contract.

144 (b) The nonrecurring general revenue funds of \$7,546 shall  
145 be allocated to the Provide Investigative Services budget entity  
146 in the Expenses appropriation category.

147 Section 36. Beginning with the 2015-2016 fiscal year, the  
148 State Data Center budget entity is created within the Agency for  
149 State Technology. Appropriations to the State Data Center budget  
150 entity shall reflect the direct data center costs allocated to  
151 customer agencies.

152 Section 37. (1) From the funds appropriated in section 31,  
153 \$500,000 in nonrecurring general revenue funds shall be used by  
154 the Agency for State Technology to contract with an independent  
155 third party consulting firm to complete a risk assessment of



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156 information technology security that analyzes and provides  
157 recommendations for protecting the state's information, data,  
158 and information technology resources. The risk assessment shall:

159 (a) Focus on the state data center created in s. 282.201,  
160 Florida Statutes, and the state data center's state agency  
161 customers.

162 (b) Identify the existing security standards, guidelines,  
163 frameworks, and practices currently managing the state's  
164 information, data, and information technology resources.

165 (c) Evaluate industry best practices, standards,  
166 guidelines, and frameworks and provide recommendations to  
167 increase overall security within the state data center and its  
168 state agency customers.

169 (d) Identify the differences between current operations or  
170 practices and the Agency for State Technology's recommendations  
171 and prioritize the identified gaps in order of relative  
172 importance to state agency customers' business objectives.

173 (2) The Agency for State Technology shall submit the  
174 results of the completed risk assessment to the Governor, the  
175 President of the Senate, and the Speaker of the House of  
176 Representatives by June 30, 2015.

177 Section 38. (1) The Agency for State Technology shall  
178 complete an operational assessment of the state data center  
179 created by s. 282.201, Florida Statutes. The operational  
180 assessment shall focus on:

181 (a) Standardizing the state data center's operational  
182 processes and practices to include its cost recovery  
183 methodologies.

184 (b) Identifying duplication of any staff resources



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185 supporting the operation of the state data center and any  
186 positions created within the Agency for State Technology.  
187 (2) Based upon the results of the operational assessment,  
188 the Agency for State Technology shall provide recommendations  
189 for the potential reorganization of the state data center,  
190 including recommendations for the reduction or reclassification  
191 of duplicative positions, and submit its recommendations to the  
192 Governor, the President of the Senate, and the Speaker of the  
193 House of Representatives by February 1, 2015.  
194 Section 39. Notwithstanding s. 216.292(4)(d), Florida Statutes,  
195 the transfers authorized in sections 27 and 28 of this act do  
196 not require Legislative Budget Commission approval.





290876

576-02182-14

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to state technology; repealing s. 14.204, F.S., relating to the Agency for Enterprise Information Technology within the Executive Office of the Governor; creating s. 20.61, F.S.; creating the Agency for State Technology within the Department of Management Services; providing for an executive director and other permanent positions; creating a Technology Advisory Council and providing for membership; amending s. 282.0041, F.S.; revising and defining terms used in the Enterprise Information Technology Services Management Act; creating s. 282.0051, F.S.; providing the powers, duties, and functions of the Agency for State Technology; authorizing the agency to adopt rules; providing exceptions for certain departments; repealing s. 282.0055, F.S., relating to the assignment of information technology resource and service responsibilities; repealing s. 282.0056, F.S., relating to the development of an annual work plan, the development of implementation plans, and policy recommendations relating to enterprise information technology services; amending s. 282.201, F.S.; providing for a state data center and the duties of the center; deleting duties for the Agency for Enterprise Information Technology; revising the schedule for consolidating agency data centers and



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deleting obsolete provisions; revising the limitations on state agencies; repealing s. 282.203, F.S., relating to primary data centers; repealing s. 282.204, F.S., relating to the Northwood Shared Resource Center; repealing s. 282.205, F.S., relating to the Southwood Shared Resource Center; amending s. 282.318, F.S.; conforming provisions to changes made by the act; revising the duties of the state agencies with respect to information technology security; repealing s. 282.33, F.S., relating to objective standards for data center energy efficiency; repealing s. 282.34, F.S., relating to statewide e-mail service; amending ss. 17.0315, 20.055, 110.205, 215.322, and 215.96, F.S.; conforming provisions to changes made by the act; amending s. 216.023, F.S.; requiring the governance structure of information technology projects to incorporate certain standards; amending s. 287.057, F.S.; requiring the Department of Management Services to consult with the agency with respect to the online procurement of commodities; amending ss. 445.011, 445.045, and 668.50, F.S.; conforming provisions to changes made by the act; amending s. 943.0415, F.S.; providing additional duties for the Cybercrime Office in the Department of Law Enforcement relating to cyber security; requiring the office to provide cyber security training to state agency employees; requiring the office to consult with the agency; amending s. 1004.649, F.S.; revising provisions relating to the Northwest Regional Data



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57 Center; revising the center's duties and the content  
58 of service-level agreements with state agency  
59 customers; transferring the components of the Agency  
60 for Enterprise Information Technology to the Agency  
61 for State Technology; providing that certain rules  
62 adopted by the Agency for Enterprise Information  
63 Technology are nullified; transferring the Northwood  
64 Shared Resource Center and the Southwood Shared  
65 Resource Center to the Agency for State Technology;  
66 requiring the Agency for State Technology to complete  
67 a feasibility study relating to managing state  
68 government data; specifying the components of the  
69 study; requiring the study to be submitted to the  
70 Governor and Legislature by a certain date; creating  
71 the State Data Center Task Force; specifying the  
72 membership and purpose of the task force; providing  
73 for expiration; providing an appropriation; providing  
74 effective dates.

75  
76 Be It Enacted by the Legislature of the State of Florida:

77  
78 Section 1. Section 14.204, Florida Statutes, is repealed.

79 Section 2. Section 20.61, Florida Statutes, is created to  
80 read:

81 20.61 Agency for State Technology.—The Agency for State  
82 Technology is created within the Department of Management  
83 Services.

84 (1) The agency is a separate budget entity and is not  
85 subject to control, supervision, or direction by the department,



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86 including, but not limited to, purchasing, transactions  
87 involving real or personal property, personnel, or budgetary  
88 matters.

89 (2) The agency shall be headed by an executive director  
90 appointed by the Governor and subject to the confirmation of the  
91 Senate. The executive director shall be the State Chief  
92 Information Officer.

93 (a) The executive director must be a proven, effective  
94 administrator who preferably has executive-level experience in  
95 both the public and private sectors.

96 (b) The Governor shall conduct a thorough search to find  
97 the most qualified candidate and in conducting such a search,  
98 the Governor shall place emphasis on the development and  
99 implementation of information technology strategic planning;  
100 management of enterprise information technology projects,  
101 particularly management of large-scale consolidation projects;  
102 and development and implementation of fiscal and substantive  
103 information technology policy.

104 (3) The following positions are established within the  
105 agency, all of which shall be appointed by the executive  
106 director:

107 (a) A Deputy State Chief Information Officer.

108 (b) A Chief Planning Officer and six Strategic Planning  
109 Coordinators with one coordinator assigned to each of the  
110 following major program areas: health and human services,  
111 education, government operations, criminal and civil justice,  
112 agriculture and natural resources, and transportation and  
113 economic development.

114 (c) A Chief Operations Officer.



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131 (d) A Chief Information Security Officer.

132 (e) A Chief Technology Officer.

133 (4) The Technology Advisory Council, consisting of seven  
134 members, is established and shall be maintained within the  
135 agency pursuant to s. 20.052. Four members, two of whom must be  
136 from the private sector, shall be appointed by the Governor; one  
137 member shall be appointed by the Chief Financial Officer in  
138 consultation with the Attorney General and the Commissioner of  
139 Agriculture; and one member each shall be appointed by the  
140 President of the Senate and the Speaker of the House of  
141 Representatives. Upon initial establishment of the council, two  
142 of the Governor's appointments shall be for 2-year terms.  
143 Thereafter all appointments shall be for 4-year terms.

144 (a) The council shall consider and make recommendations to  
145 the executive director of the agency on such matters as  
146 enterprise information technology policies, standards, services,  
147 and architecture.

148 (b) The executive director of the agency shall consult with  
149 the council with regard to executing the duties and  
150 responsibilities of the agency related to statewide information  
151 technology strategic planning and policy.

152 (c) The council shall be governed by the code of ethics for  
153 public officers and employees as set forth in part III of  
154 chapter 112 and each member must file a statement of financial  
155 interests pursuant to s. 112.3145.

156 Section 3. Section 282.0041, Florida Statutes, is amended  
157 to read:

158 282.0041 Definitions.—As used in this chapter, the term:

159 ~~(1) "Agency" has the same meaning as in s. 216.011(1)(qq),~~



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144 ~~except that for purposes of this chapter, "agency" does not~~  
145 ~~include university boards of trustees or state universities.~~

146 ~~(2) "Agency for Enterprise Information Technology" means~~  
147 ~~the agency created in s. 14.204.~~

148 ~~(3) "Agency information technology service" means a service~~  
149 ~~that directly helps an agency fulfill its statutory or~~  
150 ~~constitutional responsibilities and policy objectives and is~~  
151 ~~usually associated with the agency's primary or core business~~  
152 ~~functions.~~

153 ~~(4) "Annual budget meeting" means a meeting of the board of~~  
154 ~~trustees of a primary data center to review data center usage to~~  
155 ~~determine the apportionment of board members for the following~~  
156 ~~fiscal year, review rates for each service provided, and~~  
157 ~~determine any other required changes.~~

158 ~~(1)(5) "Breach" has the same meaning as in s. 817.5681(4).~~

159 ~~(2)(6) "Business continuity plan" means a collection of~~  
160 ~~procedures and information used to maintain an agency's critical~~  
161 ~~operations during a period of displacement or interruption of~~  
162 ~~normal operations plan for disaster recovery which provides for~~  
163 ~~the continued functioning of a primary data center during and~~  
164 ~~after a disaster.~~

165 ~~(3)(7) "Computing facility" means agency space containing~~  
166 ~~fewer than a total of 10 physical or logical servers, any of~~  
167 ~~which supports a strategic or nonstrategic information~~  
168 ~~technology service, as described in budget instructions~~  
169 ~~developed pursuant to s. 216.023, but excluding single, logical-~~  
170 ~~server installations that exclusively perform a utility function~~  
171 ~~such as file and print servers.~~

172 ~~(4)(8) "Customer entity" means an entity that obtains~~



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173 services from a state primary data center.

174 ~~(5)(9)~~ "Data center" means agency space containing 10 or  
175 more physical or logical servers any of which supports a  
176 strategic or nonstrategic information technology service, as  
177 described in budget instructions developed pursuant to s.  
178 216.023.

179 ~~(6)(10)~~ "Department" means the Department of Management  
180 Services.

181 (7) "Disaster recovery" means the processes, policies,  
182 procedures, and infrastructure that relate to preparing for and  
183 implementing recovery or continuation of an organization's vital  
184 technology infrastructure after a natural or human-induced  
185 disaster.

186 ~~(8)(11)~~ "Enterprise information technology service" means  
187 an information technology service that is used in all agencies  
188 or a subset of agencies and is established in law to be  
189 designed, delivered, and managed at the enterprise level.

190 ~~(12) "E mail, messaging, and calendaring service" means the~~  
191 ~~enterprise information technology service that enables users to~~  
192 ~~send, receive, file, store, manage, and retrieve electronic~~  
193 ~~messages, attachments, appointments, and addresses. The e-mail,~~  
194 ~~messaging, and calendaring service must include e-mail account~~  
195 ~~management, help desk, technical support and user provisioning~~  
196 ~~services, disaster recovery and backup and restore capabilities,~~  
197 ~~antispam and antivirus capabilities, archiving and e-discovery,~~  
198 ~~and remote access and mobile messaging capabilities.~~

199 (9) "Event" means an observable occurrence in a system or  
200 network.

201 (10) "Incident" means a violation or imminent threat of



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202 violation of computer security policies, acceptable use  
203 policies, or standard security practices. An imminent threat of  
204 violation exists when a state agency has a factual basis for  
205 believing that a specific incident is about to occur.

206 ~~(13) "Information system utility" means a full-service~~  
207 ~~information processing facility offering hardware, software,~~  
208 ~~operations, integration, networking, and consulting services.~~

209 (11)(14) "Information technology" means equipment,  
210 hardware, software, firmware, programs, systems, networks,  
211 infrastructure, media, and related material used to  
212 automatically, electronically, and wirelessly collect, receive,  
213 access, transmit, display, store, record, retrieve, analyze,  
214 evaluate, process, classify, manipulate, manage, assimilate,  
215 control, communicate, exchange, convert, converge, interface,  
216 switch, or disseminate information of any kind or form.

217 (12)(15) "Information technology policy" means a specific  
218 course or method of action selected from among alternatives that  
219 guide and determine present and future decisions statements that  
220 describe clear choices for how information technology will  
221 deliver effective and efficient government services to residents  
222 and improve state agency operations. A policy may relate to  
223 investments, business applications, architecture, or  
224 infrastructure. A policy describes its rationale, implications  
225 of compliance or noncompliance, the timeline for implementation,  
226 metrics for determining compliance, and the accountable  
227 structure responsible for its implementation.

228 (13) "Information technology resources" has the same  
229 meaning as in s. 119.011.

230 (14) "Information technology security" means the protection



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231 afforded to an automated information system in order to attain  
232 the applicable objectives of preserving the integrity,  
233 availability, and confidentiality of data, information, and  
234 information technology resources.

235 ~~(15)-(16)~~ "Performance metrics" means the measures of an  
236 organization's activities and performance.

237 ~~(16)-(17)~~ "Primary data center" means a data center that is  
238 a recipient entity for consolidation of state agency nonprimary  
239 data centers and computing facilities and that is established by  
240 law.

241 ~~(17)-(18)~~ "Project" means an endeavor that has a defined  
242 start and end point; is undertaken to create or modify a unique  
243 product, service, or result; and has specific objectives that,  
244 when attained, signify completion.

245 ~~(18)~~ "Project oversight" means an independent review and  
246 analysis of an information technology project in order to  
247 provide information on the project's scope, completion  
248 timeframes, and budget and should identify and quantify any  
249 issues or risks affecting the successful and timely completion  
250 of the project.

251 ~~(19)~~ "Risk assessment analysis" means the process of  
252 identifying security risks, determining their magnitude, and  
253 identifying areas needing safeguards.

254 ~~(20)~~ "Service level" means the key performance indicators  
255 ~~(KPI)~~ of an organization or service which must be regularly  
256 performed, monitored, and achieved.

257 ~~(21)~~ "Service-level agreement" means a written contract  
258 between a data center and a customer entity which specifies the  
259 scope of services provided, service level, the duration of the



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260 agreement, the responsible parties, and service costs. A  
261 service-level agreement is not a rule pursuant to chapter 120.

262 ~~(22)~~ "Stakeholder" means an individual, group,  
263 organization, or state agency involved in or affected by a  
264 course of action.

265 ~~(23)-(22)~~ "Standards" means required practices, controls,  
266 components, or configurations established by an authority.

267 ~~(24)~~ "State Agency" means any official, officer,  
268 commission, board, authority, council, committee, or department  
269 of the executive branch of state government, and the Justice  
270 Administration Commission and the Public Service Commission. For  
271 the purpose of this chapter, "agency" does not include  
272 university boards of trustees or state universities.

273 ~~(25)~~ "State data center" means an enterprise information  
274 technology service provider that is the recipient entity for the  
275 consolidation of state agency data centers and computing  
276 facilities and that establishes, implements, operates, monitors,  
277 reviews, and maintains data center services that are hosted on  
278 premises or externally through a third-party provider as an  
279 enterprise information technology service which improve  
280 information technology services designated by the Agency for  
281 State Technology in compliance with the operating guidelines and  
282 procedures set forth by the agency pursuant to s. 282.0051(11).

283 ~~(26)-(23)~~ "SUNCOM Network" means the state enterprise  
284 telecommunications system that provides all methods of  
285 electronic or optical telecommunications beyond a single  
286 building or contiguous building complex and used by entities  
287 authorized as network users under this part.

288 ~~(27)-(24)~~ "Telecommunications" means the science and



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289 technology of communication at a distance, including electronic  
290 systems used in the transmission or reception of information.

291 ~~(28)(25)~~ "Threat" means any circumstance or event that has  
292 the potential to adversely affect a state agency's operation or  
293 assets through an information system by means of unauthorized  
294 access, destruction, disclosure, modification of information, or  
295 denial of service may cause harm to the integrity, availability,  
296 or confidentiality of information technology resources.

297 (29) "Variance" means a calculated value that illustrates a  
298 positive or negative deviation from a projection measured  
299 against documented estimations within a project plan.

300 ~~(26) "Total cost" means all costs associated with~~  
301 ~~information technology projects or initiatives, including, but~~  
302 ~~not limited to, value of hardware, software, service,~~  
303 ~~maintenance, incremental personnel, and facilities. Total cost~~  
304 ~~of a loan or gift of information technology resources to an~~  
305 ~~agency includes the fair market value of the resources.~~

306 ~~(27) "Usage" means the billing amount charged by the~~  
307 ~~primary data center, less any pass-through charges, to the~~  
308 ~~customer entity.~~

309 ~~(28) "Usage rate" means a customer entity's usage or~~  
310 ~~billing amount as a percentage of total usage.~~

311 Section 4. Section 282.0051, Florida Statutes, is created  
312 to read:

313 282.0051 Agency for State Technology; powers, duties, and  
314 functions.-

315 (1) The Agency for State Technology has the following  
316 powers, duties, and functions:

317 (a) Developing and publishing information technology policy



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318 for the management of the state's information technology  
319 resources.

320 (b) Establishing and publishing information technology  
321 architecture standards to achieve the most efficient use of the  
322 state's information technology resources and to ensure  
323 compatibility and alignment with the needs of state agencies.  
324 The agency shall assist state agencies in complying with such  
325 standards.

326 (c) By June 30, 2015, establishing project management and  
327 project oversight standards that state agencies must comply with  
328 while implementing information technology projects. The Agency  
329 for State Technology shall provide training opportunities to  
330 state agencies to assist in the adoption of the project  
331 management and oversight standards. To support data-driven  
332 decisionmaking, such standards must include, but are not limited  
333 to:

334 1. Performance measurements and metrics that objectively  
335 reflect the status of an information technology project based on  
336 the defined and documented project scope, cost, and schedule.

337 2. Methodologies for calculating acceptable variance ranges  
338 in the projected versus actual scope, schedule, or cost of an  
339 information technology project.

340 3. Reporting requirements that provide project visibility  
341 to all identified stakeholders, including instances in which an  
342 information technology project exceeds the acceptable variance  
343 ranges as defined and documented in the project plan.

344 4. The content, format, and frequency of project updates.

345 (d) Beginning January 1, 2015, performing project oversight  
346 on all information technology projects that have total project



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347 costs of \$10 million or more and that are funded in the General  
348 Appropriations Act or under state law. The agency shall report  
349 at least quarterly to the Executive Office of the Governor, the  
350 President of the Senate, and the Speaker of the House of  
351 Representatives on any information technology project the agency  
352 identifies as being a high-risk project that may exceed the  
353 acceptable variance ranges as defined and documented in the  
354 project plan. The report must include an assessment of the risk  
355 levels, including fiscal risks, associated with proceeding to  
356 the next stage of the project and a recommendation for requiring  
357 corrective action, which includes suspending or terminating the  
358 project.

359 (e) By October 15, 2015, and biennially thereafter,  
360 identifying opportunities for standardizing and consolidating  
361 information technology services that support business functions  
362 and operations, including administrative functions such as  
363 purchasing, accounting and reporting, cash management, and  
364 personnel, which are common across state agencies, and providing  
365 recommendations for such standardization and consolidation to  
366 the Executive Office of the Governor, the President of the  
367 Senate, and the Speaker of the House of Representatives.

368 (f) The department shall incorporate standards established  
369 by the agency which are designed to reduce costs, increase  
370 productivity, or improve services into the requirements for  
371 procuring information technology products and services. The  
372 agency shall review all information technology purchases made by  
373 state agencies which have a total cost of \$250,000 or more,  
374 unless a purchase is specifically mandated by the Legislature,  
375 for compliance with the standards established pursuant to this



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376 section.

377 (g) The agency shall participate as an evaluator or  
378 negotiator and collaborate with the department in conducting  
379 procurements for information technology products and services  
380 that will be used by multiple state agencies, and collaborate  
381 with the department in information technology resource  
382 acquisition planning.

383 (h) Encouraging state agencies, when considering technology  
384 infrastructure priorities, to actively seek out and identify  
385 opportunities that potentially fit into the public-private  
386 partnership model, and develop sustainable partnerships between  
387 private entities and units of government in order to accelerate  
388 project delivery and provide a source of new or increased  
389 funding for other infrastructure needs.

390 (i) Establishing standards for information technology  
391 reports and updates for use by state agencies which include, but  
392 are not limited to, operational work plans, project spending  
393 plans, and project status reports.

394 (j) Upon request, assisting state agencies in the  
395 development of their information technology-related legislative  
396 budget requests.

397 (k) Conducting annual assessments of state agencies to  
398 determine their compliance with information technology standards  
399 and guidelines developed and published by the Agency for State  
400 Technology and provide results of the assessments to the  
401 Executive Office of the Governor, the President of the Senate,  
402 and the Speaker of the House of Representatives.

403 (l) Providing operational management and oversight of the  
404 state data center established pursuant to s. 282.201, which



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405 includes:

406 1. Implementing industry standards and best practices for  
407 the state data center's facilities, operations, maintenance,  
408 planning, and management processes.

409 2. Developing and implementing cost-recovery mechanisms  
410 that recover the full cost of services, including direct and  
411 indirect costs, through charges to applicable customer entities.  
412 Such mechanisms must comply with applicable state and federal  
413 requirements relating to the distribution and use of such funds  
414 and must ensure that for any fiscal year a service or customer  
415 entity is not subsidizing another service or customer entity.

416 3. Establishing operating guidelines and procedures  
417 necessary for the state data center to perform its duties  
418 pursuant to s. 282.201 which comply with applicable state and  
419 federal laws, rules, and policies and are in accordance with  
420 generally accepted governmental accounting and auditing  
421 standards. Such guidelines and procedures must include, but need  
422 not be limited to:

423 a. Implementing a consolidated administrative support  
424 structure that is responsible for the provision of financial  
425 management, procurement, transactions involving real or personal  
426 property, human resources, and operational support.

427 b. Implementing an annual reconciliation process to ensure  
428 that each customer entity is paying for the full direct and  
429 indirect cost of each service as determined by the customer  
430 entity's use of each service.

431 c. Providing rebates, which may be credited against future  
432 billings, to customer entities when revenues exceed costs.

433 d. Requiring a customer entity to validate that sufficient



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434 funds are in or will be transferred into the appropriate data  
435 processing appropriation category before implementing a customer  
436 entity's request for a change in the type or level of service if  
437 such change results in a net increase to the customer entity's  
438 costs for that fiscal year.

439 e. Providing to each customer entity's agency head by  
440 September 1 of each year the projected costs to provide data  
441 center services for the following fiscal year.

442 f. Providing a plan for consideration by the Legislative  
443 Budget Commission if the cost of a service is increased for a  
444 reason other than a customer entity's request pursuant to  
445 subparagraph 4. which results in a net increase to the customer  
446 entity for that fiscal year.

447 g. Standardizing and consolidating procurement and  
448 contracting practices.

449 4. In collaboration with the Department of Law Enforcement,  
450 developing and implementing a process for detecting, reporting,  
451 and responding to information technology security incidents,  
452 breaches, or threats.

453 5. Adopting rules relating to the operation of the state  
454 data center, which include, but are not limited to, its  
455 budgeting and accounting procedures, cost-recovery  
456 methodologies, and operating procedures.

457 6. Consolidating contract practices and coordinating  
458 software, hardware, or other technology-related procurements.

459 7. Annually conducting a market analysis to determine if  
460 the state's approach to the provision of data center services is  
461 the most effective and efficient manner by which its customer  
462 entities can acquire such services based on federal, state, and





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463 local government trends, best practices in service provision,  
464 and the acquisition of new and emerging technologies. The  
465 results of the market analysis should assist the state data  
466 center in making any necessary adjustments to its data center  
467 service offerings.

468 (m) Recommending other information technology services that  
469 should be designed, delivered, and managed as enterprise  
470 information technology services. Such recommendations should  
471 include the identification of any existing information  
472 technology resources associated with such services which would  
473 need to be transferred as a result of such services being  
474 delivered and managed as enterprise information technology  
475 services.

476 (n) Recommending any further agency computing facility or  
477 data center consolidations into the state data center  
478 established pursuant to s. 282.201. Such recommendations should  
479 include the proposed timeline for the consolidation.

480 (o) In consultation with state agencies, proposing  
481 methodology and approaches for identifying and collecting both  
482 current and planned information technology expenditure data at  
483 the state agency level.

484 (p) If adherence to the standards or policies adopted or to  
485 the requirements established pursuant to this section conflicts  
486 with federal regulations or requirements imposed on the state  
487 agency and results in adverse action against the state agency or  
488 federal funding, the agency shall work with the state agency to  
489 provide alternative standards, policies, or requirements that do  
490 not conflict with the federal regulations or requirements. Such  
491 alternatives shall be reported annually, starting July 1, 2015,



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492 to the Governor, the President of the Senate, and the Speaker of  
493 the House of Representatives.

494 (q) Adopting rules to administer this section.

495 (2) Except as provided in subsection (3), the Department of  
496 Financial Services, the Department of Legal Affairs, and the  
497 Department of Agriculture and Consumer Services are not subject  
498 to the powers, duties, and functions of the Agency for State  
499 Technology established under this section. Each of those  
500 departments shall adopt the standards established in paragraphs  
501 (1) (b), (1) (c), and (1) (i) or adopt alternative standards based  
502 on best practices or industry standards and may contract  
503 separately with the Agency for State Technology to provide and  
504 perform any of the services and functions for those departments.

505 (3) (a) An information technology project administered or  
506 implemented by the Department of Financial Services, the  
507 Department of Legal Affairs, or the Department of Agriculture  
508 and Consumer Services is subject to project oversight as  
509 established in paragraph (1) (d), architecture standards as  
510 established in paragraph (1) (b), project management standards as  
511 established in paragraph (1) (c), and reporting standards as  
512 established in paragraph (1) (i) by the Agency for State  
513 Technology if the project is expected to have a total project  
514 cost of \$25 million or more and if the project directly affects  
515 another state agency or another information technology project  
516 that is subject to the powers, duties, and functions of the  
517 Agency for State Technology.

518 (b) If an information technology project administered by a  
519 state agency subject to the powers, duties, and functions of the  
520 Agency for State Technology must be connected to or otherwise



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521 accommodated by an information technology system administered by  
522 the Department of Financial Services, the Department of Legal  
523 Affairs or the Department of Agriculture and Consumer Services,  
524 the Agency for State Technology shall consult with those  
525 departments regarding the risks and other effects of such  
526 projects on those departments' information technology systems  
527 and shall work cooperatively with those departments regarding  
528 the connections, interfaces, timing, or accommodation required  
529 to implement such projects.

530 Section 5. Section 282.0055, Florida Statutes, is repealed.

531 Section 6. Section 282.0056, Florida Statutes, is repealed.

532 Section 7. Section 282.201, Florida Statutes, is amended to  
533 read:

534 282.201 State data center system; agency duties and  
535 limitations.—The A state data center system that includes all  
536 primary data centers, other nonprimary data centers, and  
537 computing facilities, and that provides an enterprise  
538 information technology service as defined in s. 282.0041, is  
539 established as a primary data center within the Agency for State  
540 Technology and includes the facilities formerly known as the  
541 Northwood Shared Resource Center and the Southwood Shared  
542 Resource Center.

543 (1) INTENT.—The Legislature finds that the most efficient  
544 and effective means of providing quality utility data processing  
545 services to state agencies requires that computing resources be  
546 concentrated in quality facilities that provide the proper  
547 security, disaster recovery, infrastructure, and staff resources  
548 to ensure that the state's data is maintained reliably and  
549 safely, and is recoverable in the event of a disaster.



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550 ~~Efficiencies resulting from such consolidation include the~~  
551 ~~increased ability to leverage technological expertise and~~  
552 ~~hardware and software capabilities; increased savings through~~  
553 ~~consolidated purchasing decisions; and the enhanced ability to~~  
554 ~~deploy technology improvements and implement new policies~~  
555 ~~consistently throughout the consolidated organization. Unless~~  
556 ~~otherwise exempt by law, it is the intent of the Legislature~~  
557 ~~that all agency data centers and computing facilities be~~  
558 ~~consolidated into the state a primary data center by 2019.~~

559 (2) STATE DATA CENTER DUTIES.—The state data center shall:

560 (a) Offer, develop, and support the services and  
561 applications as provided in the service-level agreements  
562 executed with its customer entities.

563 (b) Maintain the performance of the state data center,  
564 which includes ensuring proper data backup, data backup  
565 recovery, a disaster recovery plan, appropriate security, power,  
566 cooling, fire suppression, and capacity.

567 (c) Develop a business continuity plan and a disaster  
568 recovery plan, and conduct a live exercise of these plans at  
569 least annually.

570 (d) Enter into a service level agreement with each customer  
571 entity to provide the required type and level of service or  
572 services. If a customer entity fails to execute an agreement  
573 within 60 days after the commencement of a service, the state  
574 data center may cease service. A service level agreement may not  
575 have a term exceeding 3 years and at a minimum must:

576 1. Identify the parties and their roles, duties, and  
577 responsibilities under the agreement.

578 2. State the duration of the contractual term and specify



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579 the conditions for renewal.

580 3. Identify the scope of work.

581 4. Identify the products or services to be delivered with  
582 sufficient specificity to permit an external financial or  
583 performance audit.

584 5. Establish the services to be provided, the business  
585 standards that must be met for each service, the cost of each  
586 service, and the metrics and processes by which the business  
587 standards for each service are to be objectively measured and  
588 reported.

589 6. Provide a timely billing methodology for recovering the  
590 cost of services provided to the customer entity pursuant to s.  
591 215.422.

592 7. Provide a procedure for modifying the service level  
593 agreement based on changes in the type, level, and cost of a  
594 service.

595 8. Include a right-to-audit clause to ensure that the  
596 parties to the agreement have access to records for audit  
597 purposes during the term of the service level agreement.

598 9. Provide that a service level agreement may be terminated  
599 by either party for cause only after giving the other party and  
600 the Agency for State Technology notice in writing of the cause  
601 for termination and an opportunity for the other party to  
602 resolve the identified cause within a reasonable period.

603 10. Provide for the mediation of disputes by the Division  
604 of Administrative Hearings pursuant to s. 120.573.

605 (e) Be the custodian of resources and equipment that are  
606 located, operated, supported, and managed by the state data  
607 center for the purposes of chapter 273.



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608 (f) Assume administrative access rights to the resources  
609 and equipment, such as servers, network components, and other  
610 devices that are consolidated into the state data center.

611 1. On the date of each consolidation specified in this  
612 section, the General Appropriations Act, or the Laws of Florida,  
613 each state agency shall relinquish all administrative rights to  
614 such resources and equipment. State agencies required to comply  
615 with federal security regulations and policies shall retain  
616 administrative access rights sufficient to comply with the  
617 management control provisions of those regulations and policies;  
618 however, the state data center shall have the appropriate type  
619 or level of rights to allow the center to comply with its duties  
620 pursuant to this section. The Department of Law Enforcement  
621 shall serve as the arbiter of any disputes which may arise  
622 regarding the appropriate type and level of administrative  
623 access rights relating to the provision of management control in  
624 accordance with federal criminal justice information guidelines.

625 2. The state data center shall provide its customer  
626 entities with access to applications, servers, network  
627 components, and other devices necessary for state agencies to  
628 perform business activities and functions, and as defined and  
629 documented in the service level agreement.

630 ~~-(2) AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY DUTIES.-~~

631 ~~The Agency for Enterprise Information Technology shall:~~

632 ~~(a) Collect and maintain information necessary for~~  
633 ~~developing policies relating to the data center system,~~  
634 ~~including, but not limited to, an inventory of facilities.~~

635 ~~(b) Annually approve cost-recovery mechanisms and rate~~  
636 ~~structures for primary data centers which recover costs through~~



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637 ~~charges to customer entities.~~

638 ~~(c) By September 30 of each year, submit to the~~  
639 ~~Legislature, the Executive Office of the Governor, and the~~  
640 ~~primary data centers recommendations to improve the efficiency~~  
641 ~~and cost-effectiveness of computing services provided by state~~  
642 ~~data center system facilities. Such recommendations must~~  
643 ~~include, but need not be limited to:~~

644 ~~1. Policies for improving the cost-effectiveness and~~  
645 ~~efficiency of the state data center system, which includes the~~  
646 ~~primary data centers being transferred to a shared, virtualized~~  
647 ~~server environment, and the associated cost savings resulting~~  
648 ~~from the implementation of such policies.~~

649 ~~2. Infrastructure improvements supporting the consolidation~~  
650 ~~of facilities or preempting the need to create additional data~~  
651 ~~centers or computing facilities.~~

652 ~~3. Uniform disaster recovery standards.~~

653 ~~4. Standards for primary data centers which provide cost-~~  
654 ~~effective services and transparent financial data to user~~  
655 ~~agencies.~~

656 ~~5. Consolidation of contract practices or coordination of~~  
657 ~~software, hardware, or other technology-related procurements and~~  
658 ~~the associated cost savings.~~

659 ~~6. Improvements to data center governance structures.~~

660 ~~(d) By October 1 of each year, provide recommendations to~~  
661 ~~the Governor and Legislature relating to changes to the schedule~~  
662 ~~for the consolidations of state agency data centers as provided~~  
663 ~~in subsection (4).~~

664 ~~1. The recommendations must be based on the goal of~~  
665 ~~maximizing current and future cost savings by:~~



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666 ~~a. Consolidating purchase decisions.~~

667 ~~b. Leveraging expertise and other resources to gain~~  
668 ~~economies of scale.~~

669 ~~c. Implementing state information technology policies more~~  
670 ~~effectively.~~

671 ~~d. Maintaining or improving the level of service provision~~  
672 ~~to customer entities.~~

673 ~~2. The agency shall establish workgroups as necessary to~~  
674 ~~ensure participation by affected agencies in the development of~~  
675 ~~recommendations related to consolidations.~~

676 ~~(e) Develop and establish rules relating to the operation~~  
677 ~~of the state data center system which comply with applicable~~  
678 ~~federal regulations, including 2 C.F.R. part 225 and 45 C.F.R.~~  
679 ~~The rules must address:~~

680 ~~1. Ensuring that financial information is captured and~~  
681 ~~reported consistently and accurately.~~

682 ~~2. Identifying standards for hardware, including standards~~  
683 ~~for a shared, virtualized server environment, and operations~~  
684 ~~system software and other operational software, including~~  
685 ~~security and network infrastructure, for the primary data~~  
686 ~~centers; requiring compliance with such standards in order to~~  
687 ~~enable the efficient consolidation of the agency data centers or~~  
688 ~~computing facilities; and providing an exemption process from~~  
689 ~~compliance with such standards, which must be consistent with~~  
690 ~~paragraph (5)(b).~~

691 ~~3. Requiring annual full cost recovery on an equitable~~  
692 ~~rational basis. The cost recovery methodology must ensure that~~  
693 ~~no service is subsidizing another service and may include~~  
694 ~~adjusting the subsequent year's rates as a means to recover~~



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695 ~~deficits or refund surpluses from a prior year.~~

696 ~~4. Requiring that any special assessment imposed to fund~~  
697 ~~expansion is based on a methodology that apportions the~~  
698 ~~assessment according to the proportional benefit to each~~  
699 ~~customer entity.~~

700 ~~5. Requiring that rebates be given when revenues have~~  
701 ~~exceeded costs, that rebates be applied to offset charges to~~  
702 ~~those customer entities that have subsidized the costs of other~~  
703 ~~customer entities, and that such rebates may be in the form of~~  
704 ~~credits against future billings.~~

705 ~~6. Requiring that all service level agreements have a~~  
706 ~~contract term of up to 3 years, but may include an option to~~  
707 ~~renew for up to 3 additional years contingent on approval by the~~  
708 ~~board, and require at least a 180-day notice of termination.~~

709 (3) STATE AGENCY DUTIES.-

710 (a) ~~For the purpose of completing the work activities~~  
711 ~~described in subsections (1) and (2), Each state agency shall~~  
712 ~~provide to the Agency for State Enterprise Information~~  
713 ~~Technology all requested information relating to its data~~  
714 ~~centers and computing facilities and any other information~~  
715 ~~relevant to the effective agency's ability to effectively~~  
716 ~~transition of a state agency data center or computing facility~~  
717 ~~its computer services into the state a primary data center. The~~  
718 ~~agency shall also participate as required in workgroups relating~~  
719 ~~to specific consolidation planning and implementation tasks as~~  
720 ~~assigned by the Agency for Enterprise Information Technology and~~  
721 ~~determined necessary to accomplish consolidation goals.~~

722 (b) Each state agency customer of the state a primary data  
723 center shall notify the state data center, by May 31 and



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724 November 30 of each year, of any significant changes in  
725 anticipated use utilization of data center services pursuant to  
726 requirements established by the state boards of trustees of each  
727 primary data center.

728 (4) SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.-

729 (a) Consolidations of agency data centers and computing  
730 facilities shall be made by the date and to the specified state  
731 primary data center facility as provided in this section and in  
732 accordance with budget adjustments contained in the General  
733 Appropriations Act.

734 (b) ~~By December 31, 2011, the following shall be~~  
735 ~~consolidated into the Northwest Regional Data Center:~~

736 1. ~~The Department of Education's Knott Data Center in the~~  
737 ~~Turlington Building.~~

738 2. ~~The Department of Education's Division of Vocational~~  
739 ~~Rehabilitation.~~

740 3. ~~The Department of Education's Division of Blind~~  
741 ~~Services, except for the division's disaster recovery site in~~  
742 ~~Daytona Beach.~~

743 4. ~~The FCAT Explorer.~~

744 (c) ~~During the 2011-2012 fiscal year, the following shall~~  
745 ~~be consolidated into the Southwood Shared Resource Center:~~

746 1. ~~By September 30, 2011, the Department of Corrections.~~

747 2. ~~By March 31, 2012, the Department of Transportation's~~  
748 ~~Burns Building.~~

749 3. ~~By March 31, 2012, the Department of Transportation's~~  
750 ~~Survey & Mapping Office.~~

751 (d) ~~By July 1, 2012, the Department of Highway Safety and~~  
752 ~~Motor Vehicles' Office of Commercial Vehicle Enforcement shall~~



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753 ~~be consolidated into the Northwood Shared Resource Center.~~  
754 ~~(e) By September 30, 2012, the Department of Revenue's~~  
755 ~~Carlton Building and Imaging Center locations shall be~~  
756 ~~consolidated into the Northwest Regional Data Center.~~  
757 ~~(f) During the 2012-2013 fiscal year, the following shall~~  
758 ~~be consolidated into the Northwood Shared Resource Center:~~  
759 ~~1. By July 1, 2012, the Agency for Health Care~~  
760 ~~Administration.~~  
761 ~~2. By August 31, 2012, the Department of Highway Safety and~~  
762 ~~Motor Vehicles.~~  
763 ~~3. By December 31, 2012, the Department of Environmental~~  
764 ~~Protection's Palmetto Commons.~~  
765 ~~4. By December 31, 2012, the Department of Health's Test~~  
766 ~~and Development Lab and all remaining data center resources~~  
767 ~~located at the Capital Circle Office Complex.~~  
768 ~~(g) During the 2013-2014 fiscal year, the following shall~~  
769 ~~be consolidated into the Southwood Shared Resource Center:~~  
770 ~~1. By October 31, 2013, the Department of Economic~~  
771 ~~Opportunity.~~  
772 ~~2. By December 31, 2013, the Executive Office of the~~  
773 ~~Governor, to include the Division of Emergency Management except~~  
774 ~~for the Emergency Operation Center's management system in~~  
775 ~~Tallahassee and the Camp Blanding Emergency Operations Center in~~  
776 ~~Starke.~~  
777 ~~3. By March 31, 2014, the Department of Elderly Affairs.~~  
778 ~~(h) By October 30, 2013, the Fish and Wildlife Conservation~~  
779 ~~Commission, except for the commission's Fish and Wildlife~~  
780 ~~Research Institute in St. Petersburg, shall be consolidated into~~  
781 ~~the Northwood Shared Resource Center.~~



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782 ~~(i) During the 2014-2015 fiscal year, the following~~  
783 ~~agencies shall work with the Agency for Enterprise Information~~  
784 ~~Technology to begin preliminary planning for consolidation into~~  
785 ~~a primary data center:~~  
786 ~~1. The Department of Health's Jacksonville Lab Data Center.~~  
787 ~~2. The Department of Transportation's district offices,~~  
788 ~~toll offices, and the District Materials Office.~~  
789 ~~3. The Department of Military Affairs' Camp Blanding Joint~~  
790 ~~Training Center in Starke.~~  
791 ~~4. The Camp Blanding Emergency Operations Center in Starke.~~  
792 ~~5. The Department of Education's Division of Blind Services~~  
793 ~~disaster recovery site in Daytona Beach.~~  
794 ~~6. The Department of Education's disaster recovery site at~~  
795 ~~Santa Fe College.~~  
796 ~~7. The Fish and Wildlife Conservation Commission's Fish and~~  
797 ~~Wildlife Research Institute in St. Petersburg.~~  
798 ~~8. The Department of Children and Family Services' Suncoast~~  
799 ~~Data Center in Tampa.~~  
800 ~~9. The Department of Children and Family Services' Florida~~  
801 ~~State Hospital in Chattahoochee.~~  
802 ~~(j) During the 2015-2016 fiscal year, all computing~~  
803 ~~resources remaining within an agency data center or computing~~  
804 ~~facility, to include the Department of Financial Services'~~  
805 ~~Hartman, Larson, and Fletcher Buildings data centers, shall be~~  
806 ~~transferred to a primary data center for consolidation unless~~  
807 ~~otherwise required to remain in the agency for specified~~  
808 ~~financial, technical, or business reasons that must be justified~~  
809 ~~in writing and approved by the Agency for Enterprise Information~~  
810 ~~Technology. Such data centers, computing facilities, and~~



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811 ~~resources must be identified by the Agency for Enterprise~~  
812 ~~Information Technology by October 1, 2014.~~

813 ~~(b)(k) The Department of Financial Services, the Department~~  
814 ~~of Legal Affairs, the Department of Agriculture and Consumer~~  
815 ~~Services, the Department of Law Enforcement, the Department of~~  
816 ~~the Lottery's Gaming System, Systems Design and Development in~~  
817 ~~the Office of Policy and Budget, the regional traffic management~~  
818 ~~centers and the Office of Toll Operations of the Department of~~  
819 ~~Transportation, and the State Board of Administration, state~~  
820 ~~attorneys, public defenders, criminal conflict and civil~~  
821 ~~regional counsel, capital collateral regional counsel, the~~  
822 ~~Florida Clerks of Court Operations Corporation, and the Florida~~  
823 ~~Housing Finance Corporation are exempt from data center~~  
824 ~~consolidation under this section.~~

825 ~~(c)(l) A state~~ Any agency that is consolidating its agency  
826 ~~data center or computing facility centers into the state a~~  
827 ~~primary data center must execute a new or update an existing~~  
828 ~~service-level agreement within 60 days after the commencement of~~  
829 ~~service specified consolidation date, as required by s.~~  
830 ~~282.201(2) s. 282.203, in order to specify the services and~~  
831 ~~levels of service it is to receive from the state primary data~~  
832 ~~center as a result of the consolidation. If the state an agency~~  
833 ~~and the state primary data center are unable to execute a~~  
834 ~~service-level agreement by that date, the agency and the primary~~  
835 ~~data center shall submit a report to the Executive Office of the~~  
836 ~~Governor and to the chairs of the legislative appropriations~~  
837 ~~committees within 5 working days after that date which explains~~  
838 ~~the specific issues preventing execution and describing the plan~~  
839 ~~and schedule for resolving those issues.~~



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840 ~~(m) Beginning September 1, 2011, and every 6 months~~  
841 ~~thereafter until data center consolidations are complete, the~~  
842 ~~Agency for Enterprise Information Technology shall provide a~~  
843 ~~status report on the implementation of the consolidations that~~  
844 ~~must be completed during the fiscal year. The report shall be~~  
845 ~~submitted to the Executive Office of the Governor and the chairs~~  
846 ~~of the legislative appropriations committees. The report must,~~  
847 ~~at a minimum, describe:~~

848 1. Whether the consolidation is on schedule, including  
849 progress on achieving the milestones necessary for successful  
850 and timely consolidation of scheduled agency data centers and  
851 computing facilities.

852 2. The risks that may affect the progress or outcome of the  
853 consolidation and how these risks are being addressed,  
854 mitigated, or managed.

855 ~~(d)(n) Each state agency scheduled identified in this~~  
856 ~~subsection for consolidation into the state a primary data~~  
857 ~~center shall submit a transition plan to the Agency for State~~  
858 ~~Technology appropriate primary data center by July 1 of the~~  
859 ~~fiscal year before the fiscal year in which the scheduled~~  
860 ~~consolidation will occur. Transition plans shall be developed in~~  
861 ~~consultation with the state appropriate primary data center~~  
862 ~~centers and the Agency for Enterprise Information Technology,~~  
863 ~~and must include:~~

864 1. An inventory of the state agency data center's resources  
865 being consolidated, including all hardware and its associated  
866 life cycle replacement schedule, software, staff, contracted  
867 services, and facility resources performing data center  
868 management and operations, security, backup and recovery,



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869 disaster recovery, system administration, database  
870 administration, system programming, job control, production  
871 control, print, storage, technical support, help desk, and  
872 managed services, but excluding application development, and the  
873 state agency's costs supporting these resources.

874 2. A list of contracts in effect, including, but not  
875 limited to, contracts for hardware, software, and maintenance,  
876 which identifies the expiration date, the contract parties, and  
877 the cost of each contract.

878 3. A detailed description of the level of services needed  
879 to meet the technical and operational requirements of the  
880 platforms being consolidated.

881 ~~4. A description of resources for computing services~~  
882 ~~proposed to remain in the department.~~

883 ~~4.5-~~ A timetable with significant milestones for the  
884 completion of the consolidation.

885 ~~(e) Each primary data center shall develop a transition~~  
886 ~~plan for absorbing the transfer of agency data center resources~~  
887 ~~based upon the timetables for transition as provided in this~~  
888 ~~subsection. The plan shall be submitted to the Agency for~~  
889 ~~Enterprise Information Technology, the Executive Office of the~~  
890 ~~Governor, and the chairs of the legislative appropriations~~  
891 ~~committees by September 1 of the fiscal year before the fiscal~~  
892 ~~year in which the scheduled consolidations will occur. Each plan~~  
893 ~~must include:~~

894 1. The projected cost to provide data center services for  
895 each agency scheduled for consolidation.

896 2. A staffing plan that identifies the projected staffing  
897 needs and requirements based on the estimated workload



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898 ~~identified in the agency transition plan.~~

899 ~~3. The fiscal year adjustments to budget categories in~~  
900 ~~order to absorb the transfer of agency data center resources~~  
901 ~~pursuant to the legislative budget request instructions provided~~  
902 ~~in s. 216.023.~~

903 ~~4. An analysis of the cost effects resulting from the~~  
904 ~~planned consolidations on existing agency customers.~~

905 5. A description of any issues that must be resolved in  
906 order to accomplish as efficiently and effectively as possible  
907 all consolidations required during the fiscal year.

908 ~~(e)(p)~~ Each state agency scheduled identified in this  
909 subsection for consolidation into the state a primary data  
910 center shall submit with its respective legislative budget  
911 request the specific recurring and nonrecurring budget  
912 adjustments of resources by appropriation category into the  
913 appropriate data processing category pursuant to the legislative  
914 budget request instructions in s. 216.023.

915 (5) AGENCY LIMITATIONS.-

916 (a) Unless exempt from state data center consolidation  
917 pursuant to this section, authorized by the Legislature, or as  
918 provided in paragraph paragraphs (b) and ~~(e)~~, a state agency may  
919 not:

920 1. Create a new computing facility or data center, or  
921 expand the capability to support additional computer equipment  
922 in an existing state agency computing facility or ~~nonprimary~~  
923 data center;

924 2. Spend funds before the state agency's scheduled  
925 consolidation into the state a primary data center to purchase  
926 or modify hardware or operations software that does not comply





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927 with ~~hardware and software~~ standards established by the Agency  
928 for ~~State Enterprise Information Technology~~ pursuant to  
929 ~~paragraph (2)(e) for the efficient consolidation of the agency~~  
930 ~~data centers or computing facilities;~~

931 3. Transfer existing computer services to any data center  
932 other than ~~the state a primary~~ data center;

933 4. Terminate services with ~~the state a primary~~ data center  
934 ~~or transfer services between primary data centers~~ without giving  
935 written notice of intent to terminate ~~or transfer services~~ 180  
936 days before such termination ~~or transfer~~; or

937 5. Initiate a new computer service except with ~~the state a~~  
938 ~~primary~~ data center.

939 (b) Exceptions to the limitations in subparagraphs (a)1.,  
940 2., 3., and 5. may be granted by the Agency for ~~State Enterprise~~  
941 ~~Information Technology~~ if there is insufficient capacity in ~~the~~  
942 ~~state a primary~~ data center to absorb the workload associated  
943 with agency computing services, if expenditures are compatible  
944 with ~~the scheduled consolidation and the standards established~~  
945 ~~pursuant to s. 282.0051 paragraph (2)(e), or if the equipment or~~  
946 ~~resources are needed to meet a critical agency business need~~  
947 ~~that cannot be satisfied by from surplus equipment or resources~~  
948 ~~of the state primary data center until the agency data center is~~  
949 ~~consolidated. The Agency for State Technology shall develop and~~  
950 ~~publish the guidelines and required documentation that a state~~  
951 ~~agency must comply with when requesting an exception. The~~  
952 ~~agency's decision regarding the exception request is not subject~~  
953 ~~to chapter 120.~~

954 1. A request for an exception must be submitted in writing  
955 to the Agency for Enterprise Information Technology. The agency



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956 ~~must accept, accept with conditions, or deny the request within~~  
957 ~~60 days after receipt of the written request. The agency's~~  
958 ~~decision is not subject to chapter 120.~~

959 2. At a minimum, the agency may not approve a request  
960 unless it includes:

961 a. ~~Documentation approved by the primary data center's~~  
962 ~~board of trustees which confirms that the center cannot meet the~~  
963 ~~capacity requirements of the agency requesting the exception~~  
964 ~~within the current fiscal year.~~

965 b. ~~A description of the capacity requirements of the agency~~  
966 ~~requesting the exception.~~

967 c. ~~Documentation from the agency demonstrating why it is~~  
968 ~~critical to the agency's mission that the expansion or transfer~~  
969 ~~must be completed within the fiscal year rather than when~~  
970 ~~capacity is established at a primary data center.~~

971 ~~(c) Exceptions to subparagraph (a)4. may be granted by the~~  
972 ~~board of trustees of the primary data center if the termination~~  
973 ~~or transfer of services can be absorbed within the current cost-~~  
974 ~~allocation plan.~~

975 ~~(d) Upon the termination of or transfer of agency computing~~  
976 ~~services from the primary data center, the primary data center~~  
977 ~~shall require information sufficient to determine compliance~~  
978 ~~with this section. If a primary data center determines that an~~  
979 ~~agency is in violation of this section, it shall report the~~  
980 ~~violation to the Agency for Enterprise Information Technology.~~

981 ~~(6) RULES. The Agency for Enterprise Information Technology~~  
982 ~~may adopt rules to administer this part relating to the state~~  
983 ~~data center system including the primary data centers.~~

984 Section 8. ~~Section 282.203, Florida Statutes, is repealed.~~



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985 Section 9. Section 282.204, Florida Statutes, is repealed.  
986 Section 10. Section 282.205, Florida Statutes, is repealed.  
987 Section 11. Section 282.318, Florida Statutes, is amended  
988 to read:  
989 282.318 Enterprise security of data and information  
990 technology.—  
991 (1) This section may be cited as the "Enterprise Security  
992 of Data and Information Technology Act."  
993 ~~(2) Information technology security is established as an~~  
994 ~~enterprise information technology service as defined in s.~~  
995 ~~282.0041.~~  
996 ~~(2)(3) The Agency for State Enterprise Information~~  
997 ~~Technology is responsible for establishing standards,~~  
998 ~~guidelines, and processes by rule which are consistent with~~  
999 ~~generally accepted best practices for information technology~~  
1000 ~~security, and adopting rules that safeguard an agency's data,~~  
1001 ~~information, and information technology resources to ensure its~~  
1002 ~~availability, confidentiality, and integrity rules and~~  
1003 ~~publishing guidelines for ensuring an appropriate level of~~  
1004 ~~security for all data and information technology resources for~~  
1005 ~~executive branch agencies. The agency shall also perform the~~  
1006 ~~following duties and responsibilities:~~  
1007 (a) By June 30, 2015, develop, and annually update a  
1008 statewide by February 1, an enterprise information technology  
1009 security strategic plan that includes security goals and  
1010 objectives for the strategic issues of information technology  
1011 security policy, risk management, training, incident management,  
1012 and disaster recovery survivability planning.  
1013 (b) Develop and publish an information technology security



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1014 framework for use by state agencies which, at a minimum,  
1015 includes guidelines and processes enterprise security rules and  
1016 published guidelines for:  
1017 1. Developing and using a risk assessment methodology that  
1018 will apply to state agencies to identify the priorities,  
1019 constraints, risk tolerance, and assumptions.  
1020 ~~2.1. Completing comprehensive risk assessments analyses and~~  
1021 ~~information technology security audits. Such assessments and~~  
1022 ~~audits shall be conducted by state agencies and reviewed by the~~  
1023 ~~Agency for State Technology conducted by state agencies.~~  
1024 3. Identifying protection procedures to manage the  
1025 protection of a state agency's information, data, and  
1026 information technology resources.  
1027 4. Detecting threats through proactive monitoring of  
1028 events, continuous security monitoring, and specified detection  
1029 processes.  
1030 ~~5.2. Responding to suspected or confirmed information~~  
1031 ~~technology security incidents, including suspected or confirmed~~  
1032 ~~breaches of personal information containing confidential or~~  
1033 ~~exempt data.~~  
1034 ~~6.3. Developing state agency strategic and operational~~  
1035 ~~information technology security plans required under this~~  
1036 ~~section, including strategic security plans and security program~~  
1037 ~~plans.~~  
1038 ~~7.4. Recovering The recovery of information technology and~~  
1039 ~~data in response to an information technology security incident~~  
1040 ~~following a disaster. The recovery may include recommended~~  
1041 ~~improvements to the processes, policies, or guidelines.~~  
1042 ~~8.5. Establishing The managerial, operational, and~~



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1043 technical safeguards for protecting state government data and  
1044 information technology resources which align with state agency  
1045 risk management strategies for protecting the confidentiality,  
1046 integrity, and availability of information technology and data.

1047 9. Establishing procedures for accessing information  
1048 technology resources and data in order to limit authorized  
1049 users, processes, or devices to authorized activities and  
1050 transactions to ensure the confidentiality, integrity, and  
1051 availability of such information and data.

1052 10. Establishing asset management procedures to ensure that  
1053 information technology resources are identified and consistently  
1054 managed with their relative importance to business objectives.

1055 (c) Assist state agencies in complying with ~~the provisions~~  
1056 ~~of this section.~~

1057 ~~(d) Pursue appropriate funding for the purpose of enhancing~~  
1058 ~~domestic security.~~

1059 ~~(d)(e)~~ In collaboration with the Cybercrime Office in the  
1060 Department of Law Enforcement, provide training for state agency  
1061 information security managers.

1062 ~~(e)(f)~~ Annually review the strategic and operational  
1063 information technology security plans of state executive branch  
1064 agencies.

1065 ~~(3)(4) To assist the Agency for Enterprise Information~~  
1066 ~~Technology in carrying out its responsibilities, Each state~~  
1067 agency head shall, at a minimum:

1068 (a) Designate an information security manager who, for the  
1069 purposes of his or her information technology security duties,  
1070 shall report to the agency head and shall ~~to~~ administer the  
1071 information technology security program of the agency ~~for its~~



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1072 ~~data and information technology resources.~~ This designation must  
1073 be provided annually in writing to the Agency for State  
1074 ~~Enterprise Information~~ Technology by January 1.

1075 (b) Submit annually to the Agency for State Enterprise  
1076 ~~Information~~ Technology ~~annually~~ by July 31, the state agency's  
1077 strategic and operational information technology security plans  
1078 developed pursuant to the rules and guidelines established by  
1079 the Agency for State Enterprise Information Technology.

1080 1. The state agency strategic information technology  
1081 security plan must cover a 3-year period and, at a minimum,  
1082 define security goals, intermediate objectives, and projected  
1083 agency costs for the strategic issues of agency information  
1084 security policy, risk management, security training, security  
1085 incident response, and disaster recovery survivability. The plan  
1086 must be based on the statewide enterprise strategic information  
1087 security strategic plan created by the Agency for State  
1088 ~~Enterprise Information~~ Technology and include performance  
1089 metrics that can be objectively measured in order to gauge the  
1090 state agency's progress in meeting the security goals and  
1091 objectives identified in the strategic information technology  
1092 security plan. Additional issues may be included.

1093 2. The state agency operational information technology  
1094 security plan must include a progress report that objectively  
1095 measures progress made toward ~~for~~ the prior operational  
1096 information technology security plan and a project plan that  
1097 includes activities, timelines, and deliverables for security  
1098 objectives that, ~~subject to current resources,~~ the state agency  
1099 will implement during the current fiscal year. ~~The cost of~~  
1100 ~~implementing the portions of the plan which cannot be funded~~



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1101 ~~from current resources must be identified in the plan.~~  
1102 (c) Conduct, and update every 3 years, a comprehensive risk  
1103 assessment analysis to determine the security threats to the  
1104 data, information, and information technology resources of the  
1105 state agency. The risk assessment must comply with the risk  
1106 assessment methodology developed by the Agency for State  
1107 Technology. The risk assessment analysis information is  
1108 confidential and exempt from ~~the provisions of s. 119.07(1),~~  
1109 except that such information shall be available to the Auditor  
1110 General, ~~and the Agency for State Enterprise Information~~  
1111 Technology, and the Cybercrime Office in the Department of Law  
1112 Enforcement for performing postauditing duties.  
1113 (d) Develop, and periodically update, written internal  
1114 policies and procedures, ~~which include procedures for reporting~~  
1115 information technology security incidents and breaches to the  
1116 Cybercrime Office in the Department of Law Enforcement and  
1117 notifying the Agency for State Enterprise Information  
1118 Technology, and for those agencies under the jurisdiction of the  
1119 Governor, to the Chief Inspector General when a suspected or  
1120 confirmed breach, or an information security incident, occurs.  
1121 Such policies and procedures must be consistent with the rules,  
1122 ~~and guidelines, and processes~~ established by the Agency for  
1123 ~~State Enterprise Information~~ Technology to ensure the security  
1124 of the data, information, and information technology resources  
1125 of the state agency. The internal policies and procedures that,  
1126 if disclosed, could facilitate the unauthorized modification,  
1127 disclosure, or destruction of data or information technology  
1128 resources are confidential information and exempt from s.  
1129 119.07(1), except that such information shall be available to



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1130 the Auditor General, the Cybercrime Office in the Department of  
1131 Law Enforcement, and the Agency for State Enterprise Information  
1132 Technology, and for those agencies under the jurisdiction of the  
1133 Governor, to the Chief Inspector General for performing  
1134 postauditing duties.  
1135 (e) Implement the managerial, operational, and technical  
1136 appropriate cost-effective safeguards established by the Agency  
1137 for State Technology to address identified risks to the data,  
1138 information, and information technology resources of the agency.  
1139 (f) Ensure that periodic internal audits and evaluations of  
1140 the agency's information technology security program for the  
1141 data, information, and information technology resources of the  
1142 agency are conducted. The results of such audits and evaluations  
1143 are confidential ~~information~~ and exempt from s. 119.07(1),  
1144 except that such information shall be available to the Auditor  
1145 General, the Cybercrime Office in the Department of Law  
1146 Enforcement, and the Agency for State Enterprise Information  
1147 Technology for performing postauditing duties.  
1148 (g) Include appropriate information technology security  
1149 requirements in the written specifications for the solicitation  
1150 of information technology and information technology resources  
1151 and services, which are consistent with the rules and guidelines  
1152 established by the Agency for ~~State Enterprise Information~~  
1153 Technology in collaboration with the department.  
1154 (h) Require that state agency employees complete the  
1155 security awareness training offered by the Agency for State  
1156 Technology in collaboration with the Cybercrime Office in the  
1157 Department of Law Enforcement. Coordinate with state agencies to  
1158 provide agency-specific security training aligned with the



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1159 ~~agency operational information technology security plan. Provide~~  
1160 ~~security awareness training to employees and users of the~~  
1161 ~~agency's communication and information resources concerning~~  
1162 ~~information security risks and the responsibility of employees~~  
1163 ~~and users to comply with policies, standards, guidelines, and~~  
1164 ~~operating procedures adopted by the agency to reduce these~~  
1165 ~~risks.~~

1166 (i) Develop processes ~~a process~~ for detecting, reporting,  
1167 and responding to information technology suspected or confirmed  
1168 security threats or breaches or information technology security  
1169 incidents which are, including suspected or confirmed breaches  
1170 consistent with the security rules, and guidelines, and  
1171 processes established by the Agency for State Enterprise  
1172 Information Technology.

1173 1. All Suspected or confirmed information technology  
1174 security incidents and breaches must be immediately reported to  
1175 the Cybercrime Office in the Department of Law Enforcement and  
1176 the Agency for State Enterprise Information Technology.

1177 2. For information technology security incidents involving  
1178 breaches, agencies shall provide notice in accordance with s.  
1179 817.5681 and to the Agency for Enterprise Information Technology  
1180 in accordance with this subsection.

1181 ~~(5) Each state agency shall include appropriate security~~  
1182 ~~requirements in the specifications for the solicitation of~~  
1183 ~~contracts for procuring information technology or information~~  
1184 ~~technology resources or services which are consistent with the~~  
1185 ~~rules and guidelines established by the Agency for Enterprise~~  
1186 ~~Information Technology.~~

1187 ~~(4)(6) The Agency for State Enterprise Information~~



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1188 Technology may adopt rules relating to information technology  
1189 security and to administer ~~the provisions of~~ this section.

1190 Section 12. Section 282.33, Florida Statutes, is repealed.

1191 Section 13. Effective upon this act becoming a law, section  
1192 282.34, Florida Statutes, is repealed.

1193 Section 14. Subsections (1) and (2) of section 17.0315,  
1194 Florida Statutes, are amended to read:

1195 17.0315 Financial and cash management system; task force.—

1196 (1) The Chief Financial Officer, as the constitutional  
1197 officer responsible for settling and approving accounts against  
1198 the state and keeping all state funds pursuant to s. 4, Art. IV  
1199 of the State Constitution, ~~is shall be~~ the head of and shall  
1200 appoint members to a task force established to develop a  
1201 strategic business plan for a successor financial and cash  
1202 management system. The task force shall include the executive  
1203 director of the Agency for State Enterprise Information  
1204 Technology and the director of the Office of Policy and Budget  
1205 in the Executive Office of the Governor. Any member of the task  
1206 force may appoint a designee.

1207 (2) The strategic business plan for a successor financial  
1208 and cash management system must:

1209 (a) Permit proper disbursement and auditing controls  
1210 consistent with the respective constitutional duties of the  
1211 Chief Financial Officer and the Legislature;

1212 (b) Promote transparency in the accounting of public funds;

1213 (c) Provide timely and accurate recording of financial  
1214 transactions by agencies and their professional staffs;

1215 (d) Support executive reporting and data analysis  
1216 requirements;



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1217 (e) Be capable of interfacing with other systems providing  
 1218 human resource services, procuring goods and services, and  
 1219 providing other enterprise functions;  
 1220 (f) Be capable of interfacing with the existing legislative  
 1221 appropriations, planning, and budgeting systems;  
 1222 (g) Be coordinated with the information technology strategy  
 1223 development efforts of the Agency for State Enterprise  
 1224 Information Technology;  
 1225 (h) Be coordinated with the revenue estimating conference  
 1226 process as supported by the Office of Economic and Demographic  
 1227 Research; and  
 1228 (i) Address other such issues as the Chief Financial  
 1229 Officer identifies.  
 1230 Section 15. Subsection (1) of section 20.055, Florida  
 1231 Statutes, is reordered and amended to read:  
 1232 20.055 Agency inspectors general.-  
 1233 (1) As used in ~~For the purposes of~~ this section, the term:  
 1234 (d)(a) "State agency" means each department created  
 1235 pursuant to this chapter, ~~and also includes~~ the Executive Office  
 1236 of the Governor, the Department of Military Affairs, the Fish  
 1237 and Wildlife Conservation Commission, the Office of Insurance  
 1238 Regulation of the Financial Services Commission, the Office of  
 1239 Financial Regulation of the Financial Services Commission, the  
 1240 Public Service Commission, the Board of Governors of the State  
 1241 University System, the Florida Housing Finance Corporation, the  
 1242 Agency for State Technology, and the state courts system.  
 1243 (a)(b) "Agency head" means the Governor, a Cabinet officer,  
 1244 a secretary ~~as defined in s. 20.03(5)~~, or an executive director  
 1245 as those terms are defined in s. 20.03, 20.03(6). ~~It also~~



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1246 ~~includes~~ the chair of the Public Service Commission, the  
 1247 Director of the Office of Insurance Regulation of the Financial  
 1248 Services Commission, the Director of the Office of Financial  
 1249 Regulation of the Financial Services Commission, the board of  
 1250 directors of the Florida Housing Finance Corporation, and the  
 1251 Chief Justice of the State Supreme Court.  
 1252 (c) "Individuals substantially affected" means natural  
 1253 persons who have established a real and sufficiently immediate  
 1254 injury in fact due to the findings, conclusions, or  
 1255 recommendations of a final report of a state agency inspector  
 1256 general, who are the subject of the audit or investigation, and  
 1257 who do not have or are not currently afforded an existing right  
 1258 to an independent review process. The term does not apply to  
 1259 employees of the state, including career service, probationary,  
 1260 other personal service, Selected Exempt Service, and Senior  
 1261 Management Service employees; ~~are not covered by this~~  
 1262 ~~definition. This definition also does not cover~~ former employees  
 1263 of the state if the final report of the state agency inspector  
 1264 general relates to matters arising during a former employee's  
 1265 term of state employment; ~~or. This definition does not apply to~~  
 1266 persons who are the subject of audits or investigations  
 1267 conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or  
 1268 which are otherwise confidential and exempt under s. 119.07.  
 1269 (b)(d) "Entities contracting with the state" means for-  
 1270 profit and not-for-profit organizations or businesses that have  
 1271 ~~having~~ a legal existence, such as corporations or partnerships,  
 1272 as opposed to natural persons, which have entered into a  
 1273 relationship with a state agency ~~as defined in paragraph (a)~~ to  
 1274 provide for consideration certain goods or services to the state



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1275 agency or on behalf of the state agency. The relationship may be  
1276 evidenced by payment by warrant or purchasing card, contract,  
1277 purchase order, provider agreement, or other such mutually  
1278 agreed upon relationship. ~~The term This definition~~ does not  
1279 apply to entities that ~~which~~ are the subject of audits or  
1280 investigations conducted pursuant to ss. 112.3187-112.31895 or  
1281 s. 409.913 or which are otherwise confidential and exempt under  
1282 s. 119.07.

1283 Section 16. Paragraph (e) of subsection (2) of section  
1284 110.205, Florida Statutes, is amended to read:

1285 110.205 Career service; exemptions.-

1286 (2) EXEMPT POSITIONS.-The exempt positions that are not  
1287 covered by this part include the following:

1288 (e) The Chief Information Officer in the Agency for State  
1289 ~~Enterprise Information~~ Technology. Unless otherwise fixed by  
1290 law, the Agency for State ~~Enterprise Information~~ Technology  
1291 shall set the salary and benefits of this position in accordance  
1292 with the rules of the Senior Management Service.

1293 Section 17. Subsections (2) and (9) of section 215.322,  
1294 Florida Statutes, are amended to read:

1295 215.322 Acceptance of credit cards, charge cards, debit  
1296 cards, or electronic funds transfers by state agencies, units of  
1297 local government, and the judicial branch.-

1298 (2) A state agency as defined in s. 216.011, or the  
1299 judicial branch, may accept credit cards, charge cards, debit  
1300 cards, or electronic funds transfers in payment for goods and  
1301 services with the prior approval of the Chief Financial Officer.  
1302 If the Internet or other related electronic methods are to be  
1303 used as the collection medium, the Agency for State ~~Enterprise~~



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1304 ~~Information~~ Technology shall review and recommend to the Chief  
1305 Financial Officer whether to approve the request with regard to  
1306 the process or procedure to be used.

1307 (9) For payment programs in which credit cards, charge  
1308 cards, or debit cards are accepted by state agencies, the  
1309 judicial branch, or units of local government, the Chief  
1310 Financial Officer, in consultation with the Agency for State  
1311 ~~Enterprise Information~~ Technology, may adopt rules to establish  
1312 uniform security safeguards for cardholder data and to ensure  
1313 compliance with the Payment Card Industry Data Security  
1314 Standards.

1315 Section 18. Subsection (2) of section 215.96, Florida  
1316 Statutes, is amended to read:

1317 215.96 Coordinating council and design and coordination  
1318 staff.-

1319 (2) The coordinating council shall consist of the Chief  
1320 Financial Officer; the Commissioner of Agriculture; the Attorney  
1321 General; the secretary of the Department of Management Services;  
1322 the executive director of the Agency for State Technology ~~the~~  
1323 ~~Attorney General~~; and the Director of Planning and Budgeting,  
1324 Executive Office of the Governor, or their designees. The Chief  
1325 Financial Officer, or his or her designee, shall be chair of the  
1326 ~~coordinating~~ council, and the design and coordination staff  
1327 shall provide administrative and clerical support to the council  
1328 and the board. The design and coordination staff shall maintain  
1329 the minutes of each meeting and ~~shall~~ make such minutes  
1330 available to any interested person. The Auditor General, the  
1331 State Courts Administrator, an executive officer of the Florida  
1332 Association of State Agency Administrative Services Directors,



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1333 and an executive officer of the Florida Association of State  
1334 Budget Officers, or their designees, shall serve without voting  
1335 rights as ex officio members of ~~of~~ ~~on~~ the ~~coordinating~~ council. The  
1336 chair may call meetings of the ~~coordinating~~ council as often as  
1337 necessary to transact business; however, the ~~coordinating~~  
1338 council ~~must~~ ~~shall~~ meet at least annually once a year. Action of  
1339 the ~~coordinating~~ council shall be by motion, duly made, seconded  
1340 and passed by a majority of the ~~coordinating~~ council voting in  
1341 the affirmative for approval of items that are to be recommended  
1342 for approval to the Financial Management Information Board.

1343 Section 19. Paragraph (a) of subsection (4) of section  
1344 216.023, Florida Statutes, is amended to read:

1345 216.023 Legislative budget requests to be furnished to  
1346 Legislature by agencies.—

1347 (4) (a) The legislative budget request ~~must contain~~ for each  
1348 program must contain:

1349 1. The constitutional or statutory authority for a program,  
1350 a brief purpose statement, and approved program components.

1351 2. Information on expenditures for 3 fiscal years (actual  
1352 prior-year expenditures, current-year estimated expenditures,  
1353 and agency budget requested expenditures for the next fiscal  
1354 year) by appropriation category.

1355 3. Details on trust funds and fees.

1356 4. The total number of positions (authorized, fixed, and  
1357 requested).

1358 5. An issue narrative describing and justifying changes in  
1359 amounts and positions requested for current and proposed  
1360 programs for the next fiscal year.

1361 6. Information resource requests.



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1362 7. Supporting information, including applicable cost-  
1363 benefit analyses, business case analyses, performance  
1364 contracting procedures, service comparisons, and impacts on  
1365 performance standards for any request to outsource or privatize  
1366 agency functions. The cost-benefit and business case analyses  
1367 must include an assessment of the impact on each affected  
1368 activity from those identified in accordance with paragraph (b).  
1369 Performance standards must include standards for each affected  
1370 activity and be expressed in terms of the associated unit of  
1371 activity.

1372 8. An evaluation of ~~any~~ major outsourcing and privatization  
1373 initiatives undertaken during the last 5 fiscal years having  
1374 aggregate expenditures exceeding \$10 million during the term of  
1375 the contract. The evaluation must ~~shall~~ include an assessment of  
1376 contractor performance, a comparison of anticipated service  
1377 levels to actual service levels, and a comparison of estimated  
1378 savings to actual savings achieved. Consolidated reports issued  
1379 by the Department of Management Services may be used to satisfy  
1380 this requirement.

1381 9. Supporting information for any proposed consolidated  
1382 financing of deferred-payment commodity contracts including  
1383 guaranteed energy performance savings contracts. Supporting  
1384 information must also include narrative describing and  
1385 justifying the need, baseline for current costs, estimated cost  
1386 savings, projected equipment purchases, estimated contract  
1387 costs, and return on investment calculation.

1388 10. For projects that exceed \$10 million in total cost, the  
1389 statutory reference of the existing policy or the proposed  
1390 substantive policy that establishes and defines the project's





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1391 governance structure, planned scope, main business objectives  
1392 that must be achieved, and estimated completion timeframes. The  
1393 governance structure for information technology-related projects  
1394 requested by a state agency must incorporate the applicable  
1395 project management and oversight standards established under s.  
1396 282.0051. Information technology budget requests for the  
1397 continuance of existing hardware and software maintenance  
1398 agreements, renewal of existing software licensing agreements,  
1399 or the replacement of desktop units with new technology that is  
1400 similar to the technology currently in use are exempt from this  
1401 requirement.

1402 Section 20. Subsection (22) of section 287.057, Florida  
1403 Statutes, is amended to read:

1404 287.057 Procurement of commodities or contractual  
1405 services.-

1406 (22) The department, in consultation with the Chief  
1407 Financial Officer and the Agency for State Technology, shall  
1408 maintain a program for the online procurement of commodities and  
1409 contractual services. To enable the state to promote open  
1410 competition and leverage its buying power, agencies shall  
1411 participate in the online procurement program, and eligible  
1412 users may participate in the program. Only vendors prequalified  
1413 as meeting mandatory requirements and qualifications criteria  
1414 may participate in online procurement.

1415 (a) The department, in consultation with the Agency for  
1416 State Technology and in compliance with the standards and  
1417 policies of the agency, may contract for equipment and services  
1418 necessary to develop and implement online procurement.

1419 (b) The department shall adopt rules to administer the



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1420 program for online procurement. The rules must include, but not  
1421 be limited to:

1422 1. Determining the requirements and qualification criteria  
1423 for prequalifying vendors.

1424 2. Establishing the procedures for conducting online  
1425 procurement.

1426 3. Establishing the criteria for eligible commodities and  
1427 contractual services.

1428 4. Establishing the procedures for providing access to  
1429 online procurement.

1430 5. Determining the criteria warranting ~~any~~ exceptions to  
1431 participation in the online procurement program.

1432 (c) The department may impose and shall collect all fees  
1433 for the use of the online procurement systems.

1434 1. The fees may be imposed on an individual transaction  
1435 basis or as a fixed percentage of the cost savings generated. At  
1436 a minimum, the fees must be set in an amount sufficient to cover  
1437 the projected costs of the services, including administrative  
1438 and project service costs in accordance with the policies of the  
1439 department.

1440 2. If the department contracts with a provider for online  
1441 procurement, the department, pursuant to appropriation, shall  
1442 compensate the provider from the fees after the department has  
1443 satisfied all ongoing costs. The provider shall report  
1444 transaction data to the department each month so that the  
1445 department may determine the amount due and payable to the  
1446 department from each vendor.

1447 3. All fees that are due and payable to the state on a  
1448 transactional basis or as a fixed percentage of the cost savings



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1449 generated are subject to s. 215.31 and must be remitted within  
1450 40 days after receipt of payment for which the fees are due. For  
1451 fees that are not remitted within 40 days, the vendor shall pay  
1452 interest at the rate established under s. 55.03(1) on the unpaid  
1453 balance from the expiration of the 40-day period until the fees  
1454 are remitted.

1455 4. All fees and surcharges collected under this paragraph  
1456 shall be deposited in the Operating Trust Fund as provided by  
1457 law.

1458 Section 21. Subsection (4) of section 445.011, Florida  
1459 Statutes, is amended to read:

1460 445.011 Workforce information systems.—

1461 (4) Workforce Florida, Inc., shall coordinate development  
1462 and implementation of workforce information systems with the  
1463 executive director of the Agency for State Enterprise  
1464 ~~Information~~ Technology to ensure compatibility with the state's  
1465 information system strategy and enterprise architecture.

1466 Section 22. Subsections (2) and (4) of section 445.045,  
1467 Florida Statutes, are amended to read:

1468 445.045 Development of an Internet-based system for  
1469 information technology industry promotion and workforce  
1470 recruitment.—

1471 (2) Workforce Florida, Inc., shall coordinate with the  
1472 Agency for State Enterprise~~Information~~ Technology and the  
1473 Department of Economic Opportunity to ensure links, where  
1474 feasible and appropriate, to existing job information websites  
1475 maintained by the state and state agencies and ~~to ensure~~ that  
1476 information technology positions offered by the state and state  
1477 agencies are posted on the information technology website.



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1478 (4) (a) Workforce Florida, Inc., shall coordinate  
1479 development and maintenance of the website under this section  
1480 with the executive director of the Agency for State Enterprise  
1481 ~~Information~~ Technology to ensure compatibility with the state's  
1482 information system strategy and enterprise architecture.

1483 (b) Workforce Florida, Inc., may enter into an agreement  
1484 with the Agency for State Enterprise~~Information~~ Technology, the  
1485 Department of Economic Opportunity, or any other public agency  
1486 with the requisite information technology expertise for the  
1487 provision of design, operating, or other technological services  
1488 necessary to develop and maintain the website.

1489 (c) Workforce Florida, Inc., may procure services necessary  
1490 to implement ~~the provisions of~~ this section, if it employs  
1491 competitive processes, including requests for proposals,  
1492 competitive negotiation, and other competitive processes ~~that to~~  
1493 ensure that the procurement results in the most cost-effective  
1494 investment of state funds.

1495 Section 23. Paragraph (b) of subsection (18) of section  
1496 668.50, Florida Statutes, is amended to read:

1497 668.50 Uniform Electronic Transaction Act.—

1498 (18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY  
1499 GOVERNMENTAL AGENCIES.—

1500 (b) To the extent that a governmental agency uses  
1501 electronic records and electronic signatures under paragraph  
1502 (a), the Agency for State Enterprise~~Information~~ Technology, in  
1503 consultation with the governmental agency, giving due  
1504 consideration to security, may specify:

1505 1. The manner and format in which the electronic records  
1506 must be created, generated, sent, communicated, received, and



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1507 stored and the systems established for those purposes.

1508 2. If electronic records must be signed by electronic  
1509 means, the type of electronic signature required, the manner and  
1510 format in which the electronic signature must be affixed to the  
1511 electronic record, and the identity of, or criteria that must be  
1512 met by, any third party used by a person filing a document to  
1513 facilitate the process.

1514 3. Control processes and procedures as appropriate to  
1515 ensure adequate preservation, disposition, integrity, security,  
1516 confidentiality, and auditability of electronic records.

1517 4. Any other required attributes for electronic records  
1518 which are specified for corresponding nonelectronic records or  
1519 reasonably necessary under the circumstances.

1520 Section 24. Section 943.0415, Florida Statutes, is amended  
1521 to read:

1522 943.0415 Cybercrime Office.—~~The Cybercrime Office~~ There is  
1523 created within the Department of Law Enforcement ~~the Cybercrime~~  
1524 ~~Office~~. The office may:

1525 (1) Investigate violations of state law pertaining to the  
1526 sexual exploitation of children which are facilitated by or  
1527 connected to the use of any device capable of storing electronic  
1528 data.

1529 (2) Monitor information technology resources and provide  
1530 analysis on information technology security incidents, threats,  
1531 or breaches as those terms are defined in s. 282.0041.

1532 (3) Investigate violations of state law pertaining to  
1533 information technology security incidents, threats, or breaches  
1534 pursuant to s. 282.0041 and assist in incident response and  
1535 recovery.



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1536 (4) Provide security awareness training and information to  
1537 state agency employees concerning cyber security, online sexual  
1538 exploitation of children, security risks, and the responsibility  
1539 of employees to comply with policies, standards, guidelines, and  
1540 operating procedures adopted by the Agency for State Technology.

1541 (5) Consult with the Agency for State Technology in the  
1542 adoption of rules relating to the information technology  
1543 security provisions of s. 282.318.

1544 Section 25. Section 1004.649, Florida Statutes, is amended  
1545 to read:

1546 1004.649 Northwest Regional Data Center.—

1547 (1) For the purpose of providing data center services to  
1548 ~~servi~~ng its state agency customers, the Northwest Regional Data  
1549 Center at Florida State University is designated as a primary  
1550 data center and shall:

1551 (a) Operate under a governance structure that represents  
1552 its customers proportionally.

1553 (b) Maintain an appropriate cost-allocation methodology  
1554 that accurately bills state agency customers based solely on the  
1555 actual direct and indirect costs of the services provided to  
1556 state agency customers, and ensures that for any fiscal year a  
1557 state agency customer is not subsidizing a ~~prohibits the~~  
1558 ~~subsidization of~~ nonstate agency customer or another state  
1559 ~~agency customer~~ customers' costs by state agency customers. Such  
1560 cost-allocation methodology must comply with applicable state  
1561 and federal requirements concerning the distribution and use of  
1562 state and federal funds.

1563 (c) Enter into a service-level agreement with each state  
1564 agency customer to provide services as defined and approved by



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1565 the governing board of the center. At a minimum, such service-  
1566 level agreements must:

- 1567 1. Identify the parties and their roles, duties, and  
1568 responsibilities under the agreement;
- 1569 2. State the duration of the agreement term and specify the  
1570 conditions for renewal;
- 1571 3. Identify the scope of work;
- 1572 4. Establish the services to be provided, the business  
1573 standards that must be met for each service, the cost of each  
1574 service, and the process by which the business standards for  
1575 each service are to be objectively measured and reported;
- 1576 5. Provide a timely billing methodology for recovering the  
1577 cost of services provided pursuant to s. 215.422; ~~and~~
- 1578 6. Provide a procedure for modifying the service-level  
1579 agreement to address any changes in projected costs of service;
- 1580 7. Prohibit the transfer of computing services between the  
1581 Northwest Regional Data Center and the state data center  
1582 established under s. 282.201 without at least 180 days' notice  
1583 of service cancellation;
- 1584 8. Identify the products or services to be delivered with  
1585 sufficient specificity to permit an external financial or  
1586 performance audit; and
- 1587 9. Provide that the service-level agreement may be  
1588 terminated by either party for cause only after giving the other  
1589 party notice in writing of the cause for termination and an  
1590 opportunity for the other party to resolve the identified cause  
1591 within a reasonable period.

1592 (d) Provide to the Board of Governors the total annual  
1593 budget by major expenditure category, including, but not limited



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1594 to, salaries, expenses, operating capital outlay, contracted  
1595 services, or other personnel services by July 30 each fiscal  
1596 year.

- 1597 (e) Provide to each state agency customer its projected  
1598 annual cost for providing the agreed-upon data center services  
1599 by September 1 each fiscal year.
- 1600 (f) Provide a plan for consideration by the Legislative  
1601 Budget Commission if the governing body of the center approves  
1602 the use of a billing rate schedule after the start of the fiscal  
1603 year that increases any state agency customer's costs for that  
1604 fiscal year.

1605 (2) The Northwest Regional Data Center's designation as a  
1606 primary data center for purposes of serving its state agency  
1607 customers may be terminated if:

- 1608 (a) The center requests such termination to the Board of  
1609 Governors, the Senate President, and the Speaker of the House of  
1610 Representatives; or
- 1611 (b) The center fails to comply with ~~the provisions of~~ this  
1612 section.
- 1613 (3) If such designation is terminated, the center shall  
1614 have 1 year to provide for the transition of its state agency  
1615 customers to the state data center system established under s.  
1616 282.201 ~~Southwood Shared Resource Center or the Northwood Shared~~  
1617 ~~Resource Center.~~

1618 Section 26. The Agency for Enterprise Information  
1619 Technology in the Executive Office of the Governor is  
1620 transferred by a type two transfer, pursuant to s. 20.06,  
1621 Florida Statutes, to the Agency for State Technology established  
1622 pursuant to s. 20.61, Florida Statutes, except that the only



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1623 rules that are transferred are chapters 71A-1 and 71A-2, Florida  
1624 Administrative Code. All other rules adopted by the Agency for  
1625 Enterprise Information Technology are nullified and of no  
1626 further force or effect.

1627 Section 27. The Northwood Shared Resource Center in the  
1628 Department of Management Services is transferred by a type two  
1629 transfer, pursuant to s. 20.06, Florida Statutes, to the Agency  
1630 for State Technology established pursuant to s. 20.61, Florida  
1631 Statutes. This transfer does not require and is not subject to  
1632 Legislative Budget Commission approval.

1633 Section 28. The Southwood Shared Resource Center in the  
1634 Department of Management Services is transferred by a type two  
1635 transfer, pursuant to s. 20.06, Florida Statutes, to the Agency  
1636 for State Technology established pursuant to s. 20.61, Florida  
1637 Statutes. This transfer does not require and is not subject to  
1638 Legislative Budget Commission approval.

1639 Section 29. The Agency for State Technology shall:

1640 (1) Complete a feasibility study that analyzes, evaluates,  
1641 and provides recommendations for managing state government data  
1642 in a manner that promotes its interoperability and openness and,  
1643 if legally permissible and not cost prohibitive, ensures that  
1644 such data is available to the public in ways that make the data  
1645 easy to find and use, and complies with chapter 119, Florida  
1646 Statutes. At a minimum, the feasibility study must include the  
1647 following components:

1648 (a) A clear description of which state government data  
1649 should be public information. The guiding principle for this  
1650 component is a presumption of openness to the extent permitted  
1651 by law but subject to valid restrictions relating to privacy,



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1652 confidentiality, and security, and other fiscal and legal  
1653 restrictions.

1654 (b) Recommended standards for making the format and  
1655 accessibility of public information uniform and ensuring that  
1656 such data is published in a nonproprietary, searchable,  
1657 sortable, platform-independent, and machine-readable format. The  
1658 agency should include the projected cost to state agencies of  
1659 implementing and maintaining such standards.

1660 (c) A project plan for implementing a single Internet  
1661 website that contains public information or links to public  
1662 information. The plan should include a timeline and benchmarks  
1663 for making public information available online and identify any  
1664 costs associated with the development and ongoing maintenance of  
1665 such a website.

1666 (d) A recommended governance structure and review and  
1667 compliance process to ensure accountability on the part of those  
1668 who create, maintain, manage, or store public information or  
1669 post it on the single Internet website. The agency should  
1670 include any associated costs to implement and maintain the  
1671 recommended governance structure and the review and compliance  
1672 process.

1673 (2) Submit the completed feasibility study to the Executive  
1674 Office of the Governor, the President of the Senate, and the  
1675 Speaker of the House of Representatives by June 1, 2015.

1676 Section 30. The State Data Center Task Force is created.  
1677 The task force shall be comprised of those individuals who were  
1678 members of the boards of trustees of the Northwood and Southwood  
1679 Shared Resource Centers as of June 30, 2014. The purpose of the  
1680 task force is to provide assistance in the transition of the



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1681 Northwood and Southwood Shared Resource Centers into the state  
1682 data center established under s. 282.201, Florida Statutes. The  
1683 task force shall identify any operational or fiscal issues  
1684 affecting the transition and provide recommendations to the  
1685 Agency for State Technology for the resolution of such issues.  
1686 The task force may not make decisions regarding the state data  
1687 center or the facilities formerly known as the Northwood and  
1688 Southwood Shared Resource Centers and shall expire on or before  
1689 June 30, 2015.

1690       Section 31. For the 2014-2015 fiscal year, the sum of  
1691 \$2,134,892 in nonrecurring general revenue funds, \$2,865,108 in  
1692 recurring general revenue funds, and 25 full-time equivalent  
1693 positions and associated salary rate of 2,010,951 are  
1694 appropriated to the Agency for State Technology for the purpose  
1695 of implementing and administering this act.

1696       Section 32. Except as otherwise expressly provided in this  
1697 act and except for this section, which shall take effect upon  
1698 this act becoming a law, this act shall take effect July 1,  
1699 2014.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/SB 928

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Governmental Oversight and Accountability Committee

**SUBJECT:** State Technology

**DATE:** March 13, 2014      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>McKay</u>	<u>McVaney</u>		<b>GO SPB 7024 as introduced</b>
1.	<u>Wilson</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Fav/CS</b>
2.	<u>Wilson</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 928 substantially revises how the state establishes information technology (IT) policy and procedures. The bill creates the Agency for State Technology (AST), administratively housed in the Department of Management Services. The defunct Agency for Enterprise Information Technology is abolished by the bill, and its duties are transferred to the AST. The AST is given extensive authority to set state technology policy and perform project oversight of large IT projects. The Northwood and Southwood shared resource centers are transferred to the AST.

For the 2014-2015 fiscal year, \$3,563,573 in recurring general revenue funds, \$1,095,005 in nonrecurring general revenue funds, and 25 full time equivalent positions with associated salary rate of 2,083,481 are appropriated to the AST, in this bill.

For the 2014-2015 fiscal year, \$144,870 in recurring general revenue funds, \$7,546 in nonrecurring general revenue funds, and 2 full time equivalent positions with associated salary rate of 93,120 are appropriated to the Florida Department of Law Enforcement, in this bill.

Except as otherwise provided, the bill is effective July 1, 2014.

## II. Present Situation:

### Agency for Enterprise Information Technology

#### *Duties*

In 2007, the Florida Legislature created the Agency for Enterprise Information Technology (AEIT) to oversee policies for the design, planning, project management, and implementation of enterprise information technology services, to include information technology security.<sup>1</sup> The AEIT is administratively housed within the Executive Office of the Governor, with the Governor and Cabinet as the head of the agency.

The AEIT is required to<sup>2</sup>:

- Submit an annual work plan for approval by the Governor and Cabinet;
- Monitor the implementation, delivery, and management of the enterprise information technology services established in law;
- Make recommendations to the agency head and Legislature concerning other information technology services that should be designed, delivered, and managed as enterprise information technology services;
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services;
- Biennially publish a long-term strategic enterprise information technology plan;
- Perform duties related to enterprise information technology services including the state data center system, information technology security, and the statewide e-mail service;
- Coordinate with the Division of Purchasing in the DMS on the planning and acquisition of information technology products and work with the division in the establishment of best practices for procuring such products;
- Develop information technology standards;
- Submit a comprehensive transition plan for the consolidation of agency data centers into a primary data center; and
- Annually provide the Legislature with recommendations for consolidating the purchase of information technology commodities and contractual services.

Part I of ch. 282, F.S., specifies the duties of the AEIT and state agencies regarding IT management. Section 282.0041(1), F.S., defines “agency” the same as ins. 216.011(1)(qq), F.S.:

“state agency” or “agency” as any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of chapter 216 and chapter 215, “state agency” or “agency” includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission.

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<sup>1</sup> Chapter 2007-105, Laws of Florida.

<sup>2</sup> Section 14.204, Florida Statutes.



In 2008, specific duties and responsibilities pertaining to information technology security were assigned to the AEIT,<sup>3</sup> but the Office of Information Security was housed within the DMS. In 2009, the Office of Information Security was created within the AEIT,<sup>4</sup> and 8 full-time equivalents (FTE) were transferred from the DMS budget to the AEIT in the Fiscal Year 2009-2010 General Appropriations Act.

### *Administrative Rules*

The AEIT was authorized to adopt rules to carry out its statutory duties<sup>5</sup> and to specifically adopt rules relating to:

- Information security;<sup>6</sup> and
- State data center system.<sup>7</sup>

The AEIT adopted 34 administrative rules under the following chapters:

- Chapter 71-1, F.A.C., *Confirmation and Delegation of Authority*, effective July 13, 2009;
- Chapter 71A-1, F.A.C., *Florida Information Technology Resource Security Policies and Standards*, effective November 15, 2010; and
- Chapter 71A-2, F.A.C., *Florida Information Resource Security Policies and Standards*, effective August 10, 2004. These rules were promulgated by the Department of Management Services State Technology Office division.

The AEIT initiated, but never completed, the rule adoption process for two sets of rules:

- Chapter 71B-1, F.A.C., *Enterprise E-mail Service*; and
- Chapter 71B-2, F.A.C., *Data Center System*.

### *Defunding the AEIT*

In 2012, the Governor vetoed HB 5011, legislation that abolished the AEIT and transferred some of AEIT's duties to a new agency created in that bill. Because HB 5011 transferred the salary and positions from the AEIT to the new agency, the effect of the veto was the elimination of funding for AEIT, though some of its duties still exist in statute.

### **Primary Data Centers and Data Center Consolidation**

The state data center system was created by the Legislature in 2008.<sup>8</sup> The system is composed of primary data centers (Southwood Shared Resource Center, Northwood Shared Resource Center, and the Northwest Regional Data Center), other nonprimary data centers, and computing facilities serving state agencies. A "primary data center" is a data center that is a recipient entity for consolidation of nonprimary data centers and computing facilities and that is established by law.<sup>9</sup> A "computing facility" is an agency space containing fewer than 10 servers, any of which

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<sup>3</sup> Chapter 2008-116, Laws of Florida.

<sup>4</sup> Chapter 2009-80, Laws of Florida.

<sup>5</sup> Section 14.204(7), F.S.

<sup>6</sup> Section 282.318(6), F.S.

<sup>7</sup> Section 282.201(2)(e), F.S.

<sup>8</sup> Chapter 2008-116, L.O.F.

<sup>9</sup> Section 282.0041(17), F.S.

supports a strategic or nonstrategic information technology service, as described in budget instructions developed pursuant to s. 216.023, F.S., but excludes single-server installations that exclusively perform a utility function such as file and print servers.<sup>10</sup> The AEIT is responsible for developing policies for the system.<sup>11</sup>

As defined by law, Wave 1 of data center consolidation was initiated in 2009 with proviso included in the Fiscal Year 2009-2010 General Appropriations Act that required the:

- Florida Parole Commission to transfer its information technology services, to include its data center functions, to the Department of Corrections by July 1, 2009;
- Department of Juvenile Justice to consolidate its data center functions into the Northwood Shared Resource Center (NSRC) by July 1, 2010; and
- Department of Business and Professional Regulation to consolidate its data center functions into the NSRC by November 30, 2010.

Beginning in 2009, on October 1st of each calendar year, the AEIT is required to recommend to the Governor and Legislature at least two agency data centers or computing facilities for consolidation into a primary data center.<sup>12</sup> The AEIT submitted its recommendations on September 30, 2009,<sup>13</sup> for the Wave 2 consolidations and the Legislature directed, via proviso in the Fiscal Year 2010-2011 General Appropriations Act, the following consolidations:

- To the Northwood Shared Resource Center (NSRC)
  - Department of Juvenile Justice by July 1, 2010;
  - Department of Business and Professional Regulation by November 30, 2010;
  - Department of Children and Families' Winewood Office Complex by June 30, 2012; and
  - Department of Transportation's Motor Carrier Compliance Office by July 1, 2011.
- To the Southwood Shared Resource Center (SSRC)
  - Department of Transportation Burns Office Building by March 31, 2012; and
  - Department of Transportation Survey and Mapping Office by March 31, 2012.
- To the Northwest Regional Data Center (NWRDC)
  - Department of Education by December 31, 2011;
  - College Center for Library Automation by December 31, 2011; and
  - Florida Center for Library Automation by December 31, 2011.
- To the NSRC or SSRC
  - Agency for Health Care Administration by June 30, 2012; and
  - Department of Highway Safety and Motor Vehicles by December 31, 2011.

On December 23, 2010, the AEIT submitted a report "*Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers by 2019.*" The report provides recommendations for the consolidation of the remaining agency data centers and computing facilities after Wave 2. In 2011, the Legislature codified in statute the recommendations included

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<sup>10</sup> Section 282.0041(7), F.S.

<sup>11</sup> Section 282.201(2), F.S.

<sup>12</sup> s. 282.201(2), F.S.

<sup>13</sup> *Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers.* Agency for Enterprise Information Technology, September 30, 2009.

in AEIT's December 23, 2010, report identifying the agencies required to consolidate into a primary data center within that fiscal year.<sup>14</sup>

In 2012, the Legislature amended the data center consolidation schedule as follows:<sup>15</sup>

- To the NSRC:
  - Department of Highway Safety and Motor Vehicles' Office of Motor Carrier Compliance by July 1, 2012;
  - Department of Highway Safety and Motor Vehicles by August 31, 2012;
  - Department of Health's Test and Development Lab and all remaining data center resources located at the Capital Circle Office Complex by December 31, 2012;
  - Department of Veterans' Affairs by July 1, 2013;
  - Department of Legal Affairs by December 31, 2013; and
  - Department of Agriculture and Consumer Services' Agriculture Management Information Center in the Mayo Building and the Division of Licensing by March 31, 2014.
- To the SSRC:
  - Fish and Wildlife Conservation Commission, except for the commission's Fish and Wildlife Research Institute in St. Petersburg, by July 1, 2013;
  - Department of Economic Opportunity by October 31, 2013;
  - Executive Office of the Governor, to include the Division of Emergency Management except for the Emergency Operation Center's management system in Tallahassee and the Camp Blanding Emergency Operations Center in Starke, by December 31, 2013; and
  - Department of Elderly Affairs by March 31, 2014.
- To the NWRDC:
  - Department of Revenue's Carlton Building and Imaging Center locations by September 30, 2012.

The following entities are exempted from data center consolidation:

- Florida Department of Law Enforcement;
- Department of Lottery's Gaming System and the department's Backup Data Center in Orlando;
- Systems Design and Development in the Office of Policy and Budget;
- State Board of Administration;
- State Attorneys;
- Public Defenders Office;
- Criminal Conflict and Civil Regional Counsel;
- Capital Collateral Regional Counsel;
- Florida Clerks of Court Operations Corporation; and
- Florida Housing Finance Corporation

The Department of Financial Services must consolidate in Fiscal Year 2015-2016.

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<sup>14</sup> Chapter 2011-50, L.O.F.

<sup>15</sup> Chapter 2012-142, L.O.F.

The Implementing Bill for the 2013-2014 General Appropriations Act<sup>16</sup> modified the consolidation schedule in s. 282.201(4), F.S., to require that the Fish and Wildlife Conservation Commission, except for the commission's Fish and Wildlife Research Institute in St. Petersburg, be consolidated into the NSRC by October 30, 2013. The bill also deleted the consolidation schedule for the Department of Veterans' Affairs, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services' Agriculture Management Information Center.<sup>17</sup>

Each agency identified for consolidation into a primary data center must submit with its respective legislative budget request the specific recurring and nonrecurring budget adjustments of resources by appropriation category into the appropriate data processing category pursuant to the legislative budget request instructions in s. 216.023, F.S.

### **The Financial Management Information System Act<sup>18</sup>**

The Florida Financial Management Information System (FFMIS) Act, authorized in ss. 215.90 through 215.96, F.S., was established to plan, implement, and manage a unified information system which provides fiscal, management, and accounting information. The FFMIS Act established the Florida Management Information Board (FMIB) and the FFMIS Coordinating Council. The FMIB is comprised of the Governor and Cabinet and has overall responsibility for managing and overseeing the development of Florida Financial Management Information System pursuant to s. 215.95, F.S., including establishing financial management policies and procedures for executive branch agencies. The Council is comprised of the members of the Cabinet, the secretary of the Department of Management Services, and the director of the Governor's Office of Policy and Budget. Among other duties, the Council is to approve all FFMIS subsystem designs and modifications prior to implementation and to make recommendations to the FMIB on policy alternatives to ensure coordination between the subsystems, as defined in ss. 215.93 and 215.96, F.S.

There are five FFMIS subsystems which must be designed, implemented, and operated pursuant to the act. Each has a statutorily-identified functional owner as well as additional statutory requirements as follows:

- Planning and Budgeting – The Executive Office of the Governor is the functional owner. The system must also be designed, implemented, and operated pursuant to ch. 216, F.S.;
- Florida Accounting Information Resource (FLAIR) – The Department of Financial Services is the functional owner. The system must also be designed, implemented, and operated pursuant to ss. 17.03, 215.86, 216.141, and 216.151, F.S.;
- Cash Management System (CMS) – The Chief Financial Officer is the functional owner;
- Purchasing (MyFloridaMarketplace) – The Department of Management Services is the functional owner;

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<sup>16</sup> Senate Bill 1502, section 47.

<sup>17</sup> Pursuant to section 48 of SB 1502, this amendment expires July 1, 2014, and the text of s. 282.201(4), F.S., reverts to the text in effect on June 30, 2013.

<sup>18</sup> All the information in this section comes from Florida Senate Issue Brief 2009-321, *Florida Financial Management Information System (FFMIS) Act*, pp. 2-3.

- Personnel Information (PeopleFirst) – The Department of Management Services is the functional owner. The system must also be designed, implemented, and operated pursuant to s. 110.116, F.S.

The FFMIS Act identifies each subsystem's general functional requirements but allows each functional owner to establish additional functions unless they are specifically prohibited by the FFMIS Act. Functional owners may not establish or maintain additional subsystems which duplicate any of the FFMIS subsystems.

The FMIB approved a strategic plan on March 14, 2000, that authorized the replacement of the FFMIS subsystems with an enterprise-wide financial management system that integrates financial information and standardizes policies and information. This system has never been implemented. The FMIB has not made any decisions relating to policy or the FFMIS subsystems since February 2001 when it modified the strategic plan to allow the use of outsourcing as a means to replace or enhance the functionality of the FFMIS subsystems. No subsystem designs or modifications have been brought to the FMIB for review or approval since that time. As a result, the overall governance and management of each FFMIS subsystem has been "unofficially delegated" to each functional owner and each functional owner has autonomously pursued an independent path for development and enhancement of its subsystem. The FMIB has been inactive since February 2005.

### **Method of Reorganization for the Executive Branch**

Pursuant to s. 20.06, F.S., the executive branch of state government must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such a transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding.

A type one transfer is the transferring intact of an existing agency or department so that the agency or department becomes a unit of another agency or a department. Any agency or department transferred to another agency or department by a type one transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made, unless otherwise provided by law. Any agency or department transferred by a type one transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, transferred to the agency or department to which it is transferred. Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed

therefrom or abolished. Any agency or department or a program, activity, or function transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided. Unless otherwise provided, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions. Unless otherwise provided, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

### III. Effect of Proposed Changes:

**Section 1** repeals s. 14.204, F.S., which creates and provides the duties for the now-defunct Agency for Enterprise Information Technology (AEIT).

**Section 2** creates in s. 20.61, F.S., the Agency for State Technology (AST) within the Department of Management Services (DMS) for administrative purposes only. The AST must develop, implement, and manage state enterprise information technology services. The executive director of the AST, who will be the state's Chief Information Officer (CIO), must be appointed by the Governor, and confirmed by the Senate.

The bill creates a Technology Advisory Council to make recommendations to the executive director on enterprise information technology policy, standards and opportunities for public-private partnerships. The council must comply with the code of ethics for public officers, and each member must file statements of financial interests.

**Section 3** amends the definitions in s. 282.0041, F.S., by modifying, adding, and deleting some definitions, and changing references from the AEIT to the AST.

The bill creates a new definition for "state agency" to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, and the Justice Administration Commission and the Public Service Commission. The definition excludes the university boards and state universities. For part I of chapter 282, F.S., only, the definition excludes the Department of Legal Affairs, the Department of Agriculture and Consumer Affairs and the Department of Financial Services. This new definition of "state agency" is not linked to the definition in Chapter 216, F.S., to avoid conflicting interpretations on whether state attorneys, public defenders, criminal conflict and civil regional counsel, and capital collateral regional counsel are to be subject to the authority of the AST. If these entities are not executive branch entities, they are not subject to the authority of the AST. The bill revises and adds technology definitions.

**Section 4** creates s. 282.0051, F.S., to specify the duties and functions of the AST. Specific duties, functions and in some cases, specific delivery dates of the AST are as follows:

- Develop state technology policy for the management of state information technology (IT) services;

- Establish architecture standards for the state's technology infrastructure;
- Establish project management and project oversight standards for IT projects;
- Provide project oversight for all technology projects exceeding \$10 million;
- Identify opportunities for standardizing and consolidating IT services;
- Collaborate with the DMS in establishing best practices for the procurement of IT products and services;
- Review all information technology purchases over \$250,000;
- Participate by evaluating, conducting, and negotiating competitive solicitations for state term contracts with the DMS for IT products and services;
- Establish standards for state agency IT reporting;
- Assist state agencies with legislative budget requests, upon request;
- Conduct annual assessments of state agencies for compliance with statewide IT standards;
- Manage the state data center;
- Collaborate with the Department of Law Enforcement to develop a process to manage information technology security issues;
- Conduct an annual market analysis of IT services;
- Recommend other IT services that should be managed at the enterprise level;
- Recommend any further data center consolidations into the state data center;
- Propose methodology for collecting current and planned state agency IT expenditure data;
- Provide alternatives for state agencies where compliance with AST standards, policies or requirements risk loss of federal funding; and
- Adopt rules.

If the Department of Financial Services, Department of Legal Affairs, and Department of Agriculture and Consumer Services implement a technology project with a total cost of \$25 million or more that affects another state agency, they are subject to the oversight IT architecture standards, project management standards, and IT reporting standards of the AST. If an IT project administered by an agency subject to the authority of the AST will interface with an IT system administered by the Department of Financial Services, Department of Legal Affairs, or Department of Agriculture and Consumer Services, the AST must consult on the project with those three agencies.

**Section 5** creates s. 282.0515, F.S., and provides the Department of Financial Services, Department of Legal Affairs, and Department of Agriculture and Consumer Services are not subject to the standards, services, and functions established by the AST, but each of these agencies may contract separately with AST to perform any of those services and functions. However, these three agencies must adopt the AST standards with regard to IT architecture standards, project management standards, and IT reporting, or adopt alternative standards based on industry best practices in these three areas.

**Section 6** creates s. 282.0591, F.S., which specifies that the term for IT consultant services, staff augmentations, or commodities state term contracts will not exceed 48 months unless the AST, Department of Management Services and the Executive Office of the Governor determine a longer term is in the best interest of the state.

**Sections 7 and 8** repeal ss. 282.0055 and 282.0056, F.S., which specified AEIT duties with regards to the assignment of information technology resources, and development of a work plan, respectively.

**Section 9** amends s. 282.201, F.S., relating to the state data center system, by deleting duties of AEIT, and creating within AST the state data center, consisting of the Northwood Shared Resource Center (NSRC) and the Southwood Shared Resource Center (SSRC). The state data center must:

- Offer and support the services and applications provided to customer entities;
- Maintain the performance of the state data center;
- Develop a business continuity plan and a disaster recovery plan;
- Enter into service level agreements with customer entities, which must contain certain provisions;
- Be the custodian of resources and equipment that are located, operated, supported, and managed by the state data center; and
- Assume administrative access rights to the resources and equipment, such as servers, network components, and other devices that are consolidated into the state data center.

The bill repeals the current schedule for consolidation of agency data centers, and specifies that the Department of Financial Services, Department of Legal Affairs, Department of Agriculture and Consumer Services, the regional traffic management centers, and the Office of Toll Operations of the Department of Transportation are exempt from data center consolidation.

The bill removes an existing exemption from data center consolidation for state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations Corporation, and the Florida Housing Finance Corporation. Any of these entities that are part of the executive branch are subject to the authority of the AST by operation of the definition of “state agency” in the bill; for entities that are not part of the executive branch, the exemption is no longer needed.

**Sections 10, 11, and 12** repeal ss. 282.203, 282.204, and 282.205, F.S., relating to primary data centers, the NSRC, and the SSRC, respectively. The duties under these sections will be subsumed within the duties specified in section 7 of the bill.

**Section 13** amends s. 282.318, F.S., relating to enterprise IT security. The bill generally replaces AEIT with AST in regards to existing enterprise IT security duties. The bill supplements existing duties to require AST to publish an information technology security framework for use by state agencies, to include a risk assessment methodology, protection procedures, threat detection, data recovery, procedures for limiting unauthorized access to IT resources, and establishing asset management procedures. The bill also requires AST to train state agency IT security managers in collaboration with the Cybercrime Office in the Department of Law Enforcement.

State agencies must:

- Designate an information security manager who reports to the agency head;
- Submit security plans which include performance metrics;
- Conduct risk assessments consistent with AST risk assessment methodology;



- Develop procedures for reporting IT security incidents to the Cybercrime Office in the Department of Law Enforcement and, for those agencies under the jurisdiction of the Governor, to the Chief Inspector General;
- Require state agency employees to complete security awareness training offered by AST; and
- Report IT security incidents to the Cybercrime Office and AST.

**Sections 14 and 15** repeal ss. 282.33 and 282.34, F.S., respectively, relating to energy efficiency standards for data centers, and the implementation of a statewide email service.

**Section 16** amends s. 17.0315, F.S., to make terminology changes consistent with shifting duties from AEIT to AST.

**Section 17** amends s. 20.055, F.S., to add the AST into the definition of “state agency,” which has the effect of clarifying that the AST must have an Office of Inspector General.

**Sections 18 and 19** amend ss. 110.205 and 215.322, F.S., respectively, to make terminology changes.

**Section 20** amends s. 215.96 F.S., to add the executive director of the AST to the FMIS coordinating council.

**Section 21** amends s. 216.023, F.S., to require that for legislative budget requests for IT projects over \$10 million in total cost, the governance structure must incorporate the applicable project management and oversight standards established by the AST.

**Sections 22 through 25** amend ss. 287.057, 445.011, 445.045, and 668.50, F.S., respectively, to change terminology to reflect the transfer of technology duties from the AEIT to the AST.

**Section 26** amends s. 943.0415, F.S., to task the Cybercrime Office within the Department of Law Enforcement with the following additional duties:

- Monitor IT resources and provide analysis on information technology security incidents;
- Investigate violations of state law pertaining to IT security incidents, threats, or breaches;
- Provide security awareness training and information to state agency employees; and
- Consult with the AST in the adoption of rules relating to IT security.

**Section 27** amends s. 1004.649, F.S., to clarify that the cost-allocation methodology used at the Northwest Regional Data Center at Florida State University must comply with applicable state and federal requirements. The bill also requires that service level agreements between the Northwest Regional Data Center and its state agency customers must:

- Prohibit the transfer of computing services between the Northwest Regional Data Center and the state data center without at least 180 days’ notice of service cancellation;
- Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit; and
- Provide that the service-level agreement may be terminated by either party for cause only after giving notice to the other party.

**Section 28** transfers the AEIT to the AST by a type two transfer. The only rules transferred are chapters 71A-1 and 71A-2 of the Florida Administrative Code, both relating to IT security policies; all other rules adopted by the AEIT are nullified.

**Sections 29 and 30** transfer the NSRC and the SSRC to the AST by type two transfer.

**Section 31** requires the AST to complete a feasibility study that provides recommendations for managing state government data in a manner that promotes its interoperability and openness and ensures that such data is available to the public if legally permissible and not cost prohibitive. The study must include a clear description of which state government data should be public information, recommended standards for the data, a plan for implementing a single internet website that contains the public information or links to it, and a recommended governance structure. The study must be submitted to legislative leaders and the Executive Office of the Governor by June 1, 2015.

**Section 32** creates a State Data Center Task Force comprised of the members of the boards of trustees of the NSRC and SSRC as of June 30, 2014, for the purpose of assisting in the transition of the NSRC and SSRC into the state data center.

**Sections 33 through 38** appropriate funds and create budget entities, for the 2014-2015 fiscal year; appropriations are provided for \$3,563,573 in recurring general revenue funds and \$1,095,005 in nonrecurring general revenue funds, and 25 full time equivalent positions are authorized with associated salary rate of 2,083,481 to the AST. For the 2014-2015 fiscal year; appropriations are made for \$144,870 in recurring general revenue funds and \$7,546 in nonrecurring general revenue funds, and two full time equivalent positions are authorized with associated salary rate of 93,120 to the Department of Law Enforcement.

**Section 39** requires the AST to contract with a third party to complete a security risk assessment of the State Data Center and state agency customers. The assessment must include existing security practices, evaluate industry best practices, provide recommendations and prioritize the identified gaps in order of relative importance to the state agency customers' business objectives. The assessment will be funded \$500,000 from nonrecurring general revenue and must be submitted to legislative leaders and the Executive Office of the Governor by June 30, 2015.

**Section 40** requires the AST to complete an operational assessment that standardizes the operational processes, identifies staff resource duplication, and provide recommendation for reorganization of the State Data Center. The recommendation must be submitted to legislative leaders and the Executive Office of the Governor by February 1, 2015.

**Section 41** specifies that the transfers of the NSRC and SSRC authorized in Sections 29 and 30 do not require Legislative Budget Approval.

Except as otherwise provided, the bill takes effect July 1, 2014.

**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:

For the 2014-2015 fiscal year, CS/SB 928 appropriates to the AST \$3,563,573 in recurring general revenue funds, \$1,095,005 in nonrecurring general revenue funds, and 25 full time equivalent positions with associated salary rate of 2,083,481.

For the 2014-2015 fiscal year, \$144,870 in recurring general revenue funds, \$7,546 in nonrecurring general revenue funds, and two full time equivalent positions with associated salary rate of 93,120 are appropriated to the Florida Department of Law Enforcement, in this bill.

**Department of Management Services Administrative Costs**

Currently, the Southwood Shared Resource Center and the Northwood Shared Resource Center are assessed charges for the services they receive from the Department of Management Services. The assessments paid by the centers in the current year are roughly \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Absent clarification on the requirement that the executive director of the AST must be a “proven, effective” administrator, the requirement may be subject to differing interpretations.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 17.0315, 20.055, 110.205, 215.322, 215.96, 216.023, 282.0041, 282.201, 282.318, 287.057, 445.011, 445.045, 668.50, 943.0415, and 1004.649.

This bill creates the following sections of the Florida Statutes: 20.61 and 282.0051.

This bill repeals the following sections of the Florida Statutes: 14.204, 282.0055, 282.0056, 282.203, 282.204, 282.205, 282.33, and 282.34.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Appropriations on March 13, 2014:**

The CS:

- Clarifies and specifies the funding approach for the AST; appropriates recurring general revenue of \$3,563,573, non-recurring general revenue of \$1,095,005 and 25 full time positions to the AST.
- Appropriates \$144,870 of recurring general revenue, \$7,546 of nonrecurring general revenue, and two positions to the Florida Department of Law Enforcement to support new duties defined in the bill related to cybercrime.
- Provides for the AST to complete an operational assessment of the state data center and a security risk assessment on state information technology resources by June 2015.
- Revises the duties of the Technology Advisory Council to include the consideration of private-public partnerships and defines a process for the cabinet to appoint a member to the council.
- Revises the definition of “State Agency” to exclude the Department of Financial Services, Department of Legal Affairs, and the Department of Agriculture and Consumer Services. Clarifies technical definitions.
- Requires AST provide project oversight for any information technology projects of the Department of Financial Services, Department of Legal Affairs, or Department of

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Agriculture and Consumer Services that have a total project cost of \$25 million or more.

- Provides the time frames by which certain new duties of the agency are to be completed.
- Clarifies the responsibilities of the agency as related to the procurement of information technology products and services.
- Provides that state term contracts for information technology commodities, consultant services, or staff augmentation services will not exceed 48 months unless a longer term is in the best interest of the state.

**B. Amendments:**

None.

By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled  
 2 An act relating to state technology; repealing s.  
 3 14.204, F.S., relating to the Agency for Enterprise  
 4 Information Technology within the Executive Office of  
 5 the Governor; creating s. 20.61, F.S.; creating the  
 6 Agency for State Technology within the Department of  
 7 Management Services; providing for an executive  
 8 director and other permanent positions; creating a  
 9 Technology Advisory Council and providing for  
 10 membership; amending s. 282.0041, F.S.; revising and  
 11 defining terms used in the Enterprise Information  
 12 Technology Services Management Act; creating s.  
 13 282.0051, F.S.; providing the powers, duties, and  
 14 functions of the Agency for State Technology;  
 15 authorizing the agency to adopt rules; providing  
 16 exceptions for certain departments; repealing s.  
 17 282.0055, F.S., relating to the assignment of  
 18 information technology resource and service  
 19 responsibilities; repealing s. 282.0056, F.S.,  
 20 relating to the development of an annual work plan,  
 21 the development of implementation plans, and policy  
 22 recommendations relating to enterprise information  
 23 technology services; amending s. 282.201, F.S.;  
 24 providing for a state data center and the duties of  
 25 the center; deleting duties for the Agency for  
 26 Enterprise Information Technology; revising the  
 27 schedule for consolidating agency data centers and  
 28 deleting obsolete provisions; revising the limitations  
 29 on state agencies; repealing s. 282.203, F.S.,

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30 relating to primary data centers; repealing s.  
 31 282.204, F.S., relating to the Northwood Shared  
 32 Resource Center; repealing s. 282.205, F.S., relating  
 33 to the Southwood Shared Resource Center; amending s.  
 34 282.318, F.S.; conforming provisions to changes made  
 35 by the act; revising the duties of the state agencies  
 36 with respect to information technology security;  
 37 repealing s. 282.33, F.S., relating to objective  
 38 standards for data center energy efficiency; repealing  
 39 s. 282.34, F.S., relating to statewide e-mail service;  
 40 amending ss. 17.0315, 20.055, 110.205, 215.322, and  
 41 215.96, F.S.; conforming provisions to changes made by  
 42 the act; amending s. 216.023, F.S.; requiring the  
 43 governance structure of information technology  
 44 projects to incorporate certain standards; amending s.  
 45 287.057, F.S.; requiring the Department of Management  
 46 Services to consult with the agency with respect to  
 47 the online procurement of commodities; amending ss.  
 48 445.011, 445.045, and 668.50, F.S.; conforming  
 49 provisions to changes made by the act; amending s.  
 50 943.0415, F.S.; providing additional duties for the  
 51 Cybercrime Office in the Department of Law Enforcement  
 52 relating to cyber security; requiring the office to  
 53 provide cyber security training to state agency  
 54 employees; requiring the office to consult with the  
 55 agency; amending s. 1004.649, F.S.; revising  
 56 provisions relating to the Northwest Regional Data  
 57 Center; revising the center's duties and the content  
 58 of service-level agreements with state agency

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59 customers; transferring the components of the Agency  
 60 for Enterprise Information Technology to the Agency  
 61 for State Technology; providing that certain rules  
 62 adopted by the Agency for Enterprise Information  
 63 Technology are nullified; transferring the Northwood  
 64 Shared Resource Center and the Southwood Shared  
 65 Resource Center to the Agency for State Technology;  
 66 requiring the Agency for State Technology to complete  
 67 a feasibility study relating to managing state  
 68 government data; specifying the components of the  
 69 study; requiring the study to be submitted to the  
 70 Governor and Legislature by a certain date; creating  
 71 the State Data Center Task Force; specifying the  
 72 membership and purpose of the task force; providing  
 73 for expiration; providing an appropriation; providing  
 74 effective dates.

75  
 76 Be It Enacted by the Legislature of the State of Florida:

77  
 78 Section 1. Section 14.204, Florida Statutes, is repealed.

79 Section 2. Section 20.61, Florida Statutes, is created to  
 80 read:

81 20.61 Agency for State Technology.—The Agency for State  
 82 Technology is created within the Department of Management  
 83 Services.

84 (1) The agency is a separate budget entity and is not  
 85 subject to control, supervision, or direction by the department,  
 86 including, but not limited to, purchasing, transactions  
 87 involving real or personal property, personnel, or budgetary

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88 matters.

89 (2) The agency shall be headed by an executive director  
 90 appointed by the Governor and subject to the confirmation of the  
 91 Senate. The executive director shall be the State Chief  
 92 Information Officer.

93 (a) The executive director must be a proven, effective  
 94 administrator who preferably has executive-level experience in  
 95 both the public and private sectors.

96 (b) The Governor shall conduct a thorough search to find  
 97 the most qualified candidate and in conducting such a search,  
 98 the Governor shall place emphasis on the development and  
 99 implementation of information technology strategic planning;  
 100 management of enterprise information technology projects,  
 101 particularly management of large-scale consolidation projects;  
 102 and development and implementation of fiscal and substantive  
 103 information technology policy.

104 (3) The following positions are established within the  
 105 agency, all of which shall be appointed by the executive  
 106 director:

107 (a) A Deputy State Chief Information Officer.

108 (b) A Chief Planning Officer and six Strategic Planning  
 109 Coordinators with one coordinator assigned to each of the  
 110 following major program areas: health and human services,  
 111 education, government operations, criminal and civil justice,  
 112 agriculture and natural resources, and transportation and  
 113 economic development.

114 (c) A Chief Operations Officer.

115 (d) A Chief Information Security Officer.

116 (e) A Chief Technology Officer.

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117 (4) The Technology Advisory Council, consisting of seven  
 118 members, is established and shall be maintained within the  
 119 agency pursuant to s. 20.052. Four members, two of whom must be  
 120 from the private sector, shall be appointed by the Governor; one  
 121 member shall be appointed by the Cabinet; and one member each  
 122 shall be appointed by the President of the Senate and the  
 123 Speaker of the House of Representatives. Upon initial  
 124 establishment of the council, two of the Governor's appointments  
 125 shall be for 2-year terms. Thereafter all appointments shall be  
 126 for 4-year terms.

127 (a) The council shall consider and make recommendations to  
 128 the executive director of the agency on such matters as  
 129 enterprise information technology policies, standards, services,  
 130 and architecture.

131 (b) The executive director of the agency shall consult with  
 132 the council with regard to executing the duties and  
 133 responsibilities of the agency related to statewide information  
 134 technology strategic planning and policy.

135 (c) The council shall be governed by the code of ethics for  
 136 public officers and employees as set forth in part III of  
 137 chapter 112 and each member must file a statement of financial  
 138 interests pursuant to s. 112.3145.

139 Section 3. Section 282.0041, Florida Statutes, is amended  
 140 to read:

141 282.0041 Definitions.—As used in this chapter, the term:

142 ~~(1) "Agency" has the same meaning as in s. 216.011(1)(qq),~~  
 143 ~~except that for purposes of this chapter, "agency" does not~~  
 144 ~~include university boards of trustees or state universities.~~

145 ~~(2) "Agency for Enterprise Information Technology" means~~

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146 ~~the agency created in s. 14.204.~~

147 ~~(3) "Agency information technology service" means a service~~  
 148 ~~that directly helps an agency fulfill its statutory or~~  
 149 ~~constitutional responsibilities and policy objectives and is~~  
 150 ~~usually associated with the agency's primary or core business~~  
 151 ~~functions.~~

152 ~~(4) "Annual budget meeting" means a meeting of the board of~~  
 153 ~~trustees of a primary data center to review data center usage to~~  
 154 ~~determine the apportionment of board members for the following~~  
 155 ~~fiscal year, review rates for each service provided, and~~  
 156 ~~determine any other required changes.~~

157 ~~(1)(5)~~ "Breach" has the same meaning as in s. 817.5681(4).

158 ~~(2)(6)~~ "Business continuity plan" means a collection of  
 159 procedures and information used to maintain an agency's critical  
 160 operations during a period of displacement or interruption of  
 161 normal operations plan for disaster recovery which provides for  
 162 the continued functioning of a primary data center during and  
 163 after a disaster.

164 ~~(3)(7)~~ "Computing facility" means agency space containing  
 165 fewer than a total of 10 physical or logical servers, any of  
 166 which supports a strategic or nonstrategic information  
 167 technology service, as described in budget instructions  
 168 developed pursuant to s. 216.023, but excluding single, logical-  
 169 server installations that exclusively perform a utility function  
 170 such as file and print servers.

171 ~~(4)(8)~~ "Customer entity" means an entity that obtains  
 172 services from a state primary data center.

173 ~~(5)(9)~~ "Data center" means agency space containing 10 or  
 174 more physical or logical servers any of which supports a



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175 strategic or nonstrategic information technology service, as  
 176 described in budget instructions developed pursuant to s.  
 177 216.023.

178 ~~(6)(10)~~ "Department" means the Department of Management  
 179 Services.

180 (7) "Disaster recovery" means the processes, policies,  
 181 procedures, and infrastructure that relate to preparing for and  
 182 implementing recovery or continuation of an organization's vital  
 183 technology infrastructure after a natural or human-induced  
 184 disaster.

185 ~~(8)(11)~~ "Enterprise information technology service" means  
 186 an information technology service that is used in all agencies  
 187 or a subset of agencies and is established in law to be  
 188 designed, delivered, and managed at the enterprise level.

189 ~~(12) "E-mail, messaging, and calendaring service" means the~~  
 190 ~~enterprise information technology service that enables users to~~  
 191 ~~send, receive, file, store, manage, and retrieve electronic~~  
 192 ~~messages, attachments, appointments, and addresses. The e-mail,~~  
 193 ~~messaging, and calendaring service must include e-mail account~~  
 194 ~~management, help desk, technical support and user provisioning~~  
 195 ~~services, disaster recovery and backup and restore capabilities,~~  
 196 ~~antispam and antivirus capabilities, archiving and e-discovery,~~  
 197 ~~and remote access and mobile messaging capabilities.~~

198 (9) "Event" means an observable occurrence in a system or  
 199 network.

200 (10) "Incident" means a violation or imminent threat of  
 201 violation of computer security policies, acceptable use  
 202 policies, or standard security practices. An imminent threat of  
 203 violation exists when a state agency has a factual basis for

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204 believing that a specific incident is about to occur.

205 ~~(13) "Information system utility" means a full-service~~  
 206 ~~information processing facility offering hardware, software,~~  
 207 ~~operations, integration, networking, and consulting services.~~

208 ~~(11)(14)~~ "Information technology" means equipment,  
 209 hardware, software, firmware, programs, systems, networks,  
 210 infrastructure, media, and related material used to  
 211 automatically, electronically, and wirelessly collect, receive,  
 212 access, transmit, display, store, record, retrieve, analyze,  
 213 evaluate, process, classify, manipulate, manage, assimilate,  
 214 control, communicate, exchange, convert, converge, interface,  
 215 switch, or disseminate information of any kind or form.

216 (12)(15) "Information technology policy" means a specific  
 217 course or method of action selected from among alternatives that  
 218 guide and determine present and future decisions statements that  
 219 describe clear choices for how information technology will  
 220 deliver effective and efficient government services to residents  
 221 and improve state agency operations. A policy may relate to  
 222 investments, business applications, architecture, or  
 223 infrastructure. A policy describes its rationale, implications  
 224 of compliance or noncompliance, the timeline for implementation,  
 225 metrics for determining compliance, and the accountable  
 226 structure responsible for its implementation.

227 (13) "Information technology resources" has the same  
 228 meaning as in s. 119.011.

229 (14) "Information technology security" means the protection  
 230 afforded to an automated information system in order to attain  
 231 the applicable objectives of preserving the integrity,  
 232 availability, and confidentiality of data, information, and

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233 information technology resources.

234 ~~(15)-(16)~~ "Performance metrics" means the measures of an  
235 organization's activities and performance.

236 ~~(16)-(17)~~ "Primary data center" means a data center that is  
237 a recipient entity for consolidation of state agency nonprimary  
238 data centers and computing facilities and that is established by  
239 law.

240 ~~(17)-(18)~~ "Project" means an endeavor that has a defined  
241 start and end point; is undertaken to create or modify a unique  
242 product, service, or result; and has specific objectives that,  
243 when attained, signify completion.

244 (18) "Project oversight" means an independent review and  
245 analysis of an information technology project in order to  
246 provide information on the project's scope, completion  
247 timeframes, and budget and should identify and quantify any  
248 issues or risks affecting the successful and timely completion  
249 of the project.

250 (19) "Risk assessment ~~analysis~~" means the process of  
251 identifying security risks, determining their magnitude, and  
252 identifying areas needing safeguards.

253 (20) "Service level" means the key performance indicators  
254 ~~(KPI)~~ of an organization or service which must be regularly  
255 performed, monitored, and achieved.

256 (21) "Service-level agreement" means a written contract  
257 between a data center and a customer entity which specifies the  
258 scope of services provided, service level, the duration of the  
259 agreement, the responsible parties, and service costs. A  
260 service-level agreement is not a rule pursuant to chapter 120.

261 (22) "Stakeholder" means an individual, group,

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262 organization, or state agency involved in or affected by a  
263 course of action.

264 ~~(23)-(22)~~ "Standards" means required practices, controls,  
265 components, or configurations established by an authority.

266 (24) "State Agency" means any official, officer,  
267 commission, board, authority, council, committee, or department  
268 of the executive branch of state government, and the Justice  
269 Administration Commission and the Public Service Commission. For  
270 the purpose of this chapter, "agency" does not include  
271 university boards of trustees or state universities.

272 (25) "State data center" means an enterprise information  
273 technology service provider that is the recipient entity for the  
274 consolidation of state agency data centers and computing  
275 facilities and that establishes, implements, operates, monitors,  
276 reviews, maintains, and physically or virtually improves  
277 information technology services designated by the Agency for  
278 State Technology in compliance with the operating guidelines and  
279 procedures set forth by the agency pursuant to s. 282.0051(11).

280 ~~(26)-(23)~~ "SUNCOM Network" means the state enterprise  
281 telecommunications system that provides all methods of  
282 electronic or optical telecommunications beyond a single  
283 building or contiguous building complex and used by entities  
284 authorized as network users under this part.

285 ~~(27)-(24)~~ "Telecommunications" means the science and  
286 technology of communication at a distance, including electronic  
287 systems used in the transmission or reception of information.

288 (28)-(25) "Threat" means any circumstance or event that has  
289 the potential to adversely affect a state agency's operation or  
290 assets through an information system by means of unauthorized

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291 ~~access, destruction, disclosure, modification of information, or~~  
 292 ~~denial of service may cause harm to the integrity, availability,~~  
 293 ~~or confidentiality of information technology resources.~~

294 (29) "Variance" means a calculated value that illustrates a  
 295 positive or negative deviation from a projection measured  
 296 against documented estimations within a project plan.

297 ~~(26) "Total cost" means all costs associated with~~  
 298 ~~information technology projects or initiatives, including, but~~  
 299 ~~not limited to, value of hardware, software, service,~~  
 300 ~~maintenance, incremental personnel, and facilities. Total cost~~  
 301 ~~of a loan or gift of information technology resources to an~~  
 302 ~~agency includes the fair market value of the resources.~~

303 ~~(27) "Usage" means the billing amount charged by the~~  
 304 ~~primary data center, less any pass-through charges, to the~~  
 305 ~~customer entity.~~

306 ~~(28) "Usage rate" means a customer entity's usage or~~  
 307 ~~billing amount as a percentage of total usage.~~

308 Section 4. Section 282.0051, Florida Statutes, is created  
 309 to read:

310 282.0051 Agency for State Technology; powers, duties, and  
 311 functions.—

312 (1) The Agency for State Technology has the following  
 313 powers, duties, and functions:

314 (a) Developing and publishing information technology policy  
 315 for the management of the state's information technology  
 316 resources.

317 (b) Establishing and publishing information technology  
 318 architecture standards to achieve the most efficient use of the  
 319 state's information technology resources and to ensure

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320 compatibility and alignment with the needs of state agencies.  
 321 The agency shall assist state agencies in complying with such  
 322 standards.

323 (c) By June 30, 2015, establishing project management and  
 324 project oversight standards that state agencies must comply with  
 325 while implementing information technology projects. The Agency  
 326 for State Technology shall provide training opportunities to  
 327 state agencies to assist in the adoption of the project  
 328 management and oversight standards. To support data-driven  
 329 decisionmaking, such standards must include, but are not limited  
 330 to:

331 1. Performance measurements and metrics that objectively  
 332 reflect the status of an information technology project based on  
 333 the defined and documented project scope, cost, and schedule.

334 2. Methodologies for calculating acceptable variance ranges  
 335 in the projected versus actual scope, schedule, or cost of an  
 336 information technology project.

337 3. Reporting requirements that provide project visibility  
 338 to all identified stakeholders, including instances in which an  
 339 information technology project exceeds the acceptable variance  
 340 ranges as defined and documented in the project plan.

341 4. The content, format, and frequency of project updates.

342 (d) Beginning January 1, 2015, performing project oversight  
 343 on all information technology projects that have total project  
 344 costs of \$10 million or more and that are funded in the General  
 345 Appropriations Act or under state law. The agency shall report  
 346 at least quarterly to the Executive Office of the Governor, the  
 347 President of the Senate, and the Speaker of the House of  
 348 Representatives on any information technology project the agency

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349 identifies as being a high-risk project that may exceed the  
 350 acceptable variance ranges as defined and documented in the  
 351 project plan. The report must include an assessment of the risk  
 352 levels, including fiscal risks, associated with proceeding to  
 353 the next stage of the project and a recommendation for requiring  
 354 corrective action, which includes suspending or terminating the  
 355 project.

356 (e) By October 15, 2015, and biennially thereafter,  
 357 identifying opportunities for standardizing and consolidating  
 358 information technology services that support business functions  
 359 and operations, including administrative functions such as  
 360 purchasing, accounting and reporting, cash management, and  
 361 personnel, which are common across state agencies, and providing  
 362 recommendations for such standardization and consolidation to  
 363 the Executive Office of the Governor, the President of the  
 364 Senate, and the Speaker of the House of Representatives.

365 (f) In collaboration with the department, establishing best  
 366 practices for the procurement of information technology products  
 367 and services in order to reduce costs, increase productivity, or  
 368 improve services. Such practices must include a provision that  
 369 requires the agency to review all information technology  
 370 purchases made by state agencies which have a total cost of  
 371 \$250,000 or more, unless a purchase is specifically mandated by  
 372 the Legislature, for compliance with the standards established  
 373 pursuant to this section.

374 (g) Advising and collaborating with the department in  
 375 conducting procurement negotiations for information technology  
 376 products and services that will be used by multiple state  
 377 agencies, and collaborating with the department in information

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378 technology resource acquisition planning.

379 (h) Encouraging state agencies, when considering technology  
 380 infrastructure priorities, to actively seek out and identify  
 381 opportunities that potentially fit into the public-private  
 382 partnership model, and develop sustainable partnerships between  
 383 private entities and units of government in order to accelerate  
 384 project delivery and provide a source of new or increased  
 385 funding for other infrastructure needs.

386 (i) Establishing standards for information technology  
 387 reports and updates for use by state agencies which include, but  
 388 are not limited to, operational work plans, project spending  
 389 plans, and project status reports.

390 (j) Upon request, assisting state agencies in the  
 391 development of their information technology-related legislative  
 392 budget requests.

393 (k) Conducting annual assessments of state agencies to  
 394 determine their compliance with information technology standards  
 395 and guidelines developed and published by the Agency for State  
 396 Technology and provide results of the assessments to the  
 397 Executive Office of the Governor, the President of the Senate,  
 398 and the Speaker of the House of Representatives.

399 (l) Providing operational management and oversight of the  
 400 state data center established pursuant to s. 282.201, which  
 401 includes:

402 1. Implementing industry standards and best practices for  
 403 the state data center's facilities, operations, maintenance,  
 404 planning, and management processes.

405 2. Developing and implementing cost-recovery mechanisms  
 406 that recover the full cost of services, including direct and

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407 indirect costs, through charges to applicable customer entities.  
 408 Such mechanisms must comply with applicable state and federal  
 409 requirements relating to the distribution and use of such funds  
 410 and must ensure that for any fiscal year a service or customer  
 411 entity is not subsidizing another service or customer entity.  
 412 3. Establishing operating guidelines and procedures  
 413 necessary for the state data center to perform its duties  
 414 pursuant to s. 282.201 which comply with applicable state and  
 415 federal laws, rules, and policies and are in accordance with  
 416 generally accepted governmental accounting and auditing  
 417 standards. Such guidelines and procedures must include, but need  
 418 not be limited to:  
 419 a. Implementing a consolidated administrative support  
 420 structure that is responsible for the provision of financial  
 421 management, procurement, transactions involving real or personal  
 422 property, human resources, and operational support.  
 423 b. Implementing an annual reconciliation process to ensure  
 424 that each customer entity is paying for the full direct and  
 425 indirect cost of each service as determined by the customer  
 426 entity's use of each service.  
 427 c. Providing rebates, which may be credited against future  
 428 billings, to customer entities when revenues exceed costs.  
 429 d. Requiring a customer entity to validate that sufficient  
 430 funds are in or will be transferred into the appropriate data  
 431 processing appropriation category before implementing a customer  
 432 entity's request for a change in the type or level of service if  
 433 such change results in a net increase to the customer entity's  
 434 costs for that fiscal year.  
 435 e. Providing to each customer entity's agency head by

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436 September 1 of each year the projected costs to provide data  
 437 center services for the following fiscal year.  
 438 f. Providing a plan for consideration by the Legislative  
 439 Budget Commission if the cost of a service is increased for a  
 440 reason other than a customer entity's request pursuant to  
 441 subparagraph 4. which results in a net increase to the customer  
 442 entity for that fiscal year.  
 443 g. Standardizing and consolidating procurement and  
 444 contracting practices.  
 445 4. In collaboration with the Department of Law Enforcement,  
 446 developing and implementing a process for detecting, reporting,  
 447 and responding to information technology security incidents,  
 448 breaches, or threats.  
 449 5. Adopting rules relating to the operation of the state  
 450 data center, which include, but are not limited to, its  
 451 budgeting and accounting procedures, cost-recovery  
 452 methodologies, and operating procedures.  
 453 6. Consolidating contract practices and coordinating  
 454 software, hardware, or other technology-related procurements.  
 455 7. Annually conducting a market analysis to determine if  
 456 the state's approach to the provision of data center services is  
 457 the most effective and efficient manner by which its customer  
 458 entities can acquire such services based on federal, state, and  
 459 local government trends, best practices in service provision,  
 460 and the acquisition of new and emerging technologies. The  
 461 results of the market analysis should assist the state data  
 462 center in making any necessary adjustments to its data center  
 463 service offerings.  
 464 (m) Recommending other information technology services that

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465 should be designed, delivered, and managed as enterprise  
 466 information technology services. Such recommendations should  
 467 include the identification of any existing information  
 468 technology resources associated with such services which would  
 469 need to be transferred as a result of such services being  
 470 delivered and managed as enterprise information technology  
 471 services.

472 (n) Recommending any further agency computing facility or  
 473 data center consolidations into the state data center  
 474 established pursuant to s. 282.201. Such recommendations should  
 475 include the proposed timeline for the consolidation.

476 (o) In consultation with state agencies, proposing  
 477 methodology and approaches for identifying and collecting both  
 478 current and planned information technology expenditure data at  
 479 the state agency level.

480 (p) Adopting rules to administer this section.

481 (2) Except as provided in subsection (3), the Department of  
 482 Financial Services, the Department of Legal Affairs, the  
 483 Department of Agriculture and Consumer Services are not subject  
 484 to the powers, duties and functions of the Agency for State  
 485 Technology established under this section. Each of those  
 486 departments shall adopt the standards established in paragraphs  
 487 (1)(b), (1)(c), and (1)(i) or adopt alternative standards based  
 488 on best practices or industry standards and may contract  
 489 separately with the Agency for State Technology to provide and  
 490 perform any of the services and functions for those departments.

491 (3)(a) An information technology project administered or  
 492 implemented by the Department of Financial Services, the  
 493 Department of Legal Affairs, or the Department of Agriculture

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494 and Consumer Services is subject to the powers, duties, and  
 495 functions of the Agency for State Technology if such project is  
 496 expected to have a total project cost of \$50 million or more,  
 497 and the project directly affects another state agency or another  
 498 information technology project that is subject to the powers,  
 499 duties, and functions of the Agency for State Technology.

500 (b) If an information technology project administered by a  
 501 state agency subject to the powers, duties, and functions of the  
 502 Agency for State Technology must be connected to or otherwise  
 503 accommodated by an information technology system administered by  
 504 the Department of Financial Services, the Department of Legal  
 505 Affairs or the Department of Agriculture and Consumer Services,  
 506 the Agency for State Technology shall consult with those  
 507 departments regarding the risks and other effects of such  
 508 projects on those departments' information technology systems  
 509 and shall work cooperatively with those departments regarding  
 510 the connections, interfaces, timing, or accommodation required  
 511 to implement such projects.

512 Section 5. Section 282.0055, Florida Statutes, is repealed.

513 Section 6. Section 282.0056, Florida Statutes, is repealed.

514 Section 7. Section 282.201, Florida Statutes, is amended to  
 515 read:

516 282.201 State data center ~~system; agency duties and~~  
 517 limitations.—The A state data center system that includes all  
 518 primary data centers, other nonprimary data centers, and  
 519 computing facilities, and that provides an enterprise  
 520 information technology service as defined in s. 282.0041, is  
 521 established as a primary data center within the Agency for State  
 522 Technology and includes the facilities formerly known as the

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523 Northwood Shared Resource Center and the Southwood Shared  
 524 Resource Center.

525 (1) INTENT.—The Legislature finds that the most efficient  
 526 and effective means of providing quality utility data processing  
 527 services to state agencies requires that computing resources be  
 528 concentrated in quality facilities that provide the proper  
 529 security, disaster recovery, infrastructure, and staff resources  
 530 to ensure that the state's data is maintained reliably and  
 531 safely, and is recoverable in the event of a disaster.  
 532 ~~Efficiencies resulting from such consolidation include the~~  
 533 ~~increased ability to leverage technological expertise and~~  
 534 ~~hardware and software capabilities; increased savings through~~  
 535 ~~consolidated purchasing decisions; and the enhanced ability to~~  
 536 ~~deploy technology improvements and implement new policies~~  
 537 ~~consistently throughout the consolidated organization.~~ Unless  
 538 otherwise exempt by law, it is the intent of the Legislature  
 539 that all agency data centers and computing facilities be  
 540 consolidated into the state a primary data center by 2019.

541 (2) STATE DATA CENTER DUTIES.—The state data center shall:

542 (a) Offer, develop, and support the services and  
 543 applications as provided in the service-level agreements  
 544 executed with its customer entities.

545 (b) Maintain the performance of the state data center,  
 546 which includes ensuring proper data backup, data backup  
 547 recovery, a disaster recovery plan, appropriate security, power,  
 548 cooling, fire suppression, and capacity.

549 (c) Develop a business continuity plan and a disaster  
 550 recovery plan, and conduct a live exercise of these plans at  
 551 least annually.

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552 (d) Enter into a service level agreement with each customer  
 553 entity to provide the required type and level of service or  
 554 services. If a customer entity fails to execute an agreement  
 555 within 60 days after the commencement of a service, the state  
 556 data center may cease service. A service level agreement may not  
 557 have a term exceeding 3 years and at a minimum must:

558 1. Identify the parties and their roles, duties, and  
 559 responsibilities under the agreement.

560 2. State the duration of the contractual term and specify  
 561 the conditions for renewal.

562 3. Identify the scope of work.

563 4. Identify the products or services to be delivered with  
 564 sufficient specificity to permit an external financial or  
 565 performance audit.

566 5. Establish the services to be provided, the business  
 567 standards that must be met for each service, the cost of each  
 568 service, and the metrics and processes by which the business  
 569 standards for each service are to be objectively measured and  
 570 reported.

571 6. Provide a timely billing methodology for recovering the  
 572 cost of services provided to the customer entity pursuant to s.  
 573 215.422.

574 7. Provide a procedure for modifying the service level  
 575 agreement based on changes in the type, level, and cost of a  
 576 service.

577 8. Include a right-to-audit clause to ensure that the  
 578 parties to the agreement have access to records for audit  
 579 purposes during the term of the service level agreement.

580 9. Provide that a service level agreement may be terminated

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581 by either party for cause only after giving the other party and  
 582 the Agency for State Technology notice in writing of the cause  
 583 for termination and an opportunity for the other party to  
 584 resolve the identified cause within a reasonable period.  
 585 10. Provide for the mediation of disputes by the Division  
 586 of Administrative Hearings pursuant to s. 120.573.  
 587 (e) Be the custodian of resources and equipment that are  
 588 located, operated, supported, and managed by the state data  
 589 center for the purposes of chapter 273.  
 590 (f) Assume administrative access rights to the resources  
 591 and equipment, such as servers, network components, and other  
 592 devices that are consolidated into the state data center.  
 593 1. On the date of each consolidation specified in this  
 594 section, the General Appropriations Act, or the Laws of Florida,  
 595 each state agency shall relinquish all administrative rights to  
 596 such resources and equipment. State agencies required to comply  
 597 with federal security regulations and policies shall retain  
 598 administrative access rights sufficient to comply with the  
 599 management control provisions of those regulations and policies;  
 600 however, the state data center shall have the appropriate type  
 601 or level of rights to allow the center to comply with its duties  
 602 pursuant to this section. The Department of Law Enforcement  
 603 shall serve as the arbiter of any disputes which may arise  
 604 regarding the appropriate type and level of administrative  
 605 access rights relating to the provision of management control in  
 606 accordance with federal criminal justice information guidelines.  
 607 2. The state data center shall provide its customer  
 608 entities with access to applications, servers, network  
 609 components, and other devices necessary for state agencies to

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610 perform business activities and functions, and as defined and  
 611 documented in the service level agreement.  
 612 ~~(2) AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY DUTIES.~~  
 613 ~~The Agency for Enterprise Information Technology shall:~~  
 614 ~~(a) Collect and maintain information necessary for~~  
 615 ~~developing policies relating to the data center system,~~  
 616 ~~including, but not limited to, an inventory of facilities.~~  
 617 ~~(b) Annually approve cost-recovery mechanisms and rate~~  
 618 ~~structures for primary data centers which recover costs through~~  
 619 ~~charges to customer entities.~~  
 620 ~~(c) By September 30 of each year, submit to the~~  
 621 ~~Legislature, the Executive Office of the Governor, and the~~  
 622 ~~primary data centers recommendations to improve the efficiency~~  
 623 ~~and cost-effectiveness of computing services provided by state~~  
 624 ~~data center system facilities. Such recommendations must~~  
 625 ~~include, but need not be limited to:~~  
 626 ~~1. Policies for improving the cost-effectiveness and~~  
 627 ~~efficiency of the state data center system, which includes the~~  
 628 ~~primary data centers being transferred to a shared, virtualized~~  
 629 ~~server environment, and the associated cost savings resulting~~  
 630 ~~from the implementation of such policies.~~  
 631 ~~2. Infrastructure improvements supporting the consolidation~~  
 632 ~~of facilities or preempting the need to create additional data~~  
 633 ~~centers or computing facilities.~~  
 634 ~~3. Uniform disaster recovery standards.~~  
 635 ~~4. Standards for primary data centers which provide cost-~~  
 636 ~~effective services and transparent financial data to user~~  
 637 ~~agencies.~~  
 638 ~~5. Consolidation of contract practices or coordination of~~



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639 software, hardware, or other technology-related procurements and  
 640 the associated cost savings.

641 ~~6. Improvements to data center governance structures.~~

642 ~~(d) By October 1 of each year, provide recommendations to~~  
 643 ~~the Governor and Legislature relating to changes to the schedule~~  
 644 ~~for the consolidations of state agency data centers as provided~~  
 645 ~~in subsection (4).~~

646 ~~1. The recommendations must be based on the goal of~~  
 647 ~~maximizing current and future cost savings by:~~

648 ~~a. Consolidating purchase decisions.~~

649 ~~b. Leveraging expertise and other resources to gain~~  
 650 ~~economies of scale.~~

651 ~~c. Implementing state information technology policies more~~  
 652 ~~effectively.~~

653 ~~d. Maintaining or improving the level of service provision~~  
 654 ~~to customer entities.~~

655 ~~2. The agency shall establish workgroups as necessary to~~  
 656 ~~ensure participation by affected agencies in the development of~~  
 657 ~~recommendations related to consolidations.~~

658 ~~(e) Develop and establish rules relating to the operation~~  
 659 ~~of the state data center system which comply with applicable~~  
 660 ~~federal regulations, including 2 C.F.R. part 225 and 45 C.F.R.~~  
 661 ~~The rules must address:~~

662 ~~1. Ensuring that financial information is captured and~~  
 663 ~~reported consistently and accurately.~~

664 ~~2. Identifying standards for hardware, including standards~~  
 665 ~~for a shared, virtualized server environment, and operations~~  
 666 ~~system software and other operational software, including~~  
 667 ~~security and network infrastructure, for the primary data~~

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668 ~~centers; requiring compliance with such standards in order to~~  
 669 ~~enable the efficient consolidation of the agency data centers or~~  
 670 ~~computing facilities; and providing an exemption process from~~  
 671 ~~compliance with such standards, which must be consistent with~~  
 672 ~~paragraph (5)(b).~~

673 ~~3. Requiring annual full cost recovery on an equitable~~  
 674 ~~rational basis. The cost-recovery methodology must ensure that~~  
 675 ~~no service is subsidizing another service and may include~~  
 676 ~~adjusting the subsequent year's rates as a means to recover~~  
 677 ~~deficits or refund surpluses from a prior year.~~

678 ~~4. Requiring that any special assessment imposed to fund~~  
 679 ~~expansion is based on a methodology that apportions the~~  
 680 ~~assessment according to the proportional benefit to each~~  
 681 ~~customer entity.~~

682 ~~5. Requiring that rebates be given when revenues have~~  
 683 ~~exceeded costs, that rebates be applied to offset charges to~~  
 684 ~~those customer entities that have subsidized the costs of other~~  
 685 ~~customer entities, and that such rebates may be in the form of~~  
 686 ~~credits against future billings.~~

687 ~~6. Requiring that all service-level agreements have a~~  
 688 ~~contract term of up to 3 years, but may include an option to~~  
 689 ~~renew for up to 3 additional years contingent on approval by the~~  
 690 ~~board, and require at least a 180-day notice of termination.~~

691 ~~(3) STATE AGENCY DUTIES.-~~

692 ~~(a) For the purpose of completing the work activities~~  
 693 ~~described in subsections (1) and (2), Each state agency shall~~  
 694 ~~provide to the Agency for State Enterprise Information~~  
 695 ~~Technology all requested information relating to its data~~  
 696 ~~centers and computing facilities and any other information~~

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700 relevant to the effective agency's ability to effectively  
 701 transition of a state agency data center or computing facility  
 702 its computer services into the state a primary data center. The  
 703 agency shall also participate as required in workgroups relating  
 704 to specific consolidation planning and implementation tasks as  
 705 assigned by the Agency for Enterprise Information Technology and  
 706 determined necessary to accomplish consolidation goals.

707 (b) Each state agency customer of the state a primary data  
 708 center shall notify the state data center, by May 31 and  
 709 November 30 of each year, of any significant changes in  
 710 anticipated use utilization of data center services pursuant to  
 711 requirements established by the state boards of trustees of each  
 712 primary data center.

713 (4) SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.—

714 (a) Consolidations of agency data centers and computing  
 715 facilities shall be made by the date and to the specified state  
 716 primary data center facility as provided in this section and in  
 717 accordance with budget adjustments contained in the General  
 718 Appropriations Act.

719 (b) By December 31, 2011, the following shall be  
 720 consolidated into the Northwest Regional Data Center:

721 1. The Department of Education's Knott Data Center in the  
 722 Turlington Building.

723 2. The Department of Education's Division of Vocational  
 724 Rehabilitation.

725 3. The Department of Education's Division of Blind  
 Services, except for the division's disaster recovery site in  
 Daytona Beach.

4. The FCAT Explorer.

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726 (e) During the 2011-2012 fiscal year, the following shall  
 727 be consolidated into the Southwood Shared Resource Center:

728 1. By September 30, 2011, the Department of Corrections.

729 2. By March 31, 2012, the Department of Transportation's  
 730 Burns Building.

731 3. By March 31, 2012, the Department of Transportation's  
 732 Survey & Mapping Office.

733 (d) By July 1, 2012, the Department of Highway Safety and  
 734 Motor Vehicles' Office of Commercial Vehicle Enforcement shall  
 735 be consolidated into the Northwood Shared Resource Center.

736 (e) By September 30, 2012, the Department of Revenue's  
 737 Carlton Building and Imaging Center locations shall be  
 738 consolidated into the Northwest Regional Data Center.

739 (f) During the 2012-2013 fiscal year, the following shall  
 740 be consolidated into the Northwood Shared Resource Center:

741 1. By July 1, 2012, the Agency for Health Care  
 742 Administration.

743 2. By August 31, 2012, the Department of Highway Safety and  
 744 Motor Vehicles.

745 3. By December 31, 2012, the Department of Environmental  
 746 Protection's Palmetto Commons.

747 4. By December 31, 2012, the Department of Health's Test  
 748 and Development Lab and all remaining data center resources  
 749 located at the Capital Circle Office Complex.

750 (g) During the 2013-2014 fiscal year, the following shall  
 751 be consolidated into the Southwood Shared Resource Center:

752 1. By October 31, 2013, the Department of Economic  
 753 Opportunity.

754 2. By December 31, 2013, the Executive Office of the

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755 Governor, to include the Division of Emergency Management ~~except~~  
 756 ~~for the Emergency Operation Center's management system in~~  
 757 ~~Tallahassee and the Camp Blanding Emergency Operations Center in~~  
 758 ~~Starke.~~

759 ~~3. By March 31, 2014, the Department of Elderly Affairs.~~

760 ~~(h) By October 30, 2013, the Fish and Wildlife Conservation~~  
 761 ~~Commission, except for the commission's Fish and Wildlife~~  
 762 ~~Research Institute in St. Petersburg, shall be consolidated into~~  
 763 ~~the Northwood Shared Resource Center.~~

764 ~~(i) During the 2014-2015 fiscal year, the following~~  
 765 ~~agencies shall work with the Agency for Enterprise Information~~  
 766 ~~Technology to begin preliminary planning for consolidation into~~  
 767 ~~a primary data center:~~

768 ~~1. The Department of Health's Jacksonville Lab Data Center.~~

769 ~~2. The Department of Transportation's district offices,~~  
 770 ~~toll offices, and the District Materials Office.~~

771 ~~3. The Department of Military Affairs' Camp Blanding Joint~~  
 772 ~~Training Center in Starke.~~

773 ~~4. The Camp Blanding Emergency Operations Center in Starke.~~

774 ~~5. The Department of Education's Division of Blind Services~~  
 775 ~~disaster recovery site in Daytona Beach.~~

776 ~~6. The Department of Education's disaster recovery site at~~  
 777 ~~Santa Fe College.~~

778 ~~7. The Fish and Wildlife Conservation Commission's Fish and~~  
 779 ~~Wildlife Research Institute in St. Petersburg.~~

780 ~~8. The Department of Children and Family Services' Suncoast~~  
 781 ~~Data Center in Tampa.~~

782 ~~9. The Department of Children and Family Services' Florida~~  
 783 ~~State Hospital in Chattahoochee.~~

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784 ~~(j) During the 2015-2016 fiscal year, all computing~~  
 785 ~~resources remaining within an agency data center or computing~~  
 786 ~~facility, to include the Department of Financial Services'~~  
 787 ~~Hartman, Larson, and Fletcher Buildings data centers, shall be~~  
 788 ~~transferred to a primary data center for consolidation unless~~  
 789 ~~otherwise required to remain in the agency for specified~~  
 790 ~~financial, technical, or business reasons that must be justified~~  
 791 ~~in writing and approved by the Agency for Enterprise Information~~  
 792 ~~Technology. Such data centers, computing facilities, and~~  
 793 ~~resources must be identified by the Agency for Enterprise~~  
 794 ~~Information Technology by October 1, 2014.~~

795 (b)(k) The Department of Financial Services, the Department  
 796 of Legal Affairs, the Department of Agriculture and Consumer  
 797 Services, the Department of Law Enforcement, the Department of  
 798 the Lottery's Gaming System, Systems Design and Development in  
 799 the Office of Policy and Budget, the regional traffic management  
 800 centers and the Office of Toll Operations of the Department of  
 801 Transportation, and the State Board of Administration, state  
 802 attorneys, public defenders, criminal conflict and civil  
 803 regional counsel, capital collateral regional counsel, the  
 804 Florida Clerks of Court Operations Corporation, and the Florida  
 805 Housing Finance Corporation are exempt from data center  
 806 consolidation under this section.

807 (c)(l) A state Any agency that is consolidating its agency  
 808 data center or computing facility centers into the state a  
 809 primary data center must execute a new or update an existing  
 810 service-level agreement within 60 days after the commencement of  
 811 service specified consolidation date, as required by s.  
 812 282.201(2) s. 282.203, in order to specify the services and

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813 levels of service it is to receive from the state primary data  
 814 center as a result of the consolidation. If the state ~~an~~ agency  
 815 and the state primary data center are unable to execute a  
 816 service-level agreement by that date, the agency ~~and the primary~~  
 817 ~~data center~~ shall submit a report to the Executive Office of the  
 818 Governor ~~and to the chairs of the legislative appropriations~~  
 819 ~~committees~~ within 5 working days after that date which explains  
 820 the specific issues preventing execution and describing the plan  
 821 and schedule for resolving those issues.

822 ~~(m) Beginning September 1, 2011, and every 6 months~~  
 823 ~~thereafter until data center consolidations are complete, the~~  
 824 ~~Agency for Enterprise Information Technology shall provide a~~  
 825 ~~status report on the implementation of the consolidations that~~  
 826 ~~must be completed during the fiscal year. The report shall be~~  
 827 ~~submitted to the Executive Office of the Governor and the chairs~~  
 828 ~~of the legislative appropriations committees. The report must,~~  
 829 ~~at a minimum, describe:~~

830 1. ~~Whether the consolidation is on schedule, including~~  
 831 ~~progress on achieving the milestones necessary for successful~~  
 832 ~~and timely consolidation of scheduled agency data centers and~~  
 833 ~~computing facilities.~~

834 2. ~~The risks that may affect the progress or outcome of the~~  
 835 ~~consolidation and how these risks are being addressed,~~  
 836 ~~mitigated, or managed.~~

837 ~~(d)(n) Each state agency scheduled identified in this~~  
 838 ~~subsection for consolidation into the state a primary data~~  
 839 ~~center shall submit a transition plan to the Agency for State~~  
 840 ~~Technology appropriate primary data center by July 1 of the~~  
 841 ~~fiscal year before the fiscal year in which the scheduled~~

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842 consolidation will occur. Transition plans shall be developed in  
 843 consultation with the state appropriate primary data center  
 844 ~~centers and the Agency for Enterprise Information Technology,~~  
 845 and must include:

846 1. An inventory of the state agency data center's resources  
 847 being consolidated, including all hardware and its associated  
 848 life cycle replacement schedule, software, staff, contracted  
 849 services, and facility resources performing data center  
 850 management and operations, security, backup and recovery,  
 851 disaster recovery, system administration, database  
 852 administration, system programming, job control, production  
 853 control, print, storage, technical support, help desk, and  
 854 managed services, but excluding application development, and the  
 855 state agency's costs supporting these resources.

856 2. A list of contracts in effect, including, but not  
 857 limited to, contracts for hardware, software, and maintenance,  
 858 which identifies the expiration date, the contract parties, and  
 859 the cost of each contract.

860 3. A detailed description of the level of services needed  
 861 to meet the technical and operational requirements of the  
 862 platforms being consolidated.

863 4. ~~A description of resources for computing services~~  
 864 ~~proposed to remain in the department.~~

865 ~~4.5-~~ A timetable with significant milestones for the  
 866 completion of the consolidation.

867 ~~(e) Each primary data center shall develop a transition~~  
 868 ~~plan for absorbing the transfer of agency data center resources~~  
 869 ~~based upon the timetables for transition as provided in this~~  
 870 ~~subsection. The plan shall be submitted to the Agency for~~

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871 ~~Enterprise Information Technology, the Executive Office of the~~  
 872 ~~Governor, and the chairs of the legislative appropriations~~  
 873 ~~committees by September 1 of the fiscal year before the fiscal~~  
 874 ~~year in which the scheduled consolidations will occur. Each plan~~  
 875 ~~must include:~~

876 1. ~~The projected cost to provide data center services for~~  
 877 ~~each agency scheduled for consolidation.~~

878 2. ~~A staffing plan that identifies the projected staffing~~  
 879 ~~needs and requirements based on the estimated workload~~  
 880 ~~identified in the agency transition plan.~~

881 3. ~~The fiscal year adjustments to budget categories in~~  
 882 ~~order to absorb the transfer of agency data center resources~~  
 883 ~~pursuant to the legislative budget request instructions provided~~  
 884 ~~in s. 216.023.~~

885 4. ~~An analysis of the cost effects resulting from the~~  
 886 ~~planned consolidations on existing agency customers.~~

887 5. ~~A description of any issues that must be resolved in~~  
 888 ~~order to accomplish as efficiently and effectively as possible~~  
 889 ~~all consolidations required during the fiscal year.~~

890 (e)(p) Each state agency scheduled ~~identified in this~~  
 891 ~~subsection~~ for consolidation into the state a ~~primary~~ data  
 892 center shall submit with its respective legislative budget  
 893 request the specific recurring and nonrecurring budget  
 894 adjustments of resources by appropriation category into the  
 895 appropriate data processing category pursuant to the legislative  
 896 budget request instructions in s. 216.023.

897 (5) AGENCY LIMITATIONS.—

898 (a) Unless exempt from state data center consolidation  
 899 pursuant to this section, authorized by the Legislature, or as

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900 provided in paragraph ~~paragraphs~~ (b) and (e), a state agency may  
 901 not:

902 1. Create a new computing facility or data center, or  
 903 expand the capability to support additional computer equipment  
 904 in an existing state agency computing facility or ~~nonprimary~~  
 905 data center;

906 2. Spend funds before the state agency's scheduled  
 907 consolidation into the state a ~~primary~~ data center to purchase  
 908 or modify hardware or operations software that does not comply  
 909 with ~~hardware and software~~ standards established by the Agency  
 910 for State Enterprise Information Technology pursuant to  
 911 paragraph (2)(e) for the efficient consolidation of the agency  
 912 data centers or computing facilities;

913 3. Transfer existing computer services to any data center  
 914 other than the state a ~~primary~~ data center;

915 4. Terminate services with the state a ~~primary~~ data center  
 916 or ~~transfer services between primary data centers~~ without giving  
 917 written notice of intent to terminate or ~~transfer services~~ 180  
 918 days before such termination or ~~transfer~~; or

919 5. Initiate a new computer service except with the state a  
 920 ~~primary~~ data center.

921 (b) Exceptions to the limitations in subparagraphs (a)1.,  
 922 2., 3., and 5. may be granted by the Agency for State Enterprise  
 923 Information Technology if there is insufficient capacity in the  
 924 state a ~~primary~~ data center to absorb the workload associated  
 925 with agency computing services, if expenditures are compatible  
 926 with ~~the scheduled consolidation and~~ the standards established  
 927 pursuant to s. 282.0051 ~~paragraph (2)(e)~~, or if the equipment or  
 928 resources are needed to meet a critical agency business need

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929 that cannot be satisfied ~~by from surplus equipment or resources~~  
 930 of the state primary data center until the agency data center is  
 931 consolidated. The Agency for State Technology shall develop and  
 932 publish the guidelines and required documentation that a state  
 933 agency must comply with when requesting an exception. The  
 934 agency's decision regarding the exception request is not subject  
 935 to chapter 120.

936 1. A request for an exception must be submitted in writing  
 937 to the Agency for Enterprise Information Technology. The agency  
 938 must accept, accept with conditions, or deny the request within  
 939 60 days after receipt of the written request. The agency's  
 940 decision is not subject to chapter 120.

941 2. At a minimum, the agency may not approve a request  
 942 unless it includes:

943 a. Documentation approved by the primary data center's  
 944 board of trustees which confirms that the center cannot meet the  
 945 capacity requirements of the agency requesting the exception  
 946 within the current fiscal year.

947 b. A description of the capacity requirements of the agency  
 948 requesting the exception.

949 c. Documentation from the agency demonstrating why it is  
 950 critical to the agency's mission that the expansion or transfer  
 951 must be completed within the fiscal year rather than when  
 952 capacity is established at a primary data center.

953 ~~(c) Exceptions to subparagraph (a)4. may be granted by the~~  
 954 ~~board of trustees of the primary data center if the termination~~  
 955 ~~or transfer of services can be absorbed within the current cost-~~  
 956 ~~allocation plan.~~

957 ~~(d) Upon the termination of or transfer of agency computing~~

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958 ~~services from the primary data center, the primary data center~~  
 959 ~~shall require information sufficient to determine compliance~~  
 960 ~~with this section. If a primary data center determines that an~~  
 961 ~~agency is in violation of this section, it shall report the~~  
 962 ~~violation to the Agency for Enterprise Information Technology.~~

963 ~~(6) RULES. The Agency for Enterprise Information Technology~~  
 964 ~~may adopt rules to administer this part relating to the state~~  
 965 ~~data center system including the primary data centers.~~

966 Section 8. Section 282.203, Florida Statutes, is repealed.

967 Section 9. Section 282.204, Florida Statutes, is repealed.

968 Section 10. Section 282.205, Florida Statutes, is repealed.

969 Section 11. Section 282.318, Florida Statutes, is amended

970 to read:

971 282.318 Enterprise security of data and information  
 972 technology.—

973 (1) This section may be cited as the "Enterprise Security  
 974 of Data and Information Technology Act."

975 ~~(2) Information technology security is established as an~~  
 976 ~~enterprise information technology service as defined in s.~~  
 977 ~~282.0041.~~

978 ~~(2)(3) The Agency for State Enterprise Information~~  
 979 ~~Technology is responsible for establishing standards,~~  
 980 ~~guidelines, and processes by rule which are consistent with~~  
 981 ~~generally accepted best practices for information technology~~  
 982 ~~security, and adopting rules that safeguard an agency's data,~~  
 983 ~~information, and information technology resources to ensure its~~  
 984 ~~availability, confidentiality, and integrity rules and~~  
 985 ~~publishing guidelines for ensuring an appropriate level of~~  
 986 ~~security for all data and information technology resources for~~

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987 ~~executive branch agencies.~~ The agency shall also ~~perform the~~  
 988 ~~following duties and responsibilities:~~

989 (a) By June 30, 2015, ~~develop,~~ and annually update a  
 990 statewide by February 1, an enterprise information technology  
 991 security strategic plan that includes security goals and  
 992 objectives for the strategic issues of information technology  
 993 security policy, risk management, training, incident management,  
 994 and disaster recovery survivability planning.

995 (b) Develop and publish an information technology security  
 996 framework for use by state agencies which, at a minimum,  
 997 includes guidelines and processes enterprise security rules and  
 998 published guidelines for:

999 1. Developing and using a risk assessment methodology that  
 1000 will apply to state agencies to identify the priorities,  
 1001 constraints, risk tolerance, and assumptions.

1002 ~~2.1-~~ Completing comprehensive risk assessments analyses and  
 1003 information technology security audits. Such assessments and  
 1004 audits shall be conducted by state agencies and reviewed by the  
 1005 Agency for State Technology conducted by state agencies.

1006 3. Identifying protection procedures to manage the  
 1007 protection of a state agency's information, data, and  
 1008 information technology resources.

1009 4. Detecting threats through proactive monitoring of  
 1010 events, continuous security monitoring, and specified detection  
 1011 processes.

1012 ~~5.2-~~ Responding to ~~suspected or confirmed~~ information  
 1013 technology security incidents, including suspected or confirmed  
 1014 breaches of personal information containing confidential or  
 1015 exempt data.

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1016 ~~6.3-~~ Developing state agency strategic and operational  
 1017 information technology security plans required under this  
 1018 section, including strategic security plans and security program  
 1019 plans.

1020 ~~7.4-~~ Recovering ~~The recovery of~~ information technology and  
 1021 data in response to an information technology security incident  
 1022 ~~following a disaster.~~ The recovery may include recommended  
 1023 improvements to the processes, policies, or guidelines.

1024 ~~8.5-~~ Establishing ~~The managerial, operational, and~~  
 1025 technical safeguards for protecting state government data and  
 1026 information technology resources which align with state agency  
 1027 risk management strategies for protecting the confidentiality,  
 1028 integrity, and availability of information technology and data.

1029 9. Establishing procedures for accessing information  
 1030 technology resources and data in order to limit authorized  
 1031 users, processes, or devices to authorized activities and  
 1032 transactions to ensure the confidentiality, integrity, and  
 1033 availability of such information and data.

1034 10. Establishing asset management procedures to ensure that  
 1035 information technology resources are identified and consistently  
 1036 managed with their relative importance to business objectives.

1037 (c) Assist state agencies in complying with ~~the provisions~~  
 1038 ~~of~~ this section.

1039 ~~(d) Pursue appropriate funding for the purpose of enhancing~~  
 1040 ~~domestic security.~~

1041 ~~(d)-(e)~~ In collaboration with the Cybercrime Office in the  
 1042 Department of Law Enforcement, provide training for state agency  
 1043 information security managers.

1044 ~~(e)-(f)~~ Annually review the strategic and operational

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1045 information technology security plans of state executive branch  
1046 agencies.

1047 ~~(3)(4) To assist the Agency for Enterprise Information~~  
1048 ~~Technology in carrying out its responsibilities, Each state~~  
1049 agency head shall, at a minimum:

1050 (a) Designate an information security manager who, for the  
1051 purposes of his or her information technology security duties,  
1052 shall report to the agency head and shall ~~to~~ administer the  
1053 information technology security program of the agency ~~for its~~  
1054 ~~data and information technology resources.~~ This designation must  
1055 be provided annually in writing to the Agency for State  
1056 ~~Enterprise Information~~ Technology by January 1.

1057 (b) Submit annually to the Agency for State Enterprise  
1058 ~~Information~~ Technology ~~annually~~ by July 31, the state agency's  
1059 strategic and operational information technology security plans  
1060 developed pursuant to the rules and guidelines established by  
1061 the Agency for State Enterprise Information Technology.

1062 1. The state agency strategic information technology  
1063 security plan must cover a 3-year period and, at a minimum,  
1064 define security goals, intermediate objectives, and projected  
1065 agency costs for the strategic issues of agency information  
1066 security policy, risk management, security training, security  
1067 incident response, and disaster recovery survivability. The plan  
1068 must be based on the statewide enterprise strategic information  
1069 security strategic plan created by the Agency for State  
1070 ~~Enterprise Information~~ Technology and include performance  
1071 metrics that can be objectively measured in order to gauge the  
1072 state agency's progress in meeting the security goals and  
1073 objectives identified in the strategic information technology

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1074 security plan. ~~Additional issues may be included.~~

1075 2. The state agency operational information technology  
1076 security plan must include a progress report that objectively  
1077 measures progress made toward ~~for~~ the prior operational  
1078 information technology security plan and a project plan that  
1079 includes activities, timelines, and deliverables for security  
1080 objectives that, ~~subject to current resources,~~ the state agency  
1081 will implement during the current fiscal year. ~~The cost of~~  
1082 ~~implementing the portions of the plan which cannot be funded~~  
1083 ~~from current resources must be identified in the plan.~~

1084 (c) Conduct, and update every 3 years, a comprehensive risk  
1085 assessment analysis to determine the security threats to the  
1086 data, information, and information technology resources of the  
1087 state agency. The risk assessment must comply with the risk  
1088 assessment methodology developed by the Agency for State  
1089 Technology. The risk assessment analysis information is  
1090 confidential and exempt from the provisions of s. 119.07(1),  
1091 except that such information shall be available to the Auditor  
1092 General, ~~and~~ the Agency for State Enterprise Information  
1093 Technology, and the Cybercrime Office in the Department of Law  
1094 Enforcement ~~for performing postauditing duties.~~

1095 (d) Develop, and periodically update, written internal  
1096 policies and procedures, ~~which include procedures for reporting~~  
1097 information technology security incidents and breaches to the  
1098 Cybercrime Office in the Department of Law Enforcement and  
1099 ~~notifying~~ the Agency for State Enterprise Information  
1100 Technology, and for those agencies under the jurisdiction of the  
1101 Governor, to the Chief Inspector General when a suspected or  
1102 confirmed breach, or an information security incident, occurs.



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1103 Such policies and procedures must be consistent with the rules,  
 1104 ~~and guidelines, and processes~~ established by the Agency for  
 1105 ~~State Enterprise Information~~ Technology to ensure the security  
 1106 of the data, information, and information technology resources  
 1107 of the state agency. The internal policies and procedures that,  
 1108 if disclosed, could facilitate the unauthorized modification,  
 1109 disclosure, or destruction of data or information technology  
 1110 resources are confidential information and exempt from s.  
 1111 119.07(1), except that such information shall be available to  
 1112 the Auditor General, the Cybercrime Office in the Department of  
 1113 Law Enforcement, and the Agency for State Enterprise Information  
 1114 Technology, and for those agencies under the jurisdiction of the  
 1115 Governor, to the Chief Inspector General for performing  
 1116 postauditing duties.

1117 (e) Implement the managerial, operational, and technical  
 1118 appropriate cost-effective safeguards established by the Agency  
 1119 for State Technology to address identified risks to the data,  
 1120 information, and information technology resources of the agency.

1121 (f) Ensure that periodic internal audits and evaluations of  
 1122 the agency's information technology security program for the  
 1123 data, information, and information technology resources of the  
 1124 agency are conducted. The results of such audits and evaluations  
 1125 are confidential ~~information~~ and exempt from s. 119.07(1),  
 1126 except that such information shall be available to the Auditor  
 1127 General, the Cybercrime Office in the Department of Law  
 1128 Enforcement, and the Agency for State Enterprise Information  
 1129 Technology for performing postauditing duties.

1130 (g) Include appropriate information technology security  
 1131 requirements in the written specifications for the solicitation

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1132 of information technology and information technology resources  
 1133 and services, which are consistent with the rules and guidelines  
 1134 established by the Agency for ~~State Enterprise Information~~  
 1135 Technology in collaboration with the department.

1136 (h) Require that state agency employees complete the  
 1137 security awareness training offered by the Agency for State  
 1138 Technology in collaboration with the Cybercrime Office in the  
 1139 Department of Law Enforcement. Coordinate with state agencies to  
 1140 provide agency-specific security training aligned with the  
 1141 agency operational information technology security plan. Provide  
 1142 security awareness training to employees and users of the  
 1143 agency's communication and information resources concerning  
 1144 information security risks and the responsibility of employees  
 1145 and users to comply with policies, standards, guidelines, and  
 1146 operating procedures adopted by the agency to reduce these  
 1147 risks.

1148 (i) Develop processes a process for detecting, reporting,  
 1149 and responding to information technology suspected or confirmed  
 1150 security threats or breaches or information technology security  
 1151 incidents which are, including suspected or confirmed breaches  
 1152 consistent with the security rules, and guidelines, and  
 1153 processes established by the Agency for State Enterprise  
 1154 Information Technology.

1155 1. All Suspected or confirmed information technology  
 1156 security incidents and breaches must be immediately reported to  
 1157 the Cybercrime Office in the Department of Law Enforcement and  
 1158 the Agency for State Enterprise Information Technology.

1159 2. For information technology security incidents involving  
 1160 breaches, agencies shall provide notice in accordance with s.

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1161 817.5681 and to the Agency for Enterprise Information Technology  
1162 in accordance with this subsection.

1163 ~~(5) Each state agency shall include appropriate security~~  
1164 ~~requirements in the specifications for the solicitation of~~  
1165 ~~contracts for procuring information technology or information~~  
1166 ~~technology resources or services which are consistent with the~~  
1167 ~~rules and guidelines established by the Agency for Enterprise~~  
1168 ~~Information Technology.~~

1169 ~~(4)(6)~~ The Agency for State Enterprise Information  
1170 Technology may adopt rules relating to information technology  
1171 security and to administer ~~the provisions of this section.~~

1172 Section 12. Section 282.33, Florida Statutes, is repealed.

1173 Section 13. Effective upon this act becoming a law, section  
1174 282.34, Florida Statutes, is repealed.

1175 Section 14. Subsections (1) and (2) of section 17.0315,  
1176 Florida Statutes, are amended to read:

1177 17.0315 Financial and cash management system; task force.—

1178 (1) The Chief Financial Officer, as the constitutional  
1179 officer responsible for settling and approving accounts against  
1180 the state and keeping all state funds pursuant to s. 4, Art. IV  
1181 of the State Constitution, ~~is shall be~~ the head of and shall  
1182 appoint members to a task force established to develop a  
1183 strategic business plan for a successor financial and cash  
1184 management system. The task force shall include the executive  
1185 director of the Agency for State Enterprise Information  
1186 Technology and the director of the Office of Policy and Budget  
1187 in the Executive Office of the Governor. Any member of the task  
1188 force may appoint a designee.

1189 (2) The strategic business plan for a successor financial

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1190 and cash management system must:

- 1191 (a) Permit proper disbursement and auditing controls  
1192 consistent with the respective constitutional duties of the  
1193 Chief Financial Officer and the Legislature;  
1194 (b) Promote transparency in the accounting of public funds;  
1195 (c) Provide timely and accurate recording of financial  
1196 transactions by agencies and their professional staffs;  
1197 (d) Support executive reporting and data analysis  
1198 requirements;  
1199 (e) Be capable of interfacing with other systems providing  
1200 human resource services, procuring goods and services, and  
1201 providing other enterprise functions;  
1202 (f) Be capable of interfacing with the existing legislative  
1203 appropriations, planning, and budgeting systems;  
1204 (g) Be coordinated with the information technology strategy  
1205 development efforts of the Agency for State Enterprise  
1206 Information Technology;  
1207 (h) Be coordinated with the revenue estimating conference  
1208 process as supported by the Office of Economic and Demographic  
1209 Research; and  
1210 (i) Address other such issues as the Chief Financial  
1211 Officer identifies.

1212 Section 15. Subsection (1) of section 20.055, Florida  
1213 Statutes, is reordered and amended to read:

1214 20.055 Agency inspectors general.—

- 1215 (1) As used in For the purposes of this section, the term:  
1216 (d)(a) "State agency" means each department created  
1217 pursuant to this chapter, ~~and also includes~~ the Executive Office  
1218 of the Governor, the Department of Military Affairs, the Fish

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1219 and Wildlife Conservation Commission, the Office of Insurance  
 1220 Regulation of the Financial Services Commission, the Office of  
 1221 Financial Regulation of the Financial Services Commission, the  
 1222 Public Service Commission, the Board of Governors of the State  
 1223 University System, the Florida Housing Finance Corporation, the  
 1224 Agency for State Technology, and the state courts system.

1225 ~~(a) (b)~~ "Agency head" means the Governor, a Cabinet officer,  
 1226 a secretary ~~as defined in s. 20.03(5)~~, or an executive director  
 1227 as those terms are defined in s. 20.03, 20.03(6). ~~It also~~  
 1228 ~~includes~~ the chair of the Public Service Commission, the  
 1229 Director of the Office of Insurance Regulation of the Financial  
 1230 Services Commission, the Director of the Office of Financial  
 1231 Regulation of the Financial Services Commission, the board of  
 1232 directors of the Florida Housing Finance Corporation, and the  
 1233 Chief Justice of the State Supreme Court.

1234 (c) "Individuals substantially affected" means natural  
 1235 persons who have established a real and sufficiently immediate  
 1236 injury in fact due to the findings, conclusions, or  
 1237 recommendations of a final report of a state agency inspector  
 1238 general, who are the subject of the audit or investigation, and  
 1239 who do not have or are not currently afforded an existing right  
 1240 to an independent review process. The term does not apply to  
 1241 employees of the state, including career service, probationary,  
 1242 other personal service, Selected Exempt Service, and Senior  
 1243 Management Service employees; ~~are not covered by this~~  
 1244 ~~definition. This definition also does not cover~~ former employees  
 1245 of the state if the final report of the state agency inspector  
 1246 general relates to matters arising during a former employee's  
 1247 term of state employment; ~~or. This definition does not apply to~~

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1248 persons who are the subject of audits or investigations  
 1249 conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or  
 1250 which are otherwise confidential and exempt under s. 119.07.  
 1251 ~~(b) (d)~~ "Entities contracting with the state" means for-  
 1252 profit and not-for-profit organizations or businesses that have  
 1253 ~~having~~ a legal existence, such as corporations or partnerships,  
 1254 as opposed to natural persons, which have entered into a  
 1255 relationship with a state agency ~~as defined in paragraph (a)~~ to  
 1256 provide for consideration certain goods or services to the state  
 1257 agency or on behalf of the state agency. The relationship may be  
 1258 evidenced by payment by warrant or purchasing card, contract,  
 1259 purchase order, provider agreement, or other such mutually  
 1260 agreed upon relationship. The term ~~This definition~~ does not  
 1261 apply to entities that ~~which~~ are the subject of audits or  
 1262 investigations conducted pursuant to ss. 112.3187-112.31895 or  
 1263 s. 409.913 or which are otherwise confidential and exempt under  
 1264 s. 119.07.

1265 Section 16. Paragraph (e) of subsection (2) of section  
 1266 110.205, Florida Statutes, is amended to read:

1267 110.205 Career service; exemptions.—

1268 (2) EXEMPT POSITIONS.—The exempt positions that are not  
 1269 covered by this part include the following:

1270 (e) The Chief Information Officer in the Agency for State  
 1271 ~~Enterprise Information~~ Technology. Unless otherwise fixed by  
 1272 law, the Agency for State Enterprise Information Technology  
 1273 shall set the salary and benefits of this position in accordance  
 1274 with the rules of the Senior Management Service.

1275 Section 17. Subsections (2) and (9) of section 215.322,  
 1276 Florida Statutes, are amended to read:

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1277 215.322 Acceptance of credit cards, charge cards, debit  
1278 cards, or electronic funds transfers by state agencies, units of  
1279 local government, and the judicial branch.—

1280 (2) A state agency as defined in s. 216.011, or the  
1281 judicial branch, may accept credit cards, charge cards, debit  
1282 cards, or electronic funds transfers in payment for goods and  
1283 services with the prior approval of the Chief Financial Officer.  
1284 If the Internet or other related electronic methods are to be  
1285 used as the collection medium, the Agency for State Enterprise  
1286 ~~Information~~ Technology shall review and recommend to the Chief  
1287 Financial Officer whether to approve the request with regard to  
1288 the process or procedure to be used.

1289 (9) For payment programs in which credit cards, charge  
1290 cards, or debit cards are accepted by state agencies, the  
1291 judicial branch, or units of local government, the Chief  
1292 Financial Officer, in consultation with the Agency for State  
1293 ~~Enterprise Information~~ Technology, may adopt rules to establish  
1294 uniform security safeguards for cardholder data and to ensure  
1295 compliance with the Payment Card Industry Data Security  
1296 Standards.

1297 Section 18. Subsection (2) of section 215.96, Florida  
1298 Statutes, is amended to read:

1299 215.96 Coordinating council and design and coordination  
1300 staff.—

1301 (2) The coordinating council shall consist of the Chief  
1302 Financial Officer; the Commissioner of Agriculture; the Attorney  
1303 General; the secretary of the Department of Management Services;  
1304 the executive director of the Agency for State Technology ~~the~~  
1305 ~~Attorney General~~; and the Director of Planning and Budgeting,

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1306 Executive Office of the Governor, or their designees. The Chief  
1307 Financial Officer, or his or her designee, shall be chair of the  
1308 ~~coordinating~~ council, and the design and coordination staff  
1309 shall provide administrative and clerical support to the council  
1310 and the board. The design and coordination staff shall maintain  
1311 the minutes of each meeting and ~~shall~~ make such minutes  
1312 available to any interested person. The Auditor General, the  
1313 State Courts Administrator, an executive officer of the Florida  
1314 Association of State Agency Administrative Services Directors,  
1315 and an executive officer of the Florida Association of State  
1316 Budget Officers, or their designees, shall serve without voting  
1317 rights as ex officio members of en the ~~coordinating~~ council. The  
1318 chair may call meetings of the ~~coordinating~~ council as often as  
1319 necessary to transact business; however, the ~~coordinating~~  
1320 council must shall meet at least annually once a year. Action of  
1321 the ~~coordinating~~ council shall be by motion, duly made, seconded  
1322 and passed by a majority of the ~~coordinating~~ council voting in  
1323 the affirmative for approval of items that are to be recommended  
1324 for approval to the Financial Management Information Board.

1325 Section 19. Paragraph (a) of subsection (4) of section  
1326 216.023, Florida Statutes, is amended to read:

1327 216.023 Legislative budget requests to be furnished to  
1328 Legislature by agencies.—

1329 (4) (a) The legislative budget request ~~must contain~~ for each  
1330 program must contain:

1331 1. The constitutional or statutory authority for a program,  
1332 a brief purpose statement, and approved program components.

1333 2. Information on expenditures for 3 fiscal years (actual  
1334 prior-year expenditures, current-year estimated expenditures,

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1335 and agency budget requested expenditures for the next fiscal  
 1336 year) by appropriation category.

1337 3. Details on trust funds and fees.

1338 4. The total number of positions (authorized, fixed, and  
 1339 requested).

1340 5. An issue narrative describing and justifying changes in  
 1341 amounts and positions requested for current and proposed  
 1342 programs for the next fiscal year.

1343 6. Information resource requests.

1344 7. Supporting information, including applicable cost-  
 1345 benefit analyses, business case analyses, performance  
 1346 contracting procedures, service comparisons, and impacts on  
 1347 performance standards for any request to outsource or privatize  
 1348 agency functions. The cost-benefit and business case analyses  
 1349 must include an assessment of the impact on each affected  
 1350 activity from those identified in accordance with paragraph (b).  
 1351 Performance standards must include standards for each affected  
 1352 activity and be expressed in terms of the associated unit of  
 1353 activity.

1354 8. An evaluation of ~~any~~ major outsourcing and privatization  
 1355 initiatives undertaken during the last 5 fiscal years having  
 1356 aggregate expenditures exceeding \$10 million during the term of  
 1357 the contract. The evaluation ~~must~~ shall include an assessment of  
 1358 contractor performance, a comparison of anticipated service  
 1359 levels to actual service levels, and a comparison of estimated  
 1360 savings to actual savings achieved. Consolidated reports issued  
 1361 by the Department of Management Services may be used to satisfy  
 1362 this requirement.

1363 9. Supporting information for any proposed consolidated

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1364 financing of deferred-payment commodity contracts including  
 1365 guaranteed energy performance savings contracts. Supporting  
 1366 information must also include narrative describing and  
 1367 justifying the need, baseline for current costs, estimated cost  
 1368 savings, projected equipment purchases, estimated contract  
 1369 costs, and return on investment calculation.

1370 10. For projects that exceed \$10 million in total cost, the  
 1371 statutory reference of the existing policy or the proposed  
 1372 substantive policy that establishes and defines the project's  
 1373 governance structure, planned scope, main business objectives  
 1374 that must be achieved, and estimated completion timeframes. The  
 1375 governance structure for information technology-related projects  
 1376 requested by a state agency must incorporate the applicable  
 1377 project management and oversight standards established under s.  
 1378 282.0051. Information technology budget requests for the  
 1379 continuance of existing hardware and software maintenance  
 1380 agreements, renewal of existing software licensing agreements,  
 1381 or the replacement of desktop units with new technology that is  
 1382 similar to the technology currently in use are exempt from this  
 1383 requirement.

1384 Section 20. Subsection (22) of section 287.057, Florida  
 1385 Statutes, is amended to read:

1386 287.057 Procurement of commodities or contractual  
 1387 services.—

1388 (22) The department, in consultation with the Chief  
 1389 Financial Officer and the Agency for State Technology, shall  
 1390 maintain a program for the online procurement of commodities and  
 1391 contractual services. To enable the state to promote open  
 1392 competition and leverage its buying power, agencies shall

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1393 participate in the online procurement program, and eligible  
1394 users may participate in the program. Only vendors prequalified  
1395 as meeting mandatory requirements and qualifications criteria  
1396 may participate in online procurement.

1397 (a) The department, in consultation with the Agency for  
1398 State Technology, may contract for equipment and services  
1399 necessary to develop and implement online procurement.

1400 (b) The department shall adopt rules to administer the  
1401 program for online procurement. The rules must include, but not  
1402 be limited to:

1403 1. Determining the requirements and qualification criteria  
1404 for prequalifying vendors.

1405 2. Establishing the procedures for conducting online  
1406 procurement.

1407 3. Establishing the criteria for eligible commodities and  
1408 contractual services.

1409 4. Establishing the procedures for providing access to  
1410 online procurement.

1411 5. Determining the criteria warranting ~~any~~ exceptions to  
1412 participation in the online procurement program.

1413 (c) The department may impose and shall collect all fees  
1414 for the use of the online procurement systems.

1415 1. The fees may be imposed on an individual transaction  
1416 basis or as a fixed percentage of the cost savings generated. At  
1417 a minimum, the fees must be set in an amount sufficient to cover  
1418 the projected costs of the services, including administrative  
1419 and project service costs in accordance with the policies of the  
1420 department.

1421 2. If the department contracts with a provider for online

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1422 procurement, the department, pursuant to appropriation, shall  
1423 compensate the provider from the fees after the department has  
1424 satisfied all ongoing costs. The provider shall report  
1425 transaction data to the department each month so that the  
1426 department may determine the amount due and payable to the  
1427 department from each vendor.

1428 3. All fees that are due and payable to the state on a  
1429 transactional basis or as a fixed percentage of the cost savings  
1430 generated are subject to s. 215.31 and must be remitted within  
1431 40 days after receipt of payment for which the fees are due. For  
1432 fees that are not remitted within 40 days, the vendor shall pay  
1433 interest at the rate established under s. 55.03(1) on the unpaid  
1434 balance from the expiration of the 40-day period until the fees  
1435 are remitted.

1436 4. All fees and surcharges collected under this paragraph  
1437 shall be deposited in the Operating Trust Fund as provided by  
1438 law.

1439 Section 21. Subsection (4) of section 445.011, Florida  
1440 Statutes, is amended to read:

1441 445.011 Workforce information systems.—

1442 (4) Workforce Florida, Inc., shall coordinate development  
1443 and implementation of workforce information systems with the  
1444 executive director of the Agency for ~~State Enterprise~~  
1445 ~~Information~~ Technology to ensure compatibility with the state's  
1446 information system strategy and enterprise architecture.

1447 Section 22. Subsections (2) and (4) of section 445.045,  
1448 Florida Statutes, are amended to read:

1449 445.045 Development of an Internet-based system for  
1450 information technology industry promotion and workforce

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1451 recruitment.-

1452 (2) Workforce Florida, Inc., shall coordinate with the

1453 Agency for ~~State Enterprise Information~~ Technology and the

1454 Department of Economic Opportunity to ensure links, where

1455 feasible and appropriate, to existing job information websites

1456 maintained by the state and state agencies and ~~to ensure~~ that

1457 information technology positions offered by the state and state

1458 agencies are posted on the information technology website.

1459 (4) (a) Workforce Florida, Inc., shall coordinate

1460 development and maintenance of the website under this section

1461 with the executive director of the Agency for State Enterprise

1462 ~~Information~~ Technology to ensure compatibility with the state's

1463 information system strategy and enterprise architecture.

1464 (b) Workforce Florida, Inc., may enter into an agreement

1465 with the Agency for State Enterprise Information Technology, the

1466 Department of Economic Opportunity, or any other public agency

1467 with the requisite information technology expertise for the

1468 provision of design, operating, or other technological services

1469 necessary to develop and maintain the website.

1470 (c) Workforce Florida, Inc., may procure services necessary

1471 to implement ~~the provisions of~~ this section, if it employs

1472 competitive processes, including requests for proposals,

1473 competitive negotiation, and other competitive processes that ~~to~~

1474 ensure that the procurement results in the most cost-effective

1475 investment of state funds.

1476 Section 23. Paragraph (b) of subsection (18) of section

1477 668.50, Florida Statutes, is amended to read:

1478 668.50 Uniform Electronic Transaction Act.-

1479 (18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY

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1480 GOVERNMENTAL AGENCIES.-

1481 (b) To the extent that a governmental agency uses

1482 electronic records and electronic signatures under paragraph

1483 (a), the Agency for State Enterprise Information Technology, in

1484 consultation with the governmental agency, giving due

1485 consideration to security, may specify:

1486 1. The manner and format in which the electronic records

1487 must be created, generated, sent, communicated, received, and

1488 stored and the systems established for those purposes.

1489 2. If electronic records must be signed by electronic

1490 means, the type of electronic signature required, the manner and

1491 format in which the electronic signature must be affixed to the

1492 electronic record, and the identity of, or criteria that must be

1493 met by, any third party used by a person filing a document to

1494 facilitate the process.

1495 3. Control processes and procedures as appropriate to

1496 ensure adequate preservation, disposition, integrity, security,

1497 confidentiality, and auditability of electronic records.

1498 4. Any other required attributes for electronic records

1499 which are specified for corresponding nonelectronic records or

1500 reasonably necessary under the circumstances.

1501 Section 24. Section 943.0415, Florida Statutes, is amended

1502 to read:

1503 943.0415 Cybercrime Office.-The Cybercrime Office There is

1504 created within the Department of Law Enforcement ~~the Cybercrime~~

1505 ~~Office~~. The office may:

1506 (1) Investigate violations of state law pertaining to the

1507 sexual exploitation of children which are facilitated by or

1508 connected to the use of any device capable of storing electronic

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1509 data.

1510 (2) Monitor information technology resources and provide  
 1511 analysis on information technology security incidents, threats,  
 1512 or breaches as those terms are defined in s. 282.0041.

1513 (3) Investigate violations of state law pertaining to  
 1514 information technology security incidents, threats, or breaches  
 1515 pursuant to s. 282.0041 and assist in incident response and  
 1516 recovery.

1517 (4) Provide security awareness training and information to  
 1518 state agency employees concerning cyber security, online sexual  
 1519 exploitation of children, security risks, and the responsibility  
 1520 of employees to comply with policies, standards, guidelines, and  
 1521 operating procedures adopted by the Agency for State Technology.

1522 (5) Consult with the Agency for State Technology in the  
 1523 adoption of rules relating to the information technology  
 1524 security provisions of s. 282.318.

1525 Section 25. Section 1004.649, Florida Statutes, is amended  
 1526 to read:

1527 1004.649 Northwest Regional Data Center.—

1528 (1) For the purpose of providing data center services to  
 1529 ~~servng~~ its state agency customers, the Northwest Regional Data  
 1530 Center at Florida State University is designated as a primary  
 1531 data center and shall:

1532 (a) Operate under a governance structure that represents  
 1533 its customers proportionally.

1534 (b) Maintain an appropriate cost-allocation methodology  
 1535 that accurately bills state agency customers based solely on the  
 1536 actual direct and indirect costs of the services provided to  
 1537 state agency customers, and ensures that for any fiscal year a

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1538 state agency customer is not subsidizing a ~~prohibits the~~  
 1539 ~~subsidization of~~ nonstate agency customer or another state  
 1540 agency customer ~~customers' costs by state agency customers.~~ Such  
 1541 cost-allocation methodology must comply with applicable state  
 1542 and federal requirements concerning the distribution and use of  
 1543 state and federal funds.

1544 (c) Enter into a service-level agreement with each state  
 1545 agency customer to provide services as defined and approved by  
 1546 the governing board of the center. At a minimum, such service-  
 1547 level agreements must:

- 1548 1. Identify the parties and their roles, duties, and
- 1549 responsibilities under the agreement;
- 1550 2. State the duration of the agreement term and specify the
- 1551 conditions for renewal;
- 1552 3. Identify the scope of work;
- 1553 4. Establish the services to be provided, the business
- 1554 standards that must be met for each service, the cost of each
- 1555 service, and the process by which the business standards for
- 1556 each service are to be objectively measured and reported;
- 1557 5. Provide a timely billing methodology for recovering the
- 1558 cost of services provided pursuant to s. 215.422; ~~and~~
- 1559 6. Provide a procedure for modifying the service-level
- 1560 agreement to address any changes in projected costs of service;
- 1561 7. Prohibit the transfer of computing services between the
- 1562 Northwest Regional Data Center and the state data center
- 1563 established under s. 282.201 without at least 180 days' notice
- 1564 of service cancellation;
- 1565 8. Identify the products or services to be delivered with
- 1566 sufficient specificity to permit an external financial or



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1567 performance audit; and  
 1568 9. Provide that the service-level agreement may be  
 1569 terminated by either party for cause only after giving the other  
 1570 party notice in writing of the cause for termination and an  
 1571 opportunity for the other party to resolve the identified cause  
 1572 within a reasonable period.

1573 (d) Provide to the Board of Governors the total annual  
 1574 budget by major expenditure category, including, but not limited  
 1575 to, salaries, expenses, operating capital outlay, contracted  
 1576 services, or other personnel services by July 30 each fiscal  
 1577 year.

1578 (e) Provide to each state agency customer its projected  
 1579 annual cost for providing the agreed-upon data center services  
 1580 by September 1 each fiscal year.

1581 (f) Provide a plan for consideration by the Legislative  
 1582 Budget Commission if the governing body of the center approves  
 1583 the use of a billing rate schedule after the start of the fiscal  
 1584 year that increases any state agency customer's costs for that  
 1585 fiscal year.

1586 (2) The Northwest Regional Data Center's designation as a  
 1587 primary data center for purposes of serving its state agency  
 1588 customers may be terminated if:

1589 (a) The center requests such termination to the Board of  
 1590 Governors, the Senate President, and the Speaker of the House of  
 1591 Representatives; or

1592 (b) The center fails to comply with ~~the provisions of~~ this  
 1593 section.

1594 (3) If such designation is terminated, the center shall  
 1595 have 1 year to provide for the transition of its state agency

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1596 customers to the state data center system established under s.  
 1597 282.201 Southwood Shared Resource Center or the Northwood Shared  
 1598 Resource Center.

1599 Section 26. The Agency for Enterprise Information  
 1600 Technology in the Executive Office of the Governor is  
 1601 transferred by a type two transfer, pursuant to s. 20.06,  
 1602 Florida Statutes, to the Agency for State Technology established  
 1603 pursuant to s. 20.61, Florida Statutes, except that the only  
 1604 rules that are transferred are chapters 71A-1 and 71A-2, Florida  
 1605 Administrative Code. All other rules adopted by the Agency for  
 1606 Enterprise Information Technology are nullified and of no  
 1607 further force or effect.

1608 Section 27. The Northwood Shared Resource Center in the  
 1609 Department of Management Services is transferred by a type two  
 1610 transfer, pursuant to s. 20.06, Florida Statutes, to the Agency  
 1611 for State Technology established pursuant to s. 20.61, Florida  
 1612 Statutes.

1613 Section 28. The Southwood Shared Resource Center in the  
 1614 Department of Management Services is transferred by a type two  
 1615 transfer, pursuant to s. 20.06, Florida Statutes, to the Agency  
 1616 for State Technology established pursuant to s. 20.61, Florida  
 1617 Statutes.

1618 Section 29. The Agency for State Technology shall:

1619 (1) Complete a feasibility study that analyzes, evaluates,  
 1620 and provides recommendations for managing state government data  
 1621 in a manner that promotes its interoperability and openness and,  
 1622 if legally permissible and not cost prohibitive, ensures that  
 1623 such data is available to the public in ways that make the data  
 1624 easy to find and use, and complies with chapter 119, Florida

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1625 Statutes. At a minimum, the feasibility study must include the  
1626 following components:

1627 (a) A clear description of which state government data  
1628 should be public information. The guiding principle for this  
1629 component is a presumption of openness to the extent permitted  
1630 by law but subject to valid restrictions relating to privacy,  
1631 confidentiality, and security, and other fiscal and legal  
1632 restrictions.

1633 (b) Recommended standards for making the format and  
1634 accessibility of public information uniform and ensuring that  
1635 such data is published in a nonproprietary, searchable,  
1636 sortable, platform-independent, and machine-readable format. The  
1637 agency should include the projected cost to state agencies of  
1638 implementing and maintaining such standards.

1639 (c) A project plan for implementing a single Internet  
1640 website that contains public information or links to public  
1641 information. The plan should include a timeline and benchmarks  
1642 for making public information available online and identify any  
1643 costs associated with the development and ongoing maintenance of  
1644 such a website.

1645 (d) A recommended governance structure and review and  
1646 compliance process to ensure accountability on the part of those  
1647 who create, maintain, manage, or store public information or  
1648 post it on the single Internet website. The agency should  
1649 include any associated costs to implement and maintain the  
1650 recommended governance structure and the review and compliance  
1651 process.

1652 (2) Submit the completed feasibility study to the Executive  
1653 Office of the Governor, the President of the Senate, and the

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1654 Speaker of the House of Representatives by June 1, 2015.

1655 Section 30. The State Data Center Task Force is created.  
1656 The task force shall be comprised of those individuals who were  
1657 members of the boards of trustees of the Northwood and Southwood  
1658 Shared Resource Centers as of June 30, 2014. The purpose of the  
1659 task force is to provide assistance in the transition of the  
1660 Northwood and Southwood Shared Resource Centers into the state  
1661 data center established under s. 282.201, Florida Statutes. The  
1662 task force shall identify any operational or fiscal issues  
1663 affecting the transition and provide recommendations to the  
1664 Agency for State Technology for the resolution of such issues.  
1665 The task force may not make decisions regarding the state data  
1666 center or the facilities formerly known as the Northwood and  
1667 Southwood Shared Resource Centers and shall expire on or before  
1668 June 30, 2015.

1669 Section 31. For the 2014-2015 fiscal year, the sum of  
1670 \$2,134,892 in nonrecurring general revenue funds, \$2,865,108 in  
1671 recurring general revenue funds, and 25 full-time equivalent  
1672 positions and associated salary rate of 2,010,951 are  
1673 appropriated to the Agency for State Technology for the purpose  
1674 of implementing and administering this act.

1675 Section 32. Except as otherwise expressly provided in this  
1676 act and except for this section, which shall take effect upon  
1677 this act becoming a law, this act shall take effect July 1,  
1678 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 113/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 928

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14  
Meeting Date

Topic Bill

Bill Number 928  
*(if applicable)*

Name Frank Meiners

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 1633  
*Street*

Phone \_\_\_\_\_

Tall FL 32302  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Assoc. Ind. of FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14

Meeting Date

Topic State Technology

Bill Number 928  
*(if applicable)*

Name Leticia Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior Policy Director

Address 136 S. Bronough St  
*Street*

Phone 8505446866

Tall FL 32301  
*City State Zip*

E-mail ladams@chamber.com

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 1648

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Public Records and Meetings

DATE: March 13, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Kim</u>	<u>McVaney</u>		<b>GO SPB 7064 as introduced</b>
1.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 1648 substantially amends the public records and public meetings laws. This bill clarifies how the public may access records and how agencies should respond. This bill also outlines what an agency may charge as a service fee and incorporates the cost of litigating attorney fees if an agency loses an enforcement action. This bill places additional requirements on organizations that accept membership fees from the government and on businesses contracted with the government.

The bill:

- Requires organizations that accept public funds for membership dues or fees keep records related to those funds and members. Organizations will also be required to make records it gives its members or the public available for inspection and copying.
- Provides definitions for “confidential and exempt” and “exempt” records consistent with court interpretations.
- Provides that public records requests do not need to be made in writing unless there is a specific statutory requirement present. If a public records request must be made in writing, the records custodian must provide the statutory citation to the requestor.
- Provides that the fee charged for satisfying a voluminous or complicated public records request is limited to the cost of the lowest paid personnel capable of performing the work, and excludes employer-paid benefits.
- Requires a private contractor acting on behalf of a public agency to inform the agency before denying a public records request and to notify the agency if the private contractor is sued for failing to provide public records.
- Requires agencies to train their employees regarding Florida’s public records laws.
- Specifies that the attorney’s fees to which a prevailing public records plaintiff is entitled includes the fees incurred in litigating entitlement to and amount of attorney fees. Courts will be required to award the costs of enforcement, including attorney’s fees, on each count on which the plaintiff prevailed.

- Relieves a plaintiff in a public records or public meetings enforcement action who claims attorney fees from being required to serve the Department of Financial Services (DFS) with the claim for attorney fees. A state agency covered by the DFS will be given the option of informing the DFS that a claim for attorney fees has been filed.

The fiscal impact of this bill, if any, is indeterminate.

## II. Present Situation:

### Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup> The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>5</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>6</sup> The Sunshine Law<sup>7</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>8</sup>

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> FLA. CONST., art. I, s. 24(b).

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>6</sup> Section 119.07(1)(a), F.S.

<sup>7</sup> Section 286.011, F.S.

<sup>8</sup> Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

Only the Legislature may create an exemption to public records or open meetings requirements.<sup>9</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

**Section 119.01, F.S. General state policy on public records.**<sup>13</sup>

Section 119.01(3), F.S., states that if state funds are used to pay dues for any person or organization, the financial and membership records of that organization are subject to public inspection and copying.

**Section 119.07, F.S. Inspection and copying of records; photographing public records: fees; exemptions.**

Section 119.07(1), F.S., describes the duties of the custodian of public records. These duties include acknowledging a public records request and responding in good faith.<sup>14</sup> A records custodian must also redact exempt information and provide the remainder to the public.<sup>15</sup> If a records custodian believes that all or part of a record is exempt from public inspection, the records custodian is required to state the basis and statutory citation of the exemption.<sup>16</sup>

Section 119.07(4), F.S., currently permits the records custodian to charge fees for making copies or for supervising the public while they inspect or photograph public records. If the nature or volume of a public records request requires extensive use of technology, clerical staff or supervisory personal, an agency may charge a reasonable special service charge in addition to copying fees.<sup>17</sup>

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<sup>9</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</sup> Section 119.01, F.S., provides that it is the general policy of the state of Florida that all state, agency, county and municipal records are open to the public for inspection and copying. This section provides an overview of an agency's duty to provide records to the public.

<sup>14</sup> Section 119.07(1)(c), F.S.

<sup>15</sup> Section 119.07(1)(d), F.S.

<sup>16</sup> Section 119.07(1)(e), F.S.

<sup>17</sup> Section 119.07(4)(d), F.S. Section 119.07(4)(d), F.S. also provides that the special service charge may include "the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required." Florida has long required those who seek public records "defray the extraordinary costs associated with their requests." *Board of County Commissioners of Highland County v. Colby*, 976 So.2d 31,35 (2008). The court found "the statute at issue here employs the term "labor cost," the plain meaning of which is more inclusive than the



**Section 119.0701, F.S. Contracts; public records.**

Agencies can contract with private businesses to offer services that the agency would normally perform. Section 119.0701, F.S., requires a business that acts on behalf of a government agency to comply with public records laws.

**Section 119.12, F.S. Attorney fees.**

If an agency fails to comply with a public records request, the requestor can sue the agency to get access to public records in an enforcement action. The requestor can also sue the agency for “the reasonable costs of the enforcement,” which include reasonable attorney fees.<sup>18</sup> When the requestor sues a state agency for attorney fees, he or she is also required to serve the DFS.<sup>19</sup>

**Section 286.011, F.S. Public meetings and records; public inspection; criminal and civil penalties.**

Chapter 286, F.S., requires that government boards and commissions must be open to the public. Failure to provide reasonable notice to the public invalidates any official business conducted during a meeting.<sup>20</sup> Section 286.011(4), F.S., provides that a person or entity can sue a board or commission in order to enforce public meetings laws and for attorney fees. Section 286.011(4), F.S., permits the court to award attorney fees to a plaintiff if a board or commission violates public meetings laws and also permits the court to award attorney fees to the board or commission if a plaintiff files a lawsuit frivolously or in bad faith.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 119.01(3), F.S., to require organizations that accept public funds as membership dues make records they provide to their members or to the public available for public inspection and copying. Information protected by state or federal law will remain exempt from disclosure. An editorial change has also been made which eliminates enumerated organizations in favor of the definition of a legal person.

**Section 2** amends s. 119.011, F.S., to codify the current case law interpretation of the terms “confidential and exempt” and “exempt.”<sup>21</sup> The term “confidential and exempt” is defined as a record that is statutorily exempt and can only be released to the people or entities specified in the exemption. The term “exempt” is defined as a record which is statutorily exempt, but may be released at the discretion of the records custodian. The records custodian will be required to

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words “wages” or “salary.” That benefits may be a significant component of labor costs is widely understood. *Board of County Commissioners*, 976 So.2d at 36.

<sup>18</sup> Section 119.12, F.S.

<sup>19</sup> Section 284.30, F.S. Generally, when a plaintiff sues a state agency for attorney fees, the plaintiff is required to serve a copy of the claim for attorney fees on the Department of Financial Services State Risk Management Trust Fund in addition to serving a copy of the lawsuit on the agency itself. The Department of Financial Services is entitled to participate in the defense of the state in a claim for attorney fees and any appeal. See also section 284.31, F.S.

<sup>20</sup> Section 286.011(1), F.S.

<sup>21</sup> see *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004).

determine if there is a statutory or substantial need for disclosure before releasing a record. In addition, the elements of “active” (as they relate to criminal intelligence and investigative information) are placed together for clarity.

**Section 3** amends s. 119.07(1), F.S., to provide that public records requests are not required to be made in writing.<sup>22</sup> If the law requires a public records request to be made in writing, the records custodian must provide the statutory citation to the requestor.<sup>23</sup> Special service charges must be limited to the lowest paid personnel capable of providing the needed assistance and may not include the cost of health insurance premiums or other benefits paid by an agency.

**Section 4** amends s. 119.0701, F.S., to require a business acting on behalf of an agency to notify the agency before denying a public records request. The business is required to inform the agency of a public records enforcement lawsuit.

**Section 5** creates s. 119.0702, F.S., to require agencies to provide public records training to each of their employees, commensurate with his or her duties.

**Section 6** amends s. 119.12, F.S., to expand the definition of “reasonable cost enforcement” to include the attorney fees incurred when a requestor sues for attorney fees. Courts must award attorney fees to the requestor on the portions of the enforcement action he or she won. This new law does not entitle an agency to recover costs or attorney fees when the agency prevails. Under current law, anyone who sues the State of Florida or its agencies for attorney fees must serve a copy of the claim for attorney fees on the DFS. This section amends the law so that a plaintiff in a public records enforcement action who also claims attorney fees will not be required to serve a copy of the claim for attorney fees on the DFS. If an agency intends to have the DFS cover its attorney fees, the agency will be required to inform the DFS.

**Section 7** amends s. 286.011, F.S., to eliminate the requirement that a plaintiff suing a state entity to enforce public meetings laws and claiming attorney fees serve a copy of the claim for attorney fees on the DFS. If a state entity intends to have the DFS cover its attorney fees, the state entity must inform the DFS of the claim for attorney fees.

**Section 8** amends s. 257.35, F.S., to correct cross references and to make editorial changes.

**Section 9** amends s. 383.402, F.S., to correct cross references and to make editorial changes.

**Section 10** amends s. 497.140, F.S., to correct cross references.

**Section 11** amends s. 627.311, F.S., to correct cross references.

**Section 12** amends s. 627.351, F.S., to correct cross references and to make editorial changes.

**Section 13** amends s. 943.031, F.S., to make editorial changes.

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<sup>22</sup> In the footnote, the court stated “[t]here is no requirement in the Public Records Act that requests for records must be in writing.” *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So.2d 302 (Fla. 3d DCA 2001), rehearing denied.

<sup>23</sup> Section 119.07(1)(e), F.S., similarly provides that a records custodian must provide the basis and statutory citation if the records custodian believes that all or part of a record is exempt from public inspection and copying.

**Section 14** amends s. 943.0313, F.S., to correct cross references and to make editorial changes.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

This bill substantially changes public records law and public meetings law but does not create any new public records or public meetings exemptions. This bill does not require a two-thirds vote.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

SB 1648 does not appear to require new taxes.

Section 119.01(3)(b)2., F.S., as amended, increases the types of records which must be retained and produced as public records by an entity that accepts state funds for membership dues. It is unknown if costs will be passed on to members in the form of higher fees or dues.

It remains to be determined if the special service charges currently being assessed to the public pursuant to s. 119.07(4)(d), F.S., will be reduced by this bill.

##### **B. Private Sector Impact:**

Section 119.01(3)(b)2., F.S., as amended, increases the types of records which must be retained and produced as public records by an organization that accepts state funds as membership dues. An organization will be required to make those records available for public inspection and copying and, therefore, personnel costs and copying requirements may increase expenditures.

As amended, s. 119.0701, F.S., may increase costs on the private sector. Existing contracts with government agencies and businesses may need to be renegotiated since this statute imposes new duties on businesses.

Section 119.07(4)(d), F.S., as amended, may reduce the special services charges assessed to members of the public. It is unknown if agencies have been including their employer contributions to their employees' health insurance premiums or other employer-paid benefits when assessing special service charges.

Section 119.12, F.S., as amended, may decrease the cost of filing an enforcement action and the associated attorney fees since a plaintiff will not be obligated to serve legal notice on the Department of Financial Services when claiming attorney fees.

Businesses acting on behalf of a government agency may experience increases in costs similar to those that the government sector may encounter if this bill is enacted.

### C. Government Sector Impact:

Section 119.01(3)(b)2., F.S., as amended, increases the types of records which must be kept and produced as public records by an entity that accepts state funds for membership dues. It is unknown if costs will be passed on to members in the form of higher fees or dues.

Section 119.07(1)(c), F.S., as amended, puts an additional burden on a records custodian by requiring the custodian to provide the statutory citation for each public records request which must be made in writing. Records custodians may have to spend more time consulting with legal counsel in order to meet this statutory requirement, but it is unclear if this will increase government expenditures.

Section 119.07(4)(d), F.S., as amended, may require government entities expend resources in order to assess and calculate which clerical or supervisory staff is the lowest paid person capable of providing requisite supervision if a public record is being inspected or resources are used. If a municipality or a county currently includes the cost of employee benefits as part of its special service charge, then its ability to defray the cost of providing public records may be adversely impacted.<sup>24</sup>

It is unknown if state agencies have been including their employer contributions to their employees' health insurance premiums or other employer-paid benefits when assessing special service charges. If a state agency has been including the cost of employee benefits as part of its special service charge, then its ability to defray the cost of providing public records may be adversely impacted.<sup>25</sup>

As amended, Section 119.0701, F.S., may increase government expenditures because existing contracts may have to be renegotiated or amended.

Section 119.0702, F.S., which is a new provision, may increase costs on agencies because the agency will be statutorily required to train all of their employees about public records laws.

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<sup>24</sup> See s. 119.07(4)(d), F.S. and *Board of County Commissioners of Highlands County v. Colby*, 976 So.2d 31 (2008).

<sup>25</sup> See s. 119.07(4)(d), F.S. An agency could have relied on *Board of County Commissioners of Highlands County v. Colby*, 976 So.2d 31 (2008) and included benefits when calculating a special service charge.

Sections 119.12 and 284.011(4)(b), F.S., as amended, may increase the amount of attorney fees paid by agencies. It is unclear if the state or agencies will experience an increase in costs if agencies are required to provide notice to DFS when a claim for attorney fees are filed. It is unclear whether an agency's risk management allotment will be affected if it fails to provide timely notice to the DFS when a claim for attorney fees is made.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.01, 119.011, 119.07, 119.0701, 119.12 and 286.011.

This bill creates section 119.0702 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled  
 2 An act relating to public records and meetings;  
 3 amending s. 119.01, F.S.; revising the general state  
 4 policy on public records; requiring certain  
 5 information to be open for inspection and copying if  
 6 public funds are used in payment of dues or membership  
 7 contributions; providing an exception; amending s.  
 8 119.011, F.S.; defining the terms "confidential and  
 9 exempt" and "exempt"; amending s. 119.07, F.S.;  
 10 providing that public records requests need not be in  
 11 writing unless otherwise required by law; requiring  
 12 the custodian of public records to provide a statutory  
 13 citation to the requester if a written request is  
 14 required; restricting the special service charge  
 15 assessed by an agency in producing records; amending  
 16 s. 119.0701, F.S.; revising contract requirements  
 17 between a public agency and a contractor; creating s.  
 18 119.0702, F.S.; requiring each agency to provide  
 19 training on the requirements of ch. 119, F.S.;  
 20 amending s. 119.12, F.S.; specifying a reasonable cost  
 21 of enforcement; providing that a party filing an  
 22 action against certain agencies is not required to  
 23 serve a copy of a pleading claiming attorney fees on  
 24 the Department of Financial Services; requiring an  
 25 agency to provide notice of such pleading to the  
 26 department; authorizing the department to join the  
 27 agency in defense of such suit; amending s. 286.011,  
 28 F.S.; providing that a party filing an enforcement  
 29 action against a board or commission of a state agency

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30 is not required to serve a copy of a pleading claiming  
 31 attorney fees on the Department of Financial Services;  
 32 requiring the board or commission to provide notice of  
 33 such pleading to the department; authorizing the  
 34 department to join the board or commission in defense  
 35 of such suit; amending ss. 257.35, 383.402, 497.140,  
 36 627.311, 627.351, 943.031, and 943.0313; conforming  
 37 cross-references to changes made by the act; providing  
 38 an effective date.

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

41 Section 1. Subsection (3) of section 119.01, Florida  
 42 Statutes, is amended to read:

43 119.01 General state policy on public records.—

44 (3) (a) Public funds may not be ~~are~~ expended by an agency  
 45 in payment of dues or membership contributions to a ~~for any~~  
 46 person, as defined in s. 1.01, unless the following ~~corporation,~~  
 47 ~~foundation, trust, association, group, or other organization,~~  
 48 ~~all the financial, business, and membership records of such~~  
 49 ~~person are open for inspection and copying: that person,~~  
 50 ~~corporation, foundation, trust, association, group, or other~~  
 51 ~~organization which pertain to the public agency are public~~  
 52 ~~records and subject to the provisions of s. 119.07~~

53 1. All financial, business, and membership records that  
 54 pertain to the agency from which or on whose behalf the payment  
 55 of dues or membership contribution is made.

56 2. Any other record that a person has shared publicly, or  
 57 has presented to or shared with its members generally for no  
 58

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59 cost other than the payment of dues or membership contributions.

60 (b) Information that is otherwise made confidential or  
 61 exempt pursuant to state or federal law is not subject to  
 62 paragraph (a).

63 Section 2. Section 119.011, Florida Statutes, is amended to  
 64 read:

65 119.011 Definitions.—As used in this chapter, the term:

66 (1) "Actual cost of duplication" means the cost of the  
 67 material and supplies used to duplicate the public record, but  
 68 does not include labor cost or overhead cost associated with  
 69 such duplication.

70 (2) "Agency" means any state, county, district, authority,  
 71 or municipal officer, department, division, board, bureau,  
 72 commission, or other separate unit of government created or  
 73 established by law including, for the purposes of this chapter,  
 74 the Commission on Ethics, the Public Service Commission, ~~and~~ the  
 75 Office of Public Counsel, and any other public or private  
 76 agency, person, partnership, corporation, or business entity  
 77 acting on behalf of any public agency.

78 (3) "Confidential and exempt" means a record or information  
 79 that, pursuant to a specific statutory exemption, is not subject  
 80 to inspection or copying by the public and may be released only  
 81 to those persons and entities designated in the exemption.

82 (4) (a) ~~(3) (a)~~ "Criminal intelligence information" means  
 83 information with respect to an identifiable person or group of  
 84 persons collected by a criminal justice agency in an effort to  
 85 anticipate, prevent, or monitor possible criminal activity.

86 (b) "Criminal investigative information" means information  
 87 with respect to an identifiable person or group of persons

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88 compiled by a criminal justice agency in the course of  
 89 conducting a criminal investigation of a specific act or  
 90 omission, including, but not limited to, information derived  
 91 from laboratory tests, reports of investigators or informants,  
 92 or any type of surveillance.

93 (c) "Criminal intelligence information" and "criminal  
 94 investigative information" ~~do shall~~ not include:

- 95 1. The time, date, location, and nature of a reported  
 96 crime.
- 97 2. The name, sex, age, and address of a person arrested or  
 98 of the victim of a crime except as provided in s. 119.071(2)(h).
- 99 3. The time, date, and location of the incident and of the  
 100 arrest.
- 101 4. The crime charged.
- 102 5. Documents given or required by law or agency rule to be  
 103 given to the person arrested, except as provided in s.  
 104 119.071(2)(h), and, except that the court in a criminal case may  
 105 order that certain information required by law or agency rule to  
 106 be given to the person arrested be maintained in a confidential  
 107 manner and exempt from the provisions of s. 119.07(1) until  
 108 released at trial if it is found that the release of such  
 109 information would:
  - 110 a. Be defamatory to the good name of a victim or witness or  
 111 would jeopardize the safety of such victim or witness; and
  - 112 b. Impair the ability of a state attorney to locate or  
 113 prosecute a codefendant.
  - 114 6. Informations and indictments except as provided in s.  
 115 905.26.
  - 116 (d) With the exception of information in cases that are

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117 barred from prosecution under s. 775.15 or another statute of  
 118 limitation, the term word "active" has shall have the following  
 119 meaning:

120 1. Criminal intelligence information is shall be considered  
 121 "active" if as long as it is related to intelligence gathering  
 122 conducted with a reasonable, good faith belief that it will lead  
 123 to detection of ongoing or reasonably anticipated criminal  
 124 activities.

125 2. Criminal investigative information is shall be  
 126 considered "active" if as long as it is related to an ongoing  
 127 investigation that is being conducted which is continuing with a  
 128 reasonable, good faith anticipation of securing an arrest or  
 129 prosecution in the foreseeable future.

130 3. In addition, Criminal intelligence information and  
 131 criminal investigative information are shall be considered  
 132 "active" if while such information is directly related to  
 133 pending prosecutions or appeals. The word "active" shall not  
 134 apply to information in cases which are barred from prosecution  
 135 under the provisions of s. 775.15 or other statute of  
 136 limitation.

137 (5)(4) "Criminal justice agency" means:

138 (a) A Any law enforcement agency, court, or prosecutor;

139 (b) Another ~~Any other~~ agency charged by law with criminal  
 140 law enforcement duties;

141 (c) An ~~Any~~ agency having custody of criminal intelligence  
 142 information or criminal investigative information for the  
 143 purpose of assisting such law enforcement agencies in the  
 144 conduct of active criminal investigation or prosecution or for  
 145 the purpose of litigating civil actions under the Racketeer

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146 Influenced and Corrupt Organization Act, during the time that  
 147 such agencies are in possession of criminal intelligence  
 148 information or criminal investigative information pursuant to  
 149 their criminal law enforcement duties; or

150 (d) The Department of Corrections.

151 (6)(5) "Custodian of public records" means the elected or  
 152 appointed state, county, or municipal officer charged with the  
 153 responsibility of maintaining the office having public records,  
 154 or his or her designee.

155 (7)(6) "Data processing software" means the programs and  
 156 routines used to employ and control the capabilities of data  
 157 processing hardware, including, but not limited to, operating  
 158 systems, compilers, assemblers, utilities, library routines,  
 159 maintenance routines, applications, and computer networking  
 160 programs.

161 (8)(7) "Duplicated copies" means new copies produced by  
 162 duplicating, as defined in s. 283.30.

163 (9) "Exempt" means a record or information that, pursuant  
 164 to a specific statutory exemption, is not subject to inspection  
 165 or copying by the public. However, such exempt records or  
 166 information may be disclosed or made available for inspection or  
 167 copying by the public at the discretion of the custodian of  
 168 public records, who shall determine whether there is a statutory  
 169 or other substantial need for disclosure.

170 (10)(8) "Exemption" means a provision of general law which  
 171 provides that a specified record or meeting, or portion thereof,  
 172 is not subject to the access requirements of s. 119.07(1), s.  
 173 286.011, or s. 24, Art. I of the State Constitution.

174 (11)(9) "Information technology resources" means data



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175 processing hardware and software and services, communications,  
176 supplies, personnel, facility resources, maintenance, and  
177 training.

178 ~~(12)-(10)~~ "Paratransit" has the same meaning as provided in  
179 s. 427.011.

180 ~~(13)-(11)~~ "Proprietary software" means data processing  
181 software that is protected by copyright or trade secret laws.

182 ~~(14)-(12)~~ "Public records" means all documents, papers,  
183 letters, maps, books, tapes, photographs, films, sound  
184 recordings, data processing software, or other material,  
185 regardless of the physical form, characteristics, or means of  
186 transmission, made or received pursuant to law or ordinance or  
187 in connection with the transaction of official business by any  
188 agency.

189 ~~(15)-(13)~~ "Redact" means to conceal from a copy of an  
190 original public record, or to conceal from an electronic image  
191 that is available for public viewing, that portion of the record  
192 containing exempt or confidential information.

193 ~~(16)-(14)~~ "Sensitive," as it relates to ~~for purposes of~~  
194 ~~defining~~ agency-produced software ~~that is sensitive~~, means only  
195 those portions of ~~the data processing~~ software, including the  
196 specifications and documentation, which are used to:

197 (a) Collect, process, store, and retrieve information that  
198 is exempt from s. 119.07(1);

199 (b) Collect, process, store, and retrieve financial  
200 management information of the agency, such as payroll and  
201 accounting records; or

202 (c) Control and direct access authorizations and security  
203 measures for automated systems.

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204 Section 3. Present paragraphs (c) through (i) of subsection  
205 (1) of section 119.07, Florida Statutes, are redesignated as  
206 paragraphs (d) through (j), respectively, present paragraph (i)  
207 of that subsection is amended, a new paragraph (c) is added to  
208 that subsection, and paragraph (d) of subsection (4) of that  
209 section is amended, to read:

210 119.07 Inspection and copying of records; photographing  
211 public records; fees; exemptions.—

212 (1)

213 (c) A public records request need not be made in writing  
214 unless otherwise required by law. If a written request is  
215 required by law, the custodian of public records must provide  
216 the statutory citation to the requester.

217 ~~(j)-(i)~~ The absence of a civil action instituted for the  
218 purpose stated in paragraph (h) ~~(g)~~ does not relieve the  
219 custodian of public records of the duty to maintain the record  
220 as a public record if the record is in fact a public record  
221 subject to public inspection and copying under this subsection  
222 and does not otherwise excuse or exonerate the custodian of  
223 public records from any unauthorized or unlawful disposition of  
224 such record.

225 (4) The custodian of public records shall furnish a copy or  
226 a certified copy of the record upon payment of the fee  
227 prescribed by law. If a fee is not prescribed by law, the  
228 following fees are authorized:

229 (d) If the nature or volume of public records requested to  
230 be inspected or copied pursuant to this subsection is such as to  
231 require extensive use of information technology resources or  
232 extensive clerical or supervisory assistance by personnel of the

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 233 agency involved, or both, the agency may charge, in addition to  
 234 the actual cost of duplication, a reasonable special service  
 235 charge, ~~which shall be reasonable and shall be based on the~~  
 236 actual cost incurred or attributable to the agency for such  
 237 extensive use of information technology resources or the labor  
 238 cost of the personnel providing the service that is actually  
 239 incurred by the agency or attributable to the agency for the  
 240 clerical and supervisory assistance required, or both. The cost  
 241 of clerical or supervisory assistance may not exceed the rate of  
 242 the lowest paid personnel capable of providing such clerical or  
 243 supervisory assistance, and excludes employer-paid health  
 244 insurance premiums and other employer-paid benefits.

245 Section 4. Subsection (2) of section 119.0701, Florida  
 246 Statutes, is amended to read:

247 119.0701 Contracts; public records.—

248 (2) In addition to other contract requirements provided by  
 249 law, each ~~public agency~~ contract between a public agency and a  
 250 contractor for services must include a provision that requires  
 251 the contractor to comply with public records laws, specifically  
 252 to:

253 (a) Keep and maintain public records that ordinarily and  
 254 necessarily would be required by the public agency in order to  
 255 perform the service.

256 (b) Provide the public with access to public records on the  
 257 same terms and conditions that the public agency would provide  
 258 the records and at a cost that does not exceed the cost provided  
 259 in this chapter or as otherwise provided by law.

260 (c) Ensure that public records that are exempt or  
 261 confidential and exempt from public records disclosure

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 262 requirements are not disclosed except as authorized by law.  
 263 (d) Meet all requirements for retaining public records and  
 264 transfer, at no cost, to the public agency all public records in  
 265 possession of the contractor upon termination of the contract  
 266 and destroy any duplicate public records that are exempt or  
 267 confidential and exempt from public records disclosure  
 268 requirements. All records stored electronically must be provided  
 269 to the public agency in a format that is compatible with the  
 270 information technology systems of the public agency.

271 (e) Notify the public agency's custodian of public records  
 272 before denying a request to inspect or copy a record held by the  
 273 contractor. This requirement does not impose any additional duty  
 274 on the public agency.

275 (f) Notify the public agency if the contractor is served  
 276 with a civil action to enforce the provisions of this chapter.  
 277 This requirement does not impose any additional duty on the  
 278 public agency.

279 Section 5. Section 119.0702, Florida Statutes, is created  
 280 to read:

281 119.0702 Training of agency staff.—Each agency must provide  
 282 training on the requirements of this chapter to each of its  
 283 employees. The training provided shall be commensurate with an  
 284 employee's duties.

285 Section 6. Section 119.12, Florida Statutes, is amended to  
 286 read:

287 119.12 Attorney ~~Attorney's~~ fees.—

288 (1) If a civil action is filed against an agency to enforce  
 289 the provisions of this chapter and if the court determines that  
 290 such agency unlawfully refused to permit a public record to be

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291 inspected or copied, the court shall assess and award, against  
292 the ~~agency~~ responsible ~~agency~~, the reasonable costs of  
293 enforcement ~~including reasonable attorneys' fees~~.

294 (2) The reasonable costs of enforcement include, but are  
295 not limited to, reasonable attorney fees, including those fees  
296 incurred in litigating entitlement to, and the determination or  
297 quantification of, attorney fees for the underlying civil  
298 action. At a minimum, the court shall award the reasonable costs  
299 of enforcement for those counts upon which the plaintiff  
300 prevailed.

301 (3) Notwithstanding s. 284.30, a party filing an action  
302 against the state or any of its agencies covered by the State  
303 Risk Management Trust Fund to enforce the provisions of this  
304 chapter is not required to serve a copy of the pleading claiming  
305 attorney fees on the Department of Financial Services. In order  
306 to have attorney fees paid by the State Risk Management Trust  
307 Fund, the agency against whom the action is brought shall  
308 provide notice to the department of the pleading claiming  
309 attorney fees upon receipt. The department may participate with  
310 the agency in the defense of the suit and any appeal thereof  
311 with respect to the attorney fees.

312 Section 7. Subsection (4) of section 286.011, Florida  
313 Statutes, is amended to read:

314 286.011 Public meetings and records; public inspection;  
315 criminal and civil penalties.—

316 (4) (a) Whenever an action has been filed against a any  
317 board or commission of a any state agency or authority or an any  
318 agency or authority of a any county, municipal corporation, or  
319 political subdivision to enforce the provisions of this section

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320 or to invalidate the actions of any such board, commission,  
321 agency, or authority, which action was taken in violation of  
322 this section, and the court determines that the defendant or  
323 defendants to such action acted in violation of this section,  
324 the court shall assess a reasonable ~~attorney~~ ~~attorney's~~ fee  
325 against such agency, and may assess a reasonable ~~attorney~~  
326 ~~attorney's~~ fee against the individual filing such an action if  
327 the court finds it was filed in bad faith or was frivolous. Any  
328 fees so assessed may be assessed against the individual member  
329 or members of such board or commission; provided, that in any  
330 case where the board or commission seeks the advice of its  
331 attorney and such advice is followed, ~~no~~ such fees may not ~~shall~~  
332 be assessed against the individual member or members of the  
333 board or commission. However, this subsection does ~~shall~~ not  
334 apply to a state attorney or his or her duly authorized  
335 assistants or any officer charged with enforcing the provisions  
336 of this section.

337 (b) Notwithstanding s. 284.30, a party filing an action to  
338 enforce the provisions of this section against a board or  
339 commission of a state agency is not required to serve a copy of  
340 the pleading claiming attorney fees on the Department of  
341 Financial Services. In order to have attorney fees paid by the  
342 State Risk Management Trust Fund, the board or commission  
343 against whom the action is brought shall provide notice to the  
344 department of the pleading claiming attorney fees upon receipt.  
345 The department may participate with the board or commission in  
346 the defense of the suit and any appeal thereof with respect to  
347 the attorney fees.

348 Section 8. Subsection (1) of section 257.35, Florida

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349 Statutes, is amended to read:

350 257.35 Florida State Archives.—

351 (1) There is created within the Division of Library and  
352 Information Services of the Department of State the Florida  
353 State Archives for the preservation of those public records, as  
354 defined in s. 119.011 ~~s. 119.011(12)~~, manuscripts, and other  
355 archival material that have been determined by the division to  
356 have sufficient historical or other value to warrant their  
357 continued preservation and have been accepted by the division  
358 for deposit in its custody. It is the duty and responsibility of  
359 the division to:

360 (a) Organize and administer the Florida State Archives.

361 (b) Preserve and administer any such records ~~as shall be~~  
362 transferred to its custody; accept, arrange, and preserve them,  
363 according to approved archival practices; and allow ~~permit~~ them,  
364 at reasonable times and under the supervision of the division,  
365 to be inspected and copied.

366 (c) Assist the records and information management program  
367 in the determination of retention values for records.

368 (d) Cooperate with and assist, insofar as practicable,  
369 state institutions, departments, agencies, counties,  
370 municipalities, and individuals engaged in activities in the  
371 field of state archives, manuscripts, and history and accept  
372 from any person any paper, book, record, or similar material  
373 that which in the judgment of the division warrants preservation  
374 in the state archives.

375 (e) Provide a public research room where, under rules  
376 established by the division, the materials in the state archives  
377 may be studied.

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378 (f) Conduct, promote, and encourage research in Florida  
379 history, government, and culture and maintain a program of  
380 information, assistance, coordination, and guidance for public  
381 officials, educational institutions, libraries, the scholarly  
382 community, and the general public engaged in such research.

383 (g) Cooperate with and, ~~insofar~~ as practicable, assist  
384 agencies, libraries, institutions, and individuals in projects  
385 designed to preserve original source materials relating to  
386 Florida history, government, and culture and prepare and publish  
387 handbooks, guides, indexes, and other literature directed toward  
388 encouraging the preservation and use of the state's documentary  
389 resources.

390 (h) Encourage and initiate efforts to preserve, collect,  
391 process, transcribe, index, and research the oral history of  
392 Florida government.

393 (i) Assist and cooperate with the records and information  
394 management program in the training and information program  
395 described in s. 257.36(1)(g).

396 Section 9. Subsection (9) of section 383.402, Florida  
397 Statutes, is amended to read:

398 383.402 Child abuse death review; State Child Abuse Death  
399 Review Committee; local child abuse death review committees.—

400 (9) The State Child Abuse Death Review Committee or a local  
401 committee shall have access to all information of a law  
402 enforcement agency which is not the subject of an active  
403 investigation and which pertains to the review of the death of a  
404 child. A committee may not disclose ~~any~~ information that is not  
405 subject to public disclosure by the law enforcement agency, and  
406 active criminal intelligence information or criminal

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

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407 investigative information, as defined in s. 119.011 ~~s.~~  
 408 ~~119.011(3)~~, may not be made available for review or access under  
 409 this section.

410 Section 10. Subsection (5) of section 497.140, Florida  
 411 Statutes, is amended to read:  
 412 497.140 Fees.—  
 413 (5) The department shall charge a fee not to exceed \$25 for  
 414 the certification of a public record. The fee shall be  
 415 determined by rule of the department. The department shall  
 416 assess a fee for duplication of a public record as provided in  
 417 s. 119.07(4) ~~s. 119.07(1)(a) and (c)~~.

418 Section 11. Paragraph (b) of subsection (4) of section  
 419 627.311, Florida Statutes, is amended to read:  
 420 627.311 Joint underwriters and joint reinsurers; public  
 421 records and public meetings exemptions.—  
 422 (4) The Florida Automobile Joint Underwriting Association:  
 423 (b) Shall keep portions of association meetings during  
 424 which confidential and exempt underwriting files or confidential  
 425 and exempt claims files are discussed exempt from the provisions  
 426 of s. 286.011 and s. 24(b), Art. I of the State Constitution.  
 427 All closed portions of association meetings shall be recorded by  
 428 a court reporter. The court reporter shall record the times of  
 429 commencement and termination of the meeting, all discussion and  
 430 proceedings, the names of all persons present at any time, and  
 431 the names of all persons speaking. No portion of any closed  
 432 meeting shall be off the record. Subject to the provisions of  
 433 this paragraph and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(d)-(f)~~, the  
 434 court reporter's notes of any closed meeting shall be retained  
 435 by the association for a minimum of 5 years. A copy of the

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436 transcript, less any confidential and exempt information, of any  
 437 closed meeting during which confidential and exempt claims files  
 438 are discussed shall become public as to individual claims files  
 439 after settlement of that claim.

440 Section 12. Paragraph (x) of subsection (6) of section  
 441 627.351, Florida Statutes, is amended to read:  
 442 627.351 Insurance risk apportionment plans.—  
 443 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—  
 444 (x)1. The following records of the corporation are  
 445 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and  
 446 s. 24(a), Art. I of the State Constitution:  
 447 a. Underwriting files, except that a policyholder or an  
 448 applicant shall have access to his or her own underwriting  
 449 files. Confidential and exempt underwriting file records may  
 450 also be released to other governmental agencies upon written  
 451 request and demonstration of need; such records held by the  
 452 receiving agency remain confidential and exempt as provided  
 453 herein.  
 454 b. Claims files, until termination of all litigation and  
 455 settlement of all claims arising out of the same incident,  
 456 although portions of the claims files may remain exempt, as  
 457 otherwise provided by law. Confidential and exempt claims file  
 458 records may be released to other governmental agencies upon  
 459 written request and demonstration of need; such records held by  
 460 the receiving agency remain confidential and exempt as provided  
 461 herein.  
 462 c. Records obtained or generated by an internal auditor  
 463 pursuant to a routine audit, until the audit is completed, or if  
 464 the audit is conducted as part of an investigation, until the

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465 investigation is closed or ceases to be active. An investigation  
 466 is considered "active" while the investigation is being  
 467 conducted with a reasonable, good faith belief that it could  
 468 lead to the filing of administrative, civil, or criminal  
 469 proceedings.

470 d. Matters reasonably encompassed in privileged attorney-  
 471 client communications.

472 e. Proprietary information licensed to the corporation  
 473 under contract and the contract provides for the confidentiality  
 474 of such proprietary information.

475 f. All information relating to the medical condition or  
 476 medical status of a corporation employee which is not relevant  
 477 to the employee's capacity to perform his or her duties, except  
 478 as otherwise provided in this paragraph. Information that is  
 479 exempt shall include, but is not limited to, information  
 480 relating to workers' compensation, insurance benefits, and  
 481 retirement or disability benefits.

482 g. Upon an employee's entrance into the employee assistance  
 483 program, a program to assist any employee who has a behavioral  
 484 or medical disorder, substance abuse problem, or emotional  
 485 difficulty which affects the employee's job performance, all  
 486 records relative to that participation shall be confidential and  
 487 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I  
 488 of the State Constitution, except as otherwise provided in s.  
 489 112.0455(11).

490 h. Information relating to negotiations for financing,  
 491 reinsurance, depopulation, or contractual services, until the  
 492 conclusion of the negotiations.

493 i. Minutes of closed meetings regarding underwriting files,

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494 and minutes of closed meetings regarding an open claims file  
 495 until termination of all litigation and settlement of all claims  
 496 with regard to that claim, except that information otherwise  
 497 confidential or exempt by law shall be redacted.

498 2. If an authorized insurer is considering underwriting a  
 499 risk insured by the corporation, relevant underwriting files and  
 500 confidential claims files may be released to the insurer  
 501 provided the insurer agrees in writing, notarized and under  
 502 oath, to maintain the confidentiality of such files. If a file  
 503 is transferred to an insurer, that file is no longer a public  
 504 record because it is not held by an agency subject to the  
 505 provisions of the public records law. Underwriting files and  
 506 confidential claims files may also be released to staff and the  
 507 board of governors of the market assistance plan established  
 508 pursuant to s. 627.3515, who must retain the confidentiality of  
 509 such files, except such files may be released to authorized  
 510 insurers that are considering assuming the risks to which the  
 511 files apply, provided the insurer agrees in writing, notarized  
 512 and under oath, to maintain the confidentiality of such files.  
 513 Finally, the corporation or the board or staff of the market  
 514 assistance plan may make the following information obtained from  
 515 underwriting files and confidential claims files available to  
 516 licensed general lines insurance agents: name, address, and  
 517 telephone number of the residential property owner or insured;  
 518 location of the risk; rating information; loss history; and  
 519 policy type. The receiving licensed general lines insurance  
 520 agent must retain the confidentiality of the information  
 521 received.

522 3. A policyholder who has filed suit against the

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523 corporation has the right to discover the contents of his or her  
 524 own claims file to the same extent that discovery of such  
 525 contents would be available from a private insurer in litigation  
 526 as provided by the Florida Rules of Civil Procedure, the Florida  
 527 Evidence Code, and other applicable law. Pursuant to subpoena, a  
 528 third party has the right to discover the contents of an  
 529 insured's or applicant's underwriting or claims file to the same  
 530 extent that discovery of such contents would be available from a  
 531 private insurer by subpoena as provided by the Florida Rules of  
 532 Civil Procedure, the Florida Evidence Code, and other applicable  
 533 law, and subject to any confidentiality protections requested by  
 534 the corporation and agreed to by the seeking party or ordered by  
 535 the court. The corporation may release confidential underwriting  
 536 and claims file contents and information as it deems necessary  
 537 and appropriate to underwrite or service insurance policies and  
 538 claims, subject to any confidentiality protections deemed  
 539 necessary and appropriate by the corporation.

540 4. Portions of meetings of the corporation are exempt from  
 541 ~~the provisions of s. 286.011 and s. 24(b), Art. I of the State~~  
 542 ~~Constitution wherein confidential underwriting files or~~  
 543 ~~confidential open claims files are discussed. All portions of~~  
 544 ~~corporation meetings which are closed to the public shall be~~  
 545 ~~recorded by a court reporter. The court reporter shall record~~  
 546 ~~the times of commencement and termination of the meeting, all~~  
 547 ~~discussion and proceedings, the names of all persons present at~~  
 548 ~~any time, and the names of all persons speaking. No portion of~~  
 549 ~~any closed meeting shall be off the record. Subject to the~~  
 550 ~~provisions hereof and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(d)-(f),~~~~  
 551 ~~the court reporter's notes of any closed meeting shall be~~

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552 retained by the corporation for a minimum of 5 years. A copy of  
 553 the transcript, less any exempt matters, of any closed meeting  
 554 wherein claims are discussed shall become public as to  
 555 individual claims after settlement of the claim.

556 Section 13. Paragraph (b) of subsection (9) of section  
 557 943.031, Florida Statutes, is amended to read:

558 943.031 Florida Violent Crime and Drug Control Council.—  
 559 (9) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL MEETINGS  
 560 AND RECORDS.—

561 (b) The Florida Violent Crime and Drug Control Council is  
 562 ~~shall be~~ considered a "criminal justice agency," as that term is  
 563 defined in s. 119.011 within the definition of s. 119.011(4).

564 Section 14. Subsection (7) of section 943.0313, Florida  
 565 Statutes, is amended to read:

566 943.0313 Domestic Security Oversight Council.—The  
 567 Legislature finds that there exists a need to provide executive  
 568 direction and leadership with respect to terrorism prevention,  
 569 preparation, protection, response, and recovery efforts by state  
 570 and local agencies in this state. In recognition of this need,  
 571 the Domestic Security Oversight Council is hereby created. The  
 572 council shall serve as an advisory council pursuant to s.  
 573 20.03(7) to provide guidance to the state's regional domestic  
 574 security task forces and other domestic security working groups  
 575 and to make recommendations to the Governor and the Legislature  
 576 regarding the expenditure of funds and allocation of resources  
 577 related to counter-terrorism and domestic security efforts.

578 (7) AGENCY DESIGNATION.—For purposes of this section, the  
 579 Domestic Security Oversight Council is ~~shall be~~ considered a  
 580 criminal justice agency, as that term is defined in s. 119.011

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581 ~~within the definition of s. 119.011(4).~~

582 Section 15. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

APPEARANCE RECORD

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

03/13/14

Meeting Date

1648 Public Records

Topic

Bill Number 1648

Bill Number

(if applicable)

Name

USA Hurley

Amendment Barcode

(if applicable)

Job Title

Address

100 S. Monroe St.

Street

Phone

850.922.4300

E-mail

hurley@st-council.com

City

State

Zip

Speaking:

For

Against

Information

Representing

W Assoc. of Counties

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/14  
Meeting/Date

Topic \_\_\_\_\_

Bill Number SB 1648  
*(if applicable)*

Name Kraig Conn

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 301 S. Bromough  
*Street*  
Tall FL 32301  
*City State Zip*

Phone 222 9684

E-mail kconn@flcities.com

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Mar 13 2014  
Meeting Date

Topic Public Records & Meetings

Bill Number SB 1648  
(if applicable)

Name Barbara Petersen

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title President

Address 336 E College Ave #101

Phone 850/224-4555

Street

Tallahassee FL 32301

City

State

Zip

E-mail sunshine@floridafaf.org

Speaking:  For  Against  Information

Representing First Amendment Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development, *Vice Chair*  
Transportation, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Finance and Tax  
Banking and Insurance  
Commerce and Tourism  
Gaming  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

**SENATOR GWEN MARGOLIS**

35th District

March 13, 2014

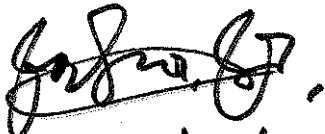
To: Senator Negron  
Chair, Appropriations Committee

From: Senator Gwen Margolis

Re: Excused absence

Please excuse me from the Thursday, March 13, 2014 committee meeting of the Senate Appropriations Committee. I have returned home for a doctor's visit.

Thank you.

  
3/13/14

### REPLY TO:

- 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777
- 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: KN 412

Case:

Type:

Caption: Senate Committee of Appropriations Judge:

Started: 3/13/2014 1:03:24 PM

Ends: 3/13/2014 2:58:17 PM Length: 01:54:54

1:03:26 PM Sen. Negron (Chair)  
1:04:50 PM S 1648  
1:05:01 PM Sen. Ring  
1:06:01 PM Sen. Negron  
1:06:24 PM Barbara Peterson, President, First Amendment Foundation  
1:08:02 PM Sen. Negron  
1:08:20 PM Kraig Conn, Florida League of Cities  
1:08:59 PM Sen. Negron  
1:09:15 PM Sen. Ring  
1:09:18 PM Sen. Negron  
1:09:31 PM Lisa Hurley, Florida Association of Counties  
1:09:59 PM Sen. Negron  
1:10:54 PM S 846  
1:11:02 PM Sen. Latvala  
1:13:23 PM Sen. Negron  
1:13:37 PM Am. 292784  
1:14:11 PM Sen. Latvala  
1:14:26 PM Sen. Negron  
1:14:41 PM Am. 261230  
1:14:46 PM Sen. Latvala  
1:15:21 PM Sen. Negron  
1:15:38 PM Am. 699846  
1:15:47 PM Sen. Latvala  
1:15:55 PM Sen. Negron  
1:16:11 PM Am. 927154  
1:16:29 PM Sen. Lee  
1:18:08 PM Sen. Negron  
1:18:13 PM Sen. Montford  
1:18:42 PM Sen. Lee  
1:19:41 PM Sen. Negron  
1:20:08 PM Lisa Hurley, Florida Association of Counties  
1:20:58 PM Sen. Negron  
1:21:06 PM Sen. Bradley  
1:21:15 PM Sen. Negron  
1:21:22 PM Sen. Sobel  
1:21:35 PM Sen. Negron  
1:21:48 PM Sen. Lee  
1:22:35 PM Sen. Sobel  
1:22:40 PM Sen. Negron  
1:22:56 PM S 846 (cont.)  
1:23:13 PM Kraig Conn, Florida League of Cities (waives in support)  
1:23:23 PM Sen. Latvala  
1:24:18 PM Sen. Negron  
1:25:02 PM S 708  
1:25:10 PM Sen. Bean  
1:26:21 PM Sen. Negron  
1:26:31 PM Am. 622240  
1:26:39 PM Sen. Bean  
1:27:10 PM Sen. Negron  
1:27:39 PM Am. 797434  
1:27:45 PM Sen. Bean  
1:28:09 PM Am. 608348

1:28:18 PM Sen. Bean  
1:28:22 PM Sen. Negron  
1:28:58 PM Am. 850798  
1:29:05 PM Sen. Bean  
1:30:04 PM Sen. Negron  
1:30:27 PM Jon Lavender, Owner, Insurance Fire & Water Restorations & Florida Association of Restoration Specialist  
1:32:55 PM Sen. Negron  
1:33:23 PM Sean Gallagher, Sales Manager, Alan Construction and Restoration Industry  
1:34:03 PM Sen. Negron  
1:34:11 PM Joe Suszko, Disabled Investor, Restoration Industry (waives in support)  
1:34:27 PM Mikal Rogers, Technician (waives in support)  
1:34:36 PM Carolyn Johnson, Policy Director, FL Chamber of Commerce  
1:35:11 PM Mark Delegal, Retained Counsel, State Farm Florida Insurance Company  
1:36:48 PM Lisa Miller, CEO, Lisa Miller & Associates Florida Insurance Company  
1:37:48 PM Reggie Garcia, FL Justice Association (waives in support)  
1:38:06 PM Sen. Negron  
1:39:06 PM Mark Delegal, Retained Counsel, State Farm Florida Insurance Company  
1:40:02 PM Sen. Negron  
1:40:09 PM M. Delegal  
1:40:55 PM Sen. Negron  
1:41:22 PM Jeff Atwater, Chief Financial Officer  
1:42:54 PM Sen. Negron  
1:42:56 PM S 708 temporarily postponed  
1:43:20 PM S 450  
1:43:28 PM Sen. Clemens  
1:43:53 PM Am. 269442  
1:44:02 PM Sen. Clemens  
1:44:17 PM S 450 (cont.)  
1:44:35 PM Brian Pitts, Trustee, Justice -2-Jesus (waives in support)  
1:44:46 PM Sen. Sobel  
1:44:50 PM Sen. Clemens  
1:45:12 PM Sen. Negron  
1:46:10 PM S 102  
1:46:14 PM Sen. Diaz de le Portilla  
1:46:32 PM Am. 479484  
1:46:43 PM Sen. Diaz de la Portilla  
1:46:54 PM Sen. Negron  
1:47:22 PM S 102 (cont.)  
1:47:38 PM Amy Mercer, Executive Director, Florida Policy Chiefs Association (waives in support)  
1:47:48 PM Brian Pitts, Trustee, Justice-2-Jesus  
1:49:37 PM Sen. Negron  
1:50:03 PM B. Pitts  
1:50:07 PM Sen. Negron  
1:50:11 PM B. Pitts  
1:50:14 PM Sen. Negron  
1:51:08 PM Jeff Sharkey, Managing Partner CAG, Florida Bicycle Association (waives in support)  
1:51:17 PM Kristen Allen, State Victim Services Manager, Mothers Against Drunk Driving Florida (waives in support)  
1:51:25 PM Edna Walsh, Aaron Cohen Law Institution  
1:54:44 PM Sen. Negron  
1:54:57 PM Sen. Diaz de la Portilla  
1:56:01 PM Sen. Negron  
1:56:14 PM S 230  
1:56:17 PM Sen. Simmons  
1:58:07 PM Sen. Negron  
1:58:16 PM Am. 337450  
1:58:24 PM Sen. Simmons  
1:58:41 PM Sen. Negron  
1:58:47 PM Am. 474374  
1:58:51 PM Sen. Simmons  
1:59:17 PM Sen. Negron  
1:59:28 PM Am. 281474

1:59:32 PM Sen. Simmons  
1:59:48 PM Sen. Negron  
2:00:01 PM S 230 (cont.)  
2:00:03 PM John Wayne Smith, City of Orlando (waives in support)  
2:00:05 PM Kelley Teague, Legislative Affairs Director, Orange County  
2:00:53 PM Sen. Negron  
2:02:06 PM S 708 (resumed)  
2:02:46 PM Paul Eagle, citizen (waives in support)  
2:02:55 PM Shawn Jones, Technician (waives in support)  
2:03:21 PM Harry Pelzer, Owner/Contractor, Speed Dry Inc, (waives in support)  
2:04:21 PM Jeff Gent, President (waives in support)  
2:04:26 PM Rob Brinker, Owner, Steam Pro of Tallahassee (waives in support)  
2:04:33 PM Mark Fisher, Marketing, (waives in support)  
2:04:39 PM Casey Doyle, Manager, United Water Restoration (waives in support)  
2:04:48 PM Gilbs Bevinall, Manager, United Water Restoration Group Inc. (waives in support)  
2:05:03 PM Jacob Dunbar, Technician, United Water Restoration Group Inc. (waives in support)  
2:05:07 PM Ricardo Gonzalez, Quality Control (waives in support)  
2:05:13 PM Carolyn Johnson, Policy Director, FL Chamber of Commerce (waives in support)  
2:05:19 PM Steve Burgess, Insurance Consumer Advocate, Insurance Consumer Advocate (waives in support)  
2:05:50 PM Brian T. Christenser, Owner (waives in support)  
2:06:07 PM Juan E. Cartaya, Lead Technician, Emorney Service (waives in support)  
2:06:17 PM Rosa Baez, Technician, Emorney Service (waives in support)  
2:06:23 PM Catalina Rodriguez, Technician, Emorney Service (waives in support)  
2:06:52 PM Paula Tapia, Emergency Service (waives in support)  
2:07:24 PM Mercedes Caba, Lead Technician, Emorney Service (waives in support)  
2:07:32 PM Milly Nunez, Technician, Emergency Service (waives in support)  
2:07:46 PM Lulsa De Leon, Lead Technician, Emergency Service (waives in support)  
2:07:56 PM Maria Quesala, Lead Technician, Emergency Service (waives in support)  
2:08:01 PM Jackey Espind, Project Manager, Emergency Service (waives in support)  
2:08:10 PM Evo Manero, Technician, Emergency Service (waives in support)  
2:08:40 PM Vidal Estrada, Lead Technician, Emergency Service (waives in support)  
2:08:45 PM Magaly Perez, Lead Technician, Emergency Service (waives in support)  
2:08:51 PM Augel Vargas, Lead Technician, Emergency Service (waives in support)  
2:09:02 PM Yuremi Adarou, Head Technician, Emergency Service (waives in support)  
2:09:05 PM Francisco Tapia, Emergency Service (waives in support)  
2:09:13 PM Diane Baez, Technician, Emergency Service (waives in support)  
2:09:19 PM Nusel Pascual Diaz Sancitez, Emergency Service (waives in support)  
2:09:27 PM Clara Flores, Technician, Emergency Service (waives in support)  
2:09:57 PM Graciela Leal, Lead Technician, Emergency Service (waives in support)  
2:10:25 PM Mark Delegal, Retained Counsel, State Farm Florida Insurance Company  
2:11:24 PM Sen. Negron  
2:11:43 PM Sen. Richter  
2:14:18 PM Sen. Negron  
2:14:24 PM Sen. Bean  
2:14:56 PM Sen. Negron  
2:16:07 PM S 326  
2:16:19 PM Sen. Thompson  
2:16:25 PM Sen. Richter  
2:16:34 PM Sen. Thompson  
2:17:23 PM Sen. Negron  
2:17:41 PM Brian Pitts, Trustee, Justice-2-Jesus  
2:19:39 PM Sen. Negron  
2:20:31 PM S 272  
2:20:36 PM Sen. Simpson  
2:20:54 PM Am. 312734  
2:21:11 PM Sen. Simpson  
2:21:38 PM Sen. Negron  
2:21:47 PM Sen. Lee  
2:22:04 PM Sen. Negron  
2:22:11 PM Sen. Joyner  
2:22:27 PM Sen. Simpson  
2:22:33 PM Sen. Joyner

2:22:40 PM Sen. Negron  
2:22:55 PM S 272 (cont.)  
2:23:01 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)  
2:23:23 PM Sen. Negron  
2:24:04 PM Sen. Benacquisto  
2:24:17 PM S 156  
2:24:21 PM Sen. Negron  
2:24:27 PM Am. 942224  
2:24:39 PM Sen. Negron  
2:26:10 PM Am. 727944  
2:26:11 PM Sen. Benacquisto  
2:26:15 PM Am. 942224 (cont.)  
2:26:16 PM Sen. Negron  
2:26:17 PM Sen. Benacquisto  
2:26:27 PM S 156 (cont.)  
2:26:28 PM Sen. Negron  
2:26:30 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)  
2:26:41 PM Frank Meiners, Association Industries Foundation (waives in support)  
2:27:22 PM Sen. Benacquisto  
2:27:32 PM Carolyn Johnson, Policy Director, FL Chamber of Commerce (waives in support)  
2:27:39 PM Tim Nungesser, Legislative Director, National Federation of Independent Business (waives in support)  
2:27:41 PM Darrick McGhee, Director of Legislative Affairs, Executive Office of the Governor (waives in support)  
2:28:05 PM Sen. Lee  
2:28:32 PM Sen. Joyner  
2:29:31 PM Sen. Benacquisto  
2:30:30 PM Sen. Negron  
2:30:34 PM S 7086  
2:30:45 PM Sen. Hukill  
2:30:53 PM Sen. Joyner  
2:31:02 PM Sen. Hukill  
2:31:22 PM Sen. Negron  
2:32:28 PM S 218  
2:32:33 PM Sen. Grimsley  
2:33:19 PM Sen. Negron  
2:33:24 PM Am. 252134  
2:33:28 PM Sen. Grimsley  
2:33:45 PM Sen. Negron  
2:33:55 PM Jim Spratt, Florida Forestry Association (waives in support)  
2:34:03 PM Sen. Negron  
2:34:14 PM Am. 128248  
2:34:26 PM Sen. Latvala  
2:34:41 PM Sen. Negron  
2:34:46 PM Ron Richmond, AP Wireless Partners LLC (waives in support)  
2:35:01 PM Am. 243762  
2:35:09 PM Sen. Grimsley  
2:35:25 PM Sen. Negron  
2:35:33 PM Joseph Spratt, Lobbyist, City of Labelle (waives in support)  
2:35:38 PM Ryan Padgett, Assistant General Counsel, Florida League of Cities (waives in support)  
2:35:42 PM Chris Doolin, Consultant, Small County Coalition (waives in support)  
2:36:00 PM S 218 (cont.)  
2:36:04 PM Brian Pitts, Trustee, Justice-2-Jesus  
2:40:21 PM Sen. Negron  
2:41:20 PM S 732  
2:41:25 PM Sen. Galvano  
2:42:11 PM Sen. Negron  
2:42:20 PM Ashley Spicola, Education Policy Chief, Executive Office of the Governor (waives in support)  
2:42:23 PM Kevin Thompson, Executive Director, FL Prepaid (waives in support)  
2:42:31 PM S 384  
2:43:40 PM PCS 543868  
2:43:41 PM Sen. Bradley  
2:44:31 PM Sen. Negron  
2:45:31 PM Sen. Joyner



2:45:44 PM Sen. Bradley  
2:45:55 PM Sen. Joyner  
2:46:06 PM Sen. Bradley  
2:46:53 PM Sen. Negron  
2:46:58 PM Sen. Joyner  
2:47:07 PM Sen. Montford  
2:47:29 PM Sen. Bradley  
2:48:12 PM Sen. Negron  
2:48:27 PM Brian Pitts, Trustee, Justice-2-Jesus  
2:50:32 PM Nancy Daniels, Public Defender 2nd Circuit, Florida Public Defender Association Inc.  
2:52:01 PM Sen. Negron  
2:52:12 PM Sen. Joyner  
2:52:50 PM S 928  
2:53:48 PM PCS 290876  
2:54:15 PM Sen. Ring  
2:54:38 PM Sen. Negron  
2:54:49 PM Am. 388256  
2:54:54 PM Sen. Negron  
2:55:07 PM Am. 693796  
2:55:11 PM Sen. Ring  
2:55:16 PM Sen. Negron  
2:55:23 PM Am. 696398  
2:55:27 PM Sen. Ring  
2:55:48 PM Sen. Negron  
2:55:50 PM PCS 290876 (cont.)  
2:55:52 PM Leticia Adams, Senior Policy Director, FL Chamber of Commerce (waives in support)  
2:56:01 PM Frank Meiners, Association Industry of FL (waives in support)  
2:56:03 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)  
2:56:26 PM Sen. Negron