The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Siplin, Vice Chair

MEETING DATE: Tuesday, February 8, 2011
TIME: 11:15 a.m.—1:15 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 128** Bullard	Public Printing; Revises the record requirements for agency publications. Requires the record to include the reasons for printing and distributing a publication and whether the publication is available electronically. Requires such justification to be included in the agency's legislative budget request. GO 02/08/2011 BC	
2	**SB 146** Smith (Identical H 449, Compare S 134)	Criminal Justice; Cites this act as the "Jim King Keep Florida Working Act." Requires state agencies and regulatory boards to prepare reports that identify and evaluate restrictions on licensing and employment for ex-offenders. Prohibits state agencies from denying an application for a license, permit, certificate, or employment based on a person's lack of civil rights. Requires an employer to review the results of a criminal background investigation. Clarifies under what circumstances a person may legally deny the existence of an expunged criminal history record, etc. GO 02/08/2011 CJ JU	
3	**SB 174** Bennett (Identical H 7001)	Growth Management; Reenacts provisions relating to the definition of "urban service area" and "dense urban land area" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act. Reenacts provisions relating to certain required and optional elements of a comprehensive plan, concurrency requirements for transportation facilities, a required notice for a new or increased impact fee, the process for adopting a comprehensive plan or plan amendment, etc. CA 01/11/2011 Favorable GO 02/08/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 176** Bennett (Identical H 7003)	Affordable Housing; Reenacts a specified provision relating to the state allocation pool used to confirm private activity bonds. Reenacts a specified provision relating to lands that are owned by a community land trust and used to provide affordable housing. Reenacts a specified provision relating to a tax exemption provided to organizations that provide low-income housing. Reenacts a specified provision relating to a property exemption for affordable housing owned by a nonprofit entity, etc. CA 01/11/2011 Favorable GO 02/08/2011 BC	
5	**SB 276** Bennett (Identical H 135)	Procurement of Professional Services; Allows compensation to be a considering factor during the competitive selection process for architectural, engineering, and other professional services. Authorizes the governmental agency or school board to reopen negotiations with a selected firm following termination of negotiations with other firms. GO 02/08/2011 ED BC	
6	**SB 444** Bogdanoff (Identical H 441)	Scrutinized Companies; Prohibits a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Requires the DMS to notify the Attorney General after the act becomes law. Provides that the act becomes inoperative if federal law ceases to authorize states to enact such contracting prohibitions, etc. GO 02/08/2011 CA BC	
7	Overview of Public Pension Plans AFL- CIO and Association of Florida Colleges will present.		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 128

INTRODUCER: Senator Bullard

SUBJECT: Public Printing

DATE: January 31, 2011 REVISED:

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

I. Summary:

This bill revises requirements for records pertaining to justification of agency printing jobs costing more than a statutorily-specified amount.

This bill substantially amends section 283.31, Florida Statutes.

II. Present Situation:

Printing of Agency Publications

An agency much maintain a record of a printed publication[1] if:

- The printing cost is greater than that provided in s. 287.017, F.S.[2], for CATEGORY THREE[3], and
- At least part of the printing cost is paid by funds appropriated by the Legislature.[4]

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[1] Section 283.31, F.S., provides that "publication" is as defined as in s. 257.05, F.S. Section 257.05, F.S., does not define "publication," but it defines "public document" to mean "any document, report, directory, bibliography, rule, newsletter, pamphlet, brochure, periodical, or other publication, whether in print or nonprint format, that is paid for in whole or in part by funds appropriated by the Legislature and may be subject to distribution to the public; however, the term excludes publications for internal use by an executive agency as defined in s. 283.30."

[2] Section 287.017, F.S., provides purchasing categories for state agency procurement.

[3] On January 31, 2010, the threshold amount provided for CATEGORY THREE was $65,000.

[4] Section 283.31, F.S.

The record must contain:
- Written justification of the need for the publication.
- The purpose of the publication.
- Legislative or administrative authority.
- Sources of funding.
- Frequency and number of issues.
- Reasons for deciding to have the publication printed in-house, by another agency or the Legislature, or purchased on bid.
- Comparative costs of alternative printing methods *if* those costs were a factor in deciding upon a method.

The record of the corporation operating the correctional industry printing program[5] must include:
- Cost of materials used.
- Cost of labor.
- Cost of overhead.
- Amount of profit made by the corporation.
- Whether the state agencies that contract with the corporation for printing are prudently determining the price paid.

OPPAGA Report No. 05-53: State Printing Expenditures Have Decreased, But Additional Steps Could Produce More Savings

The Florida Office of Program Policy Analysis and Government Accountability (OPPAGA) is a staff unit of the Legislature created by state law. It provides independent examinations, program reviews, and other projects as directed.[6]

OPPAGA Report No. 05-53 examined the production and distribution of public documents by state agencies. Included in the report was a finding that agencies were not consistently justifying publications exceeding the statutory cost threshold in s. 283.31, F.S. The report recommended that agencies be required to report the statutorily-required justifications annually in their legislative budget requests.[7]

III. Effect of Proposed Changes:

This bill:
- Deletes the link of the term “publication” to the definition in s. 257.05, F.S.
- Specifies that the written justification is for printing and distributing printed copies of the publication.

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[5] Section 283.31, F.S., does not explain what the “corporation operating the correctional industry printing program” is, but the staff analysis for ch. 90-335, L.O.F., the law in which the corporation is first mentioned in the section, states that the corporation is Prison Rehabilitative Industries and Diversified Enterprises, Inc., the nonprofit corporation operating the correctional industry program described in part II, ch. 946, F.S.
[6] Section 11.51(1), F.S.
[7] Florida Office of Program Policy and Government Accountability website, http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0553rpt.pdf, OPPAGA Report No. 05-53, last viewed on February 2, 2011.

- Requires inclusion in the written justification of whether the publication is also available electronically.
- Requires inclusion of the written justification in the agency's annual legislative budget request.[8]
- Specifies that the description of sources of funding applies to the printing and distribution of the publication.
- Requires the record to contain the number of printed copies of the publication.

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

Other potential implications:

The bill deletes the link of the term "publication" to the definition in s. 257.05, F.S., which excludes internal agency documents. The requirements of s. 283.31, F.S., will therefore apply to "publication(s)"[9] as defined in s. 283.30, F.S., which includes internal documents.

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:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

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[8] Section 216.023, F.S., requires the head of each state agency to submit a final legislative budget request to the Legislature and to the Governor each year.

[9] Section 283.30, F.S., defines "publication" as "any document, whether produced for public or internal distribution."

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 283.31, F.S., refers to the "corporation operating the correctional industry printing program," but does not explain what that corporation is. The Legislature may wish to consider amending the section to link the term to the description of the nonprofit corporation operating the correctional industry program found in part II, ch. 946, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 146

INTRODUCER: Senator Smith

SUBJECT: Ex-Offenders/Licensing and Employment

DATE: January 25, 2011 REVISED:

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

I. Summary:

The bill makes changes to Florida's laws relating to the restoration of civil rights, restrictions on the employment of ex-offenders, negligent hiring, and sealing and expunging criminal records. Specifically, the bill:

- Provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate.
- Requires state agencies and regulatory boards to submit to the Governor and certain legislative officers a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety.
- Requires an employer to review and consider the results of a criminal history background investigation and take certain steps consistent with the findings of the investigation in order to satisfy a statutory presumption against civil liability for negligent hiring.
- Provides that an ex-offender may lawfully deny or fail to acknowledge any arrests or subsequent dispositions covered by a sealed or expunged record and that a person cannot be liable for perjury for doing so on an employment application.
- Permits the subject of an expunged record to receive the contents of that record without a court order.
- Allows for a second sealing of a criminal record.

This bill substantially amends the following sections of the Florida Statutes: 112.011, 768.096, 943.0585, and 943.059.

II. Present Situation:

Restoration of Civil Rights

Section 112.011(1)(a), F.S., provides that a criminal conviction does not automatically disqualify a person from eligibility for public employment. However, a person who has been convicted of a felony or first-degree misdemeanor may be denied employment if the crime is directly related to the position sought. This section does not refer to restoration of civil rights.

Section 112.011(1)(b), F.S., relates to the impact of a prior criminal conviction on obtaining a license, permit, or certificate from a public agency to engage in an occupation, trade, vocation, profession, or business. If a person has had his or her civil rights restored, the status of having a prior conviction is not necessarily a disqualification. However, the conviction may be disqualifying if the specific crime for which the person was convicted was a felony or first-degree misdemeanor that is directly related to the position for which the license, permit, or certificate is required. In addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.[1]

Counties and municipalities that are hiring for positions deemed to be critical to security or public safety, law enforcement agencies, and correctional agencies are exempted from the provisions of s. 112.011(1), F.S.[2] Fire departments are also prohibited from hiring firefighters with a prior felony conviction sooner than four years after expiration of the sentence unless the applicant has been pardoned or had his or her civil rights restored.

According to a report prepared by the Public Safety Unit of the Office of Policy and Budget within the Executive Office of the Governor (EOG), the overwhelming majority of licenses that were denied in the two years prior to the report were due to statutory restrictions relating to criminal convictions and not for a requirement for civil rights restoration.[3] More than 4,000 licenses were denied during the prior year, but only 14 were denied due to a lack of restoration of civil rights. These denials were by the Department of Health's (DOH) Board of Nursing (12 denials)[4] and the Department of Business and Professional Regulation's (DBPR) Construction Industry Licensing Board (two denials).[5] There is no way to estimate how many persons were deterred from applying for licensing because of an actual or perceived requirement for civil rights restoration.

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[1] In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. *See Yeoman v. Construction Industry Licensing Bd.*, 919 So. 2d 542 (Fla. 1st DCA 2005); *Scherer v. Dep't of Business and Professional Regulation*, 919 So. 2d 662 (Fla. 5th DCA 2006); *Vetter v. Dep't of Business and Professional Regulation, Electrical Contractors' Licensing Bd.*, 920 So. 2d 44 (Fla. 2d DCA 2005).

[2] Section 112.011(2), F.S.

[3] Public Safety Unit, Office of Policy and Budget, Executive Office of the Governor, *Report on the Survey of License and Employment Restrictions in State Agencies* (Oct. 2007).

[4] The Board of Nursing removed its discretionary requirement of civil rights restoration in November 2007.

[5] Section 489.115(6), F.S., was amended by Senate Bill 404 in 2007 to provide that the Construction Industry Licensing Board cannot deny a contractor's license based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights. If the applicant was convicted of a felony, licensure denial may be based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The Board is also required to consider the length of time since the commission of the crime and the rehabilitation of the applicant.

The EOG's review found that the DOH and the Department of Highway Safety and Motor Vehicles restrict some licenses based upon a requirement for restoration of civil rights.[6] Outside of the Governor's agencies, the Department of Agriculture and Consumer Services and the Department of Financial Services have both statutorily mandated and non-mandated requirements for restoration of civil rights.

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction. Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.[7]

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, Section 8(a), of the Florida Constitution. In April 2007, the Governor and Cabinet changed the Rules of Executive Clemency so that more convicted felons who have completed their sentences are eligible for restoration of civil rights. Between July 1, 2007, and September 30, 2008, 123,232 felons had their rights restored.[8] This contrasts with 11,002 restorations during Fiscal Year 2005-2006, the last full fiscal year before the clemency rules were amended.[9] Many offenses for which restoration of rights was either excluded or delayed for a period of years are now eligible for restoration after verification that all qualifying conditions have been met.

Eligibility for restoration of civil rights requires that the felon have completed all sentences, that all conditions of supervision have been satisfied or expired, and that there is no outstanding victim restitution. Thereafter, felons fall into one of three categories based upon the Clemency Board's assessment of the seriousness of the offense:

- Immediately eligible for automatic approval of restoration;
- Immediately eligible for restoration without a hearing; or
- Eligible for restoration without a hearing after 15 years.

The Florida Parole Commission acts as the agent of the Clemency Board in verifying eligibility, and has prioritized processing of the automatic approval cases for which it conducts a less extensive review. A more extensive investigation is conducted for those who are immediately

[6] It appears that there are also statutorily mandated requirements for civil rights restoration related to the Department of Revenue (s. 206.026, F.S. – terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler fueler license); and the DBPR (s. 447.04, F.S. – labor union business agent license; s. 550.1815, F.S. – horseracing, dogracing, or jai alai fronton permit).

[7] Section 944.292, F.S., provides: "[u]pon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."

[8] Florida Parole Commission, *Annual Report 2007-2008*, 21 (Dec. 31, 2008), *available at* https://fpc.state.fl.us/PDFs/FPCannualreport200708.pdf (last visited Apr. 10, 2010).

[9] Comm. on Criminal Justice, The Florida Senate, *Rules for Restoration of Civil Rights for Felons and Impacts on Obtaining Occupational Licenses and Other Opportunities*, 6 (Interim Report 2008-114) (Dec. 2007), *available at* http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-114cj.pdf (last visited Apr. 10, 2010).

eligible for restoration without a hearing. Due to the large number of persons who are eligible for automatic approval, persons who are immediately eligible for restoration without a hearing may face a delay of several years before their rights are restored.

The Florida Department of Law Enforcement's criminal history database includes records of approximately 800,000 persons who have been convicted of a felony in Florida. This is not an accurate reflection of the number of Florida residents who have lost their civil rights, because it includes persons who have died or left the state and does not include persons who were convicted in other jurisdictions. However, it illustrates the magnitude of the population that is affected by loss of civil rights.

There were 101,437 inmates in the custody of the Florida Department of Corrections as of December 31, 2009. Almost 90 percent of these inmates will be released one day. During the 2007-2008 fiscal year, 36,723 inmates were released from prison,[10] and the current recommitment rate indicates that almost 33 percent of them will be recommitted within three years.[11]

The federal Second Chance Act of 2007 (act) is designed to help inmates safely and successfully transition back into the community. Among its many initiatives, the act authorizes the U.S. Justice Department's National Institute of Justice and the Bureau of Justice Statistics to conduct reentry-related research. The National Institute of Justice has found that one year after release, up to 60 percent of former inmates are not employed. The act also establishes a national resource center to collect and disseminate best practices and provide training on and support for reentry efforts. It also provides an initiative to provide specific information on health, employment, personal finance, release requirements, and community resources to each inmate released.

Restrictions on the Employment of Ex-Offenders

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards will apply to different types of employees and licensees.

Restrictions based on agency policy that are not adopted as rules could be problematic. Chapter 120, F.S., specifies that a "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.[12] Rulemaking is not a matter of agency discretion – each agency statement defined as a rule must be adopted through the rulemaking procedure provided in ch. 120, F.S., as soon as feasible and practicable.[13]

[10] Florida Department of Corrections Annual Report FY 2007-2008, p. 66. The number reported in the text of this analysis does not include inmates released by reason of death.
[11] Transcript of remarks by Secretary Walter A. McNeil at the Restoration of Rights Summit in Tallahassee, Florida, June 17, 2008, viewed on September 24, 2008 at http://free-rein.us/McNeil_Restoration_of_Rights_Summit_speech_06_18_08.pdf.
[12] Section 120.52(15), F.S.
[13] Section 120.54(1)(a), F.S.

Agencies should not impose employment or licensing restrictions on applicants that are not based on statute or rules adopted pursuant to statutory authority.

The Governor's Ex-Offender Task Force (Task Force) was established in 2005 to "help improve the effectiveness of the State of Florida in facilitating the re-entry of ex-offenders into their communities so as to reduce the incidence of recidivism."[14] The Task Force estimated that almost 40 percent of the 7.6 million jobs in Florida are subject to criminal background checks or restrictions based on criminal history. The restrictions include requiring restoration of civil rights, disqualification based on commission of specific crimes, or requiring the passing of a background check under ch. 435, F.S. Less defined restrictions require assessment of whether the applicant has good moral character or has committed an act or crime of moral turpitude. The Task Force found that convicted felons face significant barriers to employment because of these restrictions.

After the Task Force found that many state laws and policies imposed restrictions on the employment of ex-offenders, and that no comprehensive review of those restrictions had been undertaken, executive agencies were instructed to produce for the Task Force a report detailing all employment restrictions and disqualifications based on criminal records.[15] The Task Force released its Final Report to the Governor in November 2006, and recommended that employment restrictions be studied, specifically the "feasibility of a single background check act that would streamline, organize, and cohere employment restrictions based on the nature of the job."[16]

In October 2007, the Governor's Office made a presentation to the Senate Criminal Justice Committee addressing licensing and employment restrictions, based on surveys of non-Cabinet agencies. Nine agencies reported licensing restrictions, citing criminal history or restoration of civil rights as the legal basis for the restrictions. The presentation noted that pursuant to s. 112.011, F.S., an agency *may* deny employment by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and *directly related* to the position of employment sought.

Pursuant to s. 112.011(1)(a), F.S., a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S. However, a person may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought. Specific restrictions for licenses and employment are found throughout the Florida Statutes, as detailed in the Governor's Survey of License and Employment Restrictions in State Agencies, presented to the Senate Criminal Justice Committee in October 2007.

[14] Executive Order No. 05-28.
[15] Executive Order No. 06-89.
[16] Governor's Ex-Offender Task Force, *Final Report to Governor Jeb Bush,* 27 (Nov. 2006), *available at* http://www.aecf.org/upload/PublicationFiles/Final%20Report%20of%20Florida%20Ex-Offender%20Task%20Force.pdf (last visited Apr. 10, 2010).

Liability for Negligent Hiring

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee if, prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.[17] The background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE or department).[18]
- Reasonable efforts to contact references and former employers.
- A job application form that includes questions requesting detailed information regarding previous criminal convictions.
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed.
- An interview of the prospective employee.[19]

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.[20]

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The department can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE.[21] Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The department, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.[22]

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[17] Section 768.096(1), F.S.
[18] The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.
[19] Section 768.096(1)(a)-(e).
[20] Section 768.096(3), F.S.
[21] Section 943.0585(4), F.S.
[22] Section 943.0585(4)(c), F.S.

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,[23] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[24]

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.[25] It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility and swears that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses.
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged.
- Has not obtained a prior sealing or expunction.
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.[26]

In addition, the record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.[27] The same criteria apply for sealing a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.[28]

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged.[29]

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[23] These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.
[24] Section 943.0585(4)(a), F.S.
[25] Section 943.0585(2), F.S.
[26] Section 943.0585(1)(b), F.S.
[27] Section 943.0585(2)(h), F.S.
[28] Section 943.0585(1), F.S.
[29] These offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

III. Effect of Proposed Changes:

Section 1: Title

Section 1 provides that the act may be cited as the "Jim King Keep Florida Working Act."

Section 2: Restrictions on the Employment of Ex-Offenders

Each state agency, including professional and occupational regulatory boards, will submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2011, and every eight years thereafter. This report will include policies imposed by the agency or board that disqualify a person who has been convicted of a crime from employment or licensure. The report will also contain a review of these restrictions and their availability to prospective employees. The report will take into account these disqualifications and consider less restrictive ways to protect public safety while offering employment opportunities for ex-offenders. If any restriction is based on language referring to "good moral character" or "moral turpitude," the report may propose restrictions that more precisely describe the basis for employment decision making.

Section 3: Restoration of Civil Rights

Section 112.011(1)(b), F.S., is rewritten to exclude any reference to restoration of civil rights. The bill amends the original language to allow a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first-degree misdemeanor relevant to the standards normally associated with, or determined by the regulatory authority to be necessary for the protection of the public or other parties for which the license, permit, or certificate is required.

Paragraph (c) is added to expressly preclude disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment on the grounds that his or her civil rights have not been restored. This applies notwithstanding any provision in another section of Florida Statutes, though it does not apply to applications for a license to carry a concealed weapon. However, the exemptions within the section of law for county and municipal positions, which are deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments are retained.

The effect of these revisions to s. 112.011(1), F.S., is that the restoration of civil rights will no longer be used as a measure of fitness for public employment and licensure. This recognizes that restoration of civil rights is dependent upon completion of sentence, not upon a demonstration of rehabilitation or suitability for employment. Public safety may be increased by precluding consideration of restoration of civil rights as a validation that a person is fit for employment regardless of the specifics of his or her criminal background.

In addition, otherwise qualified persons will not be precluded from employment if they have a prior conviction for a crime that is not related to the position or permit which they seek. These increased employment opportunities should have some impact in reducing recidivism, thus reducing the direct costs of crime as well as costs of re-incarceration. With the link between civil

rights restoration and ex-offender employment eligibility separated, regulatory agencies and licensing boards may be more likely to establish criteria significant to their specific trades that can more effectively satisfy public safety concerns.

Section 4: Employer Presumption Against Negligent Hiring

The bill amends s. 768.096, F.S., to revise an existing statutory presumption against a civil claim of negligent hiring. Current law allows an employer to receive the presumption by satisfying any one of the items in the statutory list. The bill replaces the conjunction "or" with "and" in the list of items that must be included in the employee background investigation. As a result, an employer must complete each item in the list in order to satisfy the negligent hiring presumption.

The bill also revises the criminal background investigation required as one of the elements of the presumption. The bill provides that the employer must review and consider the results of the criminal background investigation and if the prospective employee has engaged in past criminal conduct, the employer must: (1) make sure the employee is not assigned to particular work that will place the employee in a position in which conduct that is similar to the employee's past criminal conduct is facilitated; and (2) determine whether other information revealed by the investigation demonstrated the unsuitability of the employee for the particular work or the context of the employment in general.

Sections 5 and 6: Sealing and Expunction of Criminal History Records

The bill makes the following changes to the statutes governing the sealing and expunction of criminal records:

- Requires the clerk of court to place on his or her website information on the availability of criminal history record sealing and expunction, including a link to the Florida Department of Law Enforcement's website for sealing and expunction applications and information.
- Clarifies how a potential applicant can answer a "conviction" question on a job or licensing application concerning sealed or expunged records by specifying that a person may lawfully deny or fail to acknowledge the arrests and subsequent dispositions covered by the sealed or expunged record.
- Clarifies that no person can be liable for perjury when denying or failing to acknowledge the arrests and subsequent dispositions, including when asked on an employment application.
- Permits the contents of an expunged record to be disclosed to the subject of the record without requiring him or her to obtain a court order.
- Allows for a second sealing of a criminal record if the subject of the record has been crime-free for five years (meaning no subsequent arrests have occurred since the date of the court order for the initial criminal history record expunction or sealing). The current requirements and other provisions in the sealing and expunction statutes would continue to apply when seeking a second sealing under the bill.

Section 7: Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Florida Department of Law Enforcement estimated that $498,525 in annual revenue would be generated from the certificate of eligibility fees. This was based on an estimated 6,647 new applications the department anticipates it will receive ($75 per application x 6,647 additional applications each year).[30]

B. Private Sector Impact:

The bill may have a positive fiscal impact by providing more job opportunities for convicted felons. That could reduce recidivism, thus reducing the direct costs of crime as well as costs of re-incarceration.

C. Government Sector Impact:

The Florida Department of Law Enforcement anticipates that additional resources will be required to handle the increased workload generated by the provision in the bill which allows persons to apply for a second criminal history records sealing. FDLE indicates that such costs may be $145,006 in Fiscal Year 2011-12, and $101,210 in Fiscal Years 2012-13, and 2013-14.[31]

VI. Technical Deficiencies:

The bill allows for a second sealing of a criminal record if the subject of the record has been crime-free for five years. The bill adds this exception several places in s. 943.059, F.S. (see lines

[30] Florida Dep't of Law Enforcement, *Senate Bill 146 Relating to Ex-offenders/Licensing and Employment/Sealed Records*, (Jan. 28, 2011) (on file with the Senate Committee on Governmental Oversight and Accountability).
[31] *Id.*

537, 580, and 613); however, the exception is not added to substantially similar sections of law within s. 943.0585, F.S. (see lines 245, 319, and 366). It is unclear if the exception needs to be added to s. 943.0585, F.S., which relates to court-ordered expunction of criminal history records.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 174

INTRODUCER: Senator Bennett

SUBJECT: Growth Management

DATE: January 31, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Roberts	Roberts	GO	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

In response to ongoing litigation, this bill reenacts sections of law amended by the parts of ch. 2009-96, Laws of Florida, (SB 360 from 2009) most closely related to the subject of growth management to eliminate any possible question that any of these provisions could be subjected to a single subject[1] challenge. Additionally, if the bill passes by a 2/3 majority of each house, it could remove the argument that these provisions violate the mandates provision of the Florida Constitution.[2] The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360:

- The compliance deadline for local governments to submit financially feasible capital improvement elements was extended, and one of the penalties for failing to adopt a public schools facility element was eliminated.
- Transportation Concurrency Exception Areas (TCEAs) were created in any: municipality that qualifies as a dense urban land area; urban service area which has been adopted into a local comprehensive plan and is located in a county that qualifies as a dense urban land area; and any county, including the cities within the county, which has a population of at least 900,000 and qualifies as a dense urban land area but does not have an urban service area designated within the local comprehensive plan.
- Other local governments have the option of creating TCEAs in certain designated areas.
- TCEAs were not created in Broward or Miami-Dade County.
- The bill explicitly stated that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees.

[1] Art. III, § 6, Fla. Const.
[2] Article VII, § 18(a), Fla. Const.

- A waiver from transportation concurrency requirements on the state's strategic intermodal system was created for certain Office of Tourism, Trade, and Economic Development job creation projects.
- Certain developments became exempt from the development-of-regional-impact (DRI) process in the following areas:
  - municipalities that qualify as dense urban land areas;
  - an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
  - a county, such as Pinellas or Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.
  - Other local governments have the option of designating certain areas as exempt from DRI review.
  - The bill required municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.
  - Parties that fail to resolve their disputes through voluntary meetings must now use mandatory, rather than voluntary, mediation or a similar process.
  - Urban service areas may be designated in the comprehensive plan using an expedited process.
  - Chapter 2009-96, Laws of Florida, also authorized permit extensions and commissioned a mobility fee study.
  - Includes the statement that the Legislature finds that this act fulfills an important state interest from the original bill and includes a statement that this bill, SB 174, fulfills an important state interest.

This bill substantially reenacts parts of sections 163.3164, 163.3177, 163.3180, 163.31801, 163.3184, 163.3187, 163.32465, 171.091, 186.509, and 380.06 of the Florida Statutes.

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled "An Act Relating to Growth Management" or "The Community Renewal Act" (SB 360).[3] This bill made a wide array of changes to Florida's growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.[4] The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.[5] The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal, and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted. Local governments, developers, and other private interests are facing uncertainty as a result of this lawsuit.

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

This discussion explains the issues involved in SB 360. It gives background on the issues and specifies the changes made by SB 360. Discussions of the changes to law effected by SB 360 are flagged by underlining marking the beginning of the discussion.

Growth Management

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[6] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[7] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

A local government may choose to amend its comprehensive plan for a host of reasons. It may wish to: expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government. To adopt a comprehensive plan amendment, local governments must hold two public hearings and undergo review by state and regional entities. For most types of comprehensive plan amendments, local governments may only amend their comprehensive plan twice a year.

SB 360 created a provision that requires local governments to make concurrent zoning and comprehensive plan changes upon the request of an applicant with an approved application. The bill also exempted urban service areas from the twice a year restriction on plan amendments and gave them expedited review.

Proportionate Fair-Share Mitigation

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies a significant benefit test; or

[6] *See* Chapter 163, Part II, F.S.
[7] Section 163.3177(5), F.S.

- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[8] Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be "pipelined" or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

Urban Service Areas

SB 360 amended s. 163.3164, F.S., to change "existing urban service area" to "urban service area" and to redefine the term to include built-up areas where public facilities and services, including central water and sewer and roads are already in place or are committed within the next three years. The definition also grandfathers-in existing urban service areas or their functional equivalent within counties that qualify as dense urban land areas. This definition is important because for counties that are dense urban land areas, the area within the urban service area automatically became exempt from transportation concurrency and development-of-regional-impact review.

Dense Urban Land Areas

SB 360 created the definition of a "dense urban land area." The definition includes:

- a municipality that has an average population of at least 1,000 people per square mile and at least 5,000 people total;
- a county, including the municipalities located therein, which has an average population of at least 1,000 people per square mile; and
- a county, including the municipalities located therein, which has a population of at least 1 million.

The Office of Economic and Demographic Research determines which local governments qualify as dense urban land areas. The designation becomes effective upon publication on the state land planning agency's website. To support the Office of Economic and Demographic Research, municipalities that change their boundaries send their boundary changes and information on the population effect to the Office of Economic and Demographic Research. In 2009, when the lawsuit was instituted, 246 local governments qualified as dense urban land areas. However, because of statutory exemptions, not all of these would be transportation concurrency exception areas (see below).

Capital Improvements Element

[8] Section 380.06(1), F.S.

In 2005, the Legislature required municipalities to annually adopt a financially feasible Capital Improvements Element (CIE) schedule beginning on December 1, 2007. (House Bill 7203, passed in May 2007, postponed the submittal to December 1, 2008.) The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year. Failure to update the CIE can result in penalties such as a *prohibition on Future Land Use Map amendments*; ineligibility for grant programs such as Community Development Block Grants (CDBG), and Florida Recreation Development Assistance Program (FRDAP); or ineligibility for revenue-sharing funds such as gas tax, cigarette tax, or half-cent sales tax. The majority of jurisdictions failed to meet the December 1, 2008, deadline to submit their financial feasibility reports for their capital improvements element.

SB 360 changed the deadline to submit the CIE financial feasibility element and the implementation of the associated penalty from December 1, 2008, to December 1, 2011. This means that local governments have not been required to fund the complete costs of their capital improvements listed in their comprehensive plan during this time. These requirements could be costly in and of themselves. At the very least, local governments would have been required to amend their comprehensive plans to remove any capital improvements they could not fund. Failure to comply with the financial feasibility requirement could lead to local governments being ineligible for land use map amendments and subject to financial sanctions. Under challenging economic conditions, it is likely that a court overturning this provision could be very costly for local governments.

School Concurrency

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plans by the December 1, 2008, deadline, a significant number of jurisdictions did not meet the deadline. One of the penalties for failure to comply with the December 1, 2008, deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

SB 360 changed the penalties triggered when a local government or a school board fails to enter into an approved interlocal agreement or fails to implement school concurrency. The local government may be subjected to the penalties set forth in s. 163.3184(11)(a) and (b), F.S., and the school board may be subjected to penalties set forth in s. 1008.32(4), F.S. The bill gave a waiver from school concurrency for jurisdictions where student enrollment is less than 2,000 even if the growth rate is more than 10%. The bill specified that school districts must include certain relocatables as student capacity for purposes of school concurrency and that the construction of charter schools counts as mitigation for school concurrency.

Transportation Concurrency

The Growth Management Act of 1985 required local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.[9]

SB 360 modified numerous provisions related to transportation concurrency. These revisions were made in response to concerns that transportation concurrency stifles economic development in urban centers where development should be encouraged to avoid sprawl. This is because developers in congested areas must pay sometimes exorbitant proportionate fair-share costs to pay for road improvements to try to offset the traffic their planned development would create. In some areas, building new roads is functionally impossible. Developers that built their developments prior to congestion or in areas where roads are not yet congested would not have had to pay proportionate fair-share costs for their impacts. Therefore, SB 360 targeted areas based on population density to relieve some of the unintended consequences of transportation concurrency.

SB 360 designated the following areas as transportation concurrency exception areas (TCEAs):

- a municipality that qualifies as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas or Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Local governments that did not meet the population threshold of a "dense urban land area" could designate in their comprehensive plans areas such as urban infill and urban service areas as transportation concurrency exception areas.

After SB 360 became law, the Department of Community Affairs interpreted the change as removing state-mandated transportation concurrency within the specified jurisdictions while preserving transportation concurrency ordinances and the transportation concurrency provisions the local governments had already adopted into their comprehensive plans. Therefore, the department indicated that for transportation concurrency exception areas to become effective in practice local governments would need to amend their ordinance and comprehensive plans to implement the transportation concurrency exception area. Some local governments have begun

[9] *See* Professional staff analysis, Committee on Ways and Means, *CS/CS/SB 360* (Mar. 19, 2009), *available at* http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s0360.wpsc.pdf (last visited Mar. 30, 2010).

to amend their comprehensive plans or land use regulations to implement transportation concurrency exception areas. SB 1752, which became law in 2010,[10] attempted to preserve any amendment to a local comprehensive plan adopted pursuant to SB 360 designed to implement a transportation concurrency exception area.

SB 360 did not create TCEAs for designated transportation concurrency districts within a county, such as Broward County, that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees. TCEAs are also not created for a county such as Miami-Dade that has exempted more than 40% of its urban service area from transportation concurrency for purposes of urban infill.

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S. This language does not set specific requirements for local governments to include in their mobility plan. It could be as simple as including bike paths or as ambitious as buses or trains. It could mesh with the existing transportation requirements in the comprehensive plan as long as those requirements address alternative modes of transportation. Although adopting a comprehensive plan amendment will involve a cost, the cost of adopting a comprehensive plan amendment varies significantly from jurisdiction and is less significant when local governments are already adopting other amendments in the same cycle. Additionally, not requiring local governments to adhere to the state requirements of transportation concurrency should give local governments the flexibility to manage growth without always going through the costly process of building new roads.

If a local government uses 163.3180(5)(b)6., F.S., the method of creating TCEAs that existed prior to SB 360, it must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

Subsection (10) of s. 163.3180, F.S., was amended to provide an exemption from transportation concurrency on the SIS for projects that the local government and the Office of Tourism, Trade, and Economic Development (OTTED)[11] agree are job creation programs as described in s. 288.0656 (for REDI projects) or s. 403.973 (expedited permitting), F.S.

The bill added a specific declaration that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation

[10] Chapter 2010-147, L.O.F.

[11] The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) may waive certain criteria, requirements, or similar provisions for any Rural Areas of Critical Economic Concern (RACEC) project expected to provide more than 1,000 jobs over a 5-year period. OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."

concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

The Office of Program Policy Analysis and Government Accountability must study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.

SB 360 also added language that within TCEAs the local government will be deemed to achieve and maintain level-of-service standards. It includes a statement that transportation level-of-service standards for development of regional impact purposes must be the same as for transportation concurrency.

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.[12] Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

SB 360 exempted developments from the development-of-regional-impact process in the following areas:

- municipalities that qualify as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Local governments that do not meet the density requirements to be dense urban land areas can designate in their comprehensive plan certain designated areas (urban infill and urban service areas, e.g.) within their jurisdiction to be exempt from DRI review. Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.

[12] Section 380.06(1), F.S.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved. The section explicitly does not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The exemption from the DRI process does not apply within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

Additionally, certain projects that are part of the Innovation Incentive Program, when part of a DRI, do not need to be analyzed under DRI review.

SB 1752, which became law in 2010, included a provision to reauthorize exemptions for developments of regional impact that are underway. Any exemption granted for any project for which an application for development approval has been approved or filed pursuant to s. 380.06, Florida Statutes, or for which a complete development application or rescission request has been approved or is pending, and the application or rescission process is continuing in good faith, should be protected if the development order was filed or application for rescission was pending before a possible final ruling on invalidation of SB 360 could take effect.[13]

Intergovernmental Coordination
The intergovernmental element of a local government's comprehensive plan contains a dispute resolution process. SB 360 changed intergovernmental mediation from optional to mandatory.

Impact Fees
Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes. Section 163.31801 governs impact fees. Prior to SB 360, local governments were required to provide 90 days of notice to create a new impact fee or to change an impact fee. SB 360 modified s. 163.31801(3)(d), F.S., to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

The Definition of "In Compliance"
SB 360 amended the definition of "in compliance" to change a technical error.

Mobility Fee Study
SB 360 required the Department of Transportation and the Department of Community Affairs to continue their mobility fee studies with the goal of developing a mobility fee that can replace the existing transportation concurrency system. The mobility fee study was completed and presented

[13] Chapter 2010-147, L.O.F.

to the Legislature. It is available on the DCA's website and provides some concepts for local governments to use when determining alternatives to transportation concurrency. The Legislature did not adopt a mobility fee nor did the Legislature require local governments to adopt a mobility fee.

Extension of Permits
SB 360 created an undesignated section of law to provide a retroactive 2-year extension and renewal from the date of expiration for:

- any permit issued by the Department of Environmental Permitting or a Water Management District under part IV of ch. 373, F.S.,
- any development order issued by the DCA pursuant to s. 380.06, F.S., and
- any development order, building permit, or other land use approval issued by a local government which expired or will expire between September 1, 2008 and January 1, 2012. For development orders and land use approvals, including but not limited to certificates of concurrency and development agreement, the extension applies to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S.

The conversion of a permit from the construction phase to the operation phase for combined construction and operation permits is specifically provided for. The completion date for any mitigation associated with a phased construction project is extended and renewed so the mitigation takes place in the appropriate phase as originally permitted. Entities requesting an extension and renewal must have notified the authorizing agency in writing by December 31, 2009, and must identify the specific authorization for which the extension will be used.

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal. SB 1752, which became law in 2010, contained a provision reauthorizing these permit provisions; therefore, these extensions should remain valid even if SB 360 is struck down by the appellate court.[14]

Single Subject Rule
Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The subject shall be briefly expressed in the title.[15] The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[16] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a

[14] Chapter 2010-147, L.O.F.
[15] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2002).
[16] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

natural or logical connection.[17] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[18] A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.[19] Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,[20] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[21]

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.[22] During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.[23]

(A) Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law[24] unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[25]

[17] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[18] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[19] *Ex parte* Knight, 41 So. 786 (Fla. 1906).
[20] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[21] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[22] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[23] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[24] Although the constitution says "no county or municipality shall be bound by any general law" that is an (a) mandate, the circuit court's ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.
[25] Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments that have designated TCEAS would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or $1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court did not consider the fact that local governments had two years to adopt these mobility plans or any offsetting cost effects over the long term.

The court decided that:

- The cost of amending the comprehensive plan would be at least $15,000 per jurisdiction required to amend its comprehensive plan.
- All 246 local governments that meet the statutory density requirements will be required to amend their comprehensive plans.
- Therefore, local governments throughout Florida will be required to spend $3,690,000 to comply with the SB 360 requirement that local governments that have Transportation Concurrency Exception Areas adopt into their comprehensive plan, plans to support and fund mobility within two years.

Because the court deemed $3,690,000 to be greater than an "insignificant fiscal impact," it decided that SB 360 was an unconstitutional mandate. The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

I. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts those provisions of SB 360 most closely related to growth management. SB 172 and 176 reenact the parts of SB 360 claimed by the litigants to be outside the purview of growth management. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

Section 1 reenacts s. 1 of ch. 2009-96, the title of SB 360: "Community Renewal Act."

Section 2 reenacts s. 163.3164 (29) and (34), F.S., which define the terms "urban service area" and "dense urban land area." The section also tasks the Office of Economic and Demographic Research within the Legislature with determining which jurisdictions qualify as dense urban land areas under that definition by using specific methods and with annually publishing the list and submitting it to the state land planning agency.

Section 3 reenacts s. 163.3177 (3)(b), (3)(f), (6)(h), (12)(a), and (12)(j), F.S. Paragraph (3)(b) contains the deadline for local governments to comply with the financial feasibility requirement of the CIE. Paragraph (3)(f) states that areas within TCEAs shall be deemed to have achieved

and maintained their level-of-service standard requirements. Paragraph (6)(h) details the requirements for an intergovernmental coordination element. Paragraph (12)(a) & (j) relate to the public schools facility element.

Section 4 reenacts s. 163.3180 (5), (10), (13)(b), and (13)(e), F.S. Subsection (5) & (10) relate to TCEAs. Paragraph (13)(b) & (e) relate to school concurrency.

Section 5 reenacts s. 163.31801(3)(d), F.S., which relates to notice requirements on impact fees.

Section 6 reenacts s. 163.3184(1)(b) and(3)(e), F.S. Paragraph (1)(b) gives the definition of "in compliance". Paragraph (3)(e) requires local governments to consider an application for zoning changes concurrently with comprehensive plan amendment changes.

Section 7 reenacts s. 163.3187(1)(b), (f), and (q) creating exemptions to the twice a year restriction on comprehensive plan amendments.

Section 8 reenacts s. 163.32465(2), F.S., allowing local governments to use the alternative state review pilot program to designate their urban service areas.

Section 9 reenacts s. 171.091, F.S., requiring local governments to file boundary changes with the Office of Economic and Demographic Research.

Section 10 reenacts s. 186.509, F.S., requiring mandatory mediation in certain circumstances.

Section 11 reenacts s. 380.06 (7)(a), (24), (28), and (29) relating to DRIs.

Section 12 reenacts ss. 13, 14, and 34 of ch. 2009-96. Section 13 requires DOT & DCA to work on a mobility fee study and report their findings to the Legislature. Section 14 extends and renews certain permits. Section 34 states that the Legislature finds that this act fulfills an important state interest.

Section 13 states that the Legislature finds that this act fulfills an important state interest.

Section 14 provides for the act to take effect upon becoming a law and for the portions amended or created by chapter 2009-96 to operate retroactively to June 1, 2009. In the case that a court of last resort finds such retroactive application unconstitutional, the section provides for the act to apply prospectively from the date that it becomes a law.

Other Potential Implications:
SB 360 is on appeal. If the trial court opinion is upheld and the bill in its entirety is struck down, local governments, developments, school districts, and any other people or entities that have relied on the bill may be in uncertain legal waters. Most local governments would not have a financially feasible capital improvements elements, meaning that they would either need to: amend their comprehensive plan to remove unfunded infrastructure projects, fund the often costly projects in their CIE, or possibly be subjected to financial sanctions and a prohibition on comprehensive plan amendments. Similarly, local governments that have failed to adopt school concurrency would be prohibited from adopting comprehensive plan amendments. Local

governments that may want to suspend, reduce, or eliminate impact fees to encourage new business would have to wait 90 days to do so. Any existing ordinances that did not wait 90 days may have questionable validity. In addition, local governments that have not yet adopted transportation concurrency exception area amendments into their comprehensive plan could be prohibited from doing so. Similarly, new developments in dense urban land areas would still have to go through the DRI process.

II. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill reenacts current law. A discussion of mandates issues for SB 360 can be found in the present situation section.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

III. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increased certainty of the growth management laws could have a positive financial impact on the development community.

C. Government Sector Impact:

The bill reenacts current law.

IV. Technical Deficiencies:

None.

V. Related Issues:

None.

VI. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 176

INTRODUCER: Senator Bennett

SUBJECT: Affordable Housing

DATE: January 31, 2011 REVISED: ____ ____ ____ ____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Roberts	Roberts	GO	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

In response to ongoing litigation, this bill reenacts certain sections of law created by ch. 2009-96, Laws of Florida, (SB 360 from 2009) that are most related to the subject of affordable housing in order to eliminate any possible question that it could be subjected to a single subject[1] challenge or struck down as an unconstitutional unfunded mandate.[2] The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360 relating to affordable housing:

- Limiting the Florida Housing and Finance Corporation's (FHFC) access to the state allocation pool.
- Providing additional requirements for property receiving the low-income housing tax credit and property owned by a community land trust that is used to provide affordable housing.
- Providing that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.
- Providing additional authorized uses of the local infrastructure surtax for residential housing projects with at least 30 percent of units set aside for affordable housing.
- Revising definitions relating to the state's affordable housing programs.
- Directing the FHFC to establish preference criteria for developers and contractors based in Florida or who have substantial experience developing or building affordable housing.
- Including certain projects with green building principles, storm-resistant construction, or other elements reducing the long-term maintenance costs as projects eligible for funding under the state's State Apartment Incentive Loans (SAIL) affordable housing program.

[1] Art. III, § 6, Fla. Const.

[2] Art. VII, § 18(a), Fla. Const.

- Directing the FHFC and certain state and local agencies to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving foster care.
- Modifying the distribution of funds from the Local Government Housing Trust fund by authorizing set-asides for specific purposes and repealing another section of law providing for the state administration of remaining local housing distribution funds.
- Revising certain criteria related to local housing assistance plans and affordable housing incentive strategies under the State Housing Initiatives Partnership (SHIP) Program.
- Expands the situations in which a district school board can provide affordable housing to include essential services personnel in areas of critical concern.

This bill substantially reenacts parts of the following sections of the Florida Statutes: 159.807, 193.018, 196.196, 196.1978, 212.055, 163.3202, 420.503, 420.507, 420.5087, 420.622, 420.628, 420.9071, 420.9072, 420.9073, 420.9075, 420.9076, 420.9079, and 1001.43. This bill also reenacts the repeal of s. 420.9078, F.S.

II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled "An Act Relating to Growth Management" or "The Community Renewal Act" (SB 360).[3] This bill made a wide array of changes to Florida's growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.[4] The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.[5] The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

Florida Housing Finance Corporation
The Florida Housing Finance Corporation (FHFC)[6] is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.[7] It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[6] Formerly the Florida Housing Finance Agency
[7] Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. *See* Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;[8]
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership (SHIP) Program, which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.[9] Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.[10]

SB 360 (2009) amended the Florida Housing and Finance Corporation Act, under Part V, of ch. 420, F.S., to provide a definition for the term "moderate rehabilitation" and to direct the FHFC to provide criteria by rule, establishing a preference for developers and general contractors based in Florida, and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.[11] The bill provided statutory guidelines for the FHFC to use when evaluating whether the developer or general contractor is domiciled in the state and whether he/she has substantial experience.

SB 360 also amended s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code, to the amount of their initial allocation under s. 159.804, F.S. The amendment also provided that after the initial allocation has been provided, the corporation may not receive more than 80 percent of the amount remaining in the state allocation pool on November 16 of each year. The distribution to the corporation of the unused portion of the state allocation pool was not affected.[12]

[8] Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.
[9] Sections 201.15 (9) and (10), F.S.
[10] *See* ss. 420.507 (33), and 159.608, F.S.
[11] Chapter 2009-96, L.O.F.
[12] *Id.*

State Apartment Incentive Loan (SAIL) Program

The SAIL program, created in s. 420.5087, F.S., authorizes the corporation to underwrite or make loans or loan guarantees to provide affordable housing to very-low-income persons if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjusted to family size; or
- The project sponsor uses federal low-income housing tax credits and the project meets the tenant eligibility requirements of s. 42 of the Internal Revenue code.[13]

"SAIL funds provide gap financing that leverages federal mortgage revenue bonds and allows developers to obtain the full financing needed to construct affordable multifamily units."[14] Under current law, SAIL funds must be reserved for the following tenet groups: commercial fishers and farm workers, families, the elderly, and the homeless.[15] Projects that maintain at least 80 percent of their units for commercial fishing workers, farm workers, and the homeless, are eligible to receive loans with interest rates from 0 to 3 percent. All other projects are eligible for loans with interest rates from 1 to 9 percent.[16]

Ten percent of funds set aside to house the elderly must be reserved to provide loans for the purpose of making existing building health and preservation improvements, sanitation repairs or improvements required by federal, state, or local law or regulation, or life safety or security-related repairs and improvements. Loans from the reserved funds may not exceed $750,000 per housing community, and the sponsor of the housing community must commit to matching at least 5 percent of the loan amount needed to pay for the necessary repairs or improvements.[17]

SB 360 (2009) amended s. 420.5087, F.S., to include the following additional criteria the corporation must consider while evaluating and competitively ranking applications for funding under the SAIL program:

- Projects with green building principles, storm-resistant construction, or other elements to reduce long-term costs relating to maintenance, utilities, or insurance.
- Whether the developer and general contractor have substantial experience.
- Domicile of the developer and general contractor. [18]

The bill also provided that SAIL loan proceeds may be used for moderate rehabilitation or preservation of affordable housing units.

State Housing Initiatives Partnership (SHIP) Program

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[13] Section 420.5087(2)(a) - (c), F.S.
[14] The Florida Housing Finance Corporation, *Overview of the Florida Housing Finance Corporation's Mission and Programs*, Sept. 2009, on file with the Senate Committee on Community Affairs.
[15] Section 420.5087(3)(a)-(d), F.S.
[16] Section 420.5087(6)(a), F.S., *referencing* s. 420.507(22)(a)1. and 3., F.S.
[17] Section 420.5087(3)(d), F.S.
[18] Chapter 2009-96, L.O.F.

The SHIP program, created in part VII of ch. 420, F.S., provides funds to counties and eligible cities as an incentive for the creation of local housing partnerships, to:

- Expand the production and preservation of affordable housing,
- Further the housing element in a local government comprehensive plan specific to affordable housing, and
- Increase related employment.[19]

SHIP funds are collected from documentary stamp tax revenues and are deposited into the Local Government Housing Trust Fund, which are then distributed on an entitlement basis to counties and Community Development Block Grant cities throughout the state.[20] "The minimum allocation per county is $350,000, of which at least 65 percent of the funds must be used for homeownership."[21]

To be eligible to receive funding under the SHIP program, a county or an eligible city must complete a three step process: (1) submit a local housing assistance plan to the FHFC, (2) within 12 months of adopting the plan, make amendments to incorporate local housing incentive strategies, and (3) within 24 months after adopting the amended plan, the entity must amend its land development regulations or establish local policies and procedures, as necessary, to implement the adopted strategies.[22] A local government seeking approval to receive funding is also required to adopt an ordinance that:

- Creates a local housing assistance trust fund,
- Implements a local housing assistance plan through a local housing partnership,
- Designates responsibility for the local housing assistance plan, and
- Creates an affordable housing advisory committee.[23]

The ordinance, adopted resolution, local housing assistance plan, and other related information must then be submitted to the FHFC for review and approval.[24]

SB 360 (2009) provided new definitions for the following terms under the State Housing Incentives Partnership Act: "annual gross income"; "assisted housing" and "assisted housing development"; "eligible housing"; "local housing incentive strategies"; "preservation"; and "recaptured funds". [25]

SB 360 also provided that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure. The one-time relocation grant, in an amount not to exceed $5,000, may be granted to persons who meet the income eligibility requirements of the SHIP program.

A. Local Housing Distributions

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[19] Section 420.9072, F.S.
[20] Information obtained from the Florida Housing Finance Corporation, *See supra* note 12.
[21] *Id.*
[22] Section 420.9072(2)(a)1. -3., F.S.
[23] Section 420.9072(2)(b)1. -4., F.S.
[24] *See* s. 420.9072(3), F.S.
[25] Chapter 2009-96, L.O.F.

SB 360 (2009) amended s. 420.9073, F.S., to provide that local housing distributions under SHIP be disbursed by the FHFC on a quarterly or more frequent basis, subject to the availability of funds.[26] The bill also allowed the FHFC to withhold up to $5 million in funds distributed from the Local Government Housing Trust Fund to:

- Provide additional funding to counties and eligible municipalities in a state of emergency.
- Counties and eligible municipalities to purchase properties subject to a SHIP lien and on which foreclosure proceedings have been initiated by any mortgagee.

SB 360 further clarified that counties and cities receiving SHIP must expend those funds in accordance with statutory requirements, corporation rules, and the local housing assistance plan.

SB 360 repealed s. 420.9078, F.S., which prior to its repeal, addressed the state administration of remaining local housing distribution funds. This section provided that the FHFC shall distribute remaining funds as follows:

- Proportionately under the local housing distribution formula established in s. 420.9073, F.S., to counties and cities where a state of emergency or natural disaster has been declared by executive order, and which have an approved local housing assistance plan for repairing and replacing housing damaged as part of the emergency or natural disaster.
- If no emergency or natural disaster funding is required, then proportionately among the counties and cities who have fully expended their local housing distribution for the preceding state fiscal year, and who have an approved local housing assistance plan.

B. Local Housing Assistance Plans

Section 420.9075, F.S., requires each county or eligible municipality that is participating in the SHIP program to develop and implement a local housing assistance plan that seeks to provide affordable residential units for persons of very low income, low income, or moderate income, and to persons who have special housing needs.[27] The purpose of these plans is "to increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing".[28]

SB 360 (2009) amended s. 420.9075, F.S., to include persons with disabilities as persons with special needs and to allow counties or eligible municipalities to include strategies to assist persons and households with annual incomes of not more than 140 percent of the area median income. SB 360 further provided that:

- Local housing assistance plans must describe initiatives that encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- Counties and cities are encouraged to develop local housing assistance plans that provide funding for preservation of assisted housing.
- Not more than 20 percent of funds made available in each county and eligible municipality may be used for manufactured housing.

[26] Chapter 2009-96, L.O.F.
[27] Section 420.9075, F.S.
[28] *Id.*

- SHIP funds may be used for preconstruction activities, and if preconstruction due diligence activities prove that preservation is not feasible, then the costs for those activities are program costs and not administrative costs if such program expenses do not exceed 3 percent of the annual local housing distribution.
- Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.
- Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used.[29]

SB 360 also extended Monroe County's exemption from income restrictions relating to the use of set-aside funds in the local government assistance trust fund from July 1, 2008, to July 1, 2013, so that awards could be made to residents with incomes no higher than 120 percent of the area median income, and applied retroactively.

C. Local Housing Incentive Strategies

Every county or eligible municipality that is participating in the SHIP program, or any municipality receiving SHIP funds through the county or eligible municipality, is required to amend their local housing assistance plan within 12 months of adoption to include local housing incentive strategies.[30] The governing body of the county or municipality is responsible for appointing members to the affordable housing advisory committee by resolution. The committee shall be responsible for evaluating the plan and recommending “specific actions or incentives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value”.[31] The committee must be composed of certain individuals as specified in s. 420.9076(2), F.S.

SB360 (2009) amended s. 420.9076(2), F.S., to allow a local governing body that also serves as a local planning agency to appoint a designee to the local affordable housing advisory committee.[32] SB 360 further instructed that the committee submit its final report, evaluation, and recommendations to the FHFC.

Affordable and Workforce Housing Income Requirements

Income requirements for affordable housing and workforce housing are established in ss. 420.0004[33] and 420.5095, F.S., respectively, as follows:

- Extremely-low-income persons: a person or family whose total annual income does not exceed 30 percent of the median annual adjusted gross income for households within the state.
- Very-low-income persons: a person or family whose total annual income does not exceed 50 percent of the median annual adjusted gross income for households within the state.
- Low-income persons: a person or family whose total annual income does not exceed 80 percent of the median annual adjusted gross income for households within the state.

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[29] Chapter 2009-96, L.O.F.
[30] Section 420.9076, F.S.
[31] Section 420.9076(4), F.S.
[32] Chapter 2009-96, L.O.F.
[33] Subsections (8), (10), (11), and (15) of s. 420.0004, F.S.

- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households within the state.
- Workforce housing: housing affordable to a person or family whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern, the total annual income may not exceed 150 percent of the area median income.[34]

Affordable Housing Property Exemptions

SB 360 (2009) extended the affordable housing property ad valorem tax exemption to include property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in ss. 159.603(7) and 420.0004, F.S.[35] The property must be owned entirely by a nonprofit entity that is a corporation not for profit, or a Florida-based limited partnership whose sole general partner is a corporation not for profit. The corporation not for profit must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 17. The bill also provided that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

Affordable Housing for Children and Young Adults Leaving Foster Care

SB 360 (2009) created s. 420.628, F.S., relating to affordable housing for children and young adults leaving foster care.[36] Section 420.628, F.S., directs the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Such young persons are deemed to have met the definitions for eligible persons for affordable housing purposes. In addition, students deemed to be eligible occupants under certain federal requirements[37] are also considered eligible for purposes of affordable housing projects.

State Office on Homelessness

Section 420.622, F.S., creates the State Office on Homelessness within the Department of Children and Family Services in order to "provide interagency, council, and other related coordination on issues relating to homelessness". SB 360 (2009) amended s.420.622 (5), F.S., to allow money granted by the State Office on Homelessness to also be used to *acquire* transitional or permanent housing for homelessness persons.[38]

Charitable Organizations

Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the

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[34] Section 420.5095(3)(a), F.S.
[35] Chapter 2009-96, L.O.F. See above for Affordable Housing Income Requirements .
[36] *Id.*
[37] 26 USC 42(i)(3)(d), provides conditions under which low-income housing units may not be disqualified as low-income housing because the property is occupied by certain students.
[38] Chapter 2009-96, L.O.F.

organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Property entitled to charitable, religious or other exemptions

In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.[39] Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

Property used for religious purposes may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. The term "affirmative steps" is defined by statute to mean “environmental or land use permitting activities, creation of architectural or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship”.[40]

SB 360 (2009), amended s. 196.196, F.S., to provide that property owned by an exempt organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is considered to be used for a charitable purpose if the organization has taken “affirmative steps” to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families.[41] SB 360 also provided penalties for properties granted a charitable exemption under this subsection that are transferred for purposes other than affordable housing, or if the property is not actually used as affordable housing, within 5 years after the exemption is granted.

Community Land Trusts

In an effort to create permanent affordable homeownership opportunities for Florida’s workforce, local governments donate land or the money to purchase land to charitable, tax exempt housing organizations known as community land trusts, which then build homes on the property. The community land trust (CLT) sells the home, but not the land, to an income-eligible buyer at a purchase price that is affordable to the homebuyer, in large part because the buyer is not paying for the land. In return, the homeowner receives a 99-year ground lease interest in the land and pays a nominal monthly fee to the community land trust for the use of the land. After the initial acquisition, resale is limited to a formula contained in the ground lease that restricts the market price of the home to ensure continuous affordability.

SB 360 (2009) created s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land owned by a CLT and that is used to provide affordable housing.[42] The bill defined the term community land trust to mean “a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code

[39] Section 196.196(1)(a)-(b), F.S.
[40] Section 196.196(3), F.S.
[41] Chapter 2009-96, L.O.F.
[42] Chapter 2009-96, L.O.F.

and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership."

The bill also codified in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, F.S., or for workforce housing under the income limits of s. 420.5095, F.S. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.

In addition, the bill provided that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess the property based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

Discretionary Sales Surtax

Section 212.055, F.S., authorizes qualifying counties and other special local governmental entities to levy various surtaxes. There are seven different types of authorized local discretionary sales surtaxes (also known as local option taxes). The local discretionary sales surtaxes authorized by this section apply to all transactions subject to the sales and use tax imposed pursuant to Chapter 212, F.S.

Section 212.055, F.S., specifies the rate of each surtax that may be imposed, the manner in which each surtax proposal may be adopted and the use of the funds collected. Local discretionary tax rates vary from county to county. The local surtax applies to the first $5,000 of the sales price for most items. Procedures for administration and collection of the surtax are established in s. 212.054, F.S. Any discretionary sales surtax must take effect only on January 1 and terminate on December 31.[43]

SB 360 (2009) amended s. 212.055(2), F.S, relating to local government infrastructure surtaxes, to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families whose household income does not exceed 120 percent of the area median income adjusted for household size, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.[44] The bill also provided that the local government or special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

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[43] Section 212.054(5), F.S.

[44] Chapter 2009-96, L.O.F.

Land Development Regulations
Pursuant to 163.3202, F.S., counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its revised comprehensive plan for review pursuant to s. 163.3167(2), F.S. Section 163.3202(2), F.S., outlines minimum provisions that the counties and municipalities should include in their local governments land development regulations.

SB 360 (2009) amended s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of residential properties or recreational vehicle parks, if the properties are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place to support the use, but are not located within a high coastal hazard are under s. 163.3178, F.S.[45]

Supplemental Powers and Duties of District School Board, Affordable Housing
Section 1001.43(12), F.S., allows district school boards to use portions of school sites that were purchased within the guidelines of the State Requirements for Education facilities, in which the land is not deemed usable for education purposes because of the location or other factors, or the land is declared as a surplus by the board, in order to provide affordable housing for teachers and other district personnel.

SB 360 (2009) amended s. 1001.43, F.S., to expand the purposes for which a district school board could provide affordable housing by providing that in an area of critical state concern, the board may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.[46]

Constitutional Provisions
A. Single Subject Rule
Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The subject shall be briefly expressed in the title.[47] The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[48] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.[49] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[50] A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.[51] Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject

[45] *Id.*
[46] Chapter 2009-96, L.O.F.
[47] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla.2002).
[48] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).
[49] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[50] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[51] *Ex parte Knight*, 41 So. 786 (Fla. 1906).

limitation,[52] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[53]

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.[54] The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.[55] During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.[56]

B. Type A Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law[57] unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[58]

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

[52] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[53] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[54] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[55] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[56] *Id.*
[57] Although the constitution says "no county or municipality shall be bound by any general law" that is an (a) mandate, the circuit court's ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.
[58] Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's affordable housing and growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 most closely related to affordable housing. SB 172 and 174 reenact the other parts of SB 360 pertaining to security cameras and growth management. By reenacting these bills separately and clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

Section 1 reenacts s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds.

Section 2 reenacts s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a CLT and used to provide affordable housing.

Section 3 reenacts s. 196.196(5), F.S., to provide that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.

Section 4 reenacts s. 196.1978, F.S., to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in s. 159.603(7), F.S.,[59] and s. 420.0004, F.S.[60] The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation.

Section 5 reenacts s. 212.055(2)(d), F.S., to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.

Section 6 reenacts s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of specified properties if they are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place.

Section 7 reenacts s. 420.503(25), F.S., to provide a definition for "moderate rehabilitation".

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[59] Section 159.603(7), F.S., provides that "eligible persons" means one or more natural persons or a family, determined by the housing finance authority to be of low, moderate, or middle income. The determination does not preclude any person or family earning up to 150 percent of the state or county median income from participating in a housing financing authority program. Persons 65 years of age or older are eligible regardless of income.

[60] Income limits for extremely-low, very-low, low, and moderate-income persons or families are defined in s. 420.0004, F.S.

Section 8 reenacts s. 420.507(47), F.S., which directs the FHFC to provide criteria establishing a preference for developers and general contractors based in Florida, or who have substantial experience in developing or building affordable housing through the FHFC.

Section 9 reenacts s. 420.5087, F.S., to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the SAIL program.

Section 10 reenacts s. 420.622(5), F.S., to allow money granted by the State Office on Homelessness to be used to acquire transitional or permanent housing for homeless persons.

Section 11 reenacts s. 420.628, F.S., to direct the FHFC and other state and local agencies receiving funding under SHIP to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Section 12 reenacts s. 420.9071, F.S., to provide definitions for the following terms under the State Housing Incentives Partnership Act: “annual gross income”; “assisted housing” and “assisted housing development”; “eligible housing”; “local housing incentive strategies”; “preservation”; and “recaptured funds”.

Section 13 reenacts s. 420.9072, F.S., to delete a cross-reference to s. 420.9078, F.S., which is being repealed in the bill, and to provide that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure.

Section 14 reenacts s. 420.9073, F.S., relating to Local Housing Distributions, to modify the distribution of funds from the Local Government Housing Trust Fund by authorizing set-asides for specified purposes.

Section 15 reenacts s. 420.9075, F.S., relating to local housing assistance plans.

Section 16 reenacts s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies.

Section 17 repeals s. 420.9078, F.S., which used to provide statutory requirements for the FHFC’s distribution of funds remaining in the Local Government Housing Assistance Trust Fund, after all appropriations have been made.

Section 18 reenacts s. 420.9079, F.S., to correct cross-references.

Section 19 reenacts s. 1001.43, F.S., to expand the purposes for which a district school board may providing affordable housing, to include essential services personnel in areas of critical state concern.

Section 20 provides that the act shall take effect upon becoming law, and that those portions of this act which are amended, created, or repealed by chapter 2009-96, Laws of Florida, shall

operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 276

INTRODUCER: Senator Bennett

SUBJECT: The Consultants' Competitive Negotiation Act

DATE: January 31, 2011 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	**Pre-meeting**
2.			ED	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends the Consultants' Competitive Negotiation Act (CCNA), which specifies how state agencies and political subdivisions procure the services of design professionals, to allow cost to be considered in the initial selection of firms, and allow agencies to reopen negotiations with any selected firm after terminating negotiations with another selected firm.

This bill substantially amends section 287.055 of the Florida Statutes.

II. Present Situation:

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973,[1] to specify the procedures to be followed when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection

[1] Chapter 73-19, L.O.F.

phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.[2]

Currently, the CCNA in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed $325,000.
- A planning or study activity, when the fee for professional services exceeds $35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.[3] In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders, ranked in order of preference, it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders, including willingness to meet time and budget requirements, past performance, location, recent, current, and projected firm workloads, volume of work previously awarded to the firm, and whether the firm is certified as a minority business.[4]

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Section 287.055(2)(d), F.S., defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

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[2] Chapter 88-108, L.O.F.
[3] Section 287.055(4) and (5), F.S.
[4] The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires that the agency consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

III. Effect of Proposed Changes:

The bill removes a provision in s. 287.055(4)(b), F.S., specifying that proposals for compensation may only be considered during the competitive negotiation phase of a procurement for design professional services. The effect would be to permit consideration of compensation during the selection process.

The bill also changes a provision in s. 287.055(5)(b), F.S., specifying the order in which agencies must negotiate with selected vendors. Agencies would no longer be required to undertake negotiations with the third most qualified firm, if negotiations with the second most qualified firm were terminated. Agencies could reopen negotiations with any selected firm upon terminating negotiations with another selected firm. For example, agencies could reopen negotiations with the first most qualified firm after terminating negotiations with the second most qualified firm.

The bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Agencies may be able to negotiate lower costs in contracts for design professional services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

452482

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability (Fasano and Latvala) recommended the following:

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

2

3 Delete everything after the enacting clause
4 and insert:
5 Section 1. (1) The Chief Financial Officer shall review and
6 conduct an analysis of the procurement process for the design,
7 build, and maintenance of state buildings and facilities. The
8 Chief Financial Officer shall review, at a minimum:
9 (a) The contracting procedures for the construction,
10 maintenance, and renovation of state-owned facilities;
11 (b) The lines of authority and the areas of responsibility
12 by all parties involved in the procurement process;

452482

13 (c) The methodology for the selection of internal fixtures,
14 furnishings, artwork, and any relevant infrastructure systems;
15 and
16 (d) Any identified necessary signatories and approvals for
17 such projects.
18 (2) The Chief Financial Officer shall submit a written
19 report to the President of the Senate and the Speaker of the
20 House of Representatives by October 1, 2011. The report must
21 include any recommendations for revising the law or rules
22 designed to promote transparency and accountability in the
23 state's design-build process.
24 Section 2. This act shall take effect July 1, 2011.
25
26 ================ T I T L E A M E N D M E N T ================
27 And the title is amended as follows:
28 Delete everything before the enacting clause
29 and insert:
30 A bill to be entitled
31 An act relating to the procurement process for the
32 design, build, and maintenance of state buildings and
33 facilities; requiring that the Chief Financial Officer
34 review and conduct an analysis of the procurement
35 process for the design, build, and maintenance of
36 state buildings and facilities; requiring that the
37 Chief Financial Officer submit a report to the
38 Legislature by a specified date; providing an
39 effective date.
40
41 WHEREAS, the First District Court of Appeals Courthouse

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42 located in the Southwood area of Tallahassee, Florida will cost
43 taxpayers over $70 million dollars when the bonds to finance the
44 development of the courthouse are paid in full; and
45 WHEREAS, the judges of the District Court of Appeals took
46 complete control of the planning and building of the new
47 courthouse without any oversight or transparency; and
48 WHEREAS, the First District Court of Appeals Courthouse has
49 approximately 100 employees in a taxpayer-funded facility that
50 has roughly 100,000 square feet, which gives each employee
51 approximately 1,000 square feet of space. This exceeds the
52 normal limit of 180 square feet of office space that the
53 Department of Management Service typically limits for state
54 employees; and
55 WHEREAS, the judges of the District Court of Appeals
56 directed the architect and project manager of the new courthouse
57 to spend tens of millions of dollars on interior-framed wall
58 hangings, soundproof private bathrooms for the judges, an
59 exercise room, two posh robbing rooms, dozens of large flat-
60 screen televisions, miles of South American Sepalia Mahogany,
61 and granite counter tops; and
62 WHEREAS, the Department of Management Services relinquished
63 its usual building management protocols and gave complete
64 decisionmaking and planning control to two judges of the
65 District Court of Appeals to plan and build what is now known
66 statewide as the “Taj Mahal” courthouse, NOW, THEREFORE,

662146

LEGISLATIVE ACTION

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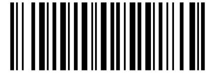
The Committee on Governmental Oversight and Accountability (Latvala) recommended the following:

1 **Senate Amendment (with directory and title amendments)**
2
3 Delete lines 20 - 55.
4
5 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
6 And the directory clause is amended as follows:
7 Delete lines 14 - 15
8 and insert:
9 Section 1. Subsection (5) of section 287.055, Florida
10 Statutes, is amended to read:
11
12 ================= T I T L E A M E N D M E N T ================


662146

13 And the title is amended as follows:
14 Delete lines 5 - 7
15 and insert:
16 287.055, F.S.; authorizing the

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LEGISLATIVE ACTION

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

1 **Senate Amendment (with title amendment)**
2
3 Between lines 13 and 14
4 insert:
5 Section 1. (1) The Chief Financial Officer shall review and
6 conduct an analysis of the procurement process for the design,
7 build, and maintenance of state buildings and facilities. The
8 Chief Financial Officer shall review, at a minimum:
9 (a) The contracting procedures for the construction,
10 maintenance, and renovation of state-owned facilities;
11 (b) The lines of authority and the areas of responsibility
12 by all parties involved in the procurement process;

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13 (c) The methodology for the selection of internal fixtures,
14 furnishings, artwork, and any relevant infrastructure systems;
15 and
16 (d) Any identified necessary signatories and approvals for
17 such projects.
18 (2) The Chief Financial Officer shall submit a written
19 report to the President of the Senate and the Speaker of the
20 House of Representatives by October 1, 2011. The report must
21 include any recommendations for revising the law or rules
22 designed to promote transparency and accountability in the
23 state’s design-build process.
24
25 ================ T I T L E A M E N D M E N T ================
26 And the title is amended as follows:
27 Delete lines 2 - 4
28 and insert:
29 An act relating to procurement; requiring that the
30 Chief Financial Officer review and conduct an analysis
31 of the procurement process for the design, build, and
32 maintenance of state buildings and facilities;
33 requiring that the Chief Financial Officer submit a
34 report to the Legislature by a specified date;
35 amending s.
36
37 WHEREAS, the First District Court of Appeals Courthouse
38 located in the Southwood area of Tallahassee, Florida will cost
39 taxpayers over $70 million dollars when the bonds to finance the
40 development of the courthouse are paid in full; and
41 WHEREAS, the judges of the District Court of Appeals took

652340

42 complete control of the planning and building of the new
43 courthouse without any oversight or transparency; and
44 WHEREAS, the First District Court of Appeals Courthouse has
45 approximately 100 employees in a taxpayer-funded facility that
46 has roughly 100,000 square feet, which gives each employee
47 approximately 1,000 square feet of space. This exceeds the
48 normal limit of 180 square feet of office space that the
49 Department of Management Service typically limits for state
50 employees; and
51 WHEREAS, the judges of the District Court of Appeals
52 directed the architect and project manager of the new courthouse
53 to spend tens of millions of dollars on interior-framed wall
54 hangings, soundproof private bathrooms for the judges, an
55 exercise room, two posh robbing rooms, dozens of large flat-
56 screen televisions, miles of South American Sepalia Mahogany,
57 and granite counter tops; and
58 WHEREAS, the Department of Management Services relinquished
59 its usual building management protocols and gave complete
60 decisionmaking and planning control to two judges of the
61 District Court of Appeals to plan and build what is now known
62 statewide as the “Taj Mahal” courthouse, NOW, THEREFORE,

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 444

INTRODUCER: Senator Bogdanoff

SUBJECT: Contracting with Scrutinized Companies

DATE: February 2, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	**Pre-meeting**
2.			CA	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more.

The bill also:

- Provides an exception to the prohibition.
- Requires a company seeking to enter into a contract of $1 million or more to certify that it is not a scrutinized business operation.
- Provides a process by which an agency or local government can report a false certification and by which the relevant government attorney may bring civil suit.
- Specifies penalties for a company that makes a false certification.
- States that the act preempts any ordinance or rule of any local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.
- Requires the Department of Management Services must submit a written notice describing the act to the Attorney General of the United States within 30 days after July 1, 2011.
- States that the act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the act.

This bill creates s. 287.135, F.S.

II. Present Situation:

The United States has instituted a number of sanctions against the nation of Iran as a result of its state support of terrorism, human rights violations, and pursuit of a policy of nuclear development. The situation is summarized in the following excerpt from a recent Congressional Research Service report:

> Iran is subject to a wide range of U.S. sanctions, restricting trade with, investment, and U.S. foreign aid to Iran, and requiring the United States to vote against international lending to Iran.
> Several laws and Executive Orders authorize the imposition of U.S. penalties against foreign companies that do business with Iran, as part of an effort to persuade foreign firms to choose between the Iranian market and the much larger U.S. market. Most notable among these sanctions is a ban, imposed in 1995, on U.S. trade with and investment in Iran. That ban has since been modified slightly to allow for some bilateral trade in luxury and humanitarian-related goods. Foreign subsidiaries of U.S. firms remain generally exempt from the trade ban since they are under the laws of the countries where they are incorporated. Since 1995, several U.S. laws and regulations that seek to pressure Iran's economy, curb Iran's support for militant groups, and curtail supplies to Iran of advanced technology have been enacted. Since 2006, the United Nations Security Council has imposed some sanctions primarily attempting to curtail supply to Iran of weapons-related technology but also sanctioning some Iranian banks.
>
> U.S. officials have identified Iran's energy sector as a key Iranian vulnerability because Iran's government revenues are approximately 80% dependent on oil revenues and in need of substantial foreign investment. A U.S. effort to curb international energy investment in Iran began in 1996 with the Iran Sanctions Act (ISA), but no firms have been sanctioned under it and the precise effects of ISA, as distinct from other factors affecting international firms' decisions on whether to invest in Iran, have been unclear. International pressure on Iran to curb its nuclear program has increased the hesitation of many major foreign firms to invest in Iran's energy sector, hindering Iran's efforts to expand oil production beyond 4.1 million barrels per day, but some firms continue to see opportunity in Iran.
>
> Some in Congress express concern about the reticence of U.S. allies, of Russia, and of China, to impose U.N. sanctions that would target Iran's civilian economy. In an attempt to strengthen U.S. leverage with its allies to back such international sanctions, several bills in the 111th Congress would add U.S. sanctions on Iran. For example, H.R. 2194 (which passed the House on December 15, 2009), H.R. 1985, H.R. 1208, and S. 908 would include as ISA violations selling refined gasoline to Iran; providing shipping insurance or other services to deliver gasoline to Iran; or supplying equipment to or performing the construction of oil refineries in Iran. Several of these bills would also expand the menu of available

sanctions against violators. A bill passed by the Senate on January 28, 2010 (S. 2799), contains these sanctions as well as a broad range of other measures against Iran, including reversing previous easing of the U.S. ban on trade with Iran.

In light of the strength of the democratic opposition in Iran, one trend in Congress is to alter some U.S. sanctions laws in order to facilitate the democracy movement's access to information, and to target those persons or institutions in the regime who are committing human rights abuses against protesters.[1]

State Sponsors of Terrorism

Countries which are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act[2], the Arms Export Control Act,[3] and the Foreign Assistance Act.[4] The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.[5] Some of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above $100,000 with companies controlled by terrorist-list states.[6]

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.[7]

The Voice Act

In addition, Congress recently directed the President of the United States to submit a report on non-Iranian persons, including corporations with United States subsidiaries, that have knowingly or negligently provided hardware, software, or other forms of assistance to the Government of Iran that has furthered Iran's efforts to filter online political content, disrupt cell phone and Internet communications, and monitor the online activities of Iranian citizens.[8]

State Law Pertaining to Foreign Trade

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[1] Congressional Research Service Report RS20871, *Iran Sanctions*, February 2, 2010.
[2] Section 6(j), U.S. Export Administration Act.
[3] Section 40, U.S. Arms Export Control Act.
[4] Section 620A, U.S. Foreign Assistance Act.
[5] U.S. Department of State website, http://www.state.gov/s/ct/c14151.htm , Office of Coordinator for Counterterrorism, State Sponsors of Terrorism, last viewed on February 3, 2011.
[6] U.S. Department of State website, http://www.state.gov/s/ct, Country Reports on Terrorism, last viewed on February 3, 2011.
[7] See Footnote 5.
[8] P.L. 111-84, October 28, 2009.

Section 288.855, F.S., prohibits the export or sale of any goods or services to a foreign country in violation of federal law and restricts interference with foreign export except as otherwise prohibited by law.

State Agency Procurement of Commodities and Services

The comprehensive process contained in ch. 287, F.S., for the procurement of commodities and contractual services by executive agencies[9] sets forth numerous requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring mechanisms. Legislative intent language for the chapter explains that the process is necessary in order to:

- Reduce improprieties and opportunities for favoritism;
- Ensure the equitable and economical award of public contracts; and
- Inspire public confidence in state procurement.[10]

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;[11] creating uniform agency procurement rules;[12] implementing the online procurement program;[13] and establishing state term contracts.[14] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Scrutinized Companies with Activities in Sudan List and Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List

Section 215.473(1)(t), F.S., defines "scrutinized company" to mean any company that meets any of the following criteria:

- The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:
  - o More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a

[9] Section 287.012(1), F.S., provides that the term "agency" for purposes of ch. 287, F.S., ". . . means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."
[10] Section 287.001, F.S.
[11] Sections 287.032 and 287.042, F.S.
[12] Sections 287.032(2) and 287.042(3), (4), and (12), F.S.
[13] Section 287.057(23), F.S.
[14] Sections 287.042(2), 287.056 and 287.1345, F.S.

project or consortium created exclusively by that regional government; and the company has failed to take substantial action[15]; or
    - More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.
- The company is complicit in the Darfur genocide.
- The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.
- The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:
    - More than 10% of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action[16]; or
    - The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

All funds, assets, trustees, and other designates under the State Board of Administration[17] are required to categorize scrutinized companies into a "Scrutinized Companies with Activities in Sudan List" and a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List."[18]

III. Effect of Proposed Changes:

The bill provides the following definitions for the created section of law:
- "Awarding body" for purposes of state contracts, an agency or department, and for purposes of local contracts, means the governing body of the local governmental entity.

[15] Section 215.473(1)(w), F.S., defines "substantial action specific to Sudan" to mean "adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur."
[16] Section 215.473(1)(v), F.S., defines "substantial action specific to Iran" to mean "adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations."
[17] The State Board of Administration is constituted by the governor, the chief financial officer, and the attorney general as provided for in s. 4(e), Art. IV of the State Constitution. Duties of the State Board of Administration include, but are not limited to, investment of specified public funds pursuant to s. 215.44, F.S.
[18] Section 215.473(2)(b), F.S.

- "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state.

The bill prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency[19] or local governmental entity for goods or services of $1 million or more.

The bill allows an agency or local governmental entity to make a case-by-case exception to the prohibition if:
- The scrutinized business operations[20] were made before July 1, 2010;
- The scrutinized business operations have not been expanded or renewed after July 1, 2010;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of $1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not a scrutinized business operation under s. 215.473.

If an agency or local governmental entity determines that a company has submitted a false certification that it is not a scrutinized business operation and has provided the company with written notice and 90 days to respond in writing to such determination, and the company fails to demonstrate that it has ceased its engagement in scrutinized business operations, then:
- The awarding body *must* report the company to the Attorney General and provide information demonstrating the false certification. The Attorney General must determine whether to bring a civil action against the company. The awarding body *may* report the company to the municipal attorney, county attorney, or district attorney and provide information demonstrating the false certification. Such attorney may determine whether to

[19] As defined in s. 287.012(1), F.S.
[20] S. 215.473(1)(s), F.S., defines "scrutinized business operations" to mean "business operations that have resulted in a company becoming a scrutinized company."

bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification) and a civil penalty equal to the greater of $250,000 or twice the amount of the contract for which the false certification was submitted. A civil action to collect the penalties must commence within 3 years after the date the false certification is made.

  - The bill specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

- An existing contract with the company shall be terminated at the option of the awarding body.
- The company is ineligible to bid on any contract with an agency or a local governmental entity for 3 years after the date of determining that the company submitted a false certification.

The bill specifies that the act preempts any ordinance or rule of any local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

The Department of Management Services must submit a written notice describing the act to the Attorney General of the United States within 30 days after July 1, 2011.

The act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the act.

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

Other Potential Implications:

The provisions of ch. 287, F.S., currently apply only to agencies as defined in the chapter, which specifies only units of the executive branch of state government. The requirements of this bill apply to both state agencies and to local governmental entities not governed by ch. 287, F.S., but the bill places the new section of law within ch. 287, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will adversely affect companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that seek to enter into contracts with Florida governmental entities.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The bill provides that a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List may not engage in specified contracting activities. Lines 74-80, however, require a company seeking to enter into specified contracts to certify that it is not a scrutinized business operation. Lines 85-87 imply that the company must demonstrate that it has ceased its engagement in scrutinized business operations. The Legislature may wish to consider amending the bill to require a company to certify and, if necessary, demonstrate that it is not on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Lines 81-85 imply a requirement that an agency or local governmental agency that determines a company has submitted a false certification must provide the company with written notice and 90 days to respond in writing. The Legislature may wish to consider amending the bill to explicitly state that process.

Lines 107-108 do not specify whether “an existing contract with the company” means only a contract for which false certification was submitted or any contract which the company may have with the agency or local governmental entity.

Lines 109-110 do not specify whether the 3 years during which a company is ineligible to bid on a contract means 3 years from the agency or local government’s determination or 3 years from a court’s determination.

The Legislature may wish to change “made” in line 114 to “submitted” for consistency and clarity.

VII. Related Issues:

The bill creates definitions for “awarding body” and “local governmental entity,” and provides that other terms used in the act are defined in s. 287.012, F.S., and in 215.473, F.S. The term

"awarding body" may be superfluous because all the entities it encompasses are included in the definition of "local governmental entity" within the bill and in the definition of "agency" in s. 287.012, F.S.

To prevent any potential impairment of contracts concerns, the Legislature may wish to consider requiring agencies and local governmental entities to include a termination provision in contracts for goods and services of $1 million or more if a determination of false certification is made.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

439830

LEGISLATIVE ACTION

Senate	.	House
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	.	

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

1 **Senate Amendment**

2

3 Delete line 114

4 and insert:

5 false certification is submitted.

781182

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete line 105
4 and insert:
5 the greater of $2 million or twice the amount of the contract
6 for

Florida Retirement System Recommendations

Association of Florida Colleges
113 E College Ave.
Tallahassee, Fl 32301
Michael Brawer, CEO

Florida College System and the AFC

- 28 member institutions
- 9,000 individual members
- 20,000 full-time employees
- Serving 950,000 students
- Educators and the FRS
- Educators comprise 55% of all FRS participants
- Florida Colleges = 3%
- School Districts = 48%
- State Universities = 4%

Transition by CHOICE

- OBJECTIVES
  - Provide suggestions that meet State and Employee needs
  - Provide suggestions that ensure a 100% actuarially sound FRS system
  - Provide suggestions that help with the State budget shortfall

SUGGESTIONS

- **Raise Vesting for the FRS Defined Benefit Plan back to ten (10) years**
  - RATIONALE: This suggestion along with the expected increase in FRS investment earnings should come close to eliminating the current projected unfunded liability in several years.
- **Continue Vesting for the FRS Defined Contribution plan at one (1) year**
  - RATIONALE: This should result in an orderly movement by choice from the Defined Benefit plan to the Defined Contribution plan.

SUGGESTIONS

- **Eliminate all classes (except Special Risk for Law Enforcement, Firefighters and Correction Workers) of the FRS Defined Benefit plan to one class accruing retirement benefits at 1.6% per year**
  - RATIONALE: Along with the next suggestion this should result in an orderly movement by choice from the Defined Benefit to the Defined Contribution Plan.

SUGGESTIONS

- **Continue the current Retirement classes (Senior Management, Elected Officers and Judicial) and State contribution rates for the defined contribution plan**
  - RATIONALE: Along with the last suggestion this should result in an orderly movement by choice from the Defined Benefit to the Defined Contribution Plan.

SUGGESTIONS

- **Mandate that all new employees select either the Defined Contribution plan or the Defined Benefit plan by the end of their first year of employment with the Defined Contribution being the default selection if the employee fails to select**
  - RATIONALE: Gives new employees time to make an informed choice

SUGGESTIONS

- **Continue, for current employees only, the policy of allowing a one-time change from one FRS plan to the other prior to vestment.**
  - RATIONALE: Current employees have this option now. New employees have a year to consider their choice.

DESIRED RESULTS OF CHOICE

- New employees opting for the shorter vesting of the Defined Contribution plan.
- Higher paid employees opting for the better benefits of the Defined Contribution plan.
- Reducing the number of classes and choices in the Defined Benefit plan will reduce/eliminate the gaming of the retirement system.
- Employees that make careers of Public Service (Law Enforcement, Firefighters, Teachers and Higher Education Professors) will still have the option of a Defined Benefit plan.

Desired Results of Choice

- Professions that have recruitment and retention problems have one more tool in the Defined Benefit plan.
- Employees in positions of high turnover will opt for the Defined Contribution plan with its shorter vesting.
- Protect the State from Lawsuits by employees as options will be by choice.
- Allow the Financial Industry/Planners to ramp up education by avoiding the flood of employees needing financial assistance if the Defined Benefit plan were eliminated all at once.
- Avoid negative perceptions that could result from a hastily implemented exit from the Defined Benefit plan.