

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

**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**

**Senator Ring, Chair**  
**Senator Siplin, Vice Chair**

**MEETING DATE:** Tuesday, March 15, 2011  
**TIME:** 8:00 —9:00 a.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott 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	<b>SM 358</b> Evers	Exercise of Federal Power; Urges the Congress of the United States to honor the provisions of the Constitution of the United States and United States Supreme Court case law which limit the scope and exercise of federal power.	JU 02/08/2011 Favorable GO 03/15/2011 RC
2	<b>SB 636</b> Simmons (Similar CS/H 4099, Identical H 4081, Compare H 1187, S 1592)	Repeal of Obsolete Insurance Provisions; Deletes an obsolete requirement for the State Board of Administration to transfer to the Citizens Property Insurance Corporation certain funds of the Insurance Capital Build-Up Incentive Program. Deletes an obsolete presuit notice requirement for the Florida Automobile Joint Underwriting Association. Deletes an obsolete form filing deadline for sinkhole coverage. Deletes an obsolete reporting requirement for activities relating to the sinkhole database, etc.	BI 03/09/2011 Favorable GO 03/15/2011 BC
3	<b>SB 1292</b> Alexander (Identical H 977, Compare HJR 975, Link SJR 1276)	Chief Financial Officer; Provides definitions. Requires governmental and statutorily created entities to maintain their financial data in accordance with the requirements of the Chief Financial Officer by a certain date. Requires the Chief Financial Officer to adopt charts of accounts that meet certain requirements by a certain date. Requires a review and update of the charts of accounts. Requires the Chief Financial Officer to adopt certain procedures relating to the charts of accounts. Provides a declaration of important state interest.	GO 03/15/2011 BC

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

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

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

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BILL: SB 358

INTRODUCER: Senator Evers

SUBJECT: Exercise of Federal Power

DATE: March 8, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	<b>Favorable</b>
2.	Mason	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This Senate Memorial urges the United States Congress to honor the provisions of the United States Constitution and federal case law which limit the scope and exercise of federal power.

More specifically, the memorial demands that Congress cease and desist from issuing mandates that are beyond the scope of its constitutionally delegated powers. The memorial also provides that all compulsory federal legislation that directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding should be prohibited or repealed.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each state legislature of the United States, and each member of the Florida delegation to the United States Congress.

**II. Present Situation:**

**Tenth Amendment and State Sovereignty**

By the provisions of the United States Constitution, certain powers are entrusted solely to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments.<sup>1</sup> All attributes of government

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<sup>1</sup> 48A FLA. JUR 2D, *State of Florida* s. 13 (2010).

that have not been relinquished by the adoption of the United States Constitution and its amendments have been reserved to the states.<sup>2</sup> The Tenth Amendment to the United States Constitution provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” As noted by one Supreme Court Justice:

[t]his amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities.<sup>3</sup>

Therefore, courts have consistently interpreted the Tenth Amendment to mean that “[t]he States unquestionably do retain a significant measure of sovereign authority. . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.”<sup>4</sup> Under the federalist system of government in the United States, states may enact more rigorous restraints on government intrusion than the federal charter imposes.<sup>5</sup> However, a state may not adopt more restrictions on the fundamental rights of a citizen than the United States Constitution allows.<sup>6</sup>

The United States Supreme Court has recognized that the framers of the Constitution explicitly chose a constitution that affords to Congress the power to regulate individuals, not states.<sup>7</sup> Therefore, the Court has consistently held that the Tenth Amendment does not afford Congress the power to require states to enact particular laws or require that states regulate in a particular manner.<sup>8</sup> For example, in *New York v. United States*, the Court, in interpreting the Tenth Amendment, ruled that the Constitution does not confer upon Congress the power to compel states to provide for disposal of radioactive waste generated within their borders, though Congress has substantial power under the Constitution to encourage states to do so.<sup>9</sup>

### **State Sovereignty Movement**

A state sovereignty movement has emerged in the United States over the past couple of years. The premise of this movement is the belief that the balance of power has tilted too far in favor of the federal government. Proponents of this movement urge legislators and citizens to support resolutions or state constitutional amendments declaring the sovereignty of the state over all matters not delegated by limited enumeration of powers in the United States Constitution to the federal government. The resolutions often mandate that the state government will hold the federal government accountable to the United States Constitution to protect state residents from federal abuse.

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<sup>2</sup> *Id.*

<sup>3</sup> *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).

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

<sup>5</sup> 48A FLA. JUR 2D, *State of Florida* s. 13 (2010).

<sup>6</sup> *Id.* (quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 549 (1985)).

<sup>7</sup> *New York v. United States*, 505 U.S. at 156.

<sup>8</sup> *Id.*; see also *Baggs v. City of South Pasadena*, 947 F. Supp. 1580 (M.D. Fla. 1996).

<sup>9</sup> *New York v. United States*, 505 U.S. at 156.

In late June 2009, the Tennessee governor became the first governor to sign such a resolution.<sup>10</sup> Following Tennessee, Alaska's governor signed a similar resolution passed by the Alaska House and Senate in July 2009.<sup>11</sup> An advocacy organization supporting state sovereignty reports that 21 states introduced similar resolutions asserting state sovereignty in 2010.<sup>12</sup> Of those joint resolutions filed, three were signed by the governors of Alabama, Utah, and Wyoming.<sup>13</sup>

In lieu of a resolution asserting state sovereignty, some state legislators have filed bills proposing binding legislation supporting state sovereignty. For example, a New Hampshire legislator has filed a bill to create a "joint committee on the constitutionality of acts, orders, laws, statutes, regulations, and rules of the government of the United States of America in order to protect state sovereignty."<sup>14</sup> Some state legislators have filed legislation for a constitutional amendment asserting state sovereignty.<sup>15</sup> To date, it does not appear that a state constitutional amendment has been adopted.

### **Challenges to The Patient Protection and Affordable Care Act**

Federal health care reform legislation titled "The Patient Protection and Affordable Care Act" is one of the focuses of the state sovereignty movement. Following the enactment of the legislation in 2010, the attorneys general, including the attorney general of Florida, or governors of 26 states, two private citizens, and the National Federation of Independent Business filed suit in the United States District Court for the Northern District of Florida challenging the constitutionality of the Act.<sup>16</sup> Plaintiffs alleged that the individual mandate set forth in the Act requiring everyone to purchase federally approved health insurance violates the Commerce Clause of the United States Constitution. In addition, plaintiffs alleged that the provisions in the Act expanding Medicaid violate the Spending Clause, as well as the Ninth and Tenth Amendments of the United States Constitution. On January 31, 2011, the court concluded that:

Congress exceeded the bounds of its authority in passing the Act with the individual mandate. . . . Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void.<sup>17</sup>

This ruling is consistent with the United States District Court for the Eastern District of Virginia's ruling that provisions of the Act exceed the constitutional boundaries of congressional

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<sup>10</sup> Tennessee HJR 108 (2009).

<sup>11</sup> Alaska HJR 27 (2009).

<sup>12</sup> Tenth Amendment Center, *2010 Resolutions*, available at <http://www.tenthamendmentcenter.com/nullification/10th-amendment-resolutions/> (last visited Jan. 31, 2011).

<sup>13</sup> Alabama SJR 27 (2010); Utah SCR 3 (2010); and Wyoming HJ 0002 (2010).

<sup>14</sup> New Hampshire HB 1343 (2010). A Missouri legislator has filed a bill creating a "Tenth Amendment Commission." The commission refers cases to the Attorney General when the federal government enacts laws requiring the state or a state officer to enact or enforce a provision of federal law believed to be unconstitutional. See Missouri SB 587 (2010).

<sup>15</sup> See Oklahoma HJR 1063 (2010).

<sup>16</sup> *State of Florida v. United States Department of Health and Human Services*, Case No. 3:10-CV-91-RV/EMT (N.D. Fla. 2010).

<sup>17</sup> *State of Florida v. United States Department of Health and Human Services, Order Granting Summary Judgment*, Case No. 3:10-CV-91-RV/EMT, 76 (N.D. Fla. 2011).

power.<sup>18</sup> However, two federal district courts have upheld the constitutionality of the provisions of the Act.<sup>19</sup>

### III. Effect of Proposed Changes:

This Senate Memorial urges the United States Congress to honor the provisions of the United States Constitution and federal case law which limit the scope and exercise of federal power.

The memorial recognizes Florida's sovereignty under the Tenth Amendment to the United States Constitution over all powers not otherwise enumerated and granted to the federal government and demands that the federal government, as an agent of the State of Florida, cease and desist from issuing mandates that are beyond the scope of those constitutionally delegated powers.

The memorial provides that all compulsory federal legislation that directs states to comply under threat of civil or criminal penalties or sanctions or that requires states to pass legislation or lose federal funding should be prohibited or repealed.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each state legislature of the United States, and each member of the Florida delegation to the United States Congress.

The memorial is not subject to approval or veto by the Governor. The presiding officers of each house sign the memorial.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>18</sup> *Commonwealth of Virginia v. Kathleen Sebelius, Secretary of the Department of Health and Human Services, Memorandum Opinion (Cross Motions for Summary Judgment)*, Case No. 3:10CV188-HEH (E.D. Va. 2011).

<sup>19</sup> *Thomas More Law Center v. Obama*, 720 F.Supp.2d 882 (E.D. Mich. 2010); *Liberty University, Inc. v. Geithner*, 2010 WL 4860299 (W.D. Va. 2010).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

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

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

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BILL: SB 636

INTRODUCER: Senator Simmons

SUBJECT: Repeal Obsolete Insurance Provisions

DATE: March 10, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	<b>Favorable</b>
2.	Roberts	Roberts	GO	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

Senate Bill 636 repeals outdated or obsolete language relating to the following topics:

- Refund to Citizens Property Insurance Corporation of funds not committed or reserved for insurers in the Insurance Capital Build-Up Incentive Program,
- Requirements of pre-suit notice for suits brought against the Florida Automobile Joint Underwriting Association (FAJUA),
- Form filings for compliance with the mandatory catastrophic ground cover collapse coverage,
- Report on the development of a sinkhole database,
- Feasibility study for Florida sinkhole coverage facility, and
- Effective date of insurers’ mandatory windstorm and contents coverage in property insurance policies.

This bill amends the following sections of the Florida Statutes: 215.5595, 627.311, 627.706, 627.7065, and 627.712. The bill repeals the following section of the Florida Statute: 627.7077.

**II. Present Situation:**

**Citizens Property Insurance Refund**

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Program) to provide insurance companies low-cost capital to write additional residential property insurance

to Florida residents.<sup>1</sup> The Program's goal is to increase the availability of residential property insurance coverage and to restrain increases in property insurance premiums. To accomplish this goal, the State loaned funds, in the form of surplus notes, to new or existing authorized residential property insurers. In order to receive these funds, the participating insurers agreed to write additional residential property insurance in Florida and to contribute new capital to their respective companies.

In order to finance these notes, the Legislature, in 2006, appropriated \$250 million non-recurring funds from the General Revenue Fund to the Program. The Legislature required any unexpended balance to be reverted back to the General Revenue Fund on June 30, 2007. However, by June 28, 2007, the program had exhausted the Legislative appropriation.<sup>2</sup>

In 2008, the Legislature enacted CS/CS/SB 2860, which required Citizens Property Insurance Corporation (Citizens) to transfer \$250 million to the General Revenue Fund for transfer to the Program.<sup>3</sup> The Program was required to return any unexpended balance to the General Revenue Fund on January 15, 2009. However, SB 2860 was vetoed by Governor Crist.<sup>4</sup>

### **Pre-Suit Notice for Suits Brought against FAJUA**

The FAJUA was created to provide low-cost automobile insurance to those Florida residents that cannot procure automobile insurance. FAJUA is governed under s. 627.311(3), and every automobile insurer registered with the State is required to be a member of FAJUA. Subparagraph 627.311(3)(k)2., F.S. required that before a legal action is brought against FAJUA under s. 624.155, F.S., the Department of Financial Services (DFS) and FAJUA must be given 90 days written notice of the violation giving rise to the lawsuit.<sup>5</sup> However, under s. 624.155, F.S., the notice requirement for a lawsuit against an "authorized insurer" is only 60 days. Therefore, an alleged violation by FAJUA requires an additional 30 days notice. By its own provision, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. The Legislature has not reenacted that subparagraph.

### **Form Filings for the Mandatory Catastrophic Ground Cover Collapse Coverage**

In the 2007A Special Session, the Legislature required that every insurer authorized to sell property insurance in Florida must provide coverage for catastrophic ground cover collapse and

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<sup>1</sup> Section 215.5595, F.S.

<sup>2</sup> Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=TYIOUbpBbDM%3d&tabid=975&mid=2692> (last viewed February 1, 2011).

<sup>3</sup> Section 16, ch. 2008-66, L.O.F.

<sup>4</sup> On May 28, 2008, Governor Charlie Crist line-item vetoed section 16 of CS/CS/SB 2860 which required the \$250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program. CS/HB 5057 also required the \$250 million transfer and this entire bill was vetoed on June 10, 2008. (Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated June 10, 2008).

<sup>5</sup> Section 624.155, F.S., specifies the insurer violations which require pre-suit notice to the DFS and to the insurer. These violations include: unfair claim settlement practices, illegal dealings in premiums, refusal to insure, favored agent or insurer, illegal dealings for life or disability insurance, life or disability insurance discrimination based on policyholder having the sickle cell trait, return of auto insurance premium upon cancellation of the policy by the policyholder, not settling claims in good faith, claims payments made to policyholders without an accompanying statement relating to the coverage, and failure to settle a claim under one portion of an insurance policy in order to influence settlement under other portions of the policy.



make available, for an appropriate premium, coverage for sinkhole losses.<sup>6</sup> Catastrophic ground cover collapse coverage pays the homeowner for property damage caused by the abrupt collapse of the ground cover with a visible ground cover depression resulting in structural damage to the building when the structure is condemned and ordered to be vacated. For damages that do not reach this threshold, the homeowner can choose to purchase additional sinkhole coverage, which also requires structural damage, but does not require an abrupt collapse visible to the naked eye, resulting in condemnation by a governmental agency. Insurers were required to make a form filing with the Office of Insurance Regulation by June 1, 2007 to implement these coverage requirements.

### **Report on the Development of a Sinkhole Database**

Section 627.7065, F.S., creates a sinkhole information database for the purpose of tracking current and past sinkhole activity and making the information available for prevention and remediation activities. The Department of Financial Services and the Insurance Consumer Advocate, in consultation with the Florida Geological Survey and the Department of Environmental Protection, was charged with implementing the database. The Florida Geological Survey is responsible for recording reports of sinkhole activity in the database, which is downloadable and available to the public.<sup>7</sup> In order to create the database, the Department of Environmental Protection, in consultation with the Department of Financial Services, was required to submit a report of database recommendations and other similar matters by December 31, 2005 to the Governor, the Chief Financial officer, and the Legislative presiding officers.

### **Feasibility Study for Florida Sinkhole Facility**

Pursuant to s. 627.7077, F.S., the Florida State University College of Business Department of Risk Management and Insurance was directed by the Legislature to perform a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility. Specifically, the study was to examine the availability, coverage options, and costs associated with various sinkhole insurance programs.<sup>8</sup> A draft report was due to the Legislature and the Financial Services Commission by February 1, 2005, and the final report was due by April 1, 2005.

### **Effective date of insurers' mandatory windstorm and contents coverage**

Section 627.712, F.S. requires residential property insurers to offer windstorm coverage for property insurance policies, but allows policyholders to exclude windstorm coverage and contents coverage, if specified requirements are met. The effective date of the statute, as specified in s. 627.712(7), F.S., was June 1, 2007. However, the statute allowed the Office of Insurance Regulation to extend the effective date to October 1, 2007, with the approval of the Financial Services Commission.

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<sup>6</sup> Section 30, ch. 2007-1, L.O.F.

<sup>7</sup> Department of Environmental Protection, Florida Geological Survey-Data and Maps. [http://www.dep.state.fl.us/geology/gisdatamaps/SIRs\\_database.htm](http://www.dep.state.fl.us/geology/gisdatamaps/SIRs_database.htm), (As of February 25, 2011).

<sup>8</sup> *Final Report: Insurance Study of Sinkholes*; Submitted to the State of Florida, April 2005. [http://www.flair.com/pdf/Sinkhole\\_Study\\_042005.pdf](http://www.flair.com/pdf/Sinkhole_Study_042005.pdf), (As of February 25, 2011).

### III. Effect of Proposed Changes:

Section 1 deletes s. 215.5595(11), F.S., which requires the State Board of Administration to refund to Citizens all uncommitted Insurance Capital Build-Up Incentive Program funds that were to have been transferred from Citizens to the Program through SB 2860. The transfer of funds was never performed due to the Governor's veto of SB 2860; thus, the bill repeals this obsolete language from the statute.

Section 2 deletes s. 627.311(3)(k)2., F.S., which contains the 90 day pre-suit notice requirement for suits brought against FAJUA under s. 624.155, F.S. By its own terms, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. Because the Legislature did not reinstate s. 627.311(3)(k)2., F.S., prior to October 1, 2007, that subparagraph expired and is obsolete. Therefore, the bill deletes obsolete language from the statute.

Section 3 deletes s. 627.706(3), F.S., which required insurers to file a form implementing the mandated coverage of catastrophic ground cover collapse and the optional sinkhole coverage with the Office of Insurance Regulation (OIR) by June 1, 2007. Since the time for filing has passed, and all insurers have filed with OIR, the bill deletes the obsolete language from the statute.

Section 4 deletes s. 627.7065(5), F.S., because the report of sinkhole database recommendations was filed by the Department of Environmental Protection before the deadline of December 31, 2005.

Section 5 repeals s. 627.7077, F.S., because the Florida State University College of Business Department of Risk Management and Insurance submitted the report on the feasibility of a Florida Sinkhole Insurance Facility, required by the statute, to the Legislature on April 1, 2005.<sup>9</sup>

Section 6 deletes s. 627.712(7), F.S., which provides an effective date of June 1, 2007, or at the latest, October 1, 2007, of the statute requiring residential property insurers to offer windstorm coverage for property insurance policies. This date has passed, and insurance companies are now required to offer windstorm coverage.

Section 7 provides that this act take effect July 1, 2011.

#### **Other Potential Implications:**

None.

### IV. Constitutional Issues:

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

None.

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<sup>9</sup> See Note 6.

**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.

**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 1292  
 INTRODUCER: Senator Alexander  
 SUBJECT: Chief Financial Officer/Chart of Accounts  
 DATE: March 8, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill requires by July 1, 2011 that:

- each state entity, including the legislative, judicial and executive branches, must maintain its financial data in a manner consistent with the applicable financial data management codes for state agencies adopted by the Chief Financial Officer (CFO);
- each local government must maintain its financial data in a manner consistent with the financial data management codes for local governments adopted by the CFO;
- each school district must maintain its financial data in a manner consistent with the applicable common financial data management codes established by the Department of Education;
- each entity of higher education must maintain its financial data in a manner consistent with the applicable common financial data management codes established by the Board of Governors; and
- each statutorily authorized entity must maintain its financial data in a manner consistent with the applicable common financial data management codes for such entity adopted by the CFO.

By January 1, 2013, the CFO must adopt charts of accounts that:

- Require specific enterprise-wide data;
- Permit additional agency-specific data;
- Require uniform data codes for expenditures and revenues by state, local government, and educational entities to the greatest extent possible; and
- Require at least two additional levels of specificity on the expenditure of public funds to the extent possible.

The updated charts of accounts will be applicable for fiscal years beginning on or after July 1, 2013.

The CFO must update the charts of accounts biennially, and must adopt procedures for the approval and publication of the charts of accounts.

This bill creates an unnumbered section of the Florida Statutes.

## **II. Present Situation:**

### **The Florida Accounting Information Resource System**

The Florida Accounting Information Resource System (FLAIR) is one of the subsystems of the Florida Financial Management Information System established in s. 215.93, F.S. The Department of Financial Services (DFS) is the functional owner of FLAIR, which must include the following functions:

- Accounting and reporting so as to provide timely data for producing financial statements for the state in accordance with generally accepted accounting principles.
- Auditing and settling claims against the state.

According to the FLAIR Procedures Manual:

To conform with GASB Statement No. 1, General Principles Section 1800, a chart of State Standard codes has been developed for the State of Florida which classifies Organizational structures, Budget Entities, Internal Budget Indicators, Funds, General Ledger Codes, Object Codes, Appropriation Categories, and State Programs. It also provides for other classifications as they are required. The Florida Accounting Information Resource System further provides for fund accounting, budgetary accounting, financial accounting and legal compliance with the statutes of the State of Florida.<sup>1</sup>

### **Local Government Annual Financial Reports**

Section 218.32 (1), F.S., requires that local governments submit to DFS an Annual Financial Report covering their operations for the preceding fiscal year. DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database and makes that information available to the public in an electronic format.

In order to improve government accountability by making financial information reported by Florida's local governments more comparable, thereby enabling local taxpayers and local policy makers to better understand and evaluate local government service delivery and operations, all local governmental entities are required to use accounting principles, such as the Uniform Accounting System Chart of Accounts when completing their Annual Financial Report.

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<sup>1</sup> FLAIR Procedures Manual, September 1, 2007, chapter 2, page 1, last visited on March 8, 2011:  
<http://www.myfloridacfo.com/aadir/docs/FLAIRProceduresCh.1-7.pdf>

Submission of the annual report depends on whether or not the local government entity is required to have an annual audit; if no audit is required the deadline is April 30 of each year, and if an audit is required the deadline is no later than 12 months after the end of the fiscal year. If DFS does not receive a completed annual financial report from a local government entity within the required period, DFS must notify the Legislative Auditing Committee, which must schedule a hearing.

If the Legislative Auditing Committee determines that an entity should be subject to further state action, the committee must:

- In the case of a local government entity or a district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction until the local government entity or the district school board is in compliance. The committee must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.<sup>2</sup>
- In the case of a special district, the committee must notify the Department of Community Affairs and the department must offer assistance to the special district. If the district continues in noncompliance, the department must petition the circuit court in Leon County for a writ of certiorari, and the court must award attorney costs and court fees to the prevailing party.<sup>3</sup>
- In the case of a charter school or charter technical career center, the committee must notify the appropriate sponsoring entity that may terminate the charter.<sup>4</sup>

### **Local Government Accounting Practices and Procedures**

Section 218.33(2), F.S., requires each local governmental entity to follow uniform accounting practices and procedures as promulgated by rule of DFS to assure the use of proper accounting and fiscal management by such units. The rules must include a uniform classification of accounts.

### **Local Government Annual Financial Audit Reports**

Section 218.39, F.S., provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within 12 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds. The entities are:

- Each county, district school board, charter school, or charter technical center;
- Each city with revenues or expenditures and expenses of more than \$250,000;
- Each special district with revenues or expenditures and expenses of more than \$100,000;
- Each city with revenues or expenditures and expenses between \$100,000 and \$250,000 that has not been audited within the 2 preceding fiscal years; and
- Each special district with revenues or expenditures and expenses between \$50,000 and \$100,000 that has not been audited within the 2 preceding fiscal years.

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<sup>2</sup> Section 11.40(5), F.S.

<sup>3</sup> See s. 189.421(3), F.S.

<sup>4</sup> See s. 11.40(5), F.S.

**Uniform Records and Accounts – Education**

Pursuant to s. 1010.01, F.S., the financial records and accounts of each school district, community college, and other institution or agency under the supervision of the State Board of Education must be prepared and maintained as prescribed by law and rules of the State Board of Education. The financial records and accounts of each state university under the supervision of the Board of Governors must be prepared and maintained as prescribed by law and rules of the Board of Governors.

Rules of the State Board of Education and rules of the Board of Governors must incorporate the requirements of law and accounting principles generally accepted in the United States, and the rules must include a uniform classification of accounts.

Each state university must annually file with the Board of Governors financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the Board of Governors.

Required financial accounts and reports must include provisions that are unique to each of the following: K-12 school districts, community colleges, and state universities, and must provide for the data to be reported to the National Center of Educational Statistics and other governmental and professional educational data information services as appropriate.

**Cost Accounting and Reporting – School Districts**

Each school district must account for expenditures of all state, local, and federal funds on a school-by-school and a district-aggregate basis in accordance with the manual developed by the Department of Education (DOE) or as provided by law.<sup>5</sup> The DOE has incorporated into an administrative rule<sup>6</sup> the Financial and Program Cost Accounting and Reporting for Florida Schools (Redbook 2001), which provides Florida school districts with a uniform chart of accounts for budgeting and financial reporting.

The chart of accounts included in the Redbook is adapted from the United States Department of Education publication, *Financial Accounting for Local and State School Systems*, which establishes a comprehensive and uniform structure for reporting education fiscal data. The Florida chart of accounts was modified following the initial publication of the Federal manual in 1957 and the major revision of 1973. Subsequent Federal revisions in 1980 and 1990 have also been addressed to ensure compatibility in national statistical reports.<sup>7</sup>

**Constitutional Duties of the Chief Financial Officer**

Article IV, section 4(c) of the Florida Constitution provides that “the chief financial officer shall serve as the chief financial officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and securities.”

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<sup>5</sup> Section 1010.20(1), F.S.

<sup>6</sup> Rule 6A-1.001, F.A.C.

<sup>7</sup> Financial and Program Cost Accounting and Reporting for Florida Schools (Redbook 2001), 1-1

### III. Effect of Proposed Changes:

The bill requires each state agency, by July 1, 2012, to maintain its financial data in a manner consistent with the applicable financial data management codes for the agency adopted by the CFO and in effect as of January 1, 2011.

Each local government, by July 1, 2012, must maintain its financial data in a manner consistent with the chart of accounts for local governments adopted by the CFO and in effect as of January 1, 2010.

Each educational entity, by July 1, 2012, must maintain its financial data in a manner consistent with the applicable common financial data management codes for such entity established by the Department of Education and in effect as of January 1, 2011.

Each entity of higher education, by July 1, 2012, must maintain its financial data in a manner consistent with the applicable common financial data management codes for such entity established by the Board of Governors or State Board of Education.

Each statutorily authorized entity must maintain its financial data in a manner consistent with the applicable common financial data management codes for such entity adopted by the CFO and in effect as of January 1, 2011.

By January 1, 2014, the CFO, after consulting with the state agencies, local governments, educational entities, and statutorily authorized entities affected, must adopt a chart of accounts that:

- Requires specific enterprise-wide data;
- Permits additional agency-specific data;
- Requires uniform data codes for expenditures and revenues by state, local government, and educational entities to the greatest extent possible; and
- Requires at least two additional levels of specificity on the expenditure of public funds to the maximum extent possible.

Entities must comply with the CFO's charts of accounts in any fiscal year beginning on or after July 1, 2014.

Beginning January 1, 2015, the CFO must biennially update the charts of accounts, after receiving input from users.

The bill requires the CFO to adopt procedures regarding the approval and publication of the charts of accounts.

Section 2 provides that this act fulfills an important state interest.

The bill provides that it takes effect on the same date that SJR 1276 takes effect.



**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

To the extent this bill requires cities and counties to expend funds to comply with the charts of accounts developed by the chief financial officer, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest (see section 2) and one of the following relevant exceptions must apply:

- a. funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- b. counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- c. the expenditure is required to comply with a law that applies to all persons similarly situated; or
- d. the law must be approved by two-thirds of the membership of each house of the legislature.

**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:**

Entities subject to the provisions of this bill may incur costs associated with changes in policies and equipment required to comply with the bill. The amount of those costs, if any, is currently unknown.

The Department of Financial Services estimates that it will need 3 FTE and approximately \$193,000 in FY 2011-12 to implement the bill. The department also advises that, if modifications are needed to expand the field length or add a new field to FLAIR, programming costs could reach \$9,397,200.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SJR 1276 proposes the constitutional amendment providing the CFO with the constitutional authority for implementing the charts of accounts.

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

None.

**B. Amendments:**

None.

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

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