

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Fraud Prevention
SPONSOR(S): Harrell, Cantens and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary</u>	_____	<u>Jaroslav</u>	<u>Havlicak</u>
2) <u>Agriculture</u>	_____	_____	_____
3) <u>Public Safety Apps. (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates a Fraud Prevention Unit ("FPU") to be located within the Office of the Attorney General. The FPU's mission is to improve the state's response to fraud and crimes related to fraud using cooperative efforts between state agencies, businesses in the private sector, and private citizen volunteers. The bill requires the FPU to:

- Establish a Statewide Complaint Receipt and Referral Center;
- Create a public and private partnership to address criminal fraud prevention;
- Support the development of a coordinated service network to assist fraud victims;
- Support projects that initiate or expand local crime-prevention efforts;
- Design its efforts to focus primarily on organized multi-jurisdictional fraud, white collar crime, and other types of fraud that involve large numbers of victims; and
- Use and promote the services of the Federal Trade Commission.

The bill provides that the Attorney General may use volunteers to assist the FPU, with such volunteers being entitled to sovereign immunity protection. The bill further states that the FPU shall be developed using existing resources within the Attorney General's Office, as well as funds and resources donated by businesses and others. Private businesses, state agencies, and local agencies may temporarily assign employees to work with the unit.

This bill appears to have an uncertain fiscal impact on state and local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0323.ju.doc
DATE: April 8, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill creates a new government office.

B. EFFECT OF PROPOSED CHANGES:

Background: Fraud in Florida

In 1999, the Strikeforce Against Fraudulent Enterprises (“SAFE”) was developed as an initiative of the Governor and Cabinet in response to the growing number of sophisticated fraudulent acts and the lack of expertise in any one agency to combat fraudulent activity. SAFE is a coalition of state, federal, and private agencies working in partnership to combat fraud in the state. SAFE initiatives include the development of a fraud database for sharing investigative fraud intelligence and a public awareness campaign to help citizens from becoming victimized. SAFE was created with no new financial appropriations and, as of November 2000, FDLE had spent over \$500,000 developing and maintaining the database.

The SAFE database serves as a depository of information related to “closed” fraud cases but not “open” active investigations. Closed cases are those that have been reported, investigated, and administered or prosecuted. Any member of the public can access the database through the internet to research whether a particular individual or entity has been the subject of an investigation regarding fraudulent activity. Currently, at least 29 entities have the ability to submit closed case information to the database. However, due to each entity possessing different computer software systems, and the lack of specific funding appropriations dedicated solely to making those systems compatible with the SAFE operating language, many of the participating entities have made minimal contributions to the database. Nevertheless, as of November of 2000, the database contained over 200,000 entries.

In September of 2000, SAFE hosted the Public/Private Partnership on Fraud Summit. Over 100 individuals representing state investigative and regulatory agencies and Florida’s business community attended the summit. The purpose of the summit was to discuss Florida’s current and anticipated fraud problems, as well as to initiate a stronger partnership between the public and private sectors to combat fraudulent activity. The following information was reported at the summit:

- The economic losses of fraud greatly exceed the financial costs associated with violent crime and it is estimated that fraud costs U.S. businesses more than \$400 billion annually.
- Fraud-related arrests in Florida in 2000 totaled 5,802, up from 5,304 in 1999.
- In fiscal year 1998-1999 the Medicaid Fraud Unit in the Office of the Attorney General opened 376 criminal cases which netted over \$2.7 million and civil settlements totaling over \$3.4 million.
- Financial awards from all civil, consumer, and civil RICO cases pursued by the Office of the Attorney General amounted to over \$27 million in 1999-2000.

- The Department of Banking and Finance opened 560 fraud-related cases in 1998-1999, with 83 closed cases consisting of 1,921 total victims, \$52 million in losses, \$21 million in court-ordered restitution, and \$201,500 in voluntary restitution.
- In 1999 the Department of Insurance received over 7,000 complaints, conducted over 1500 investigations, and effected nearly 500 arrests. The department estimates that insurance fraud costs Floridians an estimated \$6.4 billion annually, equating to \$1,500 in higher insurance premiums for each Florida family.

The summit participants also discussed and agreed upon the importance and necessity of a public/private partnership to combat and prevent fraud. In 2000, Florida's Statewide Prosecutor, Melanie Hines, reported an example of how successful such a partnership can be. The Office of Statewide Prosecution forged a partnership with the Office of the Attorney General, the Florida Department of Law Enforcement ("FDLE"), the Agency for Health Care Administration, the Executive Office of the Governor/Inspector General, the Department of Insurance and several private sector organizations and businesses to attack Medicaid fraud. Ms. Hines reported that the investigative efforts were successful and changes to procedure were made which significantly cut Medicaid fraud in Florida, saving as much as \$200 million in two years.

According to the Office of Statewide Intelligence ("OSI") within FDLE, as of March 2001 economic crime and fraud continues to be a major threat to citizens, businesses, and government in Florida. The OSI conducted a survey of state agencies that have the responsibility of responding to fraud complaints and found that the fraud problem was overwhelming not only because of the number of complaints, but also because of the lack of resources and expertise to respond to the problem. The survey revealed that fraudulent complaints could be placed in three categories: fraud against citizens; fraud against corporations; and fraud against the government. Based on the survey results, information from SAFE, and information from the Florida Computer Crimes Center, the OSI made the following recommendations:

- The SAFE initiative should be continued and receive increased resources.
- Close coordination should be maintained by all state agencies working fraud investigations to ensure that major fraud problems in the state are being addressed with an appropriate response.
- A screening mechanism should be developed to allow agencies to prioritize the deployment of limited investigative resources.
- Emphasis should be maintained within the Florida Computer Crimes Center on fraudulent activities and identity theft.

Proposed Changes: the Fraud Prevention Unit

Section 1 of this bill creates, within **subsection (1)**, the Fraud Prevention Unit ("FPU") in the Office of the Attorney General. The bill states that the unit's mission is to improve the state's response to fraud and crimes related to fraud using cooperative efforts between state agencies, businesses in the private sector, and private citizen volunteers.

Subsection (2) directs the FPU to establish a Statewide Complaint Receipt and Referral Center within the Department of Agriculture and Consumer Services, another state agency, or a designated private entity. The purpose of the center is to provide immediate information and general assistance to victims of fraud and serve as a bridge between the public, state agencies, consumer organizations, and private businesses. The bill requires the center to establish a program for collecting and analyzing information and data concerning fraud, focusing on the goals of prevention, reporting, and restoration. The center must:

- Provide a statewide methodology to manage complaint information from consumers, businesses, consumer-support organizations, and regulatory and enforcement agencies;

- Identify related complaints;
- Collect, analyze, and produce accurate data concerning the scope of fraud;
- Develop and implement prevention and education programs to reduce fraud victimization and provide response strategies to fraud victims; and
- Share complaint information and fraud data among public and private investigations.

Subsection (3) of the bill provides the stated responsibilities of the FPU include, but are not limited to:

- Creating an effective public and private partnership to cooperatively address criminal fraud within the state as it affects individual citizens and businesses;
- Providing timely information to the public regarding the types of fraud and efforts that can be taken to reduce the possibility of becoming a victim of such fraud;
- Providing information to the public encouraging the use of new and innovative refinements for fraud prevention, including the use of Internet resources to access government and private-sector programs designed to assist fraud victims;
- Furthering the goal of a statewide fraud prevention network;
- Supporting the development of a coordinated service network;
- Promoting a greater awareness of fraud and encouraging a cooperative response to fraud by state and local law enforcement officers and prosecutors, private security officers, and business representatives;
- Strengthening and expanding options for communication to fraud victims to assist them in detecting the extent of the fraud perpetrated against them, assist them during the investigation and prosecution of the criminal fraud, and assist them in recouping losses from fraud and managing the consequences of such fraud;
- Providing general support and assistance for fraud victims during their involvement with the criminal justice system;
- Providing information to fraud victims to assist them in dealing with the ramifications of fraud, such as information relating to reestablishing credit ratings; and
- Assisting in the identification and delivery of training and awareness programs related to fraud detection, investigation, prevention, and consequence management.

Subsection (4) establishes guidelines pertaining to projects supported by the FPU, which projects initiate or expand local crime prevention efforts. The projects shall:

- Use suitable outreach and educational techniques to raise the awareness of the public to potential fraud, efforts that can be taken to avoid becoming a victim, and responses to take when fraudulent activity has occurred;
- Develop and deliver crime prevention information to the elderly regarding fraud, theft, grand theft, and burglary;
- Develop programs to provide literature on training, information, and prevention to law enforcement officers, elderly care custodians, health practitioners, and social service providers regarding fraud perpetrated on the elderly;
- Cooperate with the Criminal Justice Standards and Training Commission to establish curricula for training law enforcement officers on how to handle all of the ramifications of fraud, from investigating to victim assistance;
- Review and evaluate fraud prevention programs; and
- Establish fraud prevention programs with the use of partnership initiatives.

Subsection (5) provides that any initiative or program funded under this section must demonstrate an ongoing effectiveness in assisting the Attorney General in the implementation of the mission of the FPU.

Subsection (6) provides that the Attorney General may employ personnel, to the extent funding is available, to ensure the FPU meets its mission. Volunteers may also be used and they will be entitled to the sovereign immunity protection of the state.

Subsection (7) directs the FPU to focus primarily on organized, multi-jurisdictional fraud, violations of s. 775.0844, F.S. (the White Collar Crime Protection Act), or other types of fraud that involve large numbers of real or potential victims. The FPU must coordinate its investigations with the Department of Law Enforcement and its efforts related to prosecutions of multi-jurisdictional fraud with the Office of Statewide Prosecution. Additionally, the FPU must coordinate its efforts related to assisting fraud victims with such programs presently established within, or coordinated by, the Office of the Attorney General, other state agencies, state attorney's offices, and victim support entities within the federal government and private sector.

Subsection (8) provides that the FPU shall use and promote the services of the Federal Trade Commission, including the toll-free phone services and Internet access, when such services are relevant to addressing the perpetration of fraud. The unit is directed to avoid duplicating services that are provided by other entities.

Subsection (9) states that the FPU shall be developed and operated using existing resources within the Office of the Attorney General, as well as funds and resources donated by businesses and others. Funds received by the unit may not be used to fund positions for investigators or law enforcement officers within law enforcement agencies or prosecutors within the Office of Statewide Prosecution or the state attorneys. State agencies, local agencies, and private businesses are permitted to temporarily assign employees to the FPU, but any such private sector employee remains at all times an employee of the private business. The Attorney General is also given the authority to use volunteers.

Subsection (10) provides that, upon the request of a fraud victim, the FPU may assist the victim in obtaining information necessary to correct inaccuracies or errors in the victim's credit report or other identifying information. However, the unit may not provide legal representation to the victim.

C. SECTION DIRECTORY:

Section 1. Creates the Fraud Prevention Unit within the Office of the Attorney General.

Section 2. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill allows for financial contributions by private businesses to the FPU; how much revenue this would generate is unclear.

2. Expenditures:

This bill specifies that the FPU is to be funded out of existing resources of the Office of the Attorney General, plus private contributions, but whether this would be possible is uncertain. Additional appropriations to cross-subsidize other functions of the Attorney General's office in exchange for the funds expended on the FPU might be needed. If the Attorney General must rely solely on existing resources to operate the FPU, then additional workload requirements will fall upon existing personnel. It is unknown whether the Attorney General's existing resources and personnel can accommodate the bill's requirements as the Attorney General has indicated the impact is "indeterminate."

Potentially, the Statewide Complaint Receipt and Referral Center could benefit law enforcement and regulatory entities in their investigative efforts. If the center tracks active, ongoing investigations, then participants in the center may be able to detect patterns of fraudulent activity, thereby allowing the authorities to stop the activity before it has a bigger impact. The precise impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Potentially, the Statewide Complaint Receipt and Referral Center could benefit law enforcement and regulatory entities in their investigative efforts. If the center tracks active, ongoing investigations, then participants in the center may be able to detect patterns of fraudulent activity, thereby allowing the authorities to stop the activity before it has a bigger impact. The precise impact is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Conceivably, victims of fraudulent activity should benefit from the bill's creation of the FPU as they will be able to contact one entity that can provide them with all of the information they need to protect themselves and recover from the damaging effects of the crimes committed against them. Additionally, individual citizens and businesses should benefit from the fraud prevention programs that will emanate from the various activities of the unit and the efforts of the Statewide Complaint Receipt and Referral Center.

It is unclear what would motivate a private business to contribute its funds or employees to the FPU.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Unlawful Delegation

Article II, section 3 of the Florida Constitution provides: "No person belonging to one branch [of state government] shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The Florida Supreme Court has ruled that this separation-of-powers provision

prevents the Legislature from delegating legislative power.¹ The power to legislate is defined as “involv[ing] the exercise of discretion as to the content of the law, its policy, or what it shall be[.]”²

Since the Legislature may not delegate its powers to other branches of state government, one would conclude, *a fortiori*, that it may not delegate them to private persons, either.³ The Florida Supreme Court does not appear to have ever directly addressed this question; however, in the one case where the Supreme Court of the United States struck down a federal statute solely on non-delegation grounds, the statute was held unconstitutional for, among other reasons, doing precisely this.⁴ Given that Florida’s non-delegation doctrine is considerably stricter than its federal counterpart,⁵ one would expect the same result under Florida law. The wide discretion granted to the FPU to locate the Statewide Complaint Receipt and Referral Center within any department or a private entity, “as appropriate,” may raise concerns about an unconstitutional delegation of legislative power.

B. RULE-MAKING AUTHORITY:

This bill authorizes the FPU to establish a Statewide Complaint Receipt and Referral Center within the Department of Agriculture and Consumer Services, another state agency, or a designated private entity.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The frequent intermingling of public and private funds and employees that this bill provides for in the operation of the FPU may raise questions about conflicts of interest, especially if any law enforcement agency ever investigates or prosecutes a private contributor to the FPU.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

¹ See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998); *Board of Architecture v. Wasserman*, 377 So.2d 653 (1979).

² *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719, 720-21 (Fla. 1937). See also *B. H. v. State*, 645 So.2d 987 (Fla. 1994); *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260 (Fla. 1991).

³ See 10 Fla. Jur. 2d Constitutional Law § 192 (stating this as a “general rule”).

⁴ See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

⁵ See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978) (holding that the state constitution’s explicit separation of powers provision imposes a stronger non-delegation doctrine on the Legislature than the federal constitution does on Congress).