HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1145 CS Insurable Interests
SPONSOR(S): Rivera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	11 Y, 9 N, w/CS	Tinney	Cooper
2) Colleges & Universities Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Under existing law, a charitable organization may own purchase a life insurance policy or annuity in the name of an insured if the insured consents to the ownership or purchase. The bill will allow a university that receives state funds to establish a trust to be named as the irrevocable beneficiary of both a life insurance policy and an annuity contract. Because of inefficiencies in the insurance marketplace, an arbitrage, or differing yields, exists between an annuity and a traditional life insurance policy. Generally, for an older person in good health, the premiums on a life insurance policy are an estimated 5-6 percent greater than the premiums for an annuity with the same cash value as an insurance policy.

Under the bill, s. 627.404, F.S., relating to insurable interests, is amended to broaden the definition of the term "charitable organization" in order to authorize charitable organizations to own or purchase life insurance or an annuity contract on an insured who consents to the ownership or purchase of such insurance. The bill will provide a university in Florida that receives state funds—essentially all public and private universities in the state—through their foundations and direct-support organizations (DSOs), with another tool for fundraising. Allowing a university to own an insurable interest in a life insurance policy or annuity contract owned by an individual represents a potential revenue source to the universities because of the price difference between a life insurance policy and an annuity for the same insured individual.

Under the bill, a charitable organization that is approved in writing by a Florida university, or a foundation associated with a university, is authorized to approve or form a trust to purchase and hold life insurance or an annuity contract on the life of an individual insured who so consents in writing. An individual must have a net worth of at least $5 million in order to authorize the purchase of a life insurance policy or annuity under the bill. A university or an associated entity may form or approve a trust to act as administrator for the insurance policy or annuity if the trust is formed, at least in part, for the purpose of fundraising on behalf of the university. The bill also specifies that at least 99 percent of all funds used by the trust for purchase of an insurance policy or annuity contract must originate from qualified institutional buyers as defined by the Federal Securities Act.

Under the bill, DFS is required to approve the proposed transaction prior to the purchase of a life insurance policy or annuity contract by a university or associated DSO. The bill requires the Department of Financial Services (DFS) to consult both with the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR) before approving the purchase. In its review of a proposed purchase of life insurance by a university, DFS must consider whether the purchase complies with the law and is fiscally prudent and whether the purchase serves the citizens of the state. Once DFS grants approval for the purchase, the bill states that the trust approved by the university has an insurable interest in the individual insured. The bill prohibits the trust or similar organization from assigning or transferring a policy or annuity or from changing the beneficiary or ownership of the policies. Similarly, the trust is prohibited by the bill from borrowing money collateralized or otherwise securitized by either a life insurance policy or annuity contract, except under rare specified circumstances.

Proponents of the bill report that Nebraska, North Carolina, Tennessee, Texas, and Virginia have approved legislation similar to that proposed by the bill. Similarly, five states in addition to Florida, have similar legislation pending; these include Alabama, Georgia, New York, Oklahoma, and South Carolina. The Louisiana Legislature defeated a similar measure.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government and Promote Personal Responsibility—The bill allows a not-for-profit organization, such as a university direct-support organization, to approve a separate and independent for-profit entity, e.g., a trust, partnership, or limited liability company, to procure a life insurance policy and an annuity contract on the life of an individual insured; such activities are not currently authorized by state law.

B. EFFECT OF PROPOSED CHANGES:

Background

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer (CFO) heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. Similarly, many insurers are required by law to seek OIR approval for their rates, or the prices they charge for coverage, and approval of the insurance forms they use for issuing policies. The Office of Insurance Regulation investigates allegations of fraud against insurers and administers state laws governing the financial reserve requirements imposed on insurers. The regulation and licensure of insurance agents and agencies is the purview of DFS. Staff of DFS also provides consumer information and assistance through the Division of Consumer Services.

Insurance Rates, and Contracts

Chapter 627, F.S., governs insurance rates and contracts. Part II of the chapter governs the insurance contract, i.e., policy, and statutorily authorizes the benefits and other coverages that may be included in an insurance contract; outlines the requirements for an insurer to file policies and other forms with OIR for approval; delineates the rate-approval process of OIR; and requires an insurer to provide a notice of cancellation, nonrenewal, or of the renewal premium to the policyholder, along with a variety of other provisions.

Insurable Interest; Personal Insurance

Section 627.404, F.S. relates to insurable interests and personal insurance. The law states that an insurer may rely upon information provided by an applicant relative to the insurable interest the applicant has in an insured. The law further states than an insurer may not be liable, except as provided in the policy, for information provided to the insurer by an applicant.

The same law authorizes a charitable organization that meets the requirements of s. 501(c)(3) of the Internal Revenue Code to own or purchase life insurance in the name of an insured who consents either to the ownership or purchase of the life insurance.

For purposes of insurable interests in property, s. 627.405, F.S., the law defines the term "insurable interest" to mean a substantial economic interest in the safety or preservation of the insured from loss, destruction, pecuniary damage, or impairment.

Types of Life Insurance

There are several different types of life insurance: term, whole life, universal life, and endowment life. Currently, under the tax laws, life insurance proceeds are not taxable. The two most popular life insurance policies are term and whole life. Term insurance generally is the least expensive form of life insurance; it is an agreement to pay a death benefit, generally as a lump sum, if the insured dies within the period specified in the policy or contract. Term life policies may be issued for 1 year or several years, although the premium may increase annually due to the increasing age of the insured.

Term insurance has no cash value or asset accumulation as part of the policy; the entire periodic premium is used to pay for the cost of the insurance protection or mortality cost associated with the policy. If the insured dies while a term life policy is in effect, the entire face amount of the policy is paid to the policyholder's named beneficiary, however, if the insured survives past the term of the policy, no cash benefit is paid by the insurer.

The other most common form of life insurance is whole life or permanent life; a whole life policy also pays a lump sum upon the death of the insured. A whole life policy is different from a term life policy because a whole life policy accumulates cash separately, in a manner similar to dividends; the dividends build as time passes. This dividend accumulation allows the insurer to maintain a constant premium level over the life of the policy. A whole life policy may also be referred to as "ordinary" or "straight" life insurance because the premiums are payable throughout the life of the insured, however, the dividends may be used to pay premiums or to increase the value of the policy.

An alternative to a traditional life insurance product is an annuity. Although annuities are sold by insurers, they are different from either a whole or term life policy. A policyholder purchases an annuity with the expectation of receiving a series of payments, distributed at pre-selected times, over the life of the policy. Some annuities have an indefinite payout schedule, meaning the longer the policyholder lives, the more payments he or she receives.

Annuities are available with immediate or deferred payments to the insured; there are also fixed and variable annuity products available. A fixed annuity has an expected payment amount for the payment period associated with the policy. In contrast, a variable annuity generally is an investment in one or more mutual funds or other investment instruments. The policyholder may select the mutual funds or other investment instrument his or her premiums purchase or an annuity may be sold based on investment instruments designated by the policy issuer. A variable annuity typically specifies a minimum periodic payment to the policyholder, although that payment amount may increase if the value of the investments associated with the annuity increase in value.

The age of the annuity policyholder may determine the type of annuity purchased. For example, an older or retired person may select an immediate annuity or one that begins making regular payments immediately. A younger policyholder, in contrast, may select a deferred annuity, opting for a payment schedule that begins as the policyholder approaches retirement. The advantage to a deferred annuity is that investment growth in the annuity is tax-free until the earnings are distributed to the policyholder.

Arbitrage Opportunities: Life Insurance and Annuities

In an online dictionary of annuity terms, the Annuities Institute (www.annuitiesinstitute.com) defines the word "arbitrage" as "an attempt to make profit by exploiting price differences of identical or similar financial instruments, on different markets or in different forms." *The American Heritage Dictionary* (4th Office Edition, 2001), defines "arbitrage" as "the purchase of securities on one market for immediate resale on another in order to profit from a price discrepancy." In other words, the opportunity for arbitrage exists when economically similar investments lead to significantly different returns.

Two Canadian professors, Dr. Narat Charupat of McMaster University in Hamilton, Ontario and Dr. Moshe Arye Milevsky of York University in Toronto, Ontario, presented a paper in 1999 at a meeting

of insurance professionals outlining an idiosyncrasy in the Canadian tax system that encouraged the use of arbitrage for elderly, wealthy Canadians who purchased a life insurance policy and an annuity. The two professors later determined that the Internal Revenue Code of the US also allows for arbitrage between an annuity and a whole life policy under similar circumstances. Two German professors published articles in 2002 explaining that the German tax system also encourages the use of this type of arbitrage.

In a 2001 article entitled *Mortality Swaps and Tax Arbitrage in the Canadian Insurance and Annuity Markets*, the two Canadian professors, Dr. Charupat and Dr. Milevsky, explain how arbitrage occurs under Canadian (and U.S.) tax laws for term life and annuity insurance products. The authors note that investing in two different life insurance policies simultaneously seems counter-intuitive:

> Specifically, if an individual acquires a fixed immediate life annuity and then uses the periodic annuity income to fund a term-to-life insurance policy, these two transactions, which we refer to as a "mortality swap," will generate a pay-off pattern that is tax free. In other words, a mortality swap replicates a risk-free security, albeit one with a stochastic [unknown] liquidation date. We show theoretically that the rate of return on a mortality swap is equal to the risk-free rate on a *before-tax* basis, but exceeds it on an *after-tax* basis.

JR Katz is an insurance, management, and investment firm based in Northbrook, IL. On their website, www.jrkatz.com, the firm explains insurance arbitrage in an article entitled *Insurance Arbitrage: An Effective Way to Enhance Cash Flow and Assist Heirs*. The article explains how arbitrage works between an annuity and a life insurance policy and explains that use of this arbitrage is effective for a person aged 75-92 in the upper tax bracket. The JR Katz article uses the example that follows. The example assumes the policyholder, Mr. Smith, is a healthy, 79-year old male; his assets place him in the 55 percent tax bracket; he owns CDs and other comparable investment instruments with a total value of $1 million, generating a 6 percent before-tax return and a 4 percent after-tax return; owns other liquid investments with an 8 percent after-tax yield; is interested in increasing investment yields without increasing risk; and is willing to provide for heirs, but unwilling to do so if it inhibits his cash flow. The chart that follows illustrates this example.

Mr. Smith's Annual Investment Results		
	Status Quo	**Life Insurance-Annuity Tandem**
Original Assets	$1,000,000	$1,000,000
Bond income @ 4% after-tax	40,000	—
Immediate annuity guaranteed after-tax income	—	140,255
Insurance premium	—	55,270
After-tax income	40,000	84,985
Additional after-tax income generated	—	$44,985
Additional income re-invested annually over 12 years @ 8% after –tax	—	$853,686
Amount to Heirs at Mr. Smith's death		
CDs and comparable investments	$1,000,000	—
Insurance	—	$1,000,000
Additional income reinvestment	—	853,686
Total assets	1,000,000	1,853,686
Amount subject to estate taxes	1,000,000	853,686
Estate taxes @ 55%	550,000	469,527
Net to heirs	450,000	1,384,159
Additional net to heirs generated	—	$934,159

According to the JR Katz example, if Mr. Smith makes no changes, the $1 million investment in CDs will generate an after-tax return of $40,000 per year. Ultimately, the initial investment of $1 million will be inherited as $450,000 in cash. Alternatively, if Mr. Smith were to liquidate his $1 million in CDs and invest it in an immediate annuity, generating annual, guaranteed pre-tax proceeds of $157,590 and after-tax proceeds of $140,255 based on a 66.7 percent exclusion ratio (the return on an annuity not subject to federal income tax) and 33 percent income tax rate, he could then purchase a life insurance policy with a $1 million death benefit. The premiums for the life insurance would be an estimated $55,270 annually. Under this example, Mr. Smith's $1 million would grow to $1,853,686 and the amount to be passed to Mr. Smith's heirs would increase from $450,000 to $1,384,159.

Thus, the arbitrage between a traditional life insurance policy and an annuity is possible because generally, in the US insurance marketplace, the cost of an annuity is roughly 5 percent less than a comparable death benefit for a life insurance policy. Because of the arbitrage between the two insurance products, an individual or a designated charitable organization is able to profit from the market inefficiencies that exist between these two similar insurance products.

Regulation of Securities in Florida

The Office of Financial Regulation (OFR) of DFS regulates securities transactions under chapter 517, F.S., the Florida Securities and Investor Protection Act. Under s. 517.07, F.S., a security must be registered, either with OFR or with the federal SEC; if a security is registered with the SEC, the law (s. 517.082, F.S.) requires the broker or issuer to notify OFR that the security is registered with the SEC. The law also requires a broker dealer and a sales agent to be registered with OFR. An applicant who registers a security in Florida must file detailed financial and other information, such as a prospectus, with OFR. An applicant must include the names and addresses of directors, officers, and partners of the issuer; the location of the issuer's principal business office; a general description of the type of business to be transacted by the issuer; a capitalization statement of the issuer; a balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; cash resources; and other detailed financial information. All statements, exhibits, and documents relating to the registration of a security are made under oath.

The law prohibits a security registered with the OFR from being sold until each potential purchaser receives a prospectus containing at least the information specified by law. Staff of OFR indicates that the information provided by a prospectus provides a potential investor with full and fair disclosures concerning the security. Also, the law (s. 517.161, F.S.) requires that prior to recommending a security, a licensed company or agent is required to determine that the investment is suitable for the prospective purchaser. Determining the suitability of an investment involves considering the purchaser's financial status, tax status, investment objectives, and investment experience. Chapter 517, F.S., also provides for suspension, revocation, or denial of the registration of a security and similar sanctions against dealers, investment advisers, and associated persons.

Corporations Not for Profit, chapter 617, F.S.

Chapter 617, F.S., the Florida Not for Profit Corporation Act, provides for the approval, incorporation, activities, and administration of not-for-profit corporations. Among the provisions of the law are the corporate filing requirements with the Department of State, including the department's powers; the approval of forms; filing fees; definitions; and requirements for corporate officers and corporate members, among other similar provisions.

State University Direct-Support Organizations

Direct-support organizations (DSOs) for state universities are authorized under s. 1004.28, F.S. The law defines a DSO as a not-for-profit Florida corporation organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures for the benefit of a state university or for a research and development authority affiliated with a state university. The law requires a DSO to

be “certified” by a state university, meaning the university has determined that the DSO meets the requirements of law and is determined to be operating for the benefit of the university and in the best interests of the state. A popular example of a university DSO is the booster organization affiliated with major sports activities sponsored by the state universities, although DSOs are affiliated with many programs and activities within the state university system.

Under the law authorizing a state university to operate a DSO, s. 1104.28, F.S., a state university board of trustees may authorize a DSO to use property, facilities, and personal services, i.e., full-time and part-time personnel and payroll services, of the university. This means DSOs such as a booster organization, an alumni foundation, and other similar groups, may operate on a state university campus, in a university building, with the assistance of university personnel.

The law prohibits a DSO from giving any gift to a political committee or committee of continuous existence as defined by law unless the DSO board of directors approves such gift at a regular board meeting as relating to the educational mission of the DSO’s affiliated university. The law requires a university DSO to hire an independent auditor annually for a financial audit of the books and records of the DSO. The audit must be submitted within 9 months after June 30th—the end of the state’s fiscal year—to the Auditor General, the State Board of Education, the university’s board of trustees, among other specified entities.

Public and Private Universities in Florida

Chapter 1000, F.S., provides the general provisions and definitions governing grades K-20 in Florida. By definition, a “state university” is one of the 11 public universities comprising the state university system (SUS). The members of the SUS include the University of Florida; Florida State University; Florida Agricultural and Mechanical University; University of South Florida; Florida Atlantic University; University of West Florida; University of Central Florida; University of North Florida; Florida International University; Florida Gulf Coast University; and the New College of Florida. In addition, there are 28 public community colleges located throughout the state.

Chapter 1005, F.S., governs nonpublic postsecondary education in the state. Section 1005.02, F.S., defines the words “college” and “university” as having the same meaning. By definition, a nonpublic university or college is an incorporated postsecondary educational entity, including all locations, offering a substantially complete program to confer at least an associate degree requiring a minimum of 15 semester hours, or its equivalent, of general education. In addition, the definition states that a nonpublic college or university offers instruction leading to, or prerequisite to, college credit. The words include an independent educational institution chartered in Florida and any center or branch campus in the state owned or sponsored by an out-of-state institution offering courses for college credit.

According to the Independent Colleges and Universities of Florida (ICUF), an organization comprised of private universities and colleges in the state, ICUF currently has 28 members, including such schools as the University of Miami, Flagler College, Florida Southern College, Bethune-Cookman College, Rollins College, Saint Leo University, Eckerd College, and Nova Southeastern University, to name only a few. Staff of ICUF reports that Beacon College in Leesburg, a school that specializes in educating students with learning disabilities, had the smallest enrollment in 2004 with 28 students. The largest member of ICUF, the University of Miami, had 15,235 students enrolled in 2004.

Charitable Organizations

Under s. 627.404(2), F.S., a charitable organization that meets the requirements of a not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code may own or purchase life insurance on an insured who consents to the ownership or purchase of that insurance. The term “501(c)(3) organization” include various public and charitable entities. The charitable organization would therefore own what is termed an “insurable interest” in the insured, e.g., a lawful and substantial economic interest in the insured.

Current state law does not authorize a not-for-profit organization, such as a university direct-support organization, to approve a separate and independent for-profit entity, e.g., a trust, partnership, or limited liability company, to obtain or procure life insurance policies and annuity contracts on the life of an individual insured.

Changes Proposed by the Bill

Under the bill, s. 627.404, F.S., relating to insurable interests, is amended to broaden the definition of the term "charitable organization" in order to authorize charitable organizations to *own or purchase* life insurance or an annuity contract on an insured who consents to the ownership or purchase of such insurance. The bill will provide a university in Florida that receives state funds—essentially all public and private universities in the state—through their foundations and DSOs, with another tool for fundraising. Allowing a university to own an insurable interest in a life insurance policy or annuity contract owned by an individual represents a potential revenue source to the universities because of the price difference, currently estimated as 5-6 percent, between a life insurance policy and an annuity. It appears the bill will apply to the 11 public universities in Florida and to the 28 independent colleges and universities, as well.

Proponents of the bill report that several states, including Nebraska, North Carolina, Tennessee, Texas, and Virginia have approved legislation similar to that proposed by the bill. Similarly, five states in addition to Florida, have similar legislation pending; these include Alabama, Georgia, New York, Oklahoma, and South Carolina. The Louisiana Legislature defeated a similar measure.

Current state law in s. 627.404, F.S., authorizes a charitable organization, such as a university foundation or DSO to be named as beneficiary in a life insurance policy. The bill expands this authority to allow a university or its affiliated foundation to establish a trust, or similar entity, which is named as the irrevocable beneficiary of a combination of life insurance policies and annuities.

Specifically, the bill amends the law to change the definition of the term "charitable organization" to include:

- any organization that meets the requirements of s. 501(c)(3) of the IRS code;
- any organization to which charitable contributions could be made under s. 170(c)(1), (c)(2), or (c)(3) of the IRS code; or
- any trust, partnership, limited liability company, or similar entity.

Under the bill, a charitable organization that is approved in writing by a Florida university, or a foundation associated with a university, is authorized to approve or form a trust to purchase and hold life insurance or an annuity contract on the life of an individual insured who so consents in writing, provided the insured has a net worth of at least $5 million. A university or an associated entity may form or approve a trust to act as administrator for the insurance policy or annuity if the trust is formed, at least in part, for the purpose of fundraising on behalf of the university.

A trust approved by a university or an associated entity is required by the bill to procure a combination of life insurance and annuity contracts on the lives of consenting individual insureds. The bill also specifies that at least 99 percent of all funds used by the trust for purchase of an insurance policy or annuity contract must originate from qualified institutional buyers as defined by the Federal Securities Act of 1933. A qualified institutional buyer generally is one associated with a pension fund or mutual fund. Alternatively, a trust may use the proceeds from a life insurance policy or annuity to purchase another policy or annuity. Only an insurance agent licensed in Florida may sell a life insurance policy or annuity contract authorized by the bill.

The investment in the trust by qualified institutional buyers may be under a public or nonpublic offering through a qualified registered broker or dealer as defined in federal law. The bill specifies, however,

that a qualified institutional buyer may not hold or procure a direct interest in the life insurance policies or annuities made available through a public or private offering, unless the interest is part of a securitized transaction. All transactions regarding a life insurance policy or annuity contract authorized by the bill are subject to oversight by OFR and to the provisions of chapter 517, F.S., the Florida Securities and Investor Protection Act.

A university or an associated entity must, at the time life insurance or an annuity is purchased by an approved trust or similar organization, reasonably anticipate receiving any residual benefit from the insurance policy after any initial investment and accrued interest is repaid to the institutional buyers. The repayment to investors must be made in accordance with the prospectus and similar information. Similarly, the initial prospectus and other disclosure materials prepared by the trust must disclose the residual amount from the life insurance that is expected to be retained by the university, its designated DSO, or similar entity.

In order for an individual to consent to the purchase of insurance, he or she must first sign an affidavit granting permission for the purchase by the university, its affiliated entity, or its trust. The affidavit must state that neither the insured nor any of the insured's relatives has or will receive remuneration as part of the authority for purchase of the insurance. Third party expenses, such as costs for a prospectus or similar documents, may be paid by the trust.

Under the bill, DFS is required to approve the proposed purchase of a life insurance policy or annuity contract by a university or associated DSO before such purchase may occur. The bill requires DFS to consult both with OIR and OFR before approving the purchase. In its review of a proposed purchase of life insurance by a university, DFS must consider whether the purchase complies with the law and is fiscally prudent and whether the purchase serves the citizens of the state. Once DFS grants approval for the purchase, the bill states that the trust approved by the university has an insurable interest in the individual insured.

The bill prohibits the trust or similar organization from assigning or transferring a policy or annuity or from changing the beneficiary or ownership of the policies. Similarly, the trust is prohibited by the bill from borrowing money collateralized or otherwise securitized by either a life insurance policy or annuity contract, except under rare specified circumstances. For example, in cases of material default, insolvency of either the life insurer or annuity issuer, or misrepresentation by the insured on the application for either the life insurance policy or annuity contract providing grounds for a contest by the life insurer or annuity issuer, the trust could sell, assign, or otherwise transfer a policy or annuity. Further, the charitable organization has an insurable interest in the life of the insured whether the organization originally purchased the insurance or the insurance is later transferred to the charitable organization by the insured.

C. SECTION DIRECTORY:

Section 1 amends s. 627.404, F.S., relating to insurable interests and personal insurance, to authorize specified universities and their affiliated not-for-profit foundations to approve a trust or similar organization for the purpose of purchasing life insurance in the name of a person who consents to same.

Section 2 provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. Neither the Department of Financial Services, the Office of Insurance Regulation, nor the Office of Financial Regulation anticipates expending funds to administer the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to information provided by proponents of the bill, over the past 2 years, more than $1.2 billion in transactions similar to those authorized by the bill have occurred collectively in North Carolina, Tennessee, Texas, and Virginia. The purchases of life insurance policies and annuity contracts on behalf of consenting individuals in these four states have or are projected to yield more than $75 million to charitable organizations. Approximately 40 percent of the $1.2 billion in transactions have been made by public and private universities, 40 percent with not-for-profit hospitals, and the remaining 20 percent on behalf of religious organizations.

D. FISCAL COMMENTS:

The bill appears to expand the fundraising ability of not-for-profit entities to facilitate charitable gifts through the coordinated use of life insurance policies and annuity contracts. According to proponents of the bill, the current low cost fixed-yield capital markets serve as the funding mechanism that allow donors to effectively make substantial monetary gifts to favored charities upon their (donors') death.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Although the bill requires DFS to approve the purchase of life insurance and annuities by a university before a purchase is made, the bill does not grant rulemaking authority to DFS to outline its approval process. In its analysis of the bill, DFS did not indicate a need for specific rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The National Conference of Insurance Legislators (NCOIL) issued a press release March 3, 2005; in the release, NCOIL announced that it opposed the expansion of state laws governing insurable interests, such as the changes proposed by HB 1145. In the press release, an NCOIL spokesman stated that investor-owned life insurance (IOLI) proposals "are contrary to sound public policy and they erode the integrity of long-standing insurable interest principles designed to ensure that life insurance is used only by those with a relationship to the insured." Further, the NCOIL announcement elaborated that "[s]tate laws should not be modified to permit charities, which otherwise have a legitimate insurable

interest in donors, to allow their interest to be used by investor groups primarily for private investment purposes." The policy statement from NCOIL also notes, "[w]hen third party entities are permitted to purchase life insurance insuring the lives of unrelated individuals, the life insurance becomes nothing more than a funding vehicle."

Both the American Council of Life Insurers (ACLI) and the National Association of Insurance and Financial Advisors (NAIFA) have indicated similar opinions about the use of life insurance and annuities by a person or organization not related to the insured. In addition, the two organizations voiced concern that a not-for-profit organization that engages in arbitrage through the purchase of both a life insurance policy and an annuity in the name of a wealthy donor may endanger the tax-exempt status of the not-for-profit organization.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 14, 2005 meeting, the Insurance Committee adopted two amendments to HB 1145. Amendment 1 required an individual who authorizes a university, its DSO, or a trust or similar entity to purchase a life insurance policy or annuity contract to have a net worth of at least $5 million. Further, the amendment specified only an insurance agent licensed to transact business in Florida may sell such life insurance or annuity contracts.

Amendment 2 corrected a cross-reference in the bill.

Accordingly, the Insurance Committee reported the bill favorably with a CS. This analysis has been updated to reflect the amendments adopted by the committee at the April 14, 2005 meeting.