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**Senate Committee on  
Governmental Oversight and Productivity**

**RETIREMENT AND BENEFITS**

**HB 5025 — FRS Payroll Contribution Rates**

by Fiscal Council and Rep. Berfield (CS/SB 1040 by Governmental Oversight and Productivity Committee)

This bill sets the employer payroll contribution rates to be imposed by the more than 850 participating employers for funding of the Florida Retirement System for FY 2006-2007. For the past several years it has become the custom for the Legislature to receive an annual plan valuation of assets and liabilities and to fix the rates to be imposed for the succeeding fiscal and plan year in separate legislation. The bill also sets default rates for effect July 1, 2007, in the event no separate rate-setting bill is passed by the 2007 Legislature. For comparison purposes the current and proposed rates are as follows:

**Current and Proposed FRS Payroll Contribution Rates (%)**

<b>Retirement Class</b>	<b>FY 2006 Rates (Current Law)</b>	<b>FY 2007 (Proposed)</b>
Regular	6.67	8.69
Special Risk	17.37	19.76
Special Risk Admin. Spt.	8.76	11.39
Elected Officers, State	11.33	13.32
Elected Officers, County	14.07	15.37
Elected Officers, Judges	17.49	18.40
Senior Management	9.29	11.96
DROP	8.22	9.80

The bill provides a statement of important state interest to effect compliance with s. 18, Art. VII, State Constitution.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 38-0; House 115-0*

**CS/CS/SB 428 — Per Diem**

by Ways and Means Committee; Governmental Oversight and Productivity Committee; and Senators Lawson, Smith, Fasano, Argenziano, and Crist

The Legislature last increased the rates for per diem and meals in 1981, and the rate for mileage in 1994. The bill amends s. 112.061, F.S., effective July 1, 2006, so that:

- The \$50 per diem rate for travelers would be increased to \$80.

- The \$3 breakfast rate for travelers would be increased to \$6.
- The \$6 lunch rate for travelers would be increased to \$11.
- The \$12 dinner rate for travelers would be increase to \$19.
- The 29 cents per mile rate for travelers using a privately owned vehicle would be increased to 44.5 cents per mile.

The bill also permits specified county-level entities to enact policies that vary from the standard rates so long as those rates are not less than the authorized rates for FY 2005-2006.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 38-0; House 115-0*

### **HB 1129 — Florida State Charitable Campaign**

by Rep. Henriquez and others (CS/SB 2026 by Governmental Oversight and Productivity Committee and Senator Wise)

The Florida State Employees Charitable Campaign is the sole statutory mechanism for employee payroll deduction to recognized charitable service organizations. The bill amends s. 110.181, F.S., to provide that participating charitable organizations that provide direct services in a local fiscal agent's area will receive the same percentage of undesignated funds as the percentage of designated funds they receive. The undesignated funds remaining will be distributed by the local steering committee, which will be composed of state employees selected by the fiscal agent from among recommendations provided by interested participating organizations, and approved by the Statewide Steering Committee.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 40-0; House 119-0*

## **GOVERNMENTAL ORGANIZATION**

### **HB 1123 — Procurement and Purchasing Reform**

by Reps. Sansom, Rubio, Cannon, and others (CS/SB 2460 by Governmental Oversight and Productivity Committee and Senator Posey)

This act provides a periodic review process for the continuation, modification, or abolition of many agencies of the executive branch of state government, including entities separately attached to the judicial and legislative branches.

The Florida Legislature has enacted many structural devices to ensure the periodic review of governmental functions and agencies. The pioneering enactments date from the 1970s and while

modified since then they have become sequentially known as the Sundown Act, Sunset Act, and Sunrise Act. Additional budget-based enactments have occurred since that time to provide succeeding Legislatures with a number of policy and financial tools to gauge the operations and sufficiency of the entities they have created and funded. The Open Government Sunset Review Act is by far the most commonly invoked of these enactments. Each year the Legislature undertakes a review process on new or existing public records exemption statutes to comply with the Florida constitutional right of access to public meetings and records.

This act creates a “Florida Government Accountability Act” and proposes an eight-year review process affecting named state agencies and their advisory bodies. It establishes a multi-member Legislative Sunset Advisory Committee to act in a review and recommending capacity for agency reviews conducted by the Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA). Both OPPAGA and the advisory committee are directed to utilize specific review criteria designed to examine each reviewed agency’s operations which will ultimately lead to a recommendation to the Legislature on whether it should be retained, modified, or repealed.

The act provides that a failure of the Legislature to act invokes an automatic one-year period at which time the reviewed state agency shall be subject to abolition unless specifically saved from expiration. If a decision to terminate an agency is reached, the bill provides specific safeguards for securing its property and funds and the satisfaction of any debt it has issued.

Additional changes are made to the planning and budgeting statutes, and a working group of key budget professionals from the executive and legislative branches is created to make recommendations regarding methodology used in computing activity and unit cost information for agency legislative budget requests.

The act appropriates \$400,000 and five full-time equivalent positions to OPPAGA to fund the FY 2007 workload created by the act.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 39-0; House 89-28*

## **HB 1145 — Official State Designations**

by Rep. Evers and others (CS/SB 1494 by Judiciary Committee and Senators Bennett and Fasano)

The bill makes the phrase “In God We Trust” the official motto of the State of Florida. The bill also designates the Admiral John H. Fetterman State of Florida Maritime Museum and Research Center as the official state maritime museum.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 40-0; House 117-0*

### **HB 911 — State Facilities/Emergency Shelters**

by Rep. Bullard and others (CS/SB 678 by Domestic Security Committee and Senators Bullard, Siplin, Hill, Campbell, Dawson, Geller, Lawson, Miller, Klein, and Wilson)

The bill requires the Department of Management Services to compile and maintain a list of unoccupied space in state-owned facilities that is suitable for use as emergency shelter during a storm or other catastrophic event. The standard for suitability is that used by the American Red Cross for hurricane evacuation shelters.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 40-0; House 114-0*

### **SB 1756 — Succession to the Office of the Governor**

by Senator Sebesta

The configuration of the Florida Cabinet was modified by the adoption of Constitutional Amendment No. 8. in November 1998. The amendment merged two Cabinet offices and eliminated two others. Specifically, the offices of the Treasurer and the Comptroller were merged into the office of the Chief Financial Officer. The amendment also removed the Secretary of State and the Commissioner of Education from the Cabinet. As a result of the adoption of the amendment, the Cabinet consists of an Attorney General, a Commissioner of Agriculture and a Chief Financial Officer.

This bill modifies the current statutory succession to the office of Governor in order to reflect changes in the size and composition of the Cabinet. The bill eliminates the Secretary of State from the succession as that office is no longer elected, but is appointed by the Governor. The bill also eliminates the Commissioner of Education from succession. Further, the Comptroller and the Treasurer are eliminated from succession to the office of Governor as those offices have been merged into the office of the Chief Financial Officer. The bill places the Chief Financial Officer in the line of succession.

Under the bill, the line of succession to the office of Governor is as follows: the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and then the Commissioner of Agriculture.

This bill amends s. 14.055, F.S.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 40-0; House 118-0*

## **HB 599 — Florida Faith-Based and Community-Based Advisory Council**

by Rep. Cannon and others (CS/SB 1232 by Governmental Oversight and Productivity Committee and Senators Wise and Crist)

The bill (Chapter 2006-9, L.O.F.) codifies in statute the Florida Faith-based and Community-based Advisory Council. This entity was originally created in Executive Order 04-245, issued November 18, 2004, as amended by Executive Order 05-24, issued February 1, 2005. The 25-member council is assigned to the Executive Office of the Governor for administrative purposes.

The purpose of the council is to provide advice on the development of broadly based secular and faith-based engagement in the delivery of important state services. The council may not make any recommendation that conflicts with the Establishment Clause of the First Amendment to the United States Constitution or the public funding provision of s. 3, Art. I of the State Constitution. The council is to report to the Governor and Legislature on these recommendations by February 1 of each year. The council is abolished June 30, 2011, unless reviewed and saved from repeal by the Legislature.

These provisions became law upon approval by the Governor on May 4, 2006.

*Vote: Senate 39-0; House 116-3*

## **PUBLIC MEETINGS AND RECORDS**

### **HB 7015 — Open Government Sunset Review of Archaeological Sites Exemption**

by Governmental Operations Committee and Rep. Rivera (CS/SB 1036 by Governmental Oversight and Productivity Committee)

This bill is the result of an Open Government Sunset Review of s. 267.135, F.S., which makes exempt any information identifying the location of an archaeological site contained in a site file or other record maintained by the Division of Historical Resources of the Department if the division finds that disclosure of such information will create a substantial risk of harm, theft, or destruction at such site.

If approved by the Governor, these provisions take effect October 1, 2006.

*Vote: Senate 40-0; House 119-0*

## **HB 7013 — Open Government Sunset Review of Copyright of Agency-created Data Processing Software Authority**

by Governmental Operations Committee and Rep. Rivera (CS/SB 1038 by Governmental Oversight and Productivity Committee)

Under Florida law, agency-created data processing software is a public record. Section 119.084(2), F.S., provides general authority to agencies to copyright data processing software that they develop and to enforce their copyrights. The provision also authorizes agencies to sell or license the use of the software based upon market considerations. If, however, agency-copyrighted software is required by a user *solely* for application to public records held by that agency, the standard public record copying fees of s. 119.07(4), F.S., apply instead of the market-based fee.

The general authority permitting agencies to copyright and sell their software based upon market considerations is, in effect, an exemption from public records requirements. The public necessity statement enacted in support of the provision provides that copyright authority enables agencies to recoup production expenses, which accrues to the benefit of the public.

As the provision is still being used by a small number of agencies, and as the provision was found to meet the requirements of the Open Government Sunset Review Act, s. 119.084, F.S., the exemption was saved from repeal.

If approved by the Governor, these provisions take effect October 1, 2006.

*Vote: Senate 40-0; House 86-32*

## **HB 1369 — Public Records Exemption for Rejected Bids**

by Rep. Evers and others (CS/SB 2316 by Governmental Oversight and Productivity Committee and Senator Sebesta)

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an invitation to bid or request for proposal. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier. Current law does not provide a public records exemption for an invitation to negotiate.

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an invitation to bid (ITB) or a request for proposal (RFP) and concurrently provides notice of its intent to reopen the ITB or RFP. The bill provides for expiration of the exemption.

The bill also expands the public records exemption to include a competitive sealed reply in response to an invitation to negotiate. Further, the bill creates a public meetings exemption for a meeting at which a negotiation with a vendor is conducted. A complete recording must be made of the exempt meeting. The recording is exempt from public records requirements for a limited period.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 37-0; House 118-0*

### **CS/SB 1438 — Custodial Requirements for Public Records**

by Governmental Oversight and Productivity Committee and Senator Argenziano

The bill clarifies custodial requirements for public records. It places subheadings in the section of the Public Records Law which establishes custodial requirements for public records. It also clarifies that the custodian of public records that are confidential and exempt, as opposed to records that are only exempt, may not release those records except as provided in statute or by court order. Although this clarification is the standard contained in case law, some confusion exists because some statutes making records confidential and exempt expressly state that the custodian may not release the confidential and exempt record except as provided in law, while other statutes do not. The bill makes it clear that same standard applies to each exemption that is confidential and exempt by expressly stating this standard in the Public Records Law.

The bill further specifies that an agency or other governmental entity that is authorized to receive a confidential and exempt record is required to maintain the record's confidential and exempt status. Maintaining the confidential and exempt status is consistent with limiting the release of the record.

The bill further clarifies that the provision does not limit access to any record by an agency or entity acting on behalf of a custodian, by the Legislature, or pursuant to court order.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 39-0; House 120-0*

### **HB 1097 — Custodians of Public Records**

by Rep. Vana and others (CS/SB 2714 by Governmental Oversight and Productivity Committee and Senators Klein and Bullard)

The bill amends the Public Records Act to require each agency head who appoints a designee to act as a custodian of public records to provide notice to the public of such designation. The notice must include the name, title, e-mail address, office telephone number, and office mailing address of the designee. It must be prominently posted in those portions of the agency offices that are accessible to the public. If the agency maintains a website, the notice must be

prominently displayed on the home page of that website and must be made available by any employee who responds to telephone calls from the public.

The bill also prohibits denying that a record exists and prohibits misleading anyone as to the existence of a public record. The bill requires a custodian or designee to respond to requests to inspect or copy records promptly and in good faith. It also requires the availability of a custodian or designee to respond to requests during regular business hours for the office having public records.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 38-0; House 117-1*

## **GOVERNMENTAL OVERSIGHT**

### **CS/CS/SB 2518 — Contractual Services/State Agency**

by Ways and Means Committee; Governmental Oversight and Productivity Committee; and Senator Argenziano

The bill creates the Council on Efficient Government, and provides for the membership, powers, and duties of the council. The bill requires that an agency develop a detailed business case to outsource before a service or activity may be outsourced, and requires that an agency submit the business case to outsource to the council, the Governor, and the Legislature, before releasing the solicitation or executing the contract, when the contract will cost more than \$1 million in any fiscal year. For proposals to outsource costing more than \$10 million in any fiscal year, the council must conduct an analysis and provide it, before the agency releases the solicitation, to the agency proposing the outsourcing, the Governor, and the Legislature.

The bill provides specific information that must be included in all business cases to outsource, and prescribes specific additional contract requirements applicable to outsourcing contracts.

The bill provides that on contracts valued at greater than \$10 million, certain contract amendments may not be executed before the agency first submits a written report on contract performance to the Governor and the Legislature. The bill specifies that when a contract is valued in excess of \$1 million, one of the negotiators must be certified as a contract negotiator by the DMS, and when a contract is valued in excess of \$10 million, one of the negotiators must be certified as a Project Management Professional. The bill requires that solicitations include a provision that respondents to a solicitation may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, any employee of the executive or legislative branch concerning the solicitation, except in writing to the procurement officer or as provided in the solicitation.



The bill provides that a contract may not prohibit lobbying by a contractor of the executive or legislative branch concerning the contract, during the contract term.

The bill specifies restrictions on contractor supervision of state employees, and prohibits contractor involvement in procurements in which the contractor has an interest.

The bill repeals s. 14.203, F.S., which provides the duties and functions of the State Council on Competitive Government.

The bill appropriates funds and authorizes positions for the Council on Efficient Government, and for the training of Project Management Professionals.

The bill provides that any agency under the control of the Attorney General, the Chief Financial Officer, or the Commissioner of Agriculture is subject to this act.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 33-0; House 116-0*

### **CS/CS/SB 262 — Administrative Procedures**

by Judiciary Committee; Governmental Oversight and Productivity Committee; and Senator Bennett

This bill amends statutory provisions relating to publication of the *Florida Administrative Weekly*, and revises and creates various duties of the Joint Administrative Procedures Committee (JAPC). The bill revises some duties of the Department of State and the Administration Commission, and revises duties with respect to rulemaking for agencies. The bill revises provisions relating to the timing and substance of petitions for administrative review of agency actions.

The bill also:

- Expands eligibility under the Florida Equal Access to Justice Act, through which small business parties may receive attorney's fees and costs when they prevail in certain adjudicatory or administrative proceedings, to include certain individuals whose net worth did not exceed \$2 million at the time of the state agency action;
- Clarifies an agency's duty to report on changes made to proposed rules after a final public hearing;
- Requires the Division of Administrative Hearings and agencies to recommend types of cases or disputes suitable for a statutory summary hearing process; and

- Requires an agency's final order in certain cases involving disputed issues of material fact to explicitly rule on the exceptions that parties raise to the recommended order.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 39-0; House 119-0*

### **HB 755 — DOL/Competitive Procurement Protest**

by Rep. Clarke (SB 1942 by Senator Clary)

The bill provides that in a competitive procurement protest involving the Department of the Lottery, including the rejection of all bids, an administrative law judge may not substitute his or her procurement decision for the agency's procurement decision, but must review the intended agency action only to determine if the agency action is illegal, arbitrary, dishonest, or fraudulent.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 40-0; House 117-0*

### **CS/CS/SB 1632 — Agency Inspectors General**

by Judiciary Committee; Governmental Oversight and Productivity Committee; and Senator Bennett

The bill creates a Council on State Agency Inspectors General in the Office of Chief Inspector General within the Executive Office of the Governor. The Council consists of the Chief Inspector General and four other Inspectors General appointed by the Governor.

The Council is tasked with developing recommendations relating to the creation of an independent review process for state agency inspector general investigations and audits. At a minimum, these recommendations must:

- Offer entities contracting with state agencies a meaningful opportunity to challenge in writing the findings, conclusions, and recommendations contained in a state agency inspector general's final report.
- Specifically identify the entities entitled to submit a response, and identify the circumstances under which the entity's response must be attached to the state agency inspector general's final report.
- Include a hearing process entitling entities contracting with state agencies with an opportunity to present to the Chief Inspector General any additional material relevant to the state agency inspector general's final report.

- Identify ancillary issues to be addressed, including but not limited to public records concerns, special conditions for whistle-blower's investigations, and exemptions for specific categories of audits or investigations.

The Council must finalize its recommendations related to these issues and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, before January 1, 2007.

The legislation repeals on July 1, 2007.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 38-0; House 117-1*

## **INVESTMENT MANAGEMENT**

### **HB 7161 — Public Records Exemption for Alternative Investments**

by Governmental Operations Committee and Rep. Rivera (CS/SB 1308 by Governmental Oversight and Productivity Committee and Senator Garcia)

This bill makes confidential and exempt proprietary confidential business information held by the State Board of Administration (SBA) regarding alternative investments for 10 years after the termination of the alternative investment, with exceptions. The SBA is the collective investment manager for more than two dozen fiduciary accounts maintained by State of Florida and local government agencies. The exemption is retroactive.

The bill defines “proprietary confidential business information,” as well as specifically provides exceptions to the definition. The bill also requires verification by the proprietor that information is still proprietary confidential business information upon the receipt by the SBA of a public records request. Failure of the proprietor within a reasonable time to submit a verified written declaration that the information is proprietary confidential business information results in the loss of confidential and exempt status and permits the release of that information.

The bill also establishes a process by which any person may petition a court for an order for the release of the information. In order for such information to be made public, the court must find that the information is not a trade secret as defined in s. 688.002, F.S., that a compelling public interest is served by the release of the record which interest exceeds the public necessity for maintaining the confidentiality of the information, and that the release will not have specified adverse effects.

If approved by the Governor, these provisions take effect October 1, 2006.

*Vote: Senate 36-0; House 120-0*

## **CS/SB 1670 — State Financial Matters**

by Governmental Oversight and Productivity Committee and Senator Garcia

This bill expands the authority provided the Board of Administration in statute for the conduct of its fiduciary duties as the manager of more than two dozen investment funds, including the multi-employer Florida Retirement System (FRS) and its dual track defined benefit (Pension Plan) and defined contribution plan (Investment Plan).

Investment restrictions contained in ss. 215.44-215.47, F.S., preclude a concentration of fund assets in any one asset class or the holding of large positions of a single equity or debt beyond a nominal amount. As part of its long-term investment management plan the board has advised the FRS plan trustees (Governor, Chief Financial Officer, and Attorney General) of the opportunity to adjust the statutory limits on its investment classes in order to make its investments sensitive to what it believes are changed circumstances in world-wide financial markets. CS/SB 1670 eliminates archaic language on the holding of Florida-specific mortgages and expands from twenty to twenty-five percent the permitted allocation of fiduciary funds in foreign asset classes. The legislation revises the current interest rate assumption for inter-plan transfers, that is, from Pension Plan to Investment Plan, from a fixed eight percent to a rate set annually and incorporated into the overall actuarial assumptions for the FRS. The current interest rate assumption is 7.75 percent.

The bill provides sanctions against current or former Investment Plan participants who receive a distribution from their account but do not engage in a bona fide termination of employment. When such an event occurs the board is given the authority to conduct an administrative hearing if there are disputed issues of fact.

The act changes the investment threshold for certain cash- and debt-based instruments from an institution's net worth to a rating system set by one of the several national rating systems.

The board is also given expanded authorization to sell any of its securities short, a financial strategy that permits it to borrow securities at one price in anticipation of market opportunities for overvalued or underperforming securities which will yield it a gain on the basis of a price decline over time.

Investment Plan participants may purchase prior earned armed services credit under like circumstances permitted for those individuals enrolled in the Pension Plan.

If approved by the Governor, these provisions take effect July 1, 2006.

*Vote: Senate 37-0; House 116-2*